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EPA ORC  
OFFICE OF  
REGIONAL HEARING CLERK

October 21, 2011

**VIA FEDERAL EXPRESS**

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code ORA18-1  
Boston, MA 02109-3912

**Re: In the Matter of Cedar's Mediterranean Foods, Inc.  
Docket No. CAA-01-2011-0055**

Dear Ms. Santiago:

Enclosed for filing please find an original and one copy of the Answer of Cedar's Mediterranean Foods, Inc. to the EPA's Complaint and Request For a Hearing.

Please docket the enclosed at your earliest convenience.

Very truly yours,



Timothy F. Holahan

TFH/caf  
Enclosure

cc: Thomas T. Oliver, Senior Enforcement Counsel (via federal express)  
Robin L. Main, Esq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1 – NEW ENGLAND

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Docket No. CAA-01-2011-0055

OFFICE OF  
REGIONAL HEARING CLERK

Cedar's Mediterranean Foods, Inc.  
50 Foundation Avenue  
Ward Hill, MA 01835

**ANSWER OF CEDAR'S MEDITERRANEAN FOODS, INC. TO COMPLAINT AND  
REQUEST FOR A HEARING**

Cedar's Mediterranean Foods, Inc. ("Cedar's") submits this Answer to the Environmental Protection Agency's ("EPA") Complaint. Further, Cedar's requests an informal settlement conference and a hearing in this matter.

**I. STATEMENT OF AUTHORITY**

1. To the extent this paragraph characterizes the Complaint and Notice of Opportunity for Hearing, those documents speak for themselves, and thus no response is required. Further, this paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

2. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

3. To the extent this paragraph characterizes the Complaint and Notice of Opportunity for Hearing, those documents speak for themselves, and thus no response is required. Further, this paragraph refers to legal authority that speaks for itself, and thus no

response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

4. This paragraph refers to the Complaint and to legal authority, which speak for themselves, and thus no response is required. To the extent a response is required, denied.

## **II. STATUTORY AND REGULATORY FRAMEWORK**

5. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

6. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

7. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

8. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

9. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

10. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.



11. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

a. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

b. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

c. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

12. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

### **III. GENERAL ALLEGATIONS**

13. Admitted.

14. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

15. Admitted.

16. The first sentence of this paragraph is admitted. As to the second sentence, admitted that the referenced IPR has a refrigerant capacity of over 50 pounds. Otherwise, the

second sentence refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

17. As to the first sentence of this paragraph, admitted that EPA conducted an inspection of the Facility on July 7, 2010. Otherwise, the first sentence of this paragraph refers to legal authority that speaks for itself, and thus no response is required. To the extent a response is required, denied. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

18. To the extent this paragraph characterizes the Administrative Order, that document speaks for itself, and thus no response is required. Further, this paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

#### **IV. VIOLATIONS**

##### **COUNT I** **(Failure to Repair Leaks)**

19. Cedar's restates and incorporates the above paragraphs by reference as if fully set forth herein.

20. Admitted that Cedar's owns or operates an IPR unit at the facility. Otherwise, this paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

21. Admitted that the referenced IPR unit normally contains more than 50 pounds of refrigerant. Otherwise, this paragraph refers to legal authority that speaks for itself, and thus no

response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

Leak Discovered on March 20, 2008

22. Cedar's admits that there was a leak on March 20, 2008 but denies that it was from its IPR unit. Otherwise, Cedar's lacks information sufficient to form a belief as to allegations in this paragraph and calls upon the EPA to prove the same. To the extent a further response is required, denied.

23. Denied.

24. Denied.

25. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

26. Denied.

27. Denied.

28. This paragraph refers to legal authority that speaks for itself, and states a legal conclusion, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

Leak Discovered on August 27, 2008

29. Denied.

30. Denied.

31. Denied.



32. Denied. Further, this paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

33. Denied. Further, this paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

34. Denied. Further, this paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

35. This paragraph refers to legal authority that speaks for itself, and states a legal conclusion, and thus no response is required. To the extent a response is required, denied.

**COUNT II**  
**(Failure to Perform Leak Repair Verification Tests)**

36. Cedar's incorporates the above paragraphs by reference.

*Leak Discovered on April 2, 2007*

37. Cedar's has reviewed documents indicating that one of its contractors located and repaired a refrigerant leak on April 2, 2007. Otherwise, Cedar's lacks information sufficient to form a belief as to allegations in this paragraph and calls upon the EPA to prove the same. To the extent a further response is required, denied.

38. Cedar's lacks information sufficient to form a belief as to allegations in this paragraph and calls upon the EPA to prove the same. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

39. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

40. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

41. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

42. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

43. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

*Leak Discovered on July 3, 2007*

44. Cedar's has reviewed documents indicating that one of its contractors located and repaired a leak on July 3, 2007. Otherwise, Cedar's lacks information sufficient to form a belief



as to allegations in this paragraph and calls upon the EPA to prove the same. To the extent a further response is required, denied.

45. Cedar's lacks information sufficient to form a belief as to allegations in this paragraph and calls upon the EPA to prove the same. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

46. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

47. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

48. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. To the extent a response is required, denied.

49. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

50. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

*Leak Discovered on August 23, 2007*

51. Denied. Further, Cedar's has reviewed documents indicating that one of its contractors located and repaired a leak on August 22, 2007.

52. Cedar's lacks information sufficient to form a belief as to allegations in this paragraph and calls upon the EPA to prove the same. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

53. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

54. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

55. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

56. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

57. This paragraph refers to legal authority that speaks for itself, and thus no response is required. To the extent a response is required, denied.

Leak Discovered on September 28, 2007

58. Denied.

59. Denied.

60. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

61. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

62. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

63. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's



denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

64. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

Leak Discovered on May 19, 2008

65. Cedar's has reviewed documents indicating that one of its contractors located and repaired a leak on or around May 19, 2008. Otherwise, Cedar's lacks information sufficient to form a belief as to allegations in this paragraph and calls upon the EPA to prove the same. To the extent a further response is required, denied.

66. Cedar's lacks information sufficient to form a belief as to allegations in this paragraph and calls upon the EPA to prove the same. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

67. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

68. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

69. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

70. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

71. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

*Leak Discovered on October 9, 2008*

72. Cedar's has reviewed documents indicating that one of its contractors located and repaired a leak on or around October 9, 2008. Otherwise, Cedar's lacks information sufficient to form a belief as to allegations in this paragraph and calls upon the EPA to prove the same. To the extent a further response is required, denied.

73. Cedar's lacks information sufficient to form a belief as to allegations in this paragraph and calls upon the EPA to prove the same. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

74. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's

denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

75. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

76. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

77. Denied. Further, to the extent this paragraph refers to legal authority, that authority speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

78. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

#### **V. PENALTY**

79. This paragraph refers to legal authority that speaks for itself, and thus no response is required. This paragraph also purports to characterize EPA's proposed civil penalty, which also speaks for itself. To the extent a response is required, denied.

80. This paragraph refers to legal authority and EPA policies that speak for themselves, and thus no response is required. If a response is required, Cedar's denies the



allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation or policy.

81. This paragraph describes EPA's characterization of this case, to which no response is required. This paragraph also refers to the Complaint, legal authority, and EPA policies, which speak for themselves, and thus no response is required. To the extent a response is required, the allegations in this paragraph are denied.

82. This paragraph describes EPA's characterization of this case, to which no response is required. To the extent a response is required, the allegations in this paragraph are denied.

83. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

84. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

85. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

## **VI. OPPORTUNITY TO REQUEST A HEARING AND FILE AN ANSWER**

86. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

87. This paragraph refers to legal authority that speaks for itself, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute or regulation.

## **VII SETTLEMENT CONFERENCE**

88. This paragraph describes EPA's characterization of this case, to which no response is required. This paragraph also refers to the Complaint, legal authority, and EPA policies, which speak for themselves, and thus no response is required. If a response is required, Cedar's denies the allegations in this paragraph to the extent they are inconsistent with the terms of the statute, regulation, policy, or EPA's characterization of the case.

### **REQUEST FOR AN INFORMAL SETTLEMENT CONFERENCE**

Cedar's requests an informal settlement conference in this matter.

### **REQUEST FOR A HEARING**

Cedar's requests a hearing in this matter.

## **AFFIRMATIVE DEFENSES**

### **FIRST AFFIRMATIVE DEFENSE**

The Complaint, and each and every count thereof, fails to state a claim upon which relief may be granted.

### **SECOND AFFIRMATIVE DEFENSE**

EPA's claims are barred to the extent that they do not set forth violations of applicable federal laws and regulations (including, but not limited to, the Clean Air Act, 42 U.S.C. Section 7413(d)).

### **THIRD AFFIRMATIVE DEFENSE**

EPA's claims may be barred in whole or in part by applicable statutes of limitation or repose.

### **FOURTH AFFIRMATIVE DEFENSE**

The penalty assessed does not comport with the CAA Penalty Policy, is arbitrary, and also includes a penalty for violations that did not occur.

### **FIFTH AFFIRMATIVE DEFENSE**

Any of the violations of law alleged by EPA therein were caused by the acts and/or omissions of individuals or entities who are not a party hereto.

### **SIXTH AFFIRMATIVE DEFENSE**

The proposed civil penalties set forth in the EPA's Complaint grossly exceed that which might be justified under the law in light of the facts.

### **SEVENTH AFFIRMATIVE DEFENSE**

Cedar's at all times acted reasonably and in good faith, based on all relevant facts and circumstances known by Cedar's at the time it acted.

### **EIGHTH AFFIRMATIVE DEFENSE**

EPA's allegations constitute agency action that is arbitrary and capricious, and an abuse of discretion under the Administrative Procedure Act. 5 U.S.C. §§ 553 and 706(2).

### **NINTH AFFIRMATIVE DEFENSE**

EPA has no right to relief. 40 C.F.R. § 22.20(a).

### **TENTH AFFIRMATIVE DEFENSE**

Any penalty should be reduced on the grounds of company size and/or economic hardship.



**ELEVENTH AFFIRMATIVE DEFENSE**

Cedar's hereby gives notice that it intends to rely upon such other and further defenses as may become available through discovery or otherwise and reserves its right to amend this Answer and to assert and rely upon such further defenses as of right or by appropriate motion.

WHEREFORE, the Defendant, Cedar's, respectfully requests that the EPA: (1) dismiss the Complaint in its entirety; and (2) award Cedar's all such other and further relief as justice may require.

CEDAR'S MEDITERRANEAN FOODS, INC.

By its attorneys,



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Robin L. Main (BBO # 556074)  
Timothy F. Holahan (BBO #672760)  
Hinckley, Allen & Snyder LLP  
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Boston, MA 02109-1775  
(617) 345-9000  
(617) 345-9020 (facsimile)  
rmain@haslaw.com  
tholahan@haslaw.com

Date: October 21, 2011

**CERTIFICATE OF SERVICE**

I hereby certify that on October 21, 2011 the above document was filed via federal express with:

Wanda I. Santiago, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code ORA18-1  
Boston, MA 02109-3912

And served via federal express on:

Thomas T. Oliver, Senior Enforcement Counsel  
U.S. Environmental Protection Agency, Region 1  
5 Post Office Square, Suite 100  
Mail Code OES04-3  
Boston, MA 02109-3912



\_\_\_\_\_  
Timothy F. Holahan