

EASTMAN & SMITH LTD.

ATTORNEYS AT LAW

Established 1844

Richard T. Sargeant
Attorney at Law
Direct Dial: 419-247-1681
rtsargeant@eastmansmith.com

One SeaGate, 24th Floor
P.O. Box 10032
Toledo, Ohio 43699-0032
Telephone: 419-241-6000
Facsimile: 419-247-1777

May 15, 2008

Regional Hearing Clerk (E-13J)
US EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

Re: Envirosafe Services of Ohio, Inc.
Our File No: E520/184499

Dear Regional Hearing Clerk:

Enclosed for filing, please find an original and two (2) copies of **Answer, Request for Hearing and Settlement Conference of Respondent Envirosafe Services of Ohio, Inc.** We have also enclosed a self-addressed, stamped envelope for your convenience in returning a date-stamped copy to us.

Very truly yours,

EASTMAN & SMITH LTD.



Richard T. Sargeant

RTS/jee
Enclosures
CC: Harriet Croke, Esq.
James Entzminger

Columbus • Toledo • Findlay

www.eastmansmith.com

3. EnviroSAFE admits the allegations in paragraph 3 of the Complaint.

Statutory and Regulatory Background

4. With respect to the allegations in paragraph 4 of the Complaint, EnviroSAFE admits that Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to report a release of a hazardous substance other than a federally permitted release and other than a release which results in exposure only to persons within a workplace in quantities equal to or greater than those determined pursuant to Section 102 of CERCLA as soon as the person has knowledge of such a release.

General Allegations

5. EnviroSAFE admits the allegations in paragraph 5 of the Complaint.

6. EnviroSAFE admits the allegations in paragraph 6 of the Complaint.

7. EnviroSAFE admits that its facility includes buildings, structures, installations, equipment, pipes, landfill, storage containers, and denies the remaining allegations in paragraph 7 of the Complaint.

8. EnviroSAFE admits the allegations in paragraph 8 of the Complaint.

9. EnviroSAFE admits that F039 is a hazardous waste under RCRA.

10. EnviroSAFE denies the allegations in paragraph 10 of the Complaint and asserts that the reportable quantity for F039 is subject to application of the mixture rule when, as here, the concentrations of the substances are known.

11. EnviroSAFE admits the allegations in paragraph 11 of the Complaint.

12. EnviroSAFE denies the allegations in paragraph 12 of the Complaint.

13. EnviroSAFE denies the allegations in paragraph 13 of the Complaint.

14. EnviroSAFE denies the allegations in paragraph 14 of the Complaint.

15. EnviroSAFE admits that it had knowledge of a spill of F039 at approximately 10:30 a.m. on February 3, 2007, but denies each and every other allegation in paragraph 15 of the Complaint.

16. EnviroSAFE admits that it called the National Response Center on February 3, 2007 at 5:30 and 5:45.

17. EnviroSAFE denies the allegations in paragraph 17 of the Complaint.

18. EnviroSAFE denies the allegations in paragraph 18 of the Complaint.

Proposed CERCLA Penalty

19. EnviroSAFE denies the allegations in paragraph 19 for lack of knowledge sufficient to form a belief as to the truth of the allegations.

20. EnviroSAFE denies the allegations in paragraph 20 for lack of knowledge sufficient to form a belief as to the truth of the allegations.

21. EnviroSAFE denies the allegations in paragraph 21 of the Complaint for lack of knowledge sufficient to form a belief as to the truth of the allegations.

22. EnviroSAFE denies the allegations in paragraph 22 of the Complaint for lack of knowledge sufficient to form a belief as to the truth of the allegations.

23. EnviroSAFE expressly denies each and every allegation in the Complaint not herein expressly admitted.

Defenses

24. Respondent EnviroSAFE denies that a reportable quantity of hazardous substances was spilled or released on February 3, 2007.

25. Respondent EnviroSAFE alleges USEPA guidance specifically provides that the quantity of waste spilled under these circumstances must be calculated pursuant to the mixture

rule and, when that is done in accordance with the facts of this matter, there was not a release of a reportable quantity.

26. Respondent EnviroSAFE asserts that it reported as soon as relevant facts were available despite its good faith conviction that a reportable quantity had probably not been spilled.

27. Respondent EnviroSAFE asserts that the short interval between the initial spill and the report, the extent and gravity of the facts, the Respondent's history of compliance and lack of culpability, and the absence of economic benefit or savings and other matters justice requires do not justify the amount demanded by Complainant in this matter even if the report is deemed not to have been immediate, which it denies.

28. Respondent EnviroSAFE asserts that the spilled volume was all contained and recovered with none leaving the site or remaining in the environment and producing no exposure other than to those at the workplace, which is a RCRA permitted hazardous waste management facility.

29. Respondent EnviroSAFE contends that it is entitled to judgment as a matter of law.

Request for Hearing

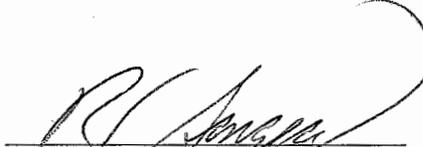
30. Respondent EnviroSAFE requests a hearing before an Administrative Law Judge upon the issues raised by the Complaint and other pertinent issues.

Request for Informal Settlement Conference

31. Respondent Envirosafe requests an informal conference to discuss the facts alleged in the Complaint and to discuss settlement.

Respectfully submitted,

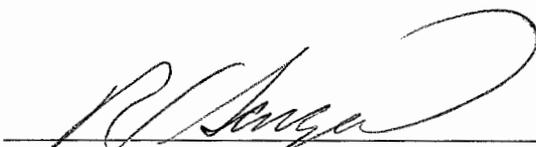
EASTMAN & SMITH LTD.



Richard T. Sargeant
Joseph A. Gregg
Eastman & Smith Ltd.
One SeaGate, 24th Floor,
Toledo, Ohio 43604
Phone: (419) 247-1681
Fax: (419) 247-1777
Email: rtsargeant@eastmansmith.com

CERTIFICATE OF SERVICE

A copy of the foregoing Answer and Request for Hearing and Settlement Conference was mailed this 15th day of May, 2008 via regular U.S. mail to: Harriet Croke, Esq. (C-14J), Office of Regional Counsel, U.S. EPA, Region 5, 77 Jackson Boulevard, Chicago, Illinois 60604.



Attorneys for Respondent Envirosafe
Services of Ohio, Inc.

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA REGION 5
MAY 19 2 59 PM '08