

2011 MAY 16 PM 3:06

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
LAKE'S FARM SERVICE LLC)	
)	DOCKET NO. CAA-05-2010-0058
RESPONDENT)	
)	Hon. Barbara A. Gunning
)	
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COMPLAINANT'S INITIAL PREHEARING EXCHANGE

In accordance with the Prehearing Order issued by the Presiding Officer on April 6, 2011, Complainant, the Director of the Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA), through his undersigned attorney, hereby files Complainant's Initial Prehearing Exchange, pursuant to Section 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22.

1. Complainant's Witnesses and Exhibits

A. Witnesses

Complainant may call the following individuals as witnesses in the hearing in this matter:

1. Mr. Edward Bordy
Inspector – Grantee
Chemical Emergency Preparedness
and Prevention Section
Superfund Division
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

Mr. Bordy may be called as a fact witness to testify about his inspection of the Lake's Farm LLC (Lake's Farm or Respondent) farm supply facility on September 10, 2008, and his observations and actions during that inspection. This may include his conversations with personnel at Respondent's facility concerning their compliance status with regard to the Risk Management Program regulations at 40 C.F.R. Part 68. A copy of

Mr. Bordy's September 10, 2008 Risk Management Program Inspection Findings Sheet is attached as Complainant's Exhibit 1.

2. Mr. Greg Chomycia
 Environmental Engineer
 Chemical Emergency Preparedness
 and Prevention Section
 Superfund Division
 U.S. EPA, Region 5
 77 West Jackson Blvd.
 Chicago, Illinois 60604

Mr. Chomycia may be called to testify about his review of Mr. Bordy's Inspection Findings, his role in U.S. EPA's issuance of a Request for Information to Lake's Farm under the authority of Section 114 of the Clean Air Act, 42 U.S.C. § 7414 (Complainant's Exhibit 2), and the information he received and reviewed from Respondent's January 14, 2010 responses to that Request for Information (Complainant's Exhibit 3). This may include various documents required by U.S. EPA's Risk Management Program, and the failure of Respondent's personnel to provide them in response to the Section 114 Request for Information. He may additionally testify about Respondent's Risk Management Plan. (Complainant's Exhibit 23)¹

Mr. Chomycia may also testify as to conversations held with Lake's Farm personnel, as well as representatives from both the Office of the Indiana State Chemist and the Indiana Plant Food and Agricultural Chemical Association with regard to Respondent's Risk Management Program practices. Mr. Chomycia may further testify about his role in U.S. EPA's issuance of the February 17, 2010 Notice of Intent to File a Civil Complaint to Lake's Farm (Complainant's Exhibit 4), including the calculation of the penalty proposed in that Notice of Intent and the Complaint in this matter (*see* Complainant's Exhibit 22), as well as his recalculation of proposed penalty (*see* Complainant's Exhibit 5).² In addition, Mr. Chomycia may provide testimony concerning certain documents provided by Respondent; and may, if necessary, provide testimony sufficient to authenticate them. These include the following:

- Complainant's Exhibit 6 - Management System Organizational Chart
- Complainant's Exhibit 7 - Results of Consequence Analysis (Worst-case)
- Complainant's Exhibit 8 - Results of Consequence Analysis (Alternative)
- Complainant's Exhibit 9 - Anhydrous Ammonia Process Checklist
- Complainant's Exhibit 10 - Anhydrous Ammonia Inspection Report (8/19/03)
- Complainant's Exhibit 11 - Operating Procedures (5/26/10)
- Complainant's Exhibit 12 - Compliance Audit for Program 2 Facilities

¹ But see footnote 3, *infra*.

² On May 13, 2011, Complainant filed a Motion for Leave to Amend the Complaint to Decrease Proposed Penalty and Memorandum in Support of Complainant's Motion.

Complainant's Exhibit 13 - Office of Indiana State Chemist/Anhydrous Ammonia Checklist

Complainant's Exhibit 14 - Risk Management Seminar Manual (portions)

3. Dr. Mark Johnson
Toxicologist
Division of Regional Operations
Agency for Toxic Substances and Disease Registry
77 W. Jackson Blvd.
Chicago, Illinois 60604

Dr. Michelle Watters
Medical Officer
Division of Regional Operations
Agency for Toxic Substances and Disease Registry
77 W. Jackson Blvd.
Chicago, Illinois 60604

Dr. Johnson has a Ph.D. in Oncology/Environmental Toxicology, as well as a Master's Degree in Public Health. He is also a Diplomate in the American Board of Toxicology. Dr. Watters has a Medical Degree, a Ph.D. in engineering and a Master's Degree in Public Health.

Dr. Johnson and/or Dr. Watters may be called as an expert witness to testify about the constituents and characteristics of anhydrous ammonia. They may testify about their review of Respondent's records, and other information about anhydrous ammonia as it is involved in this case. They may further offer expert opinion testimony about the specific hazards or potential hazards to human health and/or the environment that are posed by the release of anhydrous ammonia. Drs. Johnson and/or Watters may also testify in Complainant's rebuttal case in response to testimony and other evidence presented by Respondents. Dr. Johnson's Curriculum Vitae is attached as CX 15; Dr. Watters's Curriculum Vitae is attached as CX 21.

4. Mr. Allen Lake
President
Lake's Farm Service LLC
54300 Walnut Road
New Carlisle, Indiana 46552

Even if he is not called as a witness by Respondent, Mr. Lake may be called as a witness by Complainant. Mr. Lake may be examined about the operations at the Lake's Farm facility, the violations at issue in the Complaint, and such other matters as Complainant deems relevant (as allowed by the Court). Given Mr. Lake's position as President of Lake's Farm, Complainant requests the right to treat this witness as an

adverse or hostile witness and to examine him through the use of leading questions should Complainant elect to call Mr. Lake as a witness in Complainant's case-in-chief.

5. Ms. Kristin Boklund
Bookkeeper/Administrative Assistant
Lake's Farm Service LLC
54300 Walnut Road
New Carlisle, Indiana 46552

Even if she is not called as a witness by Respondent, Ms. Boklund may be called as a witness by Complainant. Ms. Boklund may be examined about the operations at the Lake's Farm facility, the violations at issue in the Complaint, her qualifications to develop, implement and ingrate the Risk Management Program elements at 40 C.F.R. Part 68, and such other matters as Complainant deems relevant (as allowed by the Court). Given Ms. Boklund's position as an employee of Lake's Farm, Complainant requests the right to treat this witness as an adverse or hostile witness and to examine her through the use of leading questions should Complainant elect to call Ms. Boklund as a witness in Complainant's case-in-chief.

6. James C. Belke
Environmental Engineer
EPA Chemical Emergency Preparedness and Prevention Office
U.S. EPA
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Mr. Belke serves as U.S. EPA's national policy coordinator for implementing the chemical accident prevention provisions of the Risk Management Program regulations at 40 C.F.R. Part 68. He has been involved with the interpretation and implementation of these regulations since 1998. In this capacity, he has led the development of all Risk Management Program guidelines developed by U.S. EPA. He has also worked with The Fertilizer Institute to produce U.S. EPA's "MyRMP" guidelines for retail ammonia fertilizer and bulk agricultural ammonia storage facilities. In addition to development of these guidelines, he has participated in all regulatory modifications to 40 C.F.R. Part 68 completed after 1998.

Mr. Belke may testify as to the development, goals and significance of U.S. EPA's Risk Management Program regulations. He may also provide testimony as to the nature and importance of compliance with each of the regulatory provisions allegedly violated by Respondent.

7. Frederick T. Elder, Ph.D., P.E.
2222 Commonwealth Avenue
Madison, Wisconsin 53726

Dr. Elder is a mechanical engineer and safety expert. He has more than forty years of experience with engineering in all phases of design, development and management. He has experience with the Risk Management Program elements and practical compliance with these requirements, including the maintenance component of the rules. Dr. Elder also has experience in these requirements as they apply specifically to anhydrous ammonia storage and handling facilities.

Dr. Elder may testify as to the mechanical requirements that a facility in compliance with the Risk Management Program rules would use to control its hazardous chemicals, how these systems may fail and the consequence of mechanical failure. He may also provide testimony on the other requirements that U.S. EPA's Risk Management Program places on an anhydrous ammonia storage and handling facility. Dr. Elder's Curriculum Vitae is attached as Complainant's Exhibit 20.

8. Financial Expert – To Be Determined

Should Respondent respond to Paragraph 3 of the Presiding Officer's April 6, 2011 Prehearing Order by claiming that it is unable to pay the penalty proposed in the Complaint, Complainant may call a financial expert. That expert may be called to testify as an expert witness in the areas of the forensic analysis of financial information and the analysis of ability to pay, or, the effect of a penalty on a person's ability to continue in business. The expert may offer an expert opinion on the economic impact of the proposed penalty on the Respondent.

B. Documents and Other Exhibits

Complainant expects to offer the following documents/exhibits into evidence, which are numbered as Complainant's Exhibits (CX) 1 through 21:

- CX 1: U.S.EPA Region 5 Risk Management Program Inspection Findings Sheet based on inspection of September 10, 2008
- CX 2: November 25, 2009 Section 114 Request for Information, from U.S. EPA, Region 5, to Lake's Farm Service (Request for Information)
- CX 3: January 14, 2010 response to U.S. EPA, Region 5, Request for Information, from Allen Lake to U.S. EPA, Region 5.
- CX 4: February 17, 2010 Notice of Intent to File Complaint against Lake's Farm Service

- CX 5: Penalty Calculation Worksheet (Revised)
- CX 6: Lake's Farm Management System/ Organizational Chart
- CX 7: Lake's Farm Results of Consequence Analysis (Worst-case)
- CX 8: Lake's Farm Results of Consequence Analysis (Alternative)
- CX 9: Lake's Farm Anhydrous Ammonia Process Checklist
- CX 10: Lake's Farm Anhydrous Ammonia Inspection Report (8/19/03)
- CX 11: Lake's Farm Operating Procedures (5/26/10)
- CX 12: Lake's Farm Compliance Audit for Program 2 Facilities
- CX 13: Office of Indiana State Chemist Anhydrous Ammonia Checklist for Lake's Farm Services
- CX 14: Risk Management Seminar Manual (portions), with hand-written annotations
- CX 15: Curriculum Vitae of Dr. Mark Johnson
- CX 16: Dun & Bradstreet Business Information Report for Lake's Farm Service, printed July 21, 2010
- CX 17: U.S. EPA Combined Enforcement Policy for CAA Section 112(r) Risk Management Program, August 15, 2001
- CX 18: Rules and Regulations Under the Indiana Agricultural Ammonia Law
- CX 19: U.S. EPA General Guidance on Risk Management Programs for Chemical Accident Prevention, EPA 555-B-04-001 (March 2009), Chapter 6
- CX 20: Curriculum Vitae of Dr. Frederick T. Elder
- CX 21: Curriculum Vitae of Dr. Michelle Watters
- CX 22: Penalty Calculation Worksheet (Initial)
- CX 23: Lake's Farm Risk Management Plan³

³ Pursuant to 40 C.F.R. Part 1400, Subpart B, Complainant is not authorized to provide a copy of Sections 2 through 5 of Respondent's Risk Management Plan as an exhibit to this publicly available Prehearing Exchange. Complainant may, however, provide it to the Presiding Officer for *in camera* review. See also 40 C.F.R. § 1400.8.

Copies of these exhibits are attached to this Prehearing Exchange.

C. Complainant's views as to the appropriate place of hearing, and an estimate of the time needed to present its direct case.

Complainant believes that Chicago, Illinois, would be an appropriate location for the hearing. This is the location of U.S. EPA's Region 5 Office and most of Complainant's witnesses. St. Joseph County, Indiana, in which Respondent conducts its business, would also be appropriate.

Complainant estimates that its case-in-chief will be presented within three full business days.

2. Complainant's Required Submissions

a. Penalty Calculation

Paragraph 2 of the Presiding Officer's Prehearing Order requires Complainant to submit a statement explaining in detail how the proposed penalty was determined, including a description of how the specific provisions of any Agency penalty or enforcement policies and/or guidelines were applied in calculating the penalty. Complainant has attached its Penalty Calculation Worksheet as Complainant's Exhibit 5. Complainant has also attached the Dun & Bradstreet Business Information Report for Lake's Farm Service (printed July 21, 2010), on which it relies for the "size of business component," as Complainant's Exhibit 16. In addition, Complainant has attached the Combined Enforcement Policy for CAA Section 112(r) Risk Management Program, August 15, 2001, which it used to calculate the proposed penalty, as Complainant's Exhibit 17.

b. Compliance with Paper Reduction Act

Paragraph 4 of the Presiding Officer's Prehearing Order requires Complainant to submit a statement regarding whether the Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. §§ 3501 *et seq.*, applies to this proceeding; whether there is a current Office of Management and Budget control number involved herein; and whether the provisions of Section 3512 of the PRA are applicable in this case.

The provisions of the Paperwork Reduction Act (PRA), including Section 3512 of the PRA, may apply to portions of the Complaint. These include the failure to maintain off-site consequence analysis documentation (40 C.F.R. § 68.39), and to conduct an audit of the prevention program (40 C.F.R. § 68.58). However, because there have been no lapses in OMB approval of any information collection requests (ICRs) associated with these regulatory requirements during the time periods relevant to the Complaint, the provisions of the PRA do not affect this case.

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The OMB control numbers that apply to regulatory ICRs are listed at 40 C.F.R. § 9.1. According to that regulation, the following OMB control number applies to the regulations at issue in this case: OMB Control No. 2050-0144.

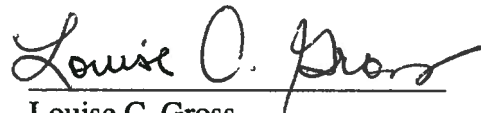
At the request of Complainant, Spencer T. Clark, a Program Analyst in the Collection Strategies Division of the Office of Environmental Information, U.S. EPA, conducted an investigation of all OMB action notices for the relevant OMB Control Numbers and associated ICRs identified above. This investigation revealed that there have been no lapses in OMB approval of any ICRs applicable to the regulations at issue in this case during the time periods relevant to the Complaint. Therefore, the Paperwork Reduction Act has no impact on this proceeding.

3. Reservation of Rights.

Complainant respectfully reserves the right to file a motion in the future seeking leave to supplement its list of witnesses and/or its list of exhibits upon reasonable notice to Respondent, and by order of the Presiding Officer.

Complainant's Initial Prehearing Exchange for In the Matter of Lake's Farm Service LLC is hereby respectfully submitted.

Respectfully submitted,



Louise C. Gross
Associate Regional Counsel
Office of Regional Counsel
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Attorney for Complainant

REGIONAL HEARING CLERK
U.S. EPA REGION 5

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In re Lake's Farm Service LLC
Docket No. CAA-05-2010-0058

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May, 2011, I filed the original and one copy of Complainant's Initial Prehearing Exchange with the Regional Hearing Clerk, U.S. EPA, Region 5, and placed for pickup to be delivered by UPS a copy of Complainant's Initial Prehearing Exchange to:

Honorable Barbara Gunning
Administrative Law Judge
EPA Office of Administrative Law Judges
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Washington, D.C. 20005

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Michael J. Schmidt, Esquire
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