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## VIA FEDEX

October 25, 2007

Regional Hearing Clerk (E-13J)  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**Re: In the Matter of:  
FUJIFILM Graphic Systems U.S.A., Inc.  
Docket No. RCRA-05-2007-0018  
U.S. EPA ID #: ILR 000 102 988**

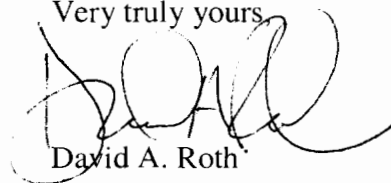
Dear Sir/Madam:

We represent FUJIFILM Graphic Systems U.S.A., Inc. Enclosed for filing please find an original and one copy of FUJIFILM's Answer to Complaint and Compliance Order, Request For Hearing, Request for Settlement Conference and Affirmative Defenses. I am also enclosing an additional copy to be stamped "filed" and returned to me in the enclosed self-addressed, postage pre-paid envelope. As set forth in the enclosed pleading, Respondent hereby requests a hearing in this matter to contest the factual allegations, the conclusions of law, the assessment of penalties and the amount of the proposed penalties as set forth in the Complaint.

If you have any questions regarding this filing please contact me.

Thank you for your cooperation.

Very truly yours



David A. Roth

DAR/jk

cc: Jefferey Trevino, Associate Regional Counsel, w/encl., via FEDEX  
Jamie L. Paulin, with encl., via FEDEX

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**FUJIFILM Graphic Systems U.S.A., Inc.  
850 Central Avenue  
Hanover Park, Illinois 60133**

**U.S. EPA ID #: ILR 000 102 988**

**Respondent.**

**ANSWER TO COMPLAINT AND  
COMPLIANCE ORDER, REQUEST FOR  
HEARING, REQUEST FOR  
SETTLEMENT CONFERENCE AND  
AFFIRMATIVE DEFENSES.**

**Docket No. RCRA-05-2007-0018**

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FUJIFILM Graphic Systems U.S.A., Inc. ("Respondent"), by way of answer to the Complaint and Compliance Order ("Complaint") of the U.S. Environmental Protection Agency, Region 5 ("USEPA"), says:

**I. PRELIMINARY STATEMENT AND JURISDICTION**

1. Paragraph 1 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

2. Paragraph 2 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

3. Paragraph 3 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

4. Paragraph 4 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

5. Admitted that Respondent leases a facility at 850 Central Avenue, Hanover Park, Illinois 60133 (the "Facility").

6. Admitted that Respondent received a "Pre-filing Notice and Opportunity to Confer" dated September 4, 2007 from USEPA. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

## **II. APPLICABLE STATUTORY AND REGULATORY PROVISIONS**

7. Paragraph 7 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

8. Paragraph 8 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

9. Paragraph 9 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

10. Paragraph 10 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

11. Paragraph 11 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

12. Paragraph 12 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

13. Paragraph 13 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

14. Paragraph 14 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

15. Paragraph 15 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

16. Paragraph 16 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

17. Paragraph 17 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

18. Paragraph 18 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

19. Paragraph 19 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

20. Paragraph 20 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

21. Paragraph 21 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

22. Paragraph 22 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

23. Paragraph 23 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

### **III. GENERAL ALLEGATIONS**

24. Respondent denies the allegations contained in Paragraph 24.

25. Paragraph 25 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

26. Admitted that Respondent leases the Facility for activities that include the demonstration of imaging products and equipment. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

27. Admitted that Respondent leases the Facility. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

28. Admitted that Respondent has complied with legal requirements applicable to notifying the USEPA of its hazardous waste activities at the Facility. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

29. Admitted that Respondent has generated “hazardous waste” at the Facility as such term is defined by applicable law. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

30. Admitted that Respondent has generated the types of hazardous wastes at the Facility that are described in the relevant hazardous waste manifests signed by Respondent. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

31. Admitted that Respondent has not been issued a “TSD” permit with respect to the Facility. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

32. Admitted that Respondent has not applied for interim status or received notification from the USEPA that it had interim status with respect to the Facility. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

#### **IV. SPECIFIC ALLEGATIONS**

##### **Count One - Storage of Hazardous Waste**

33. Respondent repeats and incorporates herein as if more fully set forth its answers to the allegations contained in Paragraphs 1 through 32 of the Complaint.

34. Paragraph 34 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

35. Admitted that Respondent stored hazardous wastes at the Facility, including at certain times between December 2005 and June 2006. Respondent denies the remaining allegations contained in Paragraph 35.

36. Admitted that Respondent stored hazardous wastes in 55-gallon containers at the Facility, including at certain times between December 2005 and June 2006. Respondent denies the remaining allegations contained in Paragraph 36.

37. Respondent denies the allegations contained in Paragraph 37.

38. Respondent denies the allegations contained in Paragraph 38.

##### **Count Two -Failure to Test and Maintain Fire Protection Equipment**

39. Respondent repeats and incorporates herein as if more fully set forth its answers to the allegations contained in Paragraphs 1 through 38 of the Complaint.

40. Paragraph 40 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

41. Respondent denies the allegations contained in Paragraph 41.

42. Respondent denies the allegations contained in Paragraph 42.

43. Respondent denies the allegations contained in Paragraph 43.

### **Count Three - Failure to Complete Contingency Plan**

44. Respondent repeats and incorporates herein as if more fully set forth its answers to the allegations contained in Paragraphs 1 through 43 of the Complaint.

45. Paragraph 45 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

46. Respondent denies the allegations contained in Paragraph 46 of the Complaint, except Respondent admits that it had a contingency plan, the provisions of which speak for themselves.

47. Respondent denies the allegations contained in Paragraph 47.

48. Respondent denies the allegations contained in Paragraph 48.

### **Count Four- Failure to Complete Training Program**

49. Respondent repeats and incorporates herein as if more fully set forth its answers to the allegations contained in Paragraphs 1 through 48 of the Complaint.

50. Paragraph 50 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

51. Respondent denies the allegations contained in Paragraph 51, except Respondent admits that it had a training program with respect to the Facility, the provisions of which speak for themselves.

52. Respondent denies that its personnel at the Facility did not have the necessary and adequate training with respect to hazardous waste activities conducted at the Facility.

Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.



53. Respondent denies the allegations contained in Paragraph 53.

54. Respondent denies the allegations contained in Paragraph 54.

#### **Count Five - Failure to Manage Containers**

55. Respondent repeats and incorporates herein as if more fully set forth its answers to the allegations contained in Paragraphs 1 through 54 of the Complaint.

56. Paragraph 56 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

57. Paragraph 57 of the Complaint contains conclusions of law as to which no admission or denial is required. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

58. Respondent admits that on April 20, 2006 it was storing hazardous waste at the Facility in containers located in a hazardous waste storage area or areas and that some of the containers were open at times when waste was not being added to the containers. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

59. Respondent denies the allegations contained in Paragraph 59.

60. Respondent denies the allegations contained in Paragraph 60.

#### **V. PROPOSED CIVIL PENALTY**

Respondent denies that any penalties should be assessed in this matter based upon the facts, the applicable legal requirements, and the applicable USEPA policies and guidance. Respondent is without sufficient information to form a belief as to the truth of the remaining allegations.

## **VI. COMPLIANCE ORDER**

Section 22.37(b) of the Consolidated Rules provides that an order contained in a complaint shall not become a final order if the respondent requests a hearing. Respondent has requested a hearing in Section VII of this Answer. Respondent has and/or will provide timely certification of compliance with the legal requirements cited in the Complaint that are applicable to its hazardous waste activities at the Facility and notification of such compliance to the USEPA as required.

## **VII. REQUEST FOR HEARING**

Respondent hereby requests a hearing in this matter to contest the factual allegations, the conclusions of law, the assessment of penalties and the amount of the proposed penalties as set forth in the Complaint. Respondent plans to contest, among other things, allegations in the Complaint regarding: the gallons of hazardous waste stored at the Facility, the number of days that the storage “continued”, failure to test and maintain fire protection equipment, failure to complete an appropriate contingency plan for the Facility, failure to appropriately train personnel, and improper storage of hazardous waste. Respondent also plans to contest the assessment of penalties, including on the basis that there was no significant or serious threat or potential to cause harm to human health or the environment, and no significant deviation from applicable legal requirements.

## **VIII. REQUEST FOR SETTLEMENT CONFERENCE**

Respondent hereby requests an informal settlement conference. This request shall not be deemed or construed as an admission of any fact, law or violation, or a waiver of any rights, claims or defenses.

## **AFFIRMATIVE DEFENSES**

### **First Affirmative Defense**

The Complaint fails to state a claim upon which relief can be granted.

### **Second Affirmative Defense**

The USEPA failed to comply with the requirements of the Administrative Procedure Act, 5 USC §551, et seq. and the consolidated Rules of Practice, 40 CFR §22.1, et seq.

### **Third Affirmative Defense**

The USEPA's proposed Civil Administrative Penalty determination and proposed Penalty Assessment are arbitrary and capricious.

### **Fourth Affirmative Defense**

The USEPA's proposed Civil Administrative Penalty determination and proposed Penalty Assessment are improper, duplicative, excessive and violative of the applicable USEPA policies and regulations.

### **Fifth Affirmative Defense**

The USEPA's actions, including the issuance of the Compliance Order, are not authorized by the Resource Conservation and Recovery Act ("RCRA"), 42 USC §6901, et seq. and as amended by the Hazardous and Solid Waste Amendments of 1984 ("HSWA").

### **Sixth Affirmative Defense**

The facts of this matter do not warrant the imposition of any penalties because the Respondent's actions, including as alleged by the Complaint, did not cause and did not have the potential to cause, any significant harm to human health or the environment.

#### **Seventh Affirmative Defense**

The Respondent's actions, including as alleged by the Complaint, did not substantially deviate from the requirements of the Resource Conservation Recovery Act or as amended by the Hazardous Solid Waste Amendments of 1984, or the implementing regulations.

#### **Eighth Affirmative Defense**

The Facility at all relevant times tested and maintained the communications or alarms systems, fire protection equipment and decontamination equipment at the Facility as necessary to assure its proper operation in times of emergency.

#### **Ninth Affirmative Defense**

The Facility at all relevant times maintained and complied with an appropriate emergency contingency plan.

#### **Tenth Affirmative Defense**

Respondent at all relevant times provided personnel at the Facility with necessary and adequate training with respect to hazardous waste activities.

#### **Eleventh Affirmative Defense**

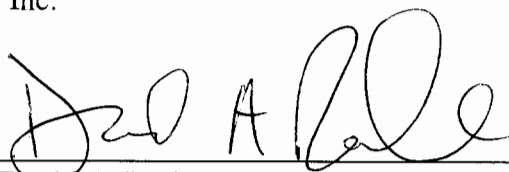
USEPA failed to consider appropriate factors for reducing the proposed penalty, including the lack of any seriousness with respect to the alleged violations, Respondent's cooperation and Respondent's good faith compliance efforts.

WHEREFORE, Respondent denies that USEPA is entitled to any of the relief requested and hereby demands that the Administrative Complaint and Compliance Order be dismissed, rescinded and/or withdrawn together with costs and attorney fees related thereto.

**RESERVATION OF RIGHTS**

Respondent reserves all its rights, defenses and claims including the right to amend, supplement and/or correct this pleading.

**GREENBAUM, ROWE, SMITH & DAVIS LLP**  
Metro Corporate Campus One  
P.O. Box 5600  
Woodbridge, New Jersey 07095  
(732) 549-5600  
Attorneys for Respondent - FUJIFILM Graphic Systems  
U.S.A., Inc.

By:   
David A. Roth, Esq.

Dated: October 25, 2007

**CERTIFICATION OF SERVICE**

I hereby certify that on this date I filed an original and one copy of the within FUJIFILM Graphic Systems Inc.'s Answer To Complaint And Compliance Order, Request For Hearing, Request For Settlement Conference And Affirmative Defenses, with the Regional Hearing Clerk (E-13J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, via Federal Express.

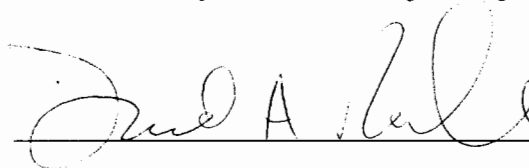
I hereby certify that on this date I sent a copy of the foregoing papers via Federal Express to:

Jeffery Trevino, Associate Regional Counsel,  
Office of Regional Counsel (C-14J),  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590, and

Jamie Paulin, RCRA Branch  
Land and Chemicals Division (LR-8J),  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604-3590.

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2007 OCT 26 PM 12:00

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



David A. Roth

Date: October 25, 2007