

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5th Street  
KANSAS CITY, KANSAS 66101

06 OCT 27 AM 9:38  
ENVIRONMENTAL PROTECTION AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )  
)  
United States Department of Agriculture, )  
Grain Inspection, Packers and )  
Stockyards Administration, )  
Federal Grain Inspection Service )  
10383 North Ambassador Drive )  
Kansas City, Missouri 64153 )  
)  
)  
EPA ID# MOD985796762 )  
)  
)  
Respondent. )  
)  
)  
)

**ANSWER AND REQUEST  
FOR HEARING**

Docket No. RCRA-07-2006-0276

**I. PRELIMINARY STATEMENT**

With respect to the Preliminary Statement of the Complaint, Compliance Order and Notice of Opportunity for Hearing (“Complaint”), this section of the Complaint contains statements of fact and/or law to which no response is required.

**II. COMPLAINT**

**ALLEGATIONS COMMON TO ALL COUNTS**

1. Paragraph 1 of the Complaint contains conclusions of law and/or other statements to which no response is required.
2. Paragraph 2 of the Complaint is admitted.
3. Paragraph 3 of the Complaint is admitted.
4. Paragraph 4 of the Complaint is admitted.

5. Paragraph 5 of the Complaint is admitted.

6. With respect to Paragraph 6 of the Complaint, Respondent admits that EPA conducted a RCRA compliance evaluation inspection at Respondent's facility on November 8-9, 2005. However, Respondent is currently without sufficient information to definitively respond to the remaining allegations contained in Paragraph 6 of the Complaint. Respondent's investigation of the relevant facts is continuing.

7. Respondent admits that a Notice of Violation was issued. With respect to the remainder of Paragraph 7 of the Complaint, Respondent is currently without sufficient information to definitively respond. Respondent's investigation of the relevant facts is continuing.

### COUNT I

#### OPERATING AS A TREATMENT, STORAGE OR DISPOSAL FACILITY WITHOUT A RCRA PERMIT OR RCRA INTERIM STATUS

8. Respondent hereby incorporates its responses to Paragraphs 1 through 7 of the Complaint as if fully set forth herein.

#### Generation and Accumulation of Acute Hazardous Wastes in Excess of Exclusion Limits

9. Paragraph 9 of the Complaint contains conclusions of law and/or other statements to which no response is required.

10. Respondent is currently without sufficient information to definitively respond to the allegation contained in Paragraph 10 of the Complaint. Respondent's investigation of the relevant facts is continuing.

11. Paragraph 11 of the Complaint contains conclusions of law and/or other statements to which no response is required.

12. Respondent is currently without sufficient information to definitively respond to the allegation contained in Paragraph 12 of the Complaint. Respondent's investigation of the relevant facts is continuing.

13. Paragraph 13 of the Complaint contains conclusions of law and/or other statements to which no response is required. Respondent's investigation of the relevant facts is continuing.

### **Illegal Storage of Hazardous Waste in Excess of 90 Days**

14. Paragraph 14 of the Complaint contains conclusions of law and/or other statements to which no response is required.

15. Respondent is currently without sufficient information to definitively respond to the allegation contained in Paragraph 15 of the Complaint. Respondent's investigation of the relevant facts is continuing.

16. Paragraph 16 of the Complaint contains conclusions of law and/or other statements to which no response is required. Respondent's investigation of the relevant facts is continuing.

17. Paragraph 17 of the Complaint contains conclusions of law and/or other statements to which no response is required.

18. Paragraph 18 of the Complaint contains conclusions of law and/or other statements to which no response is required.

### **Generator Requirements**

19. Paragraph 19 of the Complaint contains conclusions of law and/or other statements to which no response is required.

### **Labeling and Dating**

20. Paragraph 20 of the Complaint contains conclusions of law and/or other statements to which no response is required.

21. Respondent is currently without sufficient information to definitively respond to the allegation contained in Paragraph 21 of the Complaint. Respondent's investigation of the relevant facts is continuing.

22. Paragraph 22 of the Complaint contains conclusions of law and/or other statements to which no response is required.

23. Respondent is currently without sufficient information to definitively respond to the allegation contained in Paragraph 23 of the Complaint. Respondent's investigation of the relevant facts is continuing.

### **Weekly Inspections of Hazardous Waste Containers**

24. Paragraph 24 of the Complaint contains conclusions of law and/or other statements to which no response is required.

25. Paragraph 25 of the Complaint contains conclusions of law and/or other statements to which no response is required.

26. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 26 of the Complaint. Respondent's investigation of the relevant facts is continuing. Respondent states that it did conduct weekly inspections.

#### **Emergency Device**

27. Paragraph 27 of the Complaint contains conclusions of law and/or other statements to which no response is required.

28. Paragraph 28 of the Complaint contains conclusions of law and/or other statements to which no response is required.

29. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 29 of the Complaint. Respondent's investigation of the relevant facts is continuing. Respondent states that it did have an emergency device in the building.

30. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 30 of the Complaint. Respondent's investigation of the relevant facts is continuing. Respondent states that employees did have telephone access.

#### **Arrangements with Local Authorities**

31. Paragraph 31 of the Complaint contains conclusions of law and/or other statements to which no response is required.

32. Paragraph 32 of the Complaint contains conclusions of law and/or other statements to which no response is required.

33. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 33 of the Complaint. Respondent's investigation of the relevant facts is continuing.

#### **Personnel Training**

34. Paragraph 34 of the Complaint contains conclusions of law and/or other statements to which no response is required.

35. Paragraph 35 of the Complaint contains conclusions of law and/or other statements to which no response is required..

36. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 36 of the Complaint. Respondent's investigation of the relevant facts is continuing.

### **Contingency Plan**

37. Paragraph 37 of the Complaint contains conclusions of law and/or other statements to which no response is required.

38. Paragraph 38 of the Complaint contains conclusions of law and/or other statements to which no response is required.

39. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 39 of the Complaint. Respondent's investigation of the relevant facts is continuing.

40. Paragraph 40 of the Complaint contains conclusions of law and/or other statements to which no response is required.

41. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 41 of the Complaint. Respondent's investigation of the relevant facts is continuing.

42. Paragraph 42 of the Complaint contains conclusions of law and/or other statements to which no response is required.

43. Paragraph 43 of the Complaint contains conclusions of law and/or other statements to which no response is required. Respondent admits that it does not have a RCRA Permit or Interim status to operate as a RCRA hazardous waste storage facility.

### **Satellite Accumulation Containers**

44. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 44 of the Complaint. Respondent's investigation of the relevant facts is continuing.

45. Paragraph 45 of the Complaint contains conclusions of law and/or other statements to which no response is required.

46. Paragraph 46 of the Complaint contains conclusions of law and/or other statements to which no response is required.

47. Respondent is currently without sufficient information to definitively respond to the

allegations contained in Paragraph 47 of the Complaint. Respondent's investigation of the relevant facts is continuing.

48. Respondent is currently without sufficient information to definitively respond to the allegations contained in Paragraph 48 of the Complaint. Respondent's investigation of the relevant facts is continuing.

49. Paragraph 49 of the Complaint contains conclusions of law and/or other statements to which no response is required.

50. Paragraph 50 of the Complaint contains conclusions of law and/or other statements to which no response is required.

51. Paragraph 51 of the Complaint contains conclusions of law and/or other statements to which no response is required. As previously noted, Respondent does not have a RCRA Permit or Interim status to operate as a hazardous waste storage facility.

52. Respondent submits that the proposed penalty is excessive, and that the penalty should either be eliminated or significantly reduced.

### **III. COMPLIANCE ORDER**

Respondent submits that the actions ordered under Section III of the Complaint are excessive and unwarranted.

### **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

**Respondent requests a hearing in this matter.**

### **V. SETTLEMENT CONFERENCE**

Section V of the Complaint contains legal conclusions and/or other statements to which no response is required.

### **DEFENSES AND MITIGATING FACTORS:**

Respondent hereby asserts the following as defenses and/or mitigating factors:

1. Respondent made good-faith efforts to comply with applicable regulatory requirements.
2. The alleged violations were not sufficiently serious as to justify the proposed penalty.

3. The threat of harm to public health or the environment with respect to the alleged violations was quite low.
4. Respondent has been fully cooperative at all times.
5. None of the alleged violations were willful or intentional.
6. Given all relevant factors and considerations of justice, the proposed penalty is excessive and should either be eliminated or significantly reduced.
7. Respondent reserves the right to assert additional defenses and/or mitigating factors as the facts of this matter are more fully developed.

**PERSON AUTHORIZED TO RECEIVE SERVICE**

Pursuant to 40 C.F.R. Section 22.5(c)(4), the individual authorized to receive service related to this proceeding is:

Gary M. Fremerman  
USDA/OGC

By regular mail:

3351 South Building  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-1412

By overnight delivery:

2349 South Building  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250-1412

Tel: 202-720-8041  
Fax: 202-720-6039  
Email: [gary.fremerman@usda.gov](mailto:gary.fremerman@usda.gov)

Respectfully submitted,

Dated: 10-25-06

  
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Gary M. Fremerman  
Attorney  
USDA Office of the General Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that the original and one true and correct copy of the foregoing Answer And Request For Hearing were sent by Federal Express to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; and a true and correct copy was sent by Federal Express to:

Mr. Alex Chin |  
Office of Regional Counsel  
USEPA Region 7  
901 N. 5th Street  
Kansas City, Kansas 66101.

*Gary Fremmer* 10-25-06  
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Gary M. Fremmerman  
Attorney  
USDA Office of the General Counsel