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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. FIFRA-05-2007-0025
)
Behnke Lubricants, Inc.) Notice of Complainant's Request for
Menomonee Falls, Wisconsin) Voluntary Production of Financial
) Information.

Respondent.

NOTICE OF COMPLAINANT'S REQUEST FOR VOLUNTARY PRODUCTION OF
FINANCIAL INFORMATION

Complainant hereby files the instant Notice of Complainant's Request for Voluntary Production of Financial Information, which requests that Respondent, Behnke Lubricants, Inc. ("Behnke" or "Respondent"), produce in its prehearing exchange certain financial information relevant to and probative of Behnke's "ability to pay"¹ the penalty proposed in the Complaint.²

Background

On May 7, 2007, Complainant, the United States Environmental Protection Agency, Region 5 (U.S. EPA or "the Agency"), filed a Complaint against Respondent Behnke Lubricants, Inc. (Behnke). On or about June 8, 2007, Respondent filed its Answer to the Complaint. In its

¹Section 14(a)(4) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 1361(a)(4), provides in relevant part that, "[i]n determining the amount of the penalty, the Administrator shall consider the appropriateness of such penalty to the size of the business of the person charged, the effect on the person's ability to continue in business, and the gravity of the violation." The Environmental Appeals Board ("EAB" or "the Board") has referred to "the effect on the person's ability to continue in business" as "ability-to-pay." See *In re: Chempace Corporation*, 9 E.A.D. 119, at 132 (EAB 2000)

²At the present time, no Administrative Law Judge has been assigned to preside over this case, and therefore no deadlines for the filing of prehearing exchanges have yet been established. However, Complainant assumes that an order setting such deadlines will be issued shortly after the assignment of this case to an Administrative Law Judge.

Answer, Respondent appears to raise the issue of its ability to pay the penalty proposed in the Complaint. See Answer, ¶¶ 190-191.

Prior to filing the Complaint, U.S. EPA offered Respondent the opportunity to provide financial information in connection with the issue of ability to pay. Specifically, by letter dated December 22, 2006, Complainant issued to Respondent a “Notice of Intent to File Civil Administrative Complaint against Behnke Lubricants, Inc.” (“Notice letter”). In this Notice letter, U.S. EPA advised Respondent that it was planning to file an administrative complaint for civil penalties against Behnke for violations of FIFRA based on the distribution or sale of the unregistered pesticides, and also identified a proposed penalty of \$50,050 (although the letter specified that the Notice was not a demand to pay a penalty). In addition, Respondent was asked to present to U.S. EPA any information Respondent thought U.S. EPA should consider before issuing a complaint. U.S. EPA further advised Respondent that, if Respondent believed that it would be unable to pay a penalty because of financial reasons, Respondent should submit the following specific financial documents: (1) certified financial statements for the past three years, including Income Statements, Balance Sheets, Statements of Cash Flows, CPA Audit Reports and CPA Notes to the Financial Statements; and (2) Federal Income Tax Returns including all schedules for the past three years.

Respondent submitted a response to the Notice letter on February 1, 2007, in which Behnke provided a narrative response to the alleged violations. However, Respondent did not claim an inability to pay the proposed civil penalty of \$50,050, nor did Respondent provide any facts or other information concerning its ability to pay the proposed civil penalty.

Also prior to the Complaint being filed, Complainant obtained a Dun & Bradstreet, Inc., "Dun's Market Identifiers" report for Behnke dated March 30, 2006, which estimated Behnke's annual sales at \$7,900,000. In addition, an Experian Credit Report for Behnke's Menomonee Falls, Wisconsin facility, dated January 2007, indicated that Respondent's Wisconsin plant had sales of approximately \$3,000,000, while an Experian Credit Report for Respondent's Sacramento, California, plant, dated September 2006, indicated sales in the amount of \$1,400,000 for the California facility. See Exhibits 1a, 1b and 1c.

Request

Complainant wishes to ensure that the record before the Presiding Administrative Law Judge will contain all relevant and probative evidence concerning Respondent's ability to pay the penalty proposed in the Complaint. Therefore, by this Notice, Complainant requests that Respondent voluntarily include in its initial prehearing exchange specific financial information relevant to its ability to pay the proposed penalty. Complainant requests that Respondent provide the following categories of financial information, which U.S. EPA and its expert financial analyst believe to be relevant and probative of Behnke's ability to pay:

- (1) Provide true, accurate and complete copies of the signed and filed U.S. corporate income tax returns of Behnke, including all schedules, forms, balance sheets and other attachments, for the most recent three tax years, 2004, 2005 and 2006.
- (2) Provide true, accurate and complete copies of Behnke's complete financial statements, preferably audited, including all balance sheets, income statements, statements of operations, statements of retained earnings, statements of cash flows, and all notes to each financial statement, for the years 2004, 2005 and 2006. In addition, provide monthly or quarterly financial reports, if maintained by the company, for year-to-date 2007.
- (3) Provide true, accurate and complete copies of all company asset depreciation schedules for Behnke, cumulative for the most recent year (2006 or 2007).

- (4) Provide true, accurate and complete copies of all records that reflect the fair market value of each parcel of real estate that is (1) owned by Behnke; (2) owned by any shareholder, director or officer of Behnke; (3) owned by any company or other business entity that is owned by a shareholder, director or officer of Behnke; or (4) owned by any trust naming Behnke, or any shareholder, director or officer of Behnke, as a beneficiary. Such records should include, but not be limited to, the following: all real estate appraisals; all loan applications or loan documents which Behnke or any officer, director or shareholder of Behnke has prepared, received or signed within the last five years in connection with such real estate (including but not limited to all mortgage or real estate financing documents, Real Estate Procedures Act Statements, disbursement forms and other closing documents; and all applications where Behnke or any officer, director or shareholder of Behnke was signing as a guarantor); and the most recent county assessor statements for each such parcel of real estate, including such information for all real property assets owned by any trusts, corporations, partnerships or other business entities, where Behnke or any shareholder, director or officer of Behnke, has been identified an owner and/or beneficiary.
- (5) Provide true, accurate and complete copies of all loan applications prepared by or on behalf of Behnke within the last three years.
- (6) Provide true, accurate and complete copies of all documents that describe or otherwise contain information about the relationship between Behnke and an entity called "Evergreen-Peter, LLC."³

Basis for Request

Respondent's Answer has put Behnke's ability to pay the penalty proposed in the Complaint in issue. However, Behnke did not provide U.S. EPA with any evidence to support an objection to the proposed penalty based on considerations of its ability to pay, despite explicit invitations to do so before the Complaint was filed. As the Environmental Appeals Board ("EAB" or "the Board") has noted, "in any case where ability to pay is put in issue, the Region must be given access to the respondent's financial records ..." *In re: New Waterbury, Ltd.*,

³Tax Bills from Waukesha County, Wisconsin, indicate that Evergreen-Peter, LLC, shares the same mailing address as Behnke (W134N5373 Campbell Drive, Menomonee, Wisconsin), and that Evergreen-Peter, LLC, appears to be the taxpayer for this address for purposes of paying county taxes. See Exhibit 2.

5 E.A.D. 529, at 542 (EAB 1994). The Board's decision in *New Waterbury* interpreted the rules governing penalty actions (currently codified at 40 C.F.R. Part 22) to "require a respondent to indicate whether it intends to make an issue of its ability to pay, and if so, to submit evidence to support its claim as part of the pre-hearing exchange." *New Waterbury*, 5 E.A.D. at 542 (emphasis added). Therefore, under the procedural rules governing this proceeding, Behnke is required to provide its financial information when Respondent files its prehearing exchange.

Furthermore, if Respondent continues to make its ability to pay an issue, Behnke will need to provide the specific financial evidence identified above to meet its burden of production on the issue of ability to pay. Complainant already has compiled evidence sufficient to meet its initial burden at hearing with respect to Respondent's ability to pay. As noted above, a "Dun's Market Identifiers" report for Behnke dated March 30, 2006, which Complainant obtained prior to filing the Complaint, estimated Behnke's annual sales to be \$7,900,000. An Experian Credit Report for Behnke's Menomonee Falls, Wisconsin facility, dated January 2007, indicated that Respondent's Wisconsin plant had sales in the amount of \$3,000,000, while an Experian Credit Report for Respondent's Sacramento, California, plant, dated September 2006, indicated sales in the amount of \$1,400,000 for the California facility. See Exhibits 1a and 1b. These figures on Behnke's sales volumes support the inference that Respondent has the ability to pay the \$50,050 penalty proposed in the Complaint. See *New Waterbury*, 5 E.A.D. at 541-43. In addition, a Tax Bill obtained online from Waukesha County, Wisconsin, indicates that the real estate on which the Behnke facility is located (at the address W134N5373 Campbell Drive, Menomonee, Wisconsin), has an assessed value of \$1,472,400. See Exhibit 2. This suggests a healthy asset base on the part of Behnke or its owner(s). Complainant's expert financial analyst, Mr. Mark

Ewen of Industrial Economics, Inc., believes that this evidence supports an inference that Respondent has the ability to pay the proposed penalty of \$50,050. See Exhibit 3 (Declaration of Mark Ewen).

Hence, even at this early stage of the proceedings, Complainant is prepared to produce “some evidence regarding the respondent’s general financial status from which it can be inferred that the respondent’s ability to pay should not affect the penalty amount.” *New Waterbury*, 5 E.A.D. at 541. Should this case proceed to hearing, once Complainant introduces this evidence, the burden would then shift to Respondent to produce “*specific* evidence to show that despite its sales volume or apparent solvency it cannot pay any penalty.” *New Waterbury*, 5 E.A.D. at 543. The Board clarified in a later decision, *In re: Chempace Corporation*, 9 E.A.D. 119 (EAB 2000), that Respondent’s burden in this regard is to show that it is unable to pay *any* penalty at all: “[a]s we stated in *New Waterbury*, the respondent must show an inability to pay ‘*any* penalty’ to fully meet its burden of production in response to the complainant’s *prima facie* case.” *Chempace*, 9 E.A.D. at 137 (emphasis in original). Thus, to respond to Complainant’s evidence, Respondent will need to produce the specific financial evidence described above, as such evidence is relevant to and probative of Respondent’s ability to pay the proposed penalty. The relevance and probative value of these types of financial records with respect to Respondent’s ability to pay is explained by the sworn declaration of Mr. Mark Ewen, a financial analyst with Industrial Economics, Inc. See Exhibit 3. Prior decisions of Administrative Law Judges and the Environmental Appeals Board have recognized the relevance and probative value of the categories of financial information identified above. *See, e.g., In re Bil-Dry Corp.*, 9 E.A.D. 575, 613-614 (EAB 2001); *In re Carroll Oil Company*, RCRA Appeal No. 01_02, slip op. at 28

(EAB, July 31, 2002), 10 E.A.D. 635, 2002 WL 1773052 (E.P.A.); *In re New Waterbury, Ltd.*, 5 E.A.D. 529 (EAB 1994). *See also In the Matter of Vemco, Inc.*, Docket No. CAA-05-2002-0012, 2003 WL 1919589 (E.P.A.) (Court granted Complainant's motion for discovery of information such as "complete and preferably audited financial statements and all corporate minutes for the last three years for Respondent ..."); and *In the Matter of Mark Fastow and Fiberglass Specialties, Inc.*, Docket No. EPCRA-09-97-0013, 1998 WL 422191 (E.P.A.), June 29, 1998 (Court grants complainant's motion for discovery of respondent Fastow's personal federal income tax returns for most recent five years).

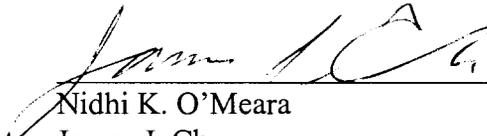
While this request is for the voluntary production of financial information, should Respondent fail to include such evidence in its prehearing exchange Complainant reserves the right to seek leave from the Presiding Administrative Law Judge to file a motion to compel discovery of this information.

Behnke may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the financial information that it submits to Complainant and to the Presiding Administrative Law Judge. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Behnke fails to assert a business confidentiality claim, U.S. EPA may make all submitted information available, without further notice, to any member of the public who requests it.

Please note that the financial information requested above is only necessary if Behnke continues to make its ability to pay an issue. If Behnke states in its prehearing exchange (or in a document filed before the prehearing exchange deadline to be established by the Presiding Administrative Law Judge) that Respondent's ability to pay the penalty proposed in the

Complaint is not in issue, *and that Behnke expressly waives any objection to the penalty based on its ability to pay*, then there will be no need for Respondent to provide the financial information described above.

Respectfully submitted,
U.S. Environmental Protection Agency



Nidhi K. O'Meara
James J. Cha
Associate Regional Counsels
U.S. Environmental Protection Agency

List of Exhibits

- Exhibit 1a – Dun’s Market Identifiers Report for Behnke Lubricants, Inc.
- Exhibit 1b – Experian Credit Report for Behnke Lubricant, Inc.’s Menomonee Falls, Wisconsin, Facility, dated January 2007.
- Exhibit 1c – Experian Credit Report for Behnke Lubricant, Inc.’s Sacramento, California, Facility, dated September 2006.
- Exhibit 2 – Tax Bill from Website of Waukesha County, Wisconsin.
- Exhibit 3 – Declaration of Mark Ewen.

Exhibit 1a

Copyright 2007 Dun & Bradstreet, Inc.
Dun's Market Identifiers

March 30, 2006

Behnke Lubricants Inc

W134n5373 Campbell Dr
Menomonee Falls, WI 53051-7023
United States

BUSINESS ADDRESS: W134n5373 Campbell Dr, Menomonee Falls, WI 53051-7023, United States
MSA: Milwaukee-Waukesha, WI - 5080
COUNTY: Waukesha
CONGRESSIONAL DISTRICT: 5th Congressional District - block face level

***** COMMUNICATIONS *****

TELEPHONE: 262-781-8850

***** COMPANY IDENTIFIERS *****

DUNS NUMBER: 02-334-8923

***** COMPANY INFORMATION *****

FOUNDED: 1993
INCORPORATION DATE: April 1, 1955
PLACE OF INCORPORATION: Wisconsin
LEGAL STATUS: Corporation
ORGANIZATION TYPE: Headquarters, Small Business, Established Manufacturer
EMPLOYEES:
Employee Total: 25
Employees At This Location: 22 - Actual

PROPERTY: 45,000 square feet - RENTS

***** EXECUTIVES *****

President:	Eric J Peter, President
Chief Financial Officer:	Jim Forsette, Chief Financial Officer
Treasurer:	Janet Peter, SEC-Treas
Secretary:	Janet Peter, SEC-Treas
Vice President:	Carl W Peter, V Pres
Data Processing:	Troy Paquette, It Director
Marketing:	John Riemer, Director of Marketing
Management:	John Riemer, Director of Marketing
	Troy Paquette, It Director
Manager:	Carter Anderson, Manager
	Mitch Clark, Manager

***** DESCRIPTION *****

INDUSTRY TYPE: Wholesale Trade; Wholesale & Manufacture Heavy Duty Industrial Lubricants

******* MARKET AND INDUSTRY *******

PRIMARY SIC:

5172 - Petroleum products, nec

51720204 - Lubricating oils and greases

SECONDARY SIC:

2992 - Lubricating oils and greases, nsk

29920000 - Lubricating oils and greases, nsk

******* INCOME STATEMENT *******

Sales Revision Date: June 1, 2006

Annual Sales: \$7,900,000 - Estimated

CROSS REFERENCE: Jax Brand Lubricants

LOAD-DATE: March 2, 2007

BUSINESS CATEGORY	DATE REPTD	LAST SALE	RECENT HIGH CREDIT	BALANCE	----- ACCOUNT STATUS ----- -DAYS PAST DUE-					
			\$		\$	CUR	1- 30	31- 60	61- 90	91+
Payment Terms: NET 30										

FOOTNOTES: + IN FIRST COLUMN INDICATES COMPANY IS PAYING FASTER THAN THE INDUSTRY NORM;
 - IN FIRST COLUMN INDICATES COMPANY IS PAYING SLOWER THAN THE INDUSTRY NORM;
 = IN FIRST COLUMN INDICATES COMPANY PAYS THE SAME AS THE INDUSTRY NORM;
 <,> SIGNS INDICATE TRUE HIGH CREDIT OR BALANCE IS < OR > AMOUNT SHOWN

ADDITIONAL PAYMENT EXPERIENCES:
 (TRADE LINES WITH AN '*' ARE NEWLY REPORTED)

BUSINESS CATEGORY	DATE REPTD	LAST SALE	RECENT HIGH CREDIT	BALANCE	----- ACCOUNT STATUS ----- -DAYS PAST DUE-					
			\$		\$	CUR	1- 30	31- 60	61- 90	91+
AIR TRANS	12/30/05	--	--	--	--	--	--	--	--	--
Payment Terms: NET 30										
Comments: CUST 3 YR										
FREIGHT	12/16/05	11/01	--	--	--	--	--	--	--	--
Payment Terms: VARIED										

TRADE PAYMENT TOTALS:

	RECENT HIGH CREDIT	BALANCE	----- ACCOUNT STATUS ----- -DAYS PAST DUE-					
	\$		\$	CUR	1- 30	31- 60	61- 90	91+
CONTINUOUSLY REPORTED: 2	4,000	--	--	--	--	--	--	--
DBT: N/A								
NEWLY REPORTED: --	--	--	--	--	--	--	--	--
DBT: N/A								
TRADE LINE TOTALS: 2	4,000	--	--	--	--	--	--	--
DBT: N/A								

INQUIRIES:

SIC	Description		1	2	3	4	5	6	7	8	9
2900	GENERAL	09/06	--	--	--	--	--	--	1	--	--
--	TOTAL	09/06	--	--	--	--	--	--	1	--	--

LOAD-DATE: September 8, 2006

Exhibit 1b

Copyright 2007 Experian Information Solutions, Inc.
All Rights Reserved
Experian Business Reports

January 15, 2007

FILE ESTABLISHED: September 1, 1984

BEHNKE LUBRICANTS INC

W134N5373 CAMPBELL DR
MENOMONEE FLS, WI 53051
UNITED STATES

***** **COMMUNICATIONS** *****

TELEPHONE: 262-781-8850

URL: <http://www.smartbusinessreports.com/Main.aspx?link=1009>

***** **COMPANY IDENTIFIERS** *****

EXPERIAN FILE NUMBER: U03482018

***** **COMPANY INFORMATION** *****

LEGAL STATUS: CORPORATION; UNKNOWN

EMPLOYEES: 26 - 50

YEARS IN BUSINESS: 52 - ACTUAL

***** **EXECUTIVES** *****

OFFICERS:

. ERIC J. PETER, PRESIDENT

***** **DESCRIPTION** *****

INDUSTRY TYPE: AUTO,HOME SUPP STORE

***** **MARKET AND INDUSTRY** *****

PRIMARY SIC:

5531 - AUTO & HOME SUPPLY RETAIL STORES

SECONDARY SIC:

2992 - LUBRICATING OILS & GREASES

5172 - PETROLEUM PRODUCTS, NEC, WHLSNG

***** **FINANCIALS** *****

SALES: USD 3,000,000 - ACTUAL

BUSINESS ANALYSIS:

DAYS BEYOND TERMS (DBT):

. As of 1/15/2007: 11

. Prediction for 3/13/2007: 11

- . Average DBT This Industry: 6
- . Average DBT All Industries: 6

HISTORICAL PAYMENT GUIDE:

- . 6-Month Account Range: USD 10,500 to USD 204,100
- . Current Balance: USD 23,700
- . Highest Credit Extended: USD 203,000 (Median: USD 700)
- . Payment Performance: PAYS SOONER THAN 50%
- . Payment Trend: NO TREND IDENTIFIABLE

TRADE PAYMENT EXPERIENCES:

(TRADE LINES WITH AN '*' ARE NEWLY REPORTED)

BUSINESS CATEGORY	DATE REPTD	LAST SALE	RECENT	BALANCE	----- ACCOUNT STATUS -----					
			HIGH CREDIT \$			-DAYS PAST DUE-				
				\$	CUR	1- 30	31- 60	61- 90	91+	
AUTOMOTIVE	09/12/06	10/05	200	--	--	--	--	--	--	
Payment Terms: NET 30 Comments: CUST 2 YR										
COMMUNICT N	09/05/06	01/04	--	--	--	--	--	--	--	
Payment Terms: NET 20 Comments: CUST 12 YR										
DAIRY PROD	12/29/06	--	--	--	--	--	--	--	--	
Payment Terms: NET 15										
+FINCL SVCS	09/01/06	--	300	200	100%	--	--	--	--	
Payment Terms: VARIED Comments: CUST 1 YR										
FREIGHT	09/26/06	10/05	800	--	--	--	--	--	--	
Payment Terms: VARIED										
=MANUFCTRN G	01/02/07	12/06	203,000	22,200	22%	78%	--	--	--	
Payment Terms: VARIED Comments: CUST 1 YR										
PACKAGING	11/21/06	--	--	--	--	--	--	--	--	
Payment Terms: NET 30										
+PAPER PROD	01/03/07	12/06	6,800	1,200	100%	--	--	--	--	
PETROLEUM	01/06/07	--	19,800	--	--	--	--	--	--	
Payment Terms: SPECIAL										
+PETROLEUM	12/09/06	12/06	300	<100	100%	--	--	--	--	
Payment Terms: VARIED Comments: CUST 9 YR										
TEMP HELP	10/13/06	09/05	200	--	--	--	--	--	--	
Payment Terms: NET 30 Comments: CUST 3 YR										

FOOTNOTES: + IN FIRST COLUMN INDICATES COMPANY IS PAYING FASTER THAN THE INDUSTRY NORM;

- IN FIRST COLUMN INDICATES COMPANY IS PAYING SLOWER THAN THE INDUSTRY NORM;

= IN FIRST COLUMN INDICATES COMPANY PAYS THE SAME AS THE INDUSTRY NORM;

<, > SIGNS INDICATE TRUE HIGH CREDIT OR BALANCE IS < OR > AMOUNT SHOWN

ADDITIONAL PAYMENT EXPERIENCES:

(TRADE LINES WITH AN '*' ARE NEWLY REPORTED)

BUSINESS CATEGORY	DATE REPTD	LAST SALE	RECENT HIGH CREDIT \$	BALANCE \$	----- ACCOUNT STATUS ----- -DAYS PAST DUE-				
					CUR	1- 30	31- 60	61- 90	91+
AIR TRANS	09/30/05	09/05	<100	--	--	--	--	--	--
AIR TRANS	12/30/05	--	--	--	--	--	--	--	--
Payment Terms: NET 30 Comments: CUST 3 YR									
BUS SERVCS	01/06/04	12/03	--	--	--	--	--	--	--
Payment Terms: NET 30									
=COMPUTERS	06/01/06	05/06	3,900	1,300	--	100%	--	--	--
+ELEC MFG	03/04/04	12/03	900	200	100%	--	--	--	--
Payment Terms: NET 30									
FREIGHT	01/04/06	--	1,600	--	--	--	--	--	--
Payment Terms: NET30 Comments: CUST 6 YR									
+FUEL DISTR	02/28/06	02/06	<100	<100	100%	--	--	--	--
Payment Terms: NET 25 Comments: CUST 18 YR									
LEASING	11/24/04	--	5,800	--	--	--	--	--	--
Payment Terms: CONTRCT									
=LUMBR&WO OD	07/31/06	06/06	8,200	4,700	--	100%	--	--	--
Payment Terms: VARIED Comments: CUST 6 YR									
+MED SUPPLY	04/21/06	--	300	<100	100%	--	--	--	--
Payment Terms: VARIED									
+OFFC SUPPL	11/11/05	07/05	1,300	400	100%	--	--	--	--
Payment Terms: CREDIT Comments: CUST 11 YR									
PACKAGING	06/07/04	03/97	--	--	--	--	--	--	--
Payment Terms: NET 30									
+PETROLEUM	10/06/04	--	300	<100	100%	--	--	--	--
Payment Terms: VARIED Comments: PROMPT									
+SAFTY PROD	03/10/06	--	100	100	100%	--	--	--	--
Payment Terms: NET 30									
-TEMP HELP	01/09/06	--	7,500	1,000	--	--	100%	--	--
Payment Terms: NET EOM Comments: CUST 1 YR									
+TELECOM	12/07/05	--	700	300	100%	--	--	--	--
Payment Terms: NET 30									
-TRANSPORTN	10/07/04	08/04	100	100	--	--	100%	--	--
Payment Terms: VARIED									
TRNS EQUIP	02/11/04	--	--	--	--	--	--	--	--
Payment Terms: VARIED Comments: CUST 4 YR									

TRADE PAYMENT TOTALS:

CONTINUOUSLY REPORTED: 11	RECENT HIGH CREDIT \$	BALANCE \$	----- ACCOUNT STATUS ----- -DAYS PAST DUE-				
			CUR	1- 30	31- 60	61- 90	91+
	231,400	23,700	27%	73%	--	--	--

	RECENT HIGH CREDIT \$	BALANCE \$	----- ACCOUNT STATUS ----- -DAYS PAST DUE-				
			CUR	1- 30	31- 60	61- 90	91+
DBT: 11							
NEWLY REPORTED: --	--	--	--	--	--	--	--
DBT: N/A							
TRADE LINE TOTALS: 11	231,400	23,700	27%	73%	--	--	--
DBT: 11							
HIGHEST CREDIT MEDIAN: USD 700							

PAYMENT TRENDS:

AS OF	BUSINESS DBT	BALANCE \$		-DAYS PAST DUE-			
			CUR	1- 30	31- 60	61- 90	91+
01/07	--	37,900	100%	--	--	--	--
12/06	--	39,300	100%	--	--	--	--
11/06	--	10,500	100%	--	--	--	--
10/06	20	32,300	32%	37%	31%	--	--
09/06	4	204,100	71%	29%	--	--	--
08/06	--	90,000	100%	--	--	--	--

PAYMENT HISTORY - QUARTERLY AVERAGES:

	DBT	BALANCE \$		-DAYS PAST DUE-			
			CUR	1- 30	31- 60	61- 90	91+
4TH-Q-06	--	29,300	100%	--	--	--	--
3RD-Q-06	5	108,800	75%	22%	3%	--	--
2ND-Q-06	--	24,700	100%	--	--	--	--
1ST-Q-06	8	28,800	62%	32%	3%	3%	--
4TH-Q-05	--	95,000	97%	3%	--	--	--

TAX LIENS:

- . Date Filed: 4/17/2002
- . Type: STAT-TX-REL
- . Document Number: 02TW000138
- . Filing Location: OUTAGAMIE COUNTY CIR
- . Liability Amount: USD 2,058

- . Date Filed: 4/17/2002
- . Type: STAT-TX-REL
- . Document Number: 02TW0138
- . Filing Location: OUTAGAMIE COUNTY CIR
- . Liability Amount: USD 2,058

- . Date Filed: 2/18/2002
- . Type: STAT-TX-LN
- . Document Number: 02TW0138
- . Filing Location: OUTAGAMIE COUNTY CIR
- . Liability Amount: USD 2,058

UNIFORM COMMERCIAL CODE FILINGS (UCC):

- . Date Filed: 11/28/2006
- . Type: UCC-ASSIGN
- . Document Number: 060017128625
- . Filing Location: WISCONSIN SECRETARY
- . Original Filing Location: WI
- . Original Document Number: 0300188118

- . Date Filed: 4/9/2004
- . Type: UCC-FILED
- . Document Number: 040005894228
- . Filing Location: WISCONSIN SECRETARY
- . Collateral: EQUIP; FURN & FIX; INVENTORY; HEREAFTER ACQUIRED PROP; UNDEFINED
- . Original Filing Location: WI
- . Original Document Number: 0400058942

- . Date Filed: 4/8/2004
- . Type: UCC-CONT
- . Document Number: 040005848025
- . Filing Location: WISCONSIN SECRETARY
- . Original Filing Location: WI
- . Original Document Number: 0750188493

- . Date Filed: 11/13/2003
- . Type: UCC-FILED
- . Document Number: 030018811827
- . Filing Location: WISCONSIN SECRETARY
- . Collateral: EQUIP
- . Original Filing Location: WI
- . Original Document Number: 0300188118

- . Date Filed: 1/30/2003
- . Type: UCC-TERM
- . Document Number: 030001662116
- . Filing Location: WISCONSIN SECRETARY
- . Original Filing Location: WI
- . Original Document Number: 0750131190

UCC COLLATERAL COUNTS:

- . COMPANY HAS 2 UCC FILINGS WITH 5 COLLATERAL ITEM(S)
- . COLLATERAL CONSISTS OF: INVENTORY; HEREAFTER ACQUIRED PROP

LOAD-DATE: January 18, 2007

Exhibit 2 – Tax Bill from Website of Waukesha County, Wisconsin.

Property Tax Bill - Register of Deeds/Treasurer - County Data Warehouse - version 1.1

Search Options | View Tax Listing | View GIS Image | Help Search by



Pay Your Taxes Online

Tax Bill Details

PAY YOUR TAXES ON-LINE
(more information)



Pay Your Taxes Online

2006 REAL PROPERTY TAX BILL VILLAGE OF MEMONOMEE FALLS
 Tax Key: MNFV0142999004 View: [Previous Year](#)
 Property Address: W134N5373 CAMPBELL DR View: [2006 Tax Listing](#)
 Legal Description: PARCEL 2 CERT SURV 4673 VOL 37/279 3.193 AC PT NW1/4 SEC 36 T8N R20E R2395/63

Tax Year:	2006	Exempt:	No
Assessment Type:	FULL	Use Value Assessment:	No
Equalized Assessment Ratio:	96.19%	Prior Taxes Due To:	
	Values	Assessed	Equalized
	Land	\$291,700.00	\$303,300.00
	Improvement	\$1,124,600.00	\$1,169,100.00
	Total	\$1,416,300.00	\$1,472,400.00

Line Item Description	Taxable Amount	Tax Rate per \$1000 of assessed value
VILLAGE TAX	\$6,255.78	4.4169874
COUNTY TAX	\$2,687.73	1.8977152
STATE TAX	\$257.93	0.1821163
TECH COLLEGE DIST	\$1,628.01	1.1494776
SEWER INTERCEPTOR	\$103.91	0.0733677
SCHOOL TAX 3437	\$13,736.54	9.6988942
LIBRARY O & M	\$578.17	0.4082286
STORM WATER	\$295.02	0.2083019
GROSS GENERAL TAXES	\$25,543.09	18.0350889
SCHOOL TAX CREDIT	(\$2,051.41)	1.4484258
NET GENERAL TAXES <small>notice</small>	\$23,491.68	16.5866631
WATER MAIN	\$864.06	
SP/ASSMT INT	\$155.53	
TOTAL SPECIAL ASSESSMENTS	\$1,019.59	
TOTAL TAX BILL	\$24,511.27	

Billed To:
 EVERGREEN-PETER LLC
 W134N5373 CAMPBELL DR
 MEMONOMEE FALLS, WI 53051

Installments	Amount Due	Due By	Pay to Agency
Full Amount Due	\$24,511.27	1/31/2007	COUNTY
First Installment	\$12,766.27	1/31/2007	COUNTY
Second Installment <small>Pay 2nd Installment (notice)</small>	\$11,745.00	7/31/2007	COUNTY
2006 Balance Due			
2006 Tax Outstanding <small>Pay Outstanding Amount (notice)</small>	\$11,745.00		

(view all transactions)

Transaction	Posted	Origin	Description	Tax	Interest	Penalty	In Rem	Total
1/23/2007	1/24/2007	LOCAL	LOCAL PAYMENT	(\$12,766.27)	\$0.00	\$0.00	\$0.00	(\$12,766.27)

No delinquent taxes found;

County Web Site Internet user

This program accesses data from databases maintained by several County Departments and Local Municipalities. There may be inconsistency in data depending on the date the information was gathered or the purpose for which it is maintained. Due to variances in sources and update cycles, there is no guarantee as to the accuracy of the data. For questions regarding tax listing, contact the County Register of Deed's Office at (262)548-7577 . For questions regarding County Tax Bills, contact the County Treasurer's Office at (262)548-7029 .

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Exhibit 3 – Declaration of Mark Ewen

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No. FIFRA-05-2007-0025
)	
Behnke Lubricants, Inc.)	Declaration of Mark D. Ewen.
Menomonee Falls, Wisconsin)	
)	
<u>Respondent</u>		

DECLARATION OF MARK D. EWEN

I, Mark D. Ewen, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury, that the following is true and correct:

1. My name is Mark D. Ewen. I make this declaration based on my personal knowledge and expertise.
2. I am a Principal of Industrial Economics, Incorporated, a consulting firm located at 2067 Massachusetts Avenue, Cambridge, Massachusetts 02140. Industrial Economics, Inc., is an economics and environmental consulting firm which provides consulting work in several different areas. These include evaluating economic damages and losses sustained in breach of contract cases, as well as providing expert witness services in environmental enforcement litigation. Industrial Economics also performs regulatory impact analyses for a variety of governmental agencies, as well as natural resource damage assessments for trustees and international bodies. Our litigation work includes assessing lost profits in economic damage cases, performing financial analyses in enforcement cases to determine economic benefit from noncompliance, and assessing the ability to pay of corporations, partnerships and individuals.
3. I hold a Master's degree in Public Policy from the University of Michigan, and a Bachelor's degree in Economics and Political Science from the University of North Dakota
4. I have served as a consultant in Industrial Economics, Inc., since 1995, focusing on case management and economic damages estimation in a variety of litigation contexts, regulatory and environmental economics, and financial analysis. I have testified in Federal court proceedings, as well as administrative hearings on financial issues.
5. I am also a member of the Risk Management Association, which is the primary professional association for risk assessors and credit lenders. My qualifications are more fully outlined in my *curriculum vitae*, which is attached to this Declaration as Attachment 1.

6. The U.S. Environmental Protection Agency retained me in June 2007 to attempt to analyze the financial status of Behnke Lubricants, Inc., including an assessment of the ability of this company to pay a civil penalty of \$50,050 proposed in U.S. EPA's Complaint in this matter.
7. I have performed analyses of ability to pay in more than 150 cases during my tenure with Industrial Economics, Inc. I have assessed the ability to pay of many different types of entities, ranging in size from large multinational corporations to small businesses, and involving all types of business activities (e.g., chemical companies, pulp and paper companies, dry-cleaning businesses, petroleum refineries, and car dealerships). I have testified regarding ability to pay in two cases in Federal District Court, and five cases before the United States Environmental Protection Agency's Office of Administrative Law Judges. These cases are identified in my curriculum vitae.
8. The purpose of an "ability to pay" analysis is to identify potential sources of funds that could be applied to either a penalty payment or for remediation/injunctive relief, along with the implications of applying those funds to the party's future financial stability. The issue is ability to pay, not willingness to pay. The purpose of the analysis is to inform the court's ultimate decision regarding remedy and penalty.
9. In order to perform a useful and accurate analysis, I need up-to-date information on parties' assets, liabilities, income and expenses. Among the types of documents that will contain this essential information are complete federal income tax returns, including all schedules and attachments; and complete corporate financial statements, including all attachments and notes. I also need to understand any uncertainties that might affect a party's future financial status.
10. In cases such as this, I identify potential sources of funds by conducting an analysis with the following components.
 - a. First, I analyze the annual cash flow that the party is generating – cash income less cash expenses. Excess cash flow can be paid out-right for penalty or remediation costs, or may support assumption of a debt for a one-time payment. In the case of individuals or small companies, I use the federal income tax return as an initial basis for this analysis, following up with requests for additional information as required. I assess whether expenses are reasonable, and if not, what expenses might be pared and what cash flow might then be generated. For many for-profit entities, the financial statements include actual cash flow statements, which document the sources and uses of cash. Thus, complete financial statements can provide a direct representation of a company's cash flow related to operating, investing, and financing activities.
 - b. Second, I analyze the net worth of the individual or party – representing difference between assets and liabilities. In the case of individuals, I often request that the individual submit a financial statement that identifies assets and

liabilities. I assess the valuation of the assets, both as represented by the party and through independent verification. I also assess the importance of the assets to the individual's income generation (i.e., a rental property may generate necessary income). I identify any "luxury" items (boats, airplanes) that could be judged to not be essential. I also examine the amount of debt and the degree to which existing assets are collateralized.

- c. Third, I look at whether there are external sources of financing as well, such as whether the company or individual has borrowing capability with a third-party lender; whether shareholders have shown a history of contributing to the company and supporting its obligations when necessary; and whether the company has had any transactions with any affiliated businesses, looking to see whether those transactions in any way affect the financial capabilities or financial appearances of the company.
11. When evaluating the ability to pay of corporations, at a minimum, I require at least three years and preferably up to five years of both complete tax returns and complete corporate financial statements, including all attachments, schedules and notes to financial statements. These financial records will document income or sales of the entity, expenses incurred to generate those sales, profits, assets, and liabilities. The notes and schedules are also important. For example, corporate tax return attachments provide useful detail on itemized expenses (for example, officer compensation, travel and entertainment) and assets purchased. Notes to financial statements document important accounting assumptions and treatment, and outline interactions with affiliated entities. In addition, I require depreciation schedules. Depreciation schedules should itemize all of the entity's asset holdings, including an asset description, purchase date, purchase price, and current book value. This type and breadth of information is needed to understand the company's historic operations, and also to understand any trends or changes that might have occurred with respect to that company.
12. With respect to corporate financial statements, I prefer audited financial statements. The primary difference between an audited financial statement and an unaudited financial statement is that, with an audited financial statement, the auditor will take the financial information provided by the company, and, in addition to simply reviewing and compiling that information, the auditor will take measures to test the accuracy and reliability of some of the underlying numbers in those statements. For example, with respect to a company's inventory, the auditor might actually inspect the warehouse or shelves of the company and count the items on the shelves or in the warehouse to see if the inventory estimate is accurate. The auditor may also interview customers or suppliers to inquire about the exchange of goods and services and the status of certain invoices. By doing this, the auditor not only compiles information and presents it in the form of a financial statement, but can also attest to the accuracy of the information and further confirm that the information fairly and actually represents the financial position of the company.

13. A company's relationship with its shareholders and with other businesses under common ownership can be important in evaluating that company's ability to pay. From a financial and operational perspective, it is important to look at both a company's business performance, and how that company has financed its operations over time. Where contributions from a company's shareholders or from related businesses have been an important part of that company's financing and financial support over time, it is important to consider the relationship between the company and its shareholders or the related businesses. First, when you have a set of closely held companies under common ownership, and they are exchanging goods and services with each other, you want to make sure that those exchanges are priced fairly and appropriately accounted for, so that you know the financial situation has been accurately presented in the financial statements. In addition, you want to know whether those related corporations have served as financial resources for each other, in managing cash flow or in managing their business obligations. When analyzing the financial condition / ability-to-pay of a particular company, it is important to look at how the corporation as a whole operates and how it has financed itself in relation to interactions with its related businesses. Where a shareholder has provided an important managerial and operational presence to the company, and has used his personal financial resources to support the firm and keep its operations going, or where a related business has provided financial resources to the company, is important to understand those relationships and the financial condition of those related entities in order to accurately assess the subject company's ability to pay.
14. The methodology described above is basic financial analysis, similar to any approach that a bank or other lending institution might take in considering whether to lend money to a company or individual. This analysis is similar to the types of inquiries that a potential investor might make if the investor were considering purchasing stock in a business.
15. To the best of my knowledge, Respondent has not provided any financial information to U.S. EPA.
16. The only information I have available concerning the potential financial circumstances of the Respondent Behnke Lubricants, Inc., are a Dun & Bradstreet, Inc., "Dun's Market Identifiers" report dated March 30, 2006, which estimated the company's annual sales to be \$7,900,000; an Experian Credit Report for Behnke's Menomonee Falls, Wisconsin facility, dated January 2007, which indicates that Respondent's Wisconsin plant had sales of approximately \$3,000,000; and an Experian Credit Report for Respondent's Sacramento, California, plant, dated September 2006, which indicates sales in the amount of \$1,400,000 for the California facility. I also reviewed a Tax Bill from Waukesha County, Wisconsin, which shows that the real estate on which the Behnke facility appears to be located (at the address W134N5373 Campbell Drive, Menomonee, Wisconsin), has an assessed value of \$1,472,400. Based on this information, Respondent appears to have sufficient revenues to pay a penalty of \$50,050, as proposed in EPA's complaint.

17. I may revise this opinion if additional information becomes available.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on June 19, 2007



Mark D. Ewen

Principal

Industrial Economics, Incorporated

MARK D. EWEN

Mr. Ewen has a strong background in applied economics, empirical methodologies, and financial analysis. As a Principal at Industrial Economics, Incorporated, he focuses on regulatory and environmental economics, case management and economic damages estimation in a variety of litigation contexts, and financial analysis. Within his areas of expertise, Mr. Ewen has been qualified as an expert witness before judicial and regulatory bodies. Examples of Mr. Ewen's project work include the following.

- For the U.S. Coast Guard's National Pollution Funds Center (NPFC), assessing economic damages to electricity generating facilities from their shutdown as result of a marine oil spill.
- Serving as an expert witness concerning economic damages incurred by the US Forest Service resulting from a forest fire within the Sierra National Forest, for the US Attorney's Office in Sacramento, CA.
- Assessing economic damages incurred by a class of lobster fishermen resulting from the collapse of the lobster fishery in Long Island Sound, for a private client.
- For the Pennsylvania Office of Small Business Advocate, Mr. Ewen provides consulting and analytic support relating to electricity and natural gas tariff design, revenue requirements, and other regulatory initiatives concerning electrical and natural gas distribution utilities.
- Providing a variety of analytic support activities for the U.S. Environmental Protection Agency's (EPA) Office of Enforcement and Compliance Assurance, DOJ, state environmental enforcement officials, and private clients. These activities include: analyzing claims of inability to afford Superfund remediation costs or civil penalties; testifying as an expert witness on ability to pay; assessing the economic benefit derived by violators through non-compliance, conducting numerous related training seminars for enforcement personnel; and managing certain modifications and updates to two of EPA's financial computer models, ABEL and INDIPAY.
- For EPA's Office of Pesticide Programs, assessing the financial and operational impacts of the planned phase-out of Methyl Bromide on various users of the pesticide, to support EPA's review of Critical Use Exemption applications under the Montreal Protocol.

Mr. Ewen holds a B.A. summa cum laude in Economics and Political Science from the University of North Dakota and an M.P.P. from the University of Michigan. Prior to joining Industrial Economics, Incorporated, Mr. Ewen worked as an Intern at the Congressional Budget Office in Washington, D.C., a Research Assistant at the Economic Development Corporation of Lansing, MI, and a Teaching Assistant at the University of Michigan.

Litigation and Economic Damages

Other litigation support and economic damages assessment activities include the following projects.

- For the Commercial Litigation Branch of the U.S. Department of Justice (DOJ), providing case management support and assessing potential economic damages for contract litigation involving nuclear utility interests.
- For a group of private plaintiffs, assessing economic damages and related financial impacts resulting from pollution discharges at a meatpacking facility.
- For the US Department of Interior, allocating liability among responsible parties for natural resource damages at a large Superfund site, including numerous mining entities.
- Providing case management and litigation support for DOJ concerning its enforcement actions against various coal burning power plants involving alleged violations of the Clean Air Act.
- For the State of Pennsylvania, providing internal expert analysis and discovery support related to the economic impacts of a landfill permitting effort.
- For the U.S. Coast Guard's National Pollution Funds Center (NPFC), developing guidance concerning the assessment of economic damages resulting from oil spills.
- For a private client, providing litigation and discovery support related to a natural resource damages claim in New Mexico.
- Providing case management and analytic support for DOJ in three lawsuits involving Alaskan timber interests. The support includes the financial and economic analysis of timber, sawmill, and pulp operations. In addition, this work involved assessing the regional economic impact of pulp mill closures on the local economies of Southeast Alaska.
- For the US Fish and Wildlife Service, auditing and documenting Natural Resource Damage Assessment (NRDA) costs incurred by relevant Trustees related to a NRDA case in Maine.
- For a private client, providing support concerning the assessment and economic valuation of human health effects related to U.S. nuclear weapons testing in the U.S. Marshall Islands.

Financial and Economic Analysis

The points below contain supplemental information on Mr. Ewen's financial economics work for various clients.

- For EPA, DOJ, U.S. Department of Agriculture, and a number of state environmental enforcement agencies, analyzing numerous ability-to-pay claims made by respondents concerning environmental enforcement lawsuits, including more than 125 corporations, 25 individuals, and several not-for-profit entities. These ability-to-pay analyses require a full review of the respondent's financial condition, including available cash flow, additional debt capacity, and unnecessary assets. Several cases have also involved the investigation of complex corporate organizations, including several with international ownership structures, to support the development of piercing the corporate veil or corporate control arguments.
- For EPA, assessing environmental regulatory costs to calculate the economic benefit of noncompliance.
- Conducting a financial and economic assessment of seven large pulp and paper facilities in Wisconsin.

Financial and Economic Analysis (continued)

- Preparing guidance documents for EPA enforcement personnel on developing maps of corporate structure and piercing the corporate veil.
- Participated as a witness in an “expert witness role play,” presented with an EPA Administrative Law Judge presiding and Agency lawyers for attendees to the Fifth Annual Financial Analysts Workshop, U.S. Environmental Protection Agency, Boston, MA, July 2000. Session provided “live” testimony session to illustrate testifying techniques for financial analysts.
- Providing litigation support in legal action taken against a potentially responsible party (PRP) at a Superfund site, for DOJ. The support includes extensive deposition preparation activities, participating in mediated settlement negotiations; and generating acceptable settlement figures.
- For the Administrative Law Judges of the Mine Safety and Health Administration, developing and conducting a seminar on financial and economic analyses relevant to the enforcement of mine safety regulations.
- Conducting training on EPA's BEN, PROJECT, MUNIPAY, INDIPAY, and ABEL computer models for EPA and state environmental enforcement staff, and developing a four-day seminar on the advanced financial analysis of respondents. Mr. Ewen has presented this seminar for EPA and state environmental enforcement officials in seven EPA Regions. He has also presented courses on advanced economic benefit assessment.
- Managing the modification of certain EPA financial models, including changing the INDIPAY model to allow greater flexibility in the ability to pay assessment of individuals and updating the ABEL model to the Windows operating environment and incorporating other improvements.
- Analyzing academic literature relating to calculating the economic benefit a violator derives from delaying or avoiding compliance with environmental statutes, for improvements to EPA's BEN computer model.

Regulatory and Environmental Economics

Mr. Ewen's additional experience in regulatory and environmental economics includes the following projects.

- For the U.S. Environmental Protection Agency's (EPA) Office of Solid Waste, directing a number of studies assessing the beneficial reuse of non-hazardous industrial byproducts, including foundry sands, coal combustion products, and construction and demolition debris. This work focuses on life-cycle assessment of these material flows.
- For EPA's Mobile Source Enforcement Branch, managing analysis of existing penalty policies to ensure policies are up-to-date and consistent, both internally to the program and externally with overarching Agency policy. Analysis requires review of financial and cost data primarily for economic benefit and gravity penalty calculation.
- For EPA's Office of Solid Waste, assessing electricity market price impacts, along with operational and financial effects, of new regulations concerning the management of residues from the burning of fossil fuels at electricity generating facilities.
- For the National Oceanographic and Atmospheric Administration, conducting an economic impact assessment related to the designation of critical habitat for Pacific Salmon.

Regulatory and Environmental Economics (continued)

- For the Independent Power Producers Society of Alberta, providing analytic support relating to the development of an electricity congestion management plan in the Province.
- For EPA's Office of Drinking Water, conducting analyses to explore possible revisions to the Agency's affordability criteria for drinking water regulations.
- For EPA's Office of Pesticide Programs, conducting a program evaluation of its Reduced Risk Initiative for conventional pesticides
- Reviewing the United States Postal Service's proposed cost allocation for postal rates in 1997 and 2000 on behalf of the Newspaper Association of America and the Office of the Consumer Advocate. This work includes submitting testimony regarding city carrier costs in the R2000 rate proceeding.
- For the US Fish and Wildlife Service, assessing economic impacts related to the designation of critical habitat under the Endangered Species Act.
- Evaluating the ability of states to meet their cost share obligations associated with remedial actions at Superfund sites, for EPA. The evaluation utilizes a case study approach to analyze state financial capabilities, willingness of state officials and residents to fund cleanup activities, and actual state experiences with the Superfund program.
- For EPA's Office of Water, managing an assessment of the costs of water pollution control in the Chesapeake Bay Watershed. This analysis estimates the increase in annual compliance costs incurred by both the public and private sector to comply with the Clean Water Act and other pollution control programs that went into effect between 1972 and 1997.
- For Environment Canada, assessing the human health and environmental benefits of Canada's New Substances Notification Regulations (NSNR). The analysis utilizes a retrospective approach to evaluate the benefits that would have resulted had the NSNR been implemented in time to regulate the use of three substances: vinyl chloride, dichloromethane, and PCBs.
- Conducting a case study analysis for EPA's Office of Water of the costs and benefits of improved water quality on the Upper Mississippi and Potomac Rivers resulting from enhanced municipal wastewater treatment processes under the Clean Water Act.
- For the U.S. Environmental Protection Agency's (EPA) Office of Radiation and Indoor Air, Mr. Ewen developed a cost-benefit analysis of risk-based radiation clearance standards for the release of scrap metal from nuclear facilities. As part of this effort, Mr. Ewen has managed various aspects of the work, including developing an economic model to predict cost and human health impacts, providing strategic planning advice concerning expansion of the initiative to include "orphaned" radioactive sources and development of international clearance standards, and developing a communications strategy and public outreach materials.
- As part of his work for EPA's Office of Radiation and Indoor Air, Mr. Ewen supported the development of a communications strategy to help the Office implement the Clean Metals Program. This work includes identifying appropriate target audiences and developing a variety of public outreach materials, including briefing packets, letters, brochures and summary issue papers.

Testimony and Appearances

Mr. Ewen has provided expert reports and/or testimony in the following cases and regulatory proceedings.

- Expert testimony on ability-to-pay provided, in the matter of Robert J. Hesper, Andrew J. Hesper, and Hesper Farms (No. CWA-05-2006-0002), May 2007.
- On behalf of Pennsylvania's Office of Small Business Advocate, submitting testimony before the Pennsylvania Public Utility Commission, concerning tariff design issues for Columbia Gas of Pennsylvania (Docket No. R-00049783, May 2005).
- On behalf of Pennsylvania's Office of Small Business Advocate, submitting testimony before the Pennsylvania Public Utility Commission, concerning cost allocation, revenue assignment, and rate design for Pennsylvania Power and Light (Docket No. R-00049255, August 2004).
- Expert report on economic damages in *United States v. Southern California Edison* No. CIV. F-01-5167 OWW DLB (E.D. Cal.), July 2004; deposition testimony provided September 2004.
- Expert testimony on ability-to-pay provided in *U.S. v. Peter Thorson, Managed Investments, Inc., Construction Management, Inc., and Gerke Excavating, Inc.* (No. 03-C-0074), May 2004.
- Expert testimony on ability-to-pay provided in *U.S. v. Paul A. Heinrich and Charles Vogel Enterprises, Inc.* (No. 03-C-0075-S), October 2003.
- Expert testimony on ability-to-pay provided in the matter of Dearborn Refining Company (No. RCRA-05-2001-0019), February 2003.
- On behalf of Pennsylvania's Office of Small Business Advocate, submitting testimony before the Pennsylvania Public Utility Commission, concerning recovery of purchased gas costs and revenue sharing for PFG Gas and Northern Penn Gas (Docket No. R-00027389, July 2002).
- Expert report and testimony on economic damages in *Carol Marmo et al. v. IBP, Inc.*; expert report filed March 2002, deposition testimony given June 2002, September 2004, and testimony at trial given February 2005.
- On behalf of Pennsylvania's Office of Small Business Advocate, submitting testimony before the Pennsylvania Public Utility Commission, concerning recovery of purchased gas costs and revenue sharing for National Fuel Gas Distribution Corporation (Docket No. R-00016789, March 2002).
- On behalf of the Office of the Consumer Advocate, providing testimony before the United States Postal Rate Commission regarding cost allocation of city carrier street time costs. Docket No. R2000-1, July 11, 2000.
- Expert report and declaration on ability-to-pay in re *Indspec Chemical Corporation and Associated Thermal Services, Inc.*, and related testimony in U.S. EPA administrative court on February 24, 1998 (No. CAA-III-086).
- Expert report on ability-to-pay in re *Harrisburg Hospital and First Capital Insulation, Inc.* and related testimony in U.S. EPA administrative court on October 8, 1997 (No. CAA-III-076).

May 2007

In the Matter of Behnke Lubricants, Inc.
Docket No. FIFRA-05-2007-0025

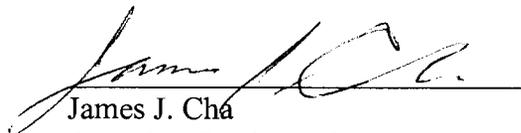
CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June, 2007, I filed the original and one copy of a Notice of Complainant's Request for Voluntary Production of Financial Information with Sonja Brooks-Woodard, Regional Hearing Clerk, U.S. EPA, Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, and placed for pickup to be mailed a copy of the Notice of Complainant's Request for Voluntary Production of Financial Information by Pouch Mail to:

Honorable Susan Biro
 Chief Administrative Law Judge
 Office of the Administrative Law Judges
 U.S. Environmental Protection Agency
 Mail Code 1900L
 1200 Pennsylvania Avenue, N.W.
 Washington, D.C. 20460-2001

and placed for pickup to be delivered by Federal Express a copy of the Notice of Complainant's Request for Voluntary Production of Financial Information to:

Mr. Bruce McIlroy, Esq.
 McIlroy, Schmitt & Button, Ltd.
 1150 Washington
 Grafton, Wisconsin 53024



James J. Cha
 Associate Regional Counsel
 U.S. EPA, Region 5
 Mail Code C-14J
 77 West Jackson Blvd.
 Chicago, IL 60604
 (312) 886-0813

JUN 21 11 11 AM '07
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