

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	Docket No. EPCRA-07-2006-0223
	)	
Missouri Tie and Timber, Inc.	)	
Reynolds, Missouri 63666	)	
	)	
Respondent.	)	

ANSWER AND REQUEST FOR HEARING

Comes now respondent, Missouri Tie and Timber, Inc., by and through its attorney, L. Dwayne Hackworth and for its answer to the Complaint filed in the above styled cause, states as follows:

Jurisdiction

1. Respondent Missouri Tie and Timber, Inc., admits paragraph one (1) of complainant's Complaint.

2. Respondent Missouri Tie and Timber, Inc., is without sufficient information, knowledge or belief to know the truth or falsity of the matters, allegations and things contained in paragraph two (2) of complainant's Complaint and therefore denies the same and requires strict proof thereof.

Parties

3. Respondent Missouri Tie and Timber, Inc., admits paragraph three (3) of complainant's Complaint.

4. For its answer to paragraph (4) of complainant's Complaint respondent admits that it is incorporated and registered to do business in the State of Missouri, and located at Reynolds, Missouri, 63666. For its further answer to paragraph four (4) of complainant's Complaint respondent denies that it is a manufacturer of wooden ties as respondent is a contract treater only of wooden ties supplied and manufactured by others.

### Statutory and Regulatory Requirements

5. Respondent Missouri Tie and Timber, Inc., admits paragraphs five (5), six (6), seven (7) and eight (8) of complainant's Complaint.

### VIOLATIONS

#### Count I

6. Respondent Missouri Tie and Timber, Inc., admits paragraph nine (9) of Count I of complainant's Complaint.

7. Respondent Missouri Tie and Timber, Inc., denies paragraphs ten (10) and eleven (11) of Count I of complainant's Complaint.

8. Respondent Missouri Tie and Timber, Inc., admits paragraphs twelve (12), thirteen (13), and Fourteen (14) of Count I of complainant's Complaint.

9. For its answer to paragraph Fifteen (15) of Count I of complainant's Complaint respondent Missouri Tie and Timber, Inc., admits that Form R for the calendar year 2002 for creosote was not timely filed, but further states said Form R has now been filed. For its further answer to paragraph fifteen (15) of Count I of complainant's Complaint and as an affirmative defense, respondent states that one of the responsibilities of the engineering firm employed by respondent included the filing of all required governmental reports on a timely basis and therefore, any reports that were not filed on a timely basis is due to the negligence of the engineering firm and not the respondent.

10. Respondent Missouri Tie and Timber, Inc., denies paragraph sixteen (16) of Count I of complainant's Complaint and for its further answer and as an affirmative defense states that respondent has never had ten or more full-time employees.

11. For its answer to paragraph seventeen (17) of Count I of complainant's Complaint respondent Missouri Tie and Timber, Inc., admits that a civil penalty of \$18,700 is proposed to be

assessed against respondent but respondent denies that said proposed civil penalty is the correct penalty or that any civil penalty is appropriate based on the defenses herein set forth.

### Count II

12. For its answer to paragraph eighteen (18) of Count II of complainant's Complaint respondent restates and incorporates herein by reference its answers to paragraphs nine (9) through twelve (12) of complainant's Complaint.

13. Respondent Missouri Tie and Timber, Inc., admits paragraphs nineteen (19) and twenty (20) of Count II of complainant's Complaint.

14. For its answer to paragraph twenty-one (21) of Count II of complainant's complaint, respondent Missouri Tie and Timber, Inc., admits that Form R for the calendar year 2002, for polycyclic aromatic compounds was not timely filed, but that said report has now been filed. . For its further answer to paragraph twenty-one (21) of Count II of complainant's Complaint and as an affirmative defense, respondent states that one of the responsibilities of the engineering firm employed by respondent included the filing of all required governmental reports on a timely basis and therefore, any reports that were not filed on a timely basis is due to the negligence of the engineering firm and not the respondent.

15. Respondent Missouri Tie and Timber, Inc., denies paragraph twenty-two (22) of Count II of complainant's Complaint and for its further answer and as an affirmative defense states that respondent has never had ten or more full-time employees.

16. For its answer to paragraph twenty-three (23) of Count II of complainant's Complaint respondent Missouri Tie and Timber, Inc., admits that a civil penalty of \$18,700 is proposed to be assessed against respondent but respondent denies that said proposed civil penalty is the correct penalty or that any civil penalty is appropriate based on the defenses herein set forth.

### Count III

17. For its answer to paragraph twenty-four (24) of Count III of complainant's Complaint respondent restates and incorporates herein by reference its answers to paragraphs nine (9) through twelve (12) of complainant's Complaint.

18. Respondent Missouri Tie and Timber, Inc., admits paragraphs twenty-five (25) and twenty-six (26) of Count III of complainant's Complaint.

19. For its answer to paragraph twenty-seven (27) of Count III of complainant's complaint, respondent Missouri Tie and Timber, Inc., admits that Form R for the calendar year 2002, for benzo (g,h,i) perylene was not timely filed, but further states that said report has now been filed. For its further answer to paragraph twenty-seven (27) of Count III of complainant's Complaint and as an affirmative defense, respondent states that one of the responsibilities of the engineering firm employed by respondent included the filing of all required governmental reports on a timely basis and therefore, any reports that were not filed on a timely basis is due to the negligence of the engineering firm and not the respondent.

20. Respondent Missouri Tie and Timber, Inc., denies paragraph twenty-eight (28) of Count III of complainant's Complaint and for its further answer and as an affirmative defense states that respondent has never had ten or more full-time employees.

21. For its answer to paragraph twenty-nine (29) of Count III of complainant's Complaint respondent Missouri Tie and Timber, Inc., admits that a civil penalty of \$18,700 is proposed to be assessed against respondent but respondent denies that said proposed civil penalty is the correct penalty or that any civil penalty is appropriate based on the defenses herein set forth.

#### Count IV

22. For its answer to paragraph thirty (30) of Count IV of complainant's Complaint respondent restates and incorporates herein by reference its answers to paragraphs nine (9) through twelve (12) of complainant's Complaint.

23. Respondent Missouri Tie and Timber, Inc., admits paragraphs thirty-one (31) and thirty-two (32) of Count IV of complainant's Complaint.

24. For its answer to paragraph thirty-three (33) of Count IV of complainant's complaint, respondent Missouri Tie and Timber, Inc., admits that Form R for the calendar year 2001, for benzo (g,h,i)perylene was not timely filed but further states that said report has now been filed. For its further answer to paragraph thirty-three (33) of Count IV of complainant's Complaint and as an affirmative defense, respondent states that one of the responsibilities of the engineering firm employed by respondent included the filing of all required governmental reports on a timely basis and therefore, any reports that were not filed on a timely basis is due to the negligence of the engineering firm and not the respondent.

25. Respondent Missouri Tie and Timber, Inc., denies paragraph thirty-four (34) of Count IV of complainant's Complaint and for its further answer and as an affirmative defense states that respondent has never had ten or more full-time employees.

26. For its answer to paragraph thirty-five (35) of Count IV of complainant's Complaint respondent Missouri Tie and Timber, Inc., admits that a civil penalty of \$18,700 is proposed to be assessed against respondent but respondent denies that said proposed civil penalty is the correct penalty or that any civil penalty is appropriate based on the defenses herein set forth.

#### Count V

27. For its answer to paragraph thirty-six (36) of Count V of complainant's Complaint respondent restates and incorporates herein by reference its answers to paragraphs nine (9) through twelve (12) of complainant's Complaint.

28. Respondent Missouri Tie and Timber, Inc., admits paragraphs thirty-seven (37), and thirty-eight (38) of Count V of complainant's Complaint.

29. For its answer to paragraph thirty-nine (39) of Count V of complainant's complaint, respondent Missouri Tie and Timber, Inc., admits that Form R for the calendar year 2000, for

creosote was not timely filed but further states that said report has now been filed. For its further answer to paragraph thirty-nine (39) of Count V of complainant's Complaint and as an affirmative defense, respondent states that one of the responsibilities of the engineering firm employed by respondent included the filing of all required governmental reports on a timely basis and therefore, any reports that were not filed on a timely basis is due to the negligence of the engineering firm and not the respondent.

30. Respondent Missouri Tie and Timber, Inc., denies paragraph forty (40) of Count V of complainant's Complaint and for its further answer and as an affirmative defense states that respondent has never had ten or more full-time employees.

31. For its answer to paragraph forty-one (41) of Count V of complainant's Complaint respondent Missouri Tie and Timber, Inc., admits that a civil penalty of \$18,700 is proposed to be assessed against respondent but respondent denies that said proposed civil penalty is the correct penalty or that any civil penalty is appropriate based on the defenses herein set forth.

#### Count VI

32. For its answer to paragraph forty-two (42) of Count VI of complainant's Complaint respondent restates and incorporates herein by reference its answers to paragraphs nine (9) through twelve (12) of complainant's Complaint.

33. Respondent Missouri Tie and Timber, Inc., admits paragraphs forty-three (43), and forty-four (44) of Count VI of complainant's Complaint.

34. For its answer to paragraph forty-five (45) of Count VI of complainant's complaint, respondent Missouri Tie and Timber, Inc., admits that Form R for the calendar year 2000, for polycyclic aromatic compounds was not timely filed but further states that said report has now been filed. For its further answer to paragraph forty-five (45) of Count VI of complainant's Complaint and as an affirmative defense, respondent states that the responsibilities of the engineering firm employed by respondent included the filing of all required governmental reports on a timely basis

and therefore, any reports that were not filed on a timely basis is due to the negligence of the engineering firm and not the respondent.

35. Respondent Missouri Tie and Timber, Inc., denies paragraph forty-six (46) of Count VI of complainant's Complaint and for its further answer and as an affirmative defense states that respondent has never had ten or more full-time employees.

36. For its answer to paragraph forty-seven (47) of Count VI of complainant's Complaint respondent Missouri Tie and Timber, Inc., admits that a civil penalty of \$18,700 is proposed to be assessed against respondent but respondent denies that said proposed civil penalty is the correct penalty or that any civil penalty is appropriate based on the defenses herein set forth.

#### Count VII

37. For its answer to paragraph forty-eight (48) of Count VII of complainant's Complaint respondent restates and incorporates herein by reference its answers to paragraphs nine (9) through twelve (12) of complainant's Complaint.

38. Respondent Missouri Tie and Timber, Inc., admits paragraphs forty-nine (49), and fifty (50) of Count VII of complainant's Complaint.

39. For its answer to paragraph fifty-one (51) of Count VII of complainant's complaint, respondent Missouri Tie and Timber, Inc., admits that Form R for the calendar year 2000, for benzo (g,h,i)perylene was not timely filed but further states that said report has now been filed. For its further answer to paragraph fifty-one (51) of Count VII of complainant's Complaint and as an affirmative defense, respondent states that the responsibilities of the engineering firm employed by respondent included the filing of all required governmental reports on a timely basis and therefore, any reports that were not filed on a timely basis is due to the negligence of the engineering firm and not the respondent.

40. Respondent Missouri Tie and Timber, Inc., denies paragraph fifty-two (52) of Count VII of complainant's Complaint and for its further answer and as an affirmative defense states that respondent has never had ten or more full-time employees.

41. For its answer to paragraph fifty-three (53) of Count VII of complainant's Complaint respondent Missouri Tie and Timber, Inc., admits that a civil penalty of \$18,700 is proposed to be assessed against respondent but respondent denies that said proposed civil penalty is the correct penalty or that any civil penalty is appropriate based on the defenses herein set forth.

#### **AFFIRMATIVE DEFENSES AS TO ALL COUNTS**

A. Answering further, as an affirmative defense and without waiving any of the foregoing defenses, respondent states that complainant's complaint fails to state a claim upon which relief can be granted.

B. Answering further, as an affirmative defense and without waiving any of the foregoing defenses, respondent states that complainant's claims are barred by the applicable statute of limitations and/or repose.

C. Answering further, as an affirmative defense and without waiving any of the foregoing defenses, respondent states that the claims arising out of the subject matter of the occurrences alleged are barred because the acts complained of were committed by a person or entity whose conduct for which respondent is not legally responsible.

D. Answering further, as an affirmative defense and without waiving any of the foregoing defenses, respondent states that complainant suffered no losses that were proximately caused by respondent.

E. Answering further, as an affirmative defense and without waiving any of the foregoing defenses, respondent states that its conduct was not the cause in fact of any damages alleged by complainant.



F. Answering further, as an affirmative defense and without waiving any of the foregoing defenses, respondent hereby reserves the right to assert any other defenses or affirmative defenses which it may become aware after further discovery and investigation.

Relief

WHEREFORE, having fully answered complainant's Complaint respondent prays that complainant's Complaint be dismissed; that respondent be allowed to go hence with its costs; and for such other and further Orders, Judgments and Decrees as may to the Court seem just and proper.

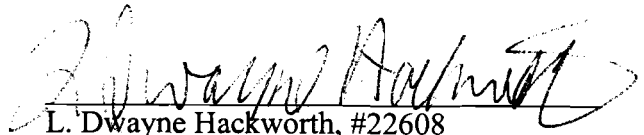
Request for Hearing

42. Respondent hereby respectfully requests a hearing concerning the allegations made in complainant's complaint.

Informal Settlement Conference

43. Respondent hereby respectfully requests an informal settlement conference.

Date: July 13, 2006



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Piedmont MO 63957

(573) 223-4247

ATTORNEYS FOR RESPONDENT,  
MISSOURI TIE AND TIMBER, INC.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the attorneys of record of all parties to the above cause by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein with postage fully prepaid and by depositing said envelope in the United States mail.

At Piedmont, Missouri, this 20<sup>th</sup> day of July  
2006.  
