



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

October 25, 2013

REPLY TO THE ATTENTION OF

E-19J

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE: In The Matter of: Meleen Corporation (Onamia, Minnesota)
Docket No. RCRA-05-2013-0013
Complaint Date: September 25, 2013
Total Proposed Penalty: \$103,125.00

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answer to an Administrative Complaint and Request for Hearing.

Please assign an Administrative Law Judge to this case.

If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in cursive script that reads "LaDawn Whitehead".

LaDawn Whitehead
Regional Hearing Clerk

Enclosures

cc: Timothy P. McCarthy, Esq.
Chestnut Cambronne PA
Attorneys at Law
17 Washington Avenue North, Suite 300
Minneapolis, Minnesota 55401-2048
tmccarthy@cclawmn.com
(612) 336-2937

Kevin Chow
Associate Regional Counsel
Office Regional Counsel
U.S. EPA, Region 5
Chicago, Illinois 60604-3590
(312) 353-6181



chestnut cambronne
ATTORNEYS AT LAW

Timothy P. McCarthy, Esq.
Minneapolis Office
Direct Dial: (612) 336-2937
Direct Fax: (612) 336-1287
tmccarthy@cclawmn.com

Chestnut Cambronne PA

MINNEAPOLIS
17 Washington Avenue North
Suite 300
Minneapolis, MN 55401-2048
T: 612.339.7300
F: 612.336.2940

SAINT PAUL
Kelly Inn, Suite 820
161 St. Anthony Avenue
St. Paul, MN 55103
T: 651.291.1900
F: 651.291.0063

October 21, 2013

www.chestnutcambronne.com

Regional Hearing Clerk (E-19J)
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

RE: In the Matter of: Meleen Corporation, Respondent
Docket No. RCRA-05-2013-0013

Dear Regional Hearing Clerk:

Please be advised that I represent Respondent, Meleen Corporation regarding this matter. I ask that all future correspondence and filings be sent to me directly. Enclosed for filing, please find the original and one copy of Respondent's Answer regarding the above matter.

By copy of this letter, Kevin Chow, Associate Regional Counsel is being served with the same.

Very truly yours,

CHESTNUT CAMBRONNE PA



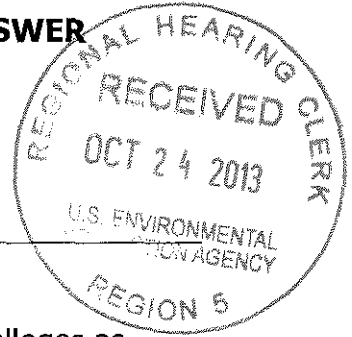
Timothy P. McCarthy

TPM/gac
Enclosures
cc: Kevin Chow, Associate Regional Counsel



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

| | |
|---|---|
| <p>In the Matter of:</p> <p>Meleen Corporation 38666 Highway 169 Onamia, Minnesota 56359</p> <p style="text-align: center;">Respondent.</p> | <p>Docket No. RCRA-05-2013-0013</p> <p style="text-align: center;">RESPONDENT'S ANSWER</p> |
|---|---|



For its Answer to Complainant's Complaint, Respondent states and alleges as follows:

I.

Respondent requests a hearing before an Administrative Law Judge.

II.

Respondent denies each and every allegation contained in Complainant's Complaint unless specifically admitted or qualified.

III.

With respect to paragraphs 1, 2, 4, 5, 6, 9, 10, 11, 12, 13, 17, 32, 33, 44 of Complainant's Complaint, these allegations call for legal conclusions and are not factual allegations of which Respondent has knowledge and therefore they are denied and Respondent puts Complainant to its strict burden of proof thereof.

IV.

With respect to paragraphs 3, 7, 8, 18, 20, 22, 37, 38 of Complainant's Complaint, Respondent admits the allegations contained therein.

V.

With respect to paragraphs 15, 25, 30, 41, 42, 46, 47 of Complainant's Complaint, Respondent denies the allegations contained therein.

VI.

With respect to paragraphs 19, 21, 23, 24, 35, 39, 40, 45 of Complainant's Complaint, Respondent does not have sufficient knowledge to either admit or deny and therefore must deny the allegations contained therein.

- Regarding ¶ 19, it was the practice of the EPA to show up unannounced, whether appropriate personnel of Respondent were present to address the EPA's concerns or insure follow up.
- Regarding ¶ 21, Respondent contacted O'Day Equipment, LLC, to address the issues raised by the EPA. O'Day attempted to address the EPA's concerns. O'Day's work did not result in adequate testing results. O'Day was unable to make timely repairs because the frost was in the ground. Permission was obtained from the EPA to delay repair until Spring, 2011. Unbeknownst to Respondent, O'Day failed to make repairs in Spring, 2011. O'Day later explained to Respondent that Respondent's repairs "fell through the cracks". O'Day made the repairs in October, 2012. It is believed that the repair conducted was a minor repair to just one tank and that the three other tanks were functioning properly.
- Regarding ¶ 23, Respondent does not know what documents were provided by MPCA to the EPA but believes the repairs were made by O'Day on October 4, 2012.

VII.

With respect to paragraph 14 of Complainant's Complaint, Respondent admits that the EPA conducted a compliance inspection on April 26, 2010 but is without sufficient knowledge to admit or deny with the EPA conducted a compliance inspection on April 25, 2013 and therefore denies that part of the allegation. April 26, 2010 was

the first "fail" issued by the EPA to Respondent since it began operating its business in 1991.

VIII.

With respect to paragraph 27 of Complainant's Complaint, Respondent asserts that this allegation calls for a legal conclusion, in part, and are not factual allegations of which Respondent has knowledge and therefore they are denied. Respondent admits repairs were made on October 4, 2012 by O'Day.

IX.

With respect to paragraph 28 of Complainant's Complaint, Respondent admits that an unannounced inspection of the EPA occurred on April 25, 2013 and that Respondent did not provide records to the EPA on that date. Regarding the remaining allegations, Respondent is without sufficient knowledge to admit or deny and therefore denies the remaining allegations.

X.

With respect to paragraph 29 of Complainant's Complaint, Respondent admits that the EPA issued an information request on June 5, 2013 but that Respondent did not receive it on June 5. Respondent asserts that on June 6, 2013, O'Day completed a UST Cathodic Protection System Evaluation with a result of "Pass". On June 10, 2013 a corrosion expert's evaluation was performed with a result of "Pass". It is believed that these results were provided to the EPA. Respondent denies the remaining allegations.

XI.

With respect to paragraph 34 of Complainant's Complaint, Respondent admits the allegation that its tanks were connected to an automatic tank gauging system.

Respondent denies that there was no other way of detecting tank leaks. Respondent, through its daily gasoline sales records and records of fuel in the tanks, were able to detect leaks in the tanks, had there been one present.

XII.

With respect to paragraph 36 of Complainant's Complaint, Respondent admits the EPA issued a notice of violation but asserts that Respondent was providing the EPA with daily piping and tank release detection records because that is how O'Day programmed the automatic tank gauging system. When Erin Galbraith of the EPA communicated the EPA's desire to have monthly records (not daily), O'Day reprogrammed the automatic tank gauging system.

XIII.

With respect to Complainant's **Compliance Order**, Respondent asserts that it is in compliance and has provided proof of compliance to the EPA in a UST Cathodic Protection System Evaluation dated June 6 and June 10, 2013.

Circumstances which Respondent alleges constitute grounds of defense.

Respondent disputes many of the factual allegations contained in Complainant's Complaint and has referenced those disputes and grounds for its defenses in Respondent's Answer.

Facts Respondent Disputes

Respondent disputes many of the factual allegations contained in Complainant's Complaint and has referenced those disputes in Respondent's Answer for any facts not admitted.

Basis for opposing the proposed penalty

Respondent opposes the proposed penalty on the grounds that: it complied with the spirit of the regulations under which Complainant seeks to prove Respondent's violations; Respondent retained the professional services of O'Day Equipment LLC, to perform regular inspections and servicing of its under storage tanks and their systems and communicate with the EPA. To the extent that Respondent failed in providing timely and adequate inspections, repairs and documentation, it relied on O'Day to provide these services and, moreover, Respondent is not possessed with the knowledge, skill or authority to conduct such services; the violations alleged are technical violations and there was no leak or discharge of any harmful or toxic substances; it is and has been Respondent's intent to comply with all EPA regulations; Respondent does not have the financial wherewithal to pay the proposed or any penalty; Respondent questions the propriety of action taken by the EPA when the regional authority is a member of Respondent's competitor.

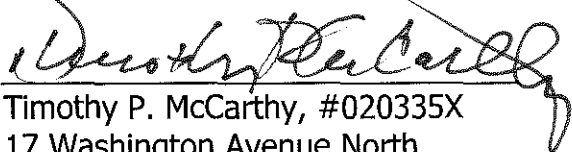
Whether Respondent Requests a Hearing.

Respondent requests a hearing before an Administrative Law Judge.

Dated: October 21, 2013



CHESTNUT CAMBRONNE PA

By 
Timothy P. McCarthy, #020335X
17 Washington Avenue North
Suite 300
Minneapolis, MN 55401
(612) 339-7300
Fax (612) 336-2940

ATTORNEYS FOR RESPONDENT

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Gail Christen, being duly sworn on oath says that on the 21st day of October, 2013, she served the attached:

- Respondent's Answer (Docket No. RCRA-05-2013-0013)

upon:

Kevin Chow (C-14J)
Associate Regional Counsel
U.S. EPA Region 5
77 W. Jackson Blvd.
Chicago, IL 60604

by depositing the same in an approved Post Office Depository of the United States Post Office Department located in Minneapolis, Minnesota, enclosed in sealed envelopes addressed to the above.

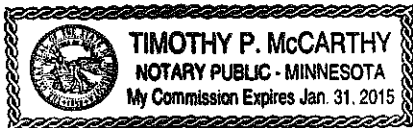
Gail Christen

Gail Christen

Subscribed and sworn to before me
this 21st day of October, 2013.

Timothy P. McCarthy

Notary Public



In the Matter of: Meleen Corporation (Onamia, Minnesota)
Docket Number: RCRA-05-2013-0013

CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7663 9705

Certificate of Service

I certify that I filed the original and one copy of the Respondent's Answer, and mailed the original copies to Ms. Sybil Anderson (MC: 1900R), Office of Administrative Law Judges U.S. EPA, 1200 Pennsylvania Avenue, N. W. Washington, DC 20460.

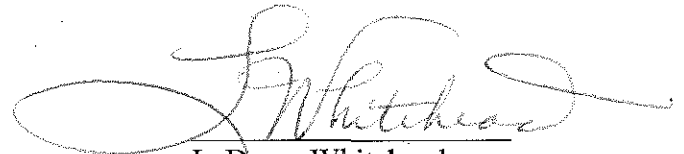
I certify that I delivered a copy of the Respondent's Answer by electronic mail, addressed as follows:

Kevin Chow, Regional Counsel
chow.kevin@epa.gov

Ann Coyle, Regional Judicial Officer
coyle.ann@epa.gov

Timothy P. McCarthy, Esq.
tmccarthy@cclawmn.com

On the 25 day of October 2013.



LaDawn Whitehead
Regional Hearing Clerk
Region 5

**CERTIFICATION OF THE ADMINISTRATIVE RECORD BEFORE
EPA Region 5**

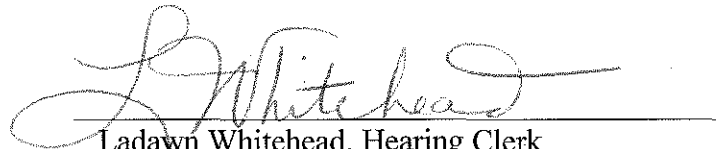
I, Ladawn Whitehead, am the Regional Hearing Clerk for EPA Region 5. My duties include maintenance of the official records for all adjudicatory oral arguments before .

I hereby certify that the attached index constitutes a true and correct index to the administrative record pertaining to the EPA's adjudication in the proceeding listed below.

I swear or affirm under penalty of perjury that the foregoing is true and correct.

Date:

10/25/2013



Ladawn Whitehead, Hearing Clerk

EPA Region 5

77 West Jackson Blvd, Chicago, IL 60604

**Docket Index for:
Meleen Corporation (Onamia, Minnesota)
RCRA-05-2013-0013**

| Filing Date | Filing # | Description | Originator |
|-------------|----------|---|--|
| 10/24/2013 | 2 | Answer. Answer with Cover Letter | Timothy P. McCarthy, Respondent's Esq. |
| 9/25/2013 | 1 | Complaint. Complaint and Compliance Order | EPA REGION 5 |