

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

UNITED STATES
ENVIRONMENTAL PROTECTION
AGENCY-REGION 7
2012 AUG 28 PM 9:45

IN THE MATTER OF:)
)
TNT General Contracting, Inc.)
Rural Route 3 Box 78C)
Kahoka, Missouri 63445)
)
Webb Minerals, LLC)
1261 Maine Street)
Quincy, Illinois 62360)
)
and)
)
Trustee(s))
of the Gary and Carol Trump Trust (U/T/A))
Kahoka, Missouri 63445)
)
Respondents)
)
Proceeding under Section 3008(a) and (g) of the)
Resource Conservation and Recovery)
Act as amended, 42 U.S.C. 6928 (a) and (g))
and)
Section 309 (g) of the Clean Water Act,)
33 U.S.C. 1319(g))
_____)

**RESPONDENTS' ANSWER AND
REQUEST FOR HEARING**

Docket No. RCRA-07-2012-0020
CWA-07-2012-0029

I. REQUEST FOR HEARING

Respondents TNT General Contracting ("TNT") and the Gary and Carol Trump Trust ("Trust"), by and through counsel, respectfully request a hearing in this matter.

Petitioner's Complaint seeks an excessive penalty from a family of rural Missouri farmers, who by agreeing to blend non-hazardous zinc bearing material ("ZBM") on a payment per ton basis for Bob Webb and Webb Minerals, LLC (collectively "Webb") unknowingly became victims of experienced minerals trading companies' RCRA failures. Without prosecuting *any* of the one hundred plus third parties whose disregard of RCRA duties *caused* TNT to be without notice of even the potential regulated status of the ZBM, Petitioner now seeks to further victimize TNT and deplete the family's assets held by the Trust by imposing a \$1.4 million penalty. Further, this ZBM is specifically excluded from RCRA waste under Petitioner's "Zinc Fertilizer Exemption," which recognizes the beneficial value of and encourages ZBM recycling. Because the materials handled at the TNT site were not hazardous waste, Petitioner has no

jurisdiction to enforce or penalize TNT and the Trust and fails to state a claim for which relief can be granted.

Instead of recognizing its own exemption of this material, as adopted in Missouri, Petitioner unreasonably insists that TNT and the Trust are responsible for alleged RCRA violations and penalties, which even if they were valid, should be primarily attributed to Webb. TNT and the Trust have been fully cooperative and actively sought settlement of this case. Petitioners have already shut down the tiny zinc blending portion of TNT's business and have incurred significant costs to investigate non-existent contamination at the site and to engage in negotiations prolonged by Webb's refusal to bring a reasonable settlement offer to the table and EPA's harsh stance. Meanwhile, Webb who fully operated and controlled the zinc blending operation at TNT, and who has been a career major player in minerals commerce, has been uncooperative and has borne only a tiny portion of the costs of evaluating the site and defending this action. By failing to allocate liability under the Unilateral Administrative Order ("UAO"), refusing to negotiate settlement with TNT and the Trust, asserting joint and several liability for the penalty, and denying the existence of the Zinc Fertilizer Exemption, Petitioner violates the Administrative Procedure Act, denies due process, and abuses its discretion, harming TNT and the Trust.

Finally, the penalty proposed is not only outrageous in the context of this case; it is inconsistent with both regional and national enforcement under RCRA for similar alleged violations. The most pertinent example is Petitioner's \$300,000 settlement of the liability of Agrium, the fertilizer manufacturer that received many of Webb's materials and used them in fertilizer product, which occurred in 2011.

II. ANSWER TO COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING BY RESPONDENTS TNT GENERAL CONTRACTING AND TRUMP TRUST

Respondents TNT and the Trust Respond to the Complaint filed by Petitioner, the United States Environmental Protection Agency ("EPA"), as below in paragraphs numbered to correspond to EPA's Complaint.

TNT and the Trust are RCRA victims that EPA is supposed to protect, not prosecute.

1. Paragraph 1 appears to be conclusions of law, which require no admission or denial. However, to the extent a response is required, Respondents deny that the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 ("RCRA"), and the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), 42 U.S.C. § 6928 (a) and (g) (collectively "RCRA") applies because Respondents deny any materials on site were hazardous waste and deny that hazardous waste was stored at the facility. Further, EPA has delegated its RCRA and Clean Water Act ("CWA") authority to the state of Missouri. The Missouri Hazardous Waste Law operates "in lieu of" the federal program because EPA has authorized the state program under RCRA § 3006, 42 U.S.C. 6926. In doing so, EPA certified the state program as the equivalent to the Federal RCRA program. Thus, the applicable law in this matter is the Missouri

Hazardous Waste Law, Rev. Stat. Mo. ("RSMo") §§ 260.350 to 260.430, the Missouri Clean Water Law RSMo Chapter 644, and corresponding state regulations.

2. Respondents deny Petitioner has authority to bring this action because EPA has delegated its RCRA and CWA authority to the Missouri Department of Natural Resources ("MDNR"). EPA has not properly provided written notice to MDNR of its enforcement action. As such, MDNR has primary enforcement responsibility for the Missouri Hazardous Waste Laws under RSMo 260.410. *See* Harmon Industries, Inc. v. Browner, 191 F.3d 894, 898-99 (8th Cir. 2000).
3. Regarding Webb Minerals, LLC, Respondents TNT and the Trust are without sufficient information to respond. Paragraph 3 is admitted to the extent it concerns TNT and the Trust.
4. Deny. The Missouri Hazardous Waste Law operates "in lieu of" the federal program because it has been authorized by EPA under RCRA § 3006, 42 U.S.C. 6926, and as such, EPA has certified the state program as the equivalent to the Federal RCRA program. Thus, the relevant statutory provisions for assessing an administrative penalty are found in RSMo §§ 260.412 and 260.425, and the amount of monetary penalty is limited to \$10,000 per violation.

Alternatively, if the penalty provisions of RCRA § 3008 (g) are found to apply, *EPA violates the administrative procedures act, disregards due process, and defeats the goals of RCRA by its application of RCRA and the penalty policy against TNT and the Trust in this case.*

EPA has applied the RCRA penalty policy guidance document so strictly as to constitute a legislative rule and EPA, in violation of the Administrative Procedure Act, 5 U.S.C. § 553, has not appropriately considered the required statutory factors. *See* Nat'l Mining Assoc. v. Jackson, No. 1:10-cv-01220-RBW (D.C. Cir. July 31, 2012) (regional application of guidance document in a manner which changes legal obligations or establishes enforceable rules or standards oversteps EPA's statutory authority). *Although* TNT now contests EPA's jurisdiction and authority to impose a RCRA penalty, TNT and the Trust immediately complied with EPA's Unilateral Administrative Order and have fully cooperated with EPA's requests since September 2010. Despite Respondents' cooperative efforts, EPA has refused to conduct reasonable negotiations related to potential reductions of its proposed penalty even though the RCRA penalty policy is merely guidance for setting a penalty amount.

To demonstrate their willingness to settle this matter, Respondents have held open an offer since September 2011 which represents all profits TNT generated from zinc blending. EPA has not responded to this settlement offer and asks TNT and the Trust to bid higher against themselves without any financial contribution from Webb Minerals, LLC or other potentially responsible parties in the chain of commerce, even though Respondents are victims of others' failure to comply with RCRA duties. EPA's proposed penalty amount is arbitrary, capricious and an abuse of discretion and its failure to enter

good faith settlement negotiations in this matter have harmed Respondents by unnecessarily dragging this matter out over a period of two years. EPA has refused to consider the circumstances of Respondents' demonstrated financial inability to pay such a catastrophic penalty and the fact that Respondent TNT has already been forced out of the zinc blending business by EPA's enforcement action. EPA has not considered that payment of the extreme penalty proposed would force TNT to shut down its legitimate trucking business as well, even though the zinc blending portion of the business constituted only a tiny portion of the total revenue of the business during the relevant time period. EPA improperly based its calculation of TNT's ability to pay on the company's entire income, rather than limiting the scope to income from zinc blending.

Although EPA has recognized the extreme disparity in culpability among the Respondents, and its Complaint demonstrates that Webb Minerals, LLC controlled all aspects of the zinc blending operations, EPA insists the penalty applies joint and severally to each Respondent. EPA refuses to consider that joint and several liability would constitute further victimization of Respondents in the case at hand because TNT and the Trust are victims of the failure of RCRA duties imposed upon third parties, including Webb Minerals, LLC, and Bob Webb (Webb). Asserting joint and several liability for a penalty is extremely inappropriate in this case, yet EPA insists that each Respondent is liable for the entire amount, a position that has prevented good faith negotiation. Although the purpose of a penalty is to punish individual actions, EPA has improperly included a 25% increase on its proposed penalty based on Webb's willful and/or negligent actions and asserted the penalty applies under joint and several liability to TNT and the Trust. And now EPA has believed that Webb is unable to pay any significant portion of the proposed penalty and seeks the remaining amount from the personal family assets of the Trust, which merely owned the land.

EPA has inappropriately brought this administrative action against Respondents without prosecuting the generators, transporters, and fertilizer manufacturers who are necessary to resolve the issues. Doing so prevents full resolution of the matter and may prevent Respondents from recovering costs from other parties who are liable to Respondents or who caused the alleged violations.

Further, the penalty EPA asserts is clearly unreasonable and extremely inconsistent with its regional and national enforcement history for similar allegations of violations. For all these reasons, the penalty proposed is arbitrary, capricious, and an abuse of discretion. Respondents request leave to submit a separate brief supporting its penalty reduction arguments once questions of liability raised in this answer have been resolved.

5. Respondents admit the first and second sentences of paragraph 5 and deny the third sentence. The Missouri Hazardous Waste Law operates "in lieu of" the federal program and MDNR has primary enforcement responsibility. Respondents deny that EPA may issue an order assessing a civil penalty without filing a judicial complaint in the U.S. District Court under RCRA § 3008(a).

6. Conclusions of law require no admission or denial. However, to the extent a response is required, Respondents deny that the alleged violations constitute violations sufficient to warrant a Class II penalty. The Missouri Clean Water law authorizes the state of Missouri to carry out the NPDES program and operates instead of the federal program. Thus, the relevant statutory provisions for assessing an administrative penalty are found in RSMo §§ 644.076 and 644.079 and the penalty amount is limited to \$10,000 per violation.
7. Admit.

Webb operated the zinc blending business and controlled the entire chain of commerce.

8. Respondents admit TNT is a Missouri corporation and the address listed is its correct business address. TNT denies paragraph 8 to the extent it presumes that TNT is a "person" subject to RCRA regulation or that TNT's business location is a RCRA "facility." Rather, TNT and the Trust have at all times handled useful materials that are not waste and not subject to RCRA. TNT's business location is not "land, structures, other appurtenances, [or] improvements on the land *used for* treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation." (40 C.F.R. 260.10-defining "facility"—emphasis added). As such, TNT denies that it is the "operator" of a RCRA facility as defined under the Missouri Hazardous Waste Law and RCRA because the definition of operator requires that the location be necessarily linked with handling hazardous materials or waste.

Even if the TNT's business location is found to be a RCRA "facility," TNT is not the "operator" of the facility because it was not the person responsible for overall operation of the facility, as that term is necessarily linked to handling of hazardous materials or hazardous waste. Rather, TNT and the Trust have become victims of third parties' failure to meet statutory duties under RCRA to properly characterize, identify, manifest, and ship hazardous secondary materials or waste. TNT was not involved in decision-making, did not control handling or processing, and did not control environmental compliance related to any zinc blending that occurred on the property. Rather, Bob Webb and Webb Minerals, LLC (collectively "Webb") was the "operator," as EPA alleges in paragraph 9. Webb's extensive participation in and control of TNT zinc blending activity prevented TNT and the Trust from having the information they would have needed to determine whether the materials at issue were subject to RCRA regulation and precluded TNT from acting as the "operator" of a RCRA "facility." *See Clean Harbors, Inc. v. CBS Corp.*, Case No. 10-2017-JPO (D. Kan. June 26, 2012) (finding a parent company was the operator of a subsidiary's facility when no decisions were made without parent's approval).

9. Respondents admit paragraph 9.
10. Respondents deny paragraph 10 to the extent it presumes the Trust is a "person" subject RCRA on the basis of owning a RCRA "facility." The Trust admits it owns the property in question, but denies that the property is a RCRA facility and that it is the "owner" of any RCRA "facility."

11. Respondents admit paragraph 11.
12. Respondents deny paragraph 12. Respondents deny that any of the materials handled were hazardous waste and deny that hazardous waste was stored at the property.
13. Respondents admit paragraph 13.
14. Respondents deny the first sentence of paragraph 14 only to the extent that it implies zinc fertilizer ingredients are produced at the TNT business location and could imply that the TNT facility is considered a manufacturer of zinc fertilizers. Webb directs the mixing of the zinc bearing materials with other materials he owns, and then Webb arranges for sale of the blended product to third parties. Respondents deny the second sentence to the extent it does not identify which party controls shipping of the materials. Webb controls all portions of the process, including shipment of blended materials from the TNT business location.
15. Respondents deny any discharge was running from the pond into a drainage ditch at the time of the March 24, 2010 inspection. Respondents admit that the inspection and sampling occurred on the dates listed.
16. Respondents deny that the samples demonstrate discharges contained pollutants due to industrial activity at the site. MDNR's sampling program was faulty and did not document samples of discharge or release from the pond. Rather, MDNR took samples from the pond itself, and EPA now attempts to characterize these samples incorrectly.
17. Respondents admit paragraph 17, except to the extent that it implies the site was contaminated and that the UAO required "cleanup," since that term is undefined.
18. Respondents deny paragraph 18. At the time of the September 14, 29, and 30, 2010 site visits, TNT was not conducting any zinc blending on site. The implication that TNT was "still not operating in compliance with RCRA regulations" is purposefully misleading. Upon receipt of the UAO, TNT immediately stopped all zinc blending for Webb and complied with all EPA requests, and was not operational at the time of any EPA site visits.

No NPDES permit was required because TNT is not a TSD Facility.

19. Respondents' admissions and denials from paragraphs 8 through 18 are likewise incorporated as if fully set forth herein.
20. This appears to be conclusions of law, which require no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.

21. This appears to be conclusions of law, which require no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.
22. This appears to be conclusions of law, which require no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.
23. This appears to be conclusions of law, which require no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.
24. This appears to be conclusions of law, which require no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.
25. This appears to be conclusions of law, which require no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.
26. This appears to be conclusions of law, which require no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.
27. Admit. However, Respondents deny any discharge of pollutants to navigable waters through stormwater from the site.
28. Respondents deny that the stormwater from the site contains "pollutants" attributable to the facility.
29. Respondents deny that a hazardous waste TSD facility exists on the site, and thus deny the site has "stormwater discharges associated with industrial activity" as defined by 40 C.F.R. § 122.26(b)(14)(iv) and deny that the site is a point source.
30. Deny. Respondents deny having discharged pollutants into "navigable waters."
31. Respondents deny that a hazardous waste TSD facility exists on the site, and thus deny paragraph 31 for the same reasons they deny paragraph 29.
32. Respondents deny the site has an industrial activity as defined by 40 C.F.R. § 122.26(b)(14)(iv) and thus deny a permit is required for the alleged industrial activity.
33. Respondents deny paragraph 33 and specifically deny that EPA has evidence demonstrating that a brown, odorous discharge was running from the containment pond at the time of the June 2010 MDNR sampling event. Respondents further deny that samples of *any* discharge were collected and analyzed. EPA's careful selection of vague

and ambiguous modifiers in paragraph 33 purposefully gives the false impression that the samples were obtained from actual discharge from the pond. Rather, the data EPA presents was obtained from a sediment sample inside the collection pond. Respondents assert that samples collected from the pond were not samples of any alleged discharge and the precise location where sampling occurred is not established by the record. Thus, EPA's assertion that a sample of any discharge was collected requires further proof.

Further, EPA cites the results of the sample with no reference to support the data's significance in order to mischaracterize the site as contaminated. EPA fails to mention that although one sediment sample showed zinc at 1,810 parts per million (ppm), this amount is nowhere near approaching the Applicable Industrial Regional Screening Level (RSL) that would apply to the site, which is established at 310,000 ppm zinc. EPA also fails to mention that it has approved Respondents' Site Characterization Report, which noted that because no samples exceeded the Industrial RSL for zinc, zinc is not a contaminant of concern in sediment and soil at the site.

34. Respondents deny that the Missouri water quality standards apply to the containment pond located on the property, and thus assert that because the samples discussed were taken from the pond, all data contained in paragraph 34 is irrelevant. See also Response to paragraphs 33 and 35.
35. Although Respondents admit that the sediment and water sampling data in paragraph 35 is accurate, they deny the data presented has the significance implied by Petitioner's Complaint. Respondents deny that the amount of zinc present in the samples demonstrates discharge of pollutants and denies the sampling results are attributable to its property or its zinc blending activity. Respondents point to the "control" sediment samples obtained by MDNR which were taken upstream of the site and at the edge of the property, which demonstrate that zinc was present in sediment in higher levels before the stream enters the zinc blending portion of the site than after leaving the site. Further, Petitioner has not properly presented this data in its Complaint, and aims to mislead and mischaracterize the site by providing sampling numbers without any reference to background levels, benchmarks, or standard by which to assess the site, which are nowhere close to being violated. As with the sediment RSL, surface water samples analyzed against the most stringent regulatory standards for surface water in accordance with 10 CSR 20-7 during the True North sampling event demonstrated that none of the analyzed compounds exceeded the surface water standards. As such, Paragraph 35 is irrelevant and should be stricken from the record.
36. Respondents admit no NPDES permit application or permit was issued for the facility prior to May 20, 2011.
37. Admit.
38. Respondents deny that the term "industrial or commercial activity" is defined by 40 C.F.R. § 122.26 and thus deny that mixing zinc bearing materials is within that meaning.

39. Deny.
40. This appears to be a conclusion of law, which requires neither admission nor denial. However, to the extent a response is necessary, Respondents deny for the foregoing reasons.

TNT site did not handle hazardous wastes and is not subject to RCRA.

41. Respondents' admissions and denials from paragraphs 8 through 18 are likewise incorporated as if fully set forth herein.
42. Respondents deny to the extent that this paragraph implies hazardous wastes were stored improperly at the site.
43. Respondents deny paragraph 43 to the extent it implies that all materials on site contained the listed contaminants and that it implies all materials on site were solid or hazardous waste and subject to EPA jurisdiction. Further, EPA's vague use of the modifier *these* creates a mischaracterization of specifically which materials were stored in what fashion and which materials, when sampled, contained the alleged pollutants and at what levels.
44. This appears to be a conclusion of law, which requires no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.
45. Admit. However, Respondents deny paragraph 45 to the extent it implies that any supersack marked with a waste code F006 actually contained F006 waste. **None of the materials contained within the marked supersacks were identified as hazardous waste or shipped under RCRA manifest by the generators or shippers, who under RCRA are obligated to make such determination and ship hazardous waste under manifest. No materials were shipped via RCRA manifest to the TNT site and none contained hazardous substance placarding, as would be required by the U.S. Department of Transportation (DOT).**
46. Deny.
47. Deny. None of the materials handled at the TNT facility were waste, let alone hazardous waste because either they were excluded from the definition of solid waste under the Missouri Hazardous Waste Law, which includes the "Zinc Fertilizer Exemption" found in 40 C.F.R. § 261.4(a)(20) & (21), or the materials did not otherwise meet the definition of waste because they were useful product, not subject to regulation. **None of the parties that generated or shipped the materials to the TNT site, who under RCRA would be obligated to identify hazardous waste and ship it under manifest, had determined any of the materials were hazardous waste.** Neither had the generating or shipping parties provided documentation of such determination of any materials on site at the time of inspection. **No materials were shipped via RCRA manifest to the TNT site and none contained hazardous substance placarding, as would be required by the U.S.**

Department of Transportation (DOT). Rather, the materials on site were non-hazardous materials, designated for recycling, and were accompanied by an ordinary bill of lading.

48. Deny. The "Zinc Fertilizer Exemption" is recognized by the state of Missouri and exists under the Missouri Hazardous Waste Law. The state of Missouri incorporated the exemption by reference into the Hazardous Waste Law and regulations. Because EPA did not provide fair notice of its interpretation of its regulations, it cannot now claim the exemption is not operational within the state. Further, Respondents assert that Webb is responsible for compliance with the exemption because he controlled the zinc blending operations of the facility. As EPA alleges, Webb provided specific instructions for handling, storing, blending, and shipping the materials. Webb arranged for all purchase and sale of materials from both directions. Webb owned the materials at all times. Webb paid a mixing fee per ton of material. Webb sampled the materials and maintained MSDS information and other records regarding the content of the materials. Webb visited TNT's site weekly to oversee zinc blending operations at the facility.
- a. Respondents deny that zinc bearing materials were accumulated speculatively, and deny that TNT failed to meet the requirement of the exemption set forth in 40 C.F.R. § 261.4 (a)(20)(i). Materials were at all times handled as useful product and stored for legitimate recycling.
 - b. Respondents TNT and the Trust admit neither party submitted notice to EPA or MDNR, but are without sufficient information to know whether Webb submitted such notice. Webb, as the controller of zinc blending operations had knowledge of the exemption's requirements and assured third parties of his facility's compliance, thus, providing notice of the site's operations was Webb's responsibility.
 - c. Respondents deny that they failed to store ZBM that would otherwise be considered hazardous waste as required by 40 C.F.R § 261.4 (a)(20)(ii)(B) of the exemption. EPA has alleged no specific facts showing any materials stored improperly at the time of the June 2010 inspection were ZBM that would be considered hazardous waste if they did not meet the zinc fertilizer exemption. (See also Responses for paragraphs 42 and 43 above).
 - d. Respondents admit that written notice was not provided to receiving facilities, however, TNT was also a receiving facility that never received written notice that the material was subject to the conditions of paragraph (a)(20) as required by 40 C.F.R. § 261.4 (a)(20)(ii)(C). Further, Webb, as the owner and broker of the materials, assumed responsibility for providing notice of the status of the materials not only to facilities receiving shipment from TNT, but notice to TNT, as a receiving facility.
 - e. Respondents deny that the minimum required records have not been maintained.

TNT is not a hazardous waste Generator and had no duty to notify.

49. This appears to be conclusions of law, which require no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.
50. Respondents deny the facility has ever been a generator of hazardous waste.
51. Respondents deny that any hazardous waste activity occurred at the facility requiring notice as a generator.
52. Admit. However, Respondents deny any implication that the word "operating" means TNT was a generator of hazardous waste.
53. This appears to be a conclusion of law, which requires no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.

TNT is not a Generator and had no duty to conduct hazardous waste determinations.

54. This appears to be a conclusion of law, which requires no admission or denial. However, to the extent a response is required, Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law. Respondents deny that TNT or the Trust have ever been generators of hazardous waste and thus deny any duty to conduct hazardous waste determinations as generators.
55. Deny. The facility has at all times handled useful product that is not solid waste.
56. Admit.
57. Admit.
58. Respondents admit that hazardous waste determinations on the materials were required by the UAO, however, they deny the UAO required them by September 21, 2010.
59. Admit.
60. Admit.
61. Deny.
62. Deny. Paragraph 62 appears to be a conclusion of law, and does not require a response, however, to the extent it does, Respondents asserts it did not generate solid waste at the facility and that all materials were useful products and handled as such. Thus, RCRA did not apply and Respondents were under no obligation to conduct hazardous waste determinations on the materials. No materials received at the facility were identified as

hazardous waste or hazardous materials by their generators, brokers, or shippers to the facility and none were shipped using a manifest to indicate regulated status. Thus, even if the materials demonstrated hazardous characteristics, TNT and the Trust had no duty to conduct hazardous waste determinations.

No Treatment, Storage, or Disposal (TSD) Facility Permit was required by law.

63. Conclusions of law require no admission or denial. To the extent a response is required, Respondents deny that the law is applicable to the present case because the facility was not treating, storing, or disposing of hazardous waste. Further, Respondents assert that even regarding materials that may be determined to have been hazardous wastes, the Missouri Hazardous Waste Law specifically exempts facilities from the permit requirement for on-site storage of hazardous waste that is exempt by rule or regulation. RSMo 260.395.13 (1). Because secondary materials used in producing zinc fertilizer are exempt from regulation by rule, all materials handled at the facility would comport to this exemption. Missouri Hazardous Waste Law also provides that no permit is required for a resource recovery facility whose sole purpose is production of a useful product, and is not treatment or disposal. RSMo 260.395.13 (3). Under either and/or both of these specifically applicable exceptions to the permit requirement, a permit was not required for the facility.
64. Respondents deny paragraph 64 to the extent that the word "generator" implies a RCRA generator of hazardous waste, and asserts Webb owned and controlled disposition and shipping of all materials received at the TNT site.
65. Deny. None of the parties that generated or shipped the materials to the TNT site, who under RCRA would be obligated to identify hazardous waste and ship it under manifest, had determined any of the materials were hazardous waste. Neither had the generating or shipping parties provided documentation of such determination of any materials on site at the time of inspection. No materials were shipped via RCRA manifest to the TNT site and none contained hazardous substance placarding, as would be required by the U.S. Department of Transportation (DOT). Rather, the materials on site were non-hazardous materials, designated for recycling, and were accompanied by an ordinary bill of lading.
66. Deny.
67. Deny. Petitioner attempts to mislead the administrative officers once again into believing that all materials handled at the TNT facility were hazardous waste, which is simply untrue. Petitioner cannot base its claims on broad assertions of observations and must specifically allege which materials it asserts are hazardous, and whether those particular materials were stored improperly.
68. Respondents deny paragraph 68 to the extent that the word "piles" implies the material handled was hazardous waste and is a continuation of the previous paragraph. However, Respondents admit that Webb directed mixing of the zinc bearing materials. Webb obtained samples of materials, provided explicit instructions for storing the materials,

provided "recipes" for mixing different types of materials, and provided estimates of the expected quantitative and qualitative results.

69. Conclusions of law require no admission or denial. To the extent a response is required, Respondents deny that the law is applicable to the present case.
70. Conclusions of law require no admission or denial. To the extent a response is required, Respondents deny that any materials on site were hazardous waste and that hazardous waste was stored at the facility. Petitioners have not alleged facts sufficient to show that any materials stored on the ground were hazardous waste or subject to RCRA jurisdiction. Respondents deny the cited law is applicable and any implications raised by the piecemeal citation of the law.
71. Deny. The conclusions of law contained in this paragraph require no response. However, to the extent a response is required, Respondents deny any hazardous waste was released or disposed of at the site. Further, Respondents deny that dispersal of the materials has occurred and have provided extensive documentation to Petitioner demonstrating the site does not contain contaminants in levels even approaching Industrial RSLs. Rather, all materials were stored and handled as useful product, and were shipped as a useful product to a down-stream consumer for incorporation into a useful product.

TNT is not a Generator and had no duty to comply with Generator requirements.

72. Conclusions of law require no admission or denial. To the extent a response is required, Respondents deny that any materials on site were hazardous waste and deny that hazardous waste was stored at the facility. Thus, Respondents deny the facility generated hazardous waste and that the duties imposed by RCRA on generators have ever applied to them.
73. Deny.
74. Deny.
75. Admit.
76. Conclusions of law require no admission or denial. To the extent a response is required, Respondents deny that any materials on site were hazardous waste and deny that hazardous waste was stored at the facility. Respondents deny a hazardous waste storage facility was operated on the site.

TNT is not a Generator and had no duty to manifest non-hazardous materials.

77. Conclusions of law require no admission or denial. To the extent a response is required, Respondents deny that any materials on site were hazardous waste and that it was a generator of hazardous waste to which generator requirements such as manifesting apply or that it shipped hazardous waste from the site.

78. Deny. None of the materials handled at the TNT facility were waste, let alone hazardous waste because either they were excluded from the definition of solid waste under the "Zinc Fertilizer Exemption" found in 40 C.F.R. § 261.4(a)(20) & (21) or they would not otherwise have been considered hazardous waste. None of the parties that generated or shipped the materials to the TNT site, who under RCRA are obligated to identify hazardous waste and ship it under manifest, had determined any of the materials were hazardous waste. Neither had the generating or shipping parties provided documentation of such determination of any materials on site at the time of inspection. No materials were shipped via RCRA manifest to the TNT site and none contained hazardous substance placarding, as required by the U.S. Department of Transportation (DOT). Rather, the majority of materials on site were non-hazardous materials, designated for recycling, and accompanied by an ordinary bill of lading.
79. TNT denies that any manifests were required for the materials shipped since none of the materials were hazardous waste. TNT admits that all shipments to and from the facility were made via bill of lading, but denies this paragraph to the extent it implies that manifests were required and implies materials shipped were hazardous waste.
80. TNT is without sufficient information to respond, but denies paragraph 80.
81. Deny. None of the materials handled at the TNT facility were waste, let alone hazardous waste because either they were excluded from the definition of solid waste under the "Zinc Fertilizer Exemption" found in 40 C.F.R. § 261.4(a)(20) & (21) or they would not otherwise have been considered hazardous waste. None of the parties that generated or shipped the materials to the TNT site, who under RCRA are obligated to identify hazardous waste and ship it under manifest, had determined any of the materials were hazardous waste. Neither had the generating or shipping parties provided documentation of such determination of any materials on site at the time of inspection. No materials were shipped via RCRA manifest to the TNT site and none contained hazardous substance placarding, as required by the U.S. Department of Transportation (DOT). Rather, the majority of materials on site were non-hazardous materials and secondary materials designated for recycling accompanied by an ordinary bill of lading.
82. Conclusions of law require no admission or denial. To the extent a response is required, Respondents deny that any materials received at or shipped from the site were hazardous waste and denies that hazardous waste was shipped from the facility to an off-site disposal at the facility.

The proposed civil penalty is arbitrary and capricious, unreasonable, inconsistent with enforcement, and an abuse of discretion.

83. Based on the foregoing denials, Respondents dispute EPA's proposed civil penalties under RCRA as arbitrary, capricious, and an abuse of enforcement discretion. Respondents assert any penalty assessed must consider the exempt and non-hazardous status of all materials handled at the site, under the Zinc Fertilizer Exemption and the Missouri Hazardous Waste Law. Further, any penalty assessed should be primarily

sought from Webb Minerals, LLC and/or Bob Webb, not from TNT or the Trust, who have been victimized by others' failures to comply with RCRA imposed obligations.

Further, Respondents assert that resolution of the alleged violations cannot occur without prosecution of all necessary parties involved in the chain of commerce. The following parties should be joined into this enforcement action based upon **violations of RCRA duties to conduct hazardous waste determinations as generators, properly manifest hazardous waste as generators, brokers, and/or transporters of hazardous waste**, or alternatively failure to provide notice to TNT and the Trust and to ensure that the materials were being handled subject to the Zinc Fertilizer Exemption:

(1) Alumitech of Wabash, Inc.; (2) American Minerals; (3) Behlen Mfg. Co; (4) Cameron Chemicals; (5) Crest Metals; (6) EA Raw Materials Corp; (7) Honda of America MFG., Inc.; (8) IMCO Recycling of Michigan L.L.C.; (9) Industrial Waste Recycling Corporation (IWRC); (10) Mechanical Galvanizing Plating; (11) Metal Source, LLC; (12) MIDA Int.; (13) Midland Industries Inc.; (14) Nutri Chem Palletizing, Inc.; (15) Oliver's Metal Mart; (16) Pelletizing Co.; (17) Plateco Inc; (18) PMX Industries, Inc.; (19) Prince Mfg. Co; (20) Prince Minerals; (21) Quantum Metals; (22) SEM Minerals, L.P.; (23) South Holland Metal Finishing Co., Inc.; (24) Specialty Fertilizer Products; (25) Tri-State Plant Food; (26) Triumph Industries; (27) U.S. Zinc; (28) U.S. Zinc Clarksville; (29) Wheatland Tube; and (30) Wisconsin Mechanical.

If EPA's allegations of RCRA violations are considered valid, the following parties should be joined into this enforcement action based upon violations of duties imposed upon fertilizer manufacturers under the Zinc Fertilizer Exemption:

(1) InterAmerican Zinc, Inc.; (2) Royster Clark (Agrium) of Florence, AL; (3) Royster Clark (Agrium) of Hartsville, SC; (4) Royster Clark (Agrium) of Americas, GA; (5) Royster Clark (Agrium) of Chesapeake, VA; (6) Royster Clark (Agrium) of Winston-Salem, NC; (7) Royster Clark of Madison, WI; (8) Tri-State Fertilizer; (9) U.S. Zinc Corporation, a subsidiary of Aleris International; (10) United Suppliers; (11) Agrium, Inc.; and (12) Agrium U.S., Inc.

Finally, if allegations of RCRA violations are considered valid, the following parties are necessary to this action based on **failure to properly ship and manifest hazardous wastes and/or hazardous materials** to the TNT site and failure to provide proper documentation of the regulated status of materials shipped:

(1) A&M Trucking; (2) Ace Doran; (3) Acme Transportation; (4) America's Transport; (5) Amstan Logistics, Inc.; (6) Beelman; (7) Ben Shinn Trucking, Inc.; (8) BMC Transportation; (9) Buyers Truck; (10) Campbell's Trucking; (11) CH Robinson; (12) Clark Farms; (13) Clark Freight; (14) Core/TT; (15) CPM Express; (16) CPU; (17) Crest; (18) CTS; (19) Delta; (20) Dohrn / Super; (21) Easton Trucking; (22) Easton Transport; (23) Fastlane; (24) Glaser Trucking; (25) Grain Train Express; (26) Grand Island Contract Carrier's; (27) Great Wide; (28) Gulfstream; (29) Gully Transportation; (30) Hammond Trucking; (31) HLH; (32) J.T. Transport; (33) Jennings; (34) Jennings

Brothers; (35) Jim Keller Int., Inc.; (36) JK William LLC; (37) Jones Motor(s) Company Inc.; (38) JW Callicutt; (39) Legacy Transportation, Inc.; (40) Laris Shelman & Sons Trucking, Inc.; (41) MCH Transportation; (42) Melvin; (43) MJB Transportation; (44) Myers Trucking; (45) Packard Transport; (46) Page Trucking; (47) Parrish Trucking; (48) Pavlich, Inc.; (49) Pierce Trucking; (50) Plumley Trucking; (51) Powell Transport Inc.; (52) Pulliam Trucking; (53) Pulliams Trucking; (54) Ramey Trucking; (55) Robbie D Wood; (56) R&L Carrters; (57) Rand L. Carriers; (58) RPL; (59) Safeway; (60) Schneider National; (61) Schrader, Inc.; (62) Sharkey; (63) Sisbro Trucking; (64) Skyway Transportation; (65) Steinkamp Transport; (66) Stone; (67) Sur-MO; (68) Swafford Trucking; (69) TEC Transport; (70) Teton Transportation; (71) TIA Trucking; (72) Tugboat Transportation LLC; (73) Tweedy; (74) Volunteer Trucking; (75) Webb; (76) Whalen Trucking, Inc.; (77) Willcoxson/Safe Transport; and (78) Yellow River Logistics.

84. Based on the foregoing denials, Respondents dispute EPA's proposed civil penalty under the CWA.
85. Finally, Respondents deny any and all allegations of the Complaint not specifically admitted in this Answer.

III. RESPONDENTS TNT AND THE TRUMP TRUST'S AFFIRMATIVE DEFENSES

TNT and the Trust assert the following affirmative defenses in addition to those already listed.

1. **The TNT site did not handle hazardous wastes and is not subject to RCRA. None of the parties that generated or shipped the materials to the TNT site, who under RCRA would be obligated to identify hazardous waste and ship it under manifest, had determined any of the materials were hazardous waste.** Neither had the generating or shipping parties provided documentation of such determination of any materials on site at the time of inspection. **No materials were shipped via RCRA manifest to the TNT site and none contained hazardous substance placarding, as would be required by the U.S. Department of Transportation (DOT).** Rather, the materials on site were non-hazardous materials, designated for recycling, and were accompanied by an ordinary bill of lading.
2. TNT and the Trust are RCRA victims that EPA is supposed to protect, not prosecute.
3. Webb operated the zinc blending business and controlled the entire chain of commerce.
4. No NPDES permit was required because TNT is not a TSD Facility.
5. TNT is not a hazardous waste Generator and had no duty to notify.
6. TNT is not a Generator and had no duty to conduct hazardous waste determinations.

7. No Treatment, Storage, or Disposal (TSD) Facility Permit was required by law.
8. TNT is not a Generator and had no duty to comply with Generator requirements.
9. TNT is not a Generator and had no duty to manifest non-hazardous materials.
10. The proposed civil penalty is arbitrary and capricious, unreasonable, inconsistent with enforcement, and an abuse of discretion.
11. EPA lacks subject matter jurisdiction to bring this action.
12. EPA lacks personal jurisdiction over Respondents TNT and the Trust. TNT and the Trust are not generators or transporters of hazardous or solid waste, nor have they owned or operated a TSD facility subject to RCRA.
13. EPA lacks authority to bring this administrative action because settling the issues of law presented are beyond its statutory authority granted by RCRA.
14. The Complaint fails to state a claim against TNT or the Trust for which relief can be granted.
15. EPA has failed to prosecute over one hundred additional parties who may be responsible for any alleged violations of the Complaint. By prosecuting TNT and the Trust, and not these additional parties, EPA abuses its discretion and causes additional harm to Respondents.
16. EPA has violated the Administrative Procedures Act by applying its penalty policy in this case as a rule without the requisite formalities, including a notice and comment period. *See Nat'l Mining Assoc. v. Jackson*, No. 1:10-cv-01220-RBW (D.C. Cir. July 31, 2012).
17. EPA enforcement in this case is a denial of due process. First, EPA denied due process by denying TNT and the Trust a hearing on this matter before compliance with the UAO was required. *See Sackett v. E.P.A.*, 132 S. Ct. 1367 (Mar. 21, 2012). Further, TNT and the Trust have been denied due process to the extent that EPA is applying its enforcement of the laws inconsistently across the nation, within the region, and regarding settlement of issues of law and fact related to this case.

IV. PRAYER FOR RELIEF

Based upon the foregoing Answer, TNT and the Trust respectfully request a hearing and request that the administrative hearing officer deny all penalties as they apply to TNT and the Trust.

Respectfully submitted,

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ATTORNEYS FOR TNT GENERAL
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AND CAROL TRUMP TRUST

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of August, 2012, the original and one true copy of the foregoing Respondents' Answer and Request for Hearing were sent by Federal Express to the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, KS 66101; and a true and correct copy was sent by U.S. mail, postage prepaid, to:

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