



chestnut cambronne  
ATTORNEYS AT LAW

**Timothy P. McCarthy, Esq.**  
Minneapolis Office  
**Direct Dial: (612) 336-2937**  
**Direct Fax: (612) 336-1287**  
[tmccarthy@cclawmn.com](mailto: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](http://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**

**In the Matter of:**

Meleen Corporation  
38666 Highway 169  
Onamia, Minnesota 56359

**Respondent.**

Docket No. RCRA-05-2013-0013

**RESPONDENT'S ANSWER**



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

