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DEC 28 2011

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the Matter of:)
)
 Mercury Vapor Processing) Docket No. RCRA-05-2010-0015
 Technologies, Inc. a/k/a River Shannon)
 Recycling)
 13605 S. Halsted)
 Riverdale, IL 60827)
 EPA ID No: ILD005234141, and)
)
 Laurence Kelly)
 Respondents)

**RESPONDENTS' RESPONSE TO COMPLAINANT'S MOTION TO STRIKE
 RESPONDENTS' POST HEARING REBUTTAL AND RESPONDENTS' AMENDED
 POST HEARING REBUTTAL AS FILED UNTIMELY AND, IN THE ALTERNATIVE,
 MOTION TO STRIKE THOSE PARTS OF RESPONDENTS' POST HEARING
 REBUTTAL AND RESPONDENTS' AMENDED POST HEARING REBUTTAL THAT
 CONTAIN STATEMENTS NOT OF RECORD**

Respondents apologize for the "untimely" filing of their post-hearing rebuttal. Respondents were under the impression that a copy faxed to the clerk on the date designated by the presiding officer, followed by a hard copy, was sufficient for timely filing. However, it appears as though the Regional Clerk has accepted and stamped the hard copies as received, and not the copies faxed to the clerk on the date designated by the presiding officer. Respondents would like to note that all parties were provided faxed copies of the rebuttal on the date designated by the presiding officer. The Respondent's respectfully request that the Complainant's Motion to Strike, which was apparently filed on December 14, 2011 was not in fact served or received by the Respondents until December 22, 2011, some eight days after it was dated, be dismissed.

Respondents' disagree with the Complainant's characterization of the Respondent's Amended Post Hearing Rebuttal as dehors the record. The examples provided by the Complainant as dehors the record can clearly be found in either the transcript or within exhibits. Examples include discussions regarding Mr. Kelly's finances, which can be found at TR598-599, discussions regarding conversations that have taken place between Mr. Kelly and the Illinois EPA, which can be found at TR 579-580 as well as RX 9. Conversations with the Wisconsin DNR can be found on the record at CEX47. The record supports the lack of environmental impairment at RX 16, the media advisory and a separate press release from the US EPA, and the lack of residences in the vicinity of the Riverdale warehouse is recorded at RX33, which depicts

an historically vacant series of low rise apartments at the inception of a gentrification project as MVP/RSR was exiting the property in December of 2008, over one year after the USEPA investigation process began.

RX33 also supports the condition of the Riverdale warehouse which depicts no major cracks in the floor, as alleged in CEX 42, that depicts the condition of the property two and a half years after the Respondent's relinquishment of the warehouse, as does RX 17, the settlement agreement, under which Respondents' were able to exit the property.

Respondents' respectfully request that this motion be dismissed and that the Respondents' Amended Post Hearing Rebuttal be accepted by the court, in its entirety.

Respectfully Submitted,


Laurence C. Kelly

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CERTIFICATE OF SERVICE

I certify that the foregoing Respondents' Response to Complainant's Motion to Strike Respondents' Post Hearing Rebuttal and Respondents' Amended Post Hearing Rebuttal as filed untimely and, in the alternative, Motion to Strike those parts of Respondents' Post Hearing Rebuttal and Amended Post Hearing Rebuttal that contains statements not of record, was sent this day, December 26, 2011 in the following manner to the addressees listed below:

Original by Registered Mail to: Regional Hearing Clerk
U.S. EPA - Region 5
77 W. Jackson Blvd.
Mail Code: E-19J
Chicago, IL 60604

Copy by Registered Mail: Jeffery Cahn
Associate Regional Counsel
US Environmental Protection Agency - Region 5
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The Honorable Judge Gunning
U.S. Environmental Protection Agency
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