



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

August 5, 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: Kahle Company d/b/a K&L Ready Mix, Inc.  
(Ottawa, Ohio)  
Docket No.: EPCRA-05-2013-0017  
Amended Complaint Date: June 13, 2013  
Total Proposed Penalty: \$211,914.00

Dear Judge Biro:

Enclosed is a copy of the Respondent's Answer to an Administrative Complaint for *Kahle Company d/b/a K&L Ready Mix, Inc.* in Ottawa, Ohio.

Please assign an Administrative Law Judge for this case. If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in black ink, appearing to read "La Dawn Whitehead".

La Dawn Whitehead  
Regional Hearing Clerk

Enclosure

cc: Joseph S. Simpson, Attorney At Law SHUMAKER, LOOP & KENDRICK, LLP  
1000 Jackson Street  
Toledo, Ohio 43604  
(419) 321-1389  
(419) 241-6894 (fax)  
[jsimpson@slk-law.com](mailto:jsimpson@slk-law.com)

Jeffery Trevino, Attorney Associate Regional Counsel  
Office Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd., C-14J  
Chicago, Illinois 60604-3590  
(312) 886-6729  
(312) 692-2987 (fax)  
[Trevino.jeffery@epa.gov](mailto:Trevino.jeffery@epa.gov)

JOSEPH S. SIMPSON  
(419) 321-1389  
jsimpson@slk-law.com



AUG 5 2013

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

July 31, 2013

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

**Via Federal Express**

Re: In the Matter of Kahle Company d/b/a K&L Ready Mix, Inc.,  
Docket No.: EPCRA-05-2013-0017  
Our File No. 153101

Dear Sir or Madam:

Enclosed for filing in the above-captioned matter are an original and one copy of Respondent's Answer. Please file in your usual manner and return the extra file-stamped copy to me in the enclosed self-addressed stamped envelope.

If you should have any questions or concerns regarding the enclosed filing, please contact me at the above-listed number.

Very truly yours,

Joseph S. Simpson

JSS:dal  
Encl.  
cc: Jeffery Trevino, Esq.

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY



AUG 5 2013

BEFORE THE ADMINISTRATOR

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

In the Matter of: )  
 )  
Kahle Company d/b/a K&L Ready )  
Mix, Inc. )  
Ottawa, Ohio )  
 )  
Respondent. )

Docket No. EPCRA-05-2013-0017

**ANSWER TO COMPLAINT  
AND REQUEST FOR HEARING**

Comes now Respondent, Kahle Company d/b/a K&L Ready Mix, Inc. ("K&L Ready Mix"), by and through its counsel and in Answer to the Administrative Complaint states as follows:

1. Respondent states that the allegations in Paragraph 1 of the Complaint constitute the United States Environmental Protection Agency's ("U.S. EPA") interpretation of the nature of the action, and as such, no response is required of Respondent. To the extent a response is required, the allegations in Paragraph 1 of the complaint are denied.
2. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made in Paragraph 2 of the Complaint.
3. Respondent admits the allegations made in Paragraph 3 of the Complaint.

**Statutory and Regulatory Background**

4. Respondent states that the allegations made in Paragraph 4 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 4 of the Complaint are denied.
5. Respondent states that the allegations made in Paragraph 5 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 5 of the Complaint are denied.
6. Respondent states that the allegations made in Paragraph 6 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 6 of the Complaint are denied.

7. Respondent states that the allegations made in Paragraph 7 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 7 of the Complaint are denied.

8. Respondent states that the allegations made in Paragraph 8 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 8 of the Complaint are denied.

### **General Allegations**

9. Respondent admits the allegations made in Paragraph 9 of the Complaint.

10. Respondent admits the allegations made in Paragraph 10 of the Complaint.

11. Respondent admits the allegations made in Paragraph 11 of the Complaint.

12. Respondent admits the allegations made in Paragraph 12 of the Complaint.

13. Respondent admits the allegations made in Paragraph 13 of the Complaint.

14. Respondent admits the allegations made in Paragraph 14 of the Complaint.

15. Respondent states that the allegations made in Paragraph 15 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 15 of the Complaint are denied.

16. Respondent admits that limestone contains calcium carbonate, but denies the remaining allegations made in Paragraph 16 of the Complaint.

17. Respondent states that the allegations made in Paragraph 17 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 17 of the Complaint are denied.

18. Respondent states that the allegations made in Paragraph 18 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 18 of the Complaint are denied.

19. Respondent denies the allegations made in Paragraph 19 of the Complaint.

20. Respondent states that the allegations made in Paragraph 20 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 20 of the Complaint are denied.

21. Respondent states that the allegations made in Paragraph 21 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 21 of the Complaint are denied.

22. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made in Paragraph 22 of the Complaint.

23. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made in Paragraph 23 of the Complaint.

24. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made in Paragraph 24 of the Complaint.

25. Respondent states that the allegations made in Paragraph 25 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 25 of the Complaint are denied.

26. Respondent states that the allegations made in Paragraph 26 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 26 of the Complaint are denied.

27. Respondent states that the allegations made in Paragraph 27 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 27 of the Complaint are denied.

28. Respondent states that the allegations made in Paragraph 28 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 28 of the Complaint are denied.

29. Respondent states that the allegations made in Paragraph 29 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 29 of the Complaint are denied.

30. Respondent states that the allegations made in Paragraph 30 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 30 of the Complaint are denied.

31. Respondent states that the allegations made in Paragraph 31 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 31 of the Complaint are denied.

32. Respondent denies the allegations made in Paragraph 32 of the Complaint.

33. Respondent admits the allegations made in Paragraph 33 of the Complaint.

34. Respondent admits the allegations made in Paragraph 34 of the Complaint.

**Count 1** (Ottawa Facility)

35. Respondent incorporates paragraphs 1 through 34 of this Answer as if set forth in this paragraph in response to Paragraph 35 of the Complaint.

36. Respondent admits the allegations made in Paragraph 36 of the Complaint.

37. Respondent states that the allegations made in Paragraph 37 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 37 of the Complaint are denied.

**Count 2** (Ottawa Facility)

38. Respondent incorporates paragraphs 1 through 37 of this Answer as if set forth in this paragraph in response to Paragraph 38 of the Complaint.

39. Respondent admits the allegations made in Paragraph 39 of the Complaint.

40. Respondent states that the allegations made in Paragraph 40 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 40 of the Complaint are denied.

**Count 3** (Ottawa Facility)

41. Respondent incorporates paragraphs 1 through 40 of this Answer as if set forth in this paragraph in response to Paragraph 41 of the Complaint.

42. Respondent admits the allegations made in Paragraph 42 of the Complaint.

43. Respondent states that the allegations made in Paragraph 43 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 43 of the Complaint are denied.

**Count 4** (Ottawa Facility)

44. Respondent incorporates paragraphs 1 through 43 of this Answer as if set forth in this paragraph in response to Paragraph 44 of the Complaint.

45. Respondent admits the allegations made in Paragraph 45 of the Complaint.

46. Respondent states that the allegations made in Paragraph 46 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 46 of the Complaint are denied.

**Count 5** (Ottawa Facility)

47. Respondent incorporates paragraphs 1 through 46 of this Answer as if set forth in this paragraph in response to Paragraph 47 of the Complaint.

48. Respondent admits the allegations made in Paragraph 48 of the Complaint.

49. Respondent states that the allegations made in Paragraph 49 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 49 of the Complaint are denied.

**Count 6** (McComb Facility)

50. Respondent incorporates paragraphs 1 through 49 of this Answer as if set forth in this paragraph in response to Paragraph 50 of the Complaint.

51. Respondent admits the allegations made in Paragraph 51 of the Complaint.

52. Respondent states that the allegations made in Paragraph 52 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 52 of the Complaint are denied.

**Count 7** (McComb Facility)

53. Respondent incorporates paragraphs 1 through 52 of this Answer as if set forth in this paragraph in response to Paragraph 53 of the Complaint.

54. Respondent admits the allegations made in Paragraph 54 of the Complaint.

55. Respondent states that the allegations made in Paragraph 55 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 55 of the Complaint are denied.

**Count 8** (McComb Facility)

56. Respondent incorporates paragraphs 1 through 55 of this Answer as if set forth in this paragraph in response to Paragraph 56 of the Complaint.

57. Respondent admits allegations made in Paragraph 57 of the Complaint.

58. Respondent states that the allegations made in Paragraph 58 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 58 of the Complaint are denied.

**Count 9** (Ottawa Facility)

59. Respondent incorporates paragraphs 1 through 58 of this Answer as if set forth in this paragraph in response to Paragraph 59 of the Complaint.

60. Respondent admits the allegations made in Paragraph 60 of the Complaint.

61. Respondent states that the allegations made in Paragraph 61 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 61 of the Complaint are denied.

**Count 10** (McComb Facility)

62. Respondent incorporates paragraphs 1 through 61 of this Answer as if set forth in this paragraph in response to Paragraph 62 of the Complaint.

63. Respondent admits the allegations made in Paragraph 63 of the Complaint.

64. Respondent states that the allegations made in Paragraph 64 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 64 of the Complaint are denied.

**Count 11** (Kalida Facility)

65. Respondent incorporates paragraphs 1 through 64 of this Answer as if set forth in this paragraph in response to Paragraph 65 of the Complaint.

66. Respondent admits the allegations made in Paragraph 66 of the Complaint.

67. Respondent states that the allegations made in Paragraph 67 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 67 of the Complaint are denied.

**Count 12** (Kalida Facility)

68. Respondent incorporates paragraphs 1 through 67 of this Answer as if set forth in this paragraph in response to Paragraph 68 of the Complaint.

69. Respondent admits the allegations made in Paragraph 69 of the Complaint.

70. Respondent states that the allegations made in Paragraph 70 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 70 of the Complaint are denied.



**Count 13** (Kalida Facility)

71. Respondent incorporates paragraphs 1 through 70 of this Answer as if set forth in this paragraph in response to Paragraph 71 of the Complaint.

72. Respondent admits the allegations made in Paragraph 72 of the Complaint.

73. Respondent states that the allegations made in Paragraph 73 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 73 of the Complaint are denied.

**Count 14** (Kalida Facility)

74. Respondent incorporates paragraphs 1 through 73 of this Answer as if set forth in this paragraph in response to Paragraph 74 of the Complaint.

75. Respondent admits the allegations made in Paragraph 75 of the Complaint.

76. Respondent states that the allegations made in Paragraph 76 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 76 of the Complaint are denied.

**Count 15** (Kalida Facility)

77. Respondent incorporates paragraphs 1 through 76 of this Answer as if set forth in this paragraph in response to Paragraph 77 of the Complaint.

78. Respondent admits the allegations made in Paragraph 78 of the Complaint.

79. Respondent states that the allegations made in Paragraph 79 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 79 of the Complaint are denied.

**Proposed EPCRA Penalty**

80. Respondent states that the allegations made in Paragraph 80 of the Complaint constitute legal conclusions to which no response is required of Respondent. To the extent a response is required, the allegations made in Paragraph 80 of the Complaint are denied.

81. Respondent admits that U.S. EPA proposes a civil penalty in Paragraph 81 of the Complaint, but is without knowledge or information sufficient to form a belief as to whether U.S. EPA performed “an evaluation of the facts alleged in [the] Complaint” or considered “the nature, circumstances, extent and gravity of the violations, the violator’s ability to pay, prior history of violations, degree of culpability, economic benefit or saving resulting from the violations and any other factors that justice may require” in formulating its proposed penalty. Further,

Respondent denies that any such penalty is appropriate or reasonable under the legal, equitable and factual considerations at issue in this case.

82. Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegations made in Paragraph 82 of the Complaint.

### **Affirmative Defenses**

#### **First Defense**

1. Respondent realleges each statement in response to the individual allegations in the Complaint as set forth above, and incorporates the same in this section as affirmative defenses.

#### **Second Defense**

2. The complaint fails to state a claim upon which relief may be granted against Respondent.

#### **Third Defense**

3. The proposed penalty is excessive and unreasonable after considering the nature, circumstance, extent and gravity of the violations, the respondent's ability to pay, prior history of violations, degree of culpability, economic benefit or saving resulting from the violations and any other matter that justice may require, including past precedents for penalties imposed under comparable circumstances.

#### **Fourth Defense**

4. The claims set forth in the Complaint are barred by equitable principles of waiver, estoppel and laches.

#### **Fifth Defense**

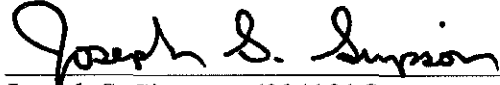
5. Respondent respectfully reserves the right to amend its Answer to the Complaint to include one or more additional affirmative defenses, after the opportunity to conduct appropriate discovery in this proceeding.

### **Request for Hearing**

Respondent hereby requests a hearing on this matter.

**Request for Informal Settlement Conference**

Respondent hereby requests an informal settlement conference in this matter.



Joseph S. Simpson (0041016)  
SHUMAKER, LOOP & KENDRICK, LLP  
1000 Jackson Street  
Toledo, Ohio 43604  
Telephone: (419) 241-9000  
Fax: (419) 241-6894  
E-Mail: [jsimson@slk-law.com](mailto:jsimson@slk-law.com)

Attorney for Kahle Company d/b/a  
K&L Ready Mix, Inc.

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a copy of this ANSWER TO COMPLAINT AND REQUEST FOR HEARING by causing same to be filed with:

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

and by placing/sending a copy of the same by overnight courier and electronic mail to the following:

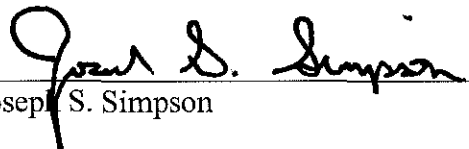
Mr. Jeffery Trevino (C-14J)  
Office of Regional Counsel  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604



AUG 5 2013

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

this 31st day of July 2013.



Joseph S. Simpson