

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TAZEWELL COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	PCB No. 97-179
)	
v.)	
)	
MIDWEST GRAIN PRODUCTS OF)	
ILLINOIS, INC., an Illinois corporation,)	
)	
Respondent.)	

**RESPONDENT MGP INGREDIENTS OF ILLINOIS, INC.'S RESPONSE
TO COMPLAINANT'S FIRST REQUEST FOR ADMISSIONS OF FACT**

COMES NOW Respondent, MGP Ingredients of Illinois, Inc.'s ("MGP" or "Respondent") f/k/a Midwest Grain Products of Illinois, Inc., by and through its attorneys, and responds to Complainant's First Request for Admissions of Fact as follows:

PRELIMINARY STATEMENT AND GENERAL OBJECTIONS

1. These responses and objections are based on information that Respondent has been reasonably able to gather to date. Respondent reserves the right to supplement these responses and objections if it becomes aware of additional information or documents.
2. Respondent objects to each and every request to the extent that it purports to require Respondent to search for information not within Respondent's possession, custody or control. To do so would place an undue added burden upon Respondent.
3. Respondent objects to each and every request to the extent that it is overly broad, unduly burdensome and not relevant to the subject matter of this litigation.
4. Respondent objects to each and every request to the extent it seeks information that is (1) subject to the attorney-client privilege, (ii) subject to attorney work product immunity,

or (iii) subject to any other privilege.

5. Respondent objects to each and every request as being oppressive and unduly burdensome to the extent that such requests seek duplicative and/or cumulative information.

6. Respondent objects to each and every request to the extent that it presupposes facts that are not correct or are otherwise not established in the record.

7. Respondent's responses to each of the following requests are subject to and without waiver of the foregoing Preliminary Statement and General Objections, and such Preliminary Statement and General Objections are incorporated into each response as though fully set out therein. A response by Respondent to a request does not constitute a waiver of any privilege or immunity.

REQUESTS FOR ADMISSION

1. At the time of the September 21, 1995 Illinois EPA inspection of Respondent's facility, Respondent's feed dryer systems 651 and 661 were in operation.

RESPONSE: MGP objects to the term "in operation" as vague, ambiguous and undefined. MGP objects to the extent it does not have in its possession any record of a September 21, 1995 Illinois EPA inspection. Subject to these objections and the General Objections referenced above, MGP admits that feed dryer system 651 was installed and started up by July 1994 and feed dryer system 661 was installed and started up by December 24, 1994. Otherwise denied.

2. At the time of the September 21, 1995 Illinois EPA inspection of Respondent's facility, Respondent's feed dryer systems 651 and 661 had commenced operation.

RESPONSE: MGP objects to the term "commenced operation" as vague, ambiguous and undefined. MGP objects to the extent it does not have in its possession any

record of a September 21, 1995 Illinois EPA inspection. Subject to these objections and the General Objections referenced above, MGP admits that feed dryer system 651 was installed and started up by July 1994 and feed dryer system 661 was installed and started up by December 24, 1994. Otherwise denied.

3. At the time of the September 21, 1995 Illinois EPA inspection, the most recent emissions test performed to indicate particulate matter ("PM") emissions from feed dryer system 651 or 661 was the May 1995 test which indicated actual emissions of 17.1 pounds per hour.

RESPONSE: MGP objects to the extent that the May 1995 PM emission test speaks for itself. MGP further objects to the extent it does not have in its possession any record of a September 21, 1995 Illinois EPA inspection. Subject to these objections and the General Objections referenced above, MGP admits Mostardi-Platt Associates, Inc., conducted a "particulate and gaseous emission compliance test program" on feed dryer 661 in May 1995 and it reported an average emission of 17.15 pounds per hour. Otherwise denied.

4. Construction permit number 93080045 issued by the Illinois EPA to Midwest Grain limits combined PM emissions from both feed dryer systems 651 and 661 to 3.2 pounds per hour.

RESPONSE: MGP objects to the extent that original construction permit number 93080045, issued 12/20/1993, and revised construction permit number 93080045, issued 12/6/1995, speak for themselves. Subject to this objection and the General Objections referenced above, MGP admits that paragraph 2(b)(iii) of both, the original construction permit number 93080045, and the revised construction permit number 93080045, state: "The particulate matter emissions from feed drying shall not exceed 0.1 pounds per ton of dried feed produced." MGP further admits that Table 1A from original construction

permit number 93080045, identifies particulate matter emission limits for “Feed Dryers 1 and 2” at 3.20 pounds per hour or 14.0 tons per year. Otherwise denied.

5. The next emissions test conducted by Respondent to determine particulate matter emissions generated by feed dryer system 651 or 661 after the May 1995 test, was conducted on January 10, 1996.

RESPONSE: MGP admits that the next emissions test conducted by Respondent to determine particulate matter emissions generated by feed dryer system 661 after the May 1995 test, was conducted on January 10, 1996.

6. The January 10, 1996 feed dryer system 651 or 661 emissions test for particulate matter emissions conducted by Respondent’s contractor demonstrated PM emissions of 16.42 pounds per hour, 12.54 pounds per hour, and 17.72 pounds per hour.

RESPONSE: MGP objects to the extent that the January 10, 1996 feed dryer system 661 emissions test for particulate matter emissions conducted by Respondent’s contractor speaks for itself. MGP further objects to the extent the request has omitted an additional test result. Subject to these objections and the General Objections referenced above, MGP admits that on January 10, 1996, Respondent’s contractor conducted emissions testing on feed dryer system 661 and reported PM emissions of 16.42 pounds per hour, 12.54 pounds per hour, 17.72 pounds per hour, and 10.70 pounds per hour for an average of 14.35 pounds per hour. Otherwise denied.

7. Each of the three test results, 16.42 pounds per hour, 12.54 pounds per hour, and 17.72 pounds per hour, obtained by the Respondent’s contractor for particulate matter emissions from feed dryer 651 or 661 on January 10, 1996, exceeded the permitted PM emission limit

applicable to the dryer that was tested.

RESPONSE: MGP objects to the extent that the January 10, 1996 feed dryer system 661 emissions test for particulate matter emissions conducted by Respondent's contractor speaks for itself. MGP further objects to the extent the request has omitted an additional test result. Subject to these objections and the General Objections referenced above, MGP admits that each of the four reported test results obtained from feed dryer system 661 exceeded the 3.2 pounds per hour PM emission limit applicable to feed dryer system 661.

8. The January 10, 1996 feed dryer system 651 or 661 stack test particulate matter emissions results reported by the Illinois EPA as results obtained by the Illinois EPA sampler, were 16.704 pounds per hour, 12.535 pounds per hour and 17.705 pounds per hour.

RESPONSE: MGP objects to the term "Illinois EPA sampler" as vague, ambiguous and undefined. MGP objects to the extent it does not have in its possession any record of January 10, 1996 Illinois EPA stack test results. Subject to and without waiving any objections, MGP responds: denied.

9. Each of the three test results, 16.704 pounds per hour, 12.535 pounds per hour and 17.705 pounds per hour, reported by the Illinois EPA as results obtained for particulate emissions from Respondent's feed dryer system 651 or 661 on January 10, 1996, indicated a level that exceeded the construction permit level applicable to the dryer that was tested.

RESPONSE: See response to request number eight.

10. No other emissions tests, or particulate matter emission tests of any kind, were conducted on feed dryer systems 651 and 661 between the time of the stack test conducted in

May 1995 and the January 10, 1996 stack test.

RESPONSE: Admitted.

11. No other information or data indicating the level of particulate matter emissions from feed dryer systems 651 and 661 for the period between May 1995 to January 10, 1996 exists.

RESPONSE: Admitted.

12. Respondent had not been issued an operating permit for feed dryer systems 651 and 661 covering the time period May 1995 through January 10, 1996.

RESPONSE: Subject to the General Objections referenced above, MGP admits that it had not been issued an operating permit for feed dryer systems 651 and 661 covering the time period May 1995 through January 10, 1996. MGP further admits that Illinois EPA was aware of MGP's May 1995 PM emissions test results and Illinois EPA deemed those results unreliable. Based upon the May 1995 PM emissions test results, Illinois EPA requested additional PM emission testing. MGP admits that at no time during the period of May 1995 to January 10, 1996, did Illinois EPA order or request MGP to shutdown its feed dryer systems. Otherwise denied.

13. Respondent constructed and operated feed dryer systems 651 and 661 without first applying for an obtaining PSD approval from the Illinois EPA

RESPONSE: MGP objects to the term "PSD approval" as vague, ambiguous and undefined. MGP further objects to the extent that the request presupposes the MGP facility was a major stationary source and that PSD approval was required. Subject to these objections and the General Objections referenced above, MGP admits that it

designed and constructed the feed dryer systems with the good faith belief that the systems would not be subject to "PSD" permitting requirements. MGP further admits that Illinois EPA supported MGP in its endeavor to construct the feed dryer systems so as not to be subject to "PSD" permitting requirements. Otherwise denied.

14. An operating permit has never been issued by the Illinois EPA for feed dryer systems 651 and 661.

RESPONSE: Subject to the General Objections referenced above, MGP admits that it has never been issued an operating permit for feed dryer systems 651 and 661. MGP further admits that after January 10, 1996, MGP continued to cooperate with Illinois EPA to resolve the particulate matter issues associated with the feed dryer systems. MGP admits that feedback from Illinois EPA indicated that MGP was to continue to operate the feed dryer systems while attempting to resolve the emissions problems. MGP further admits that in April 1997, it submitted an operating permit application for an electrostatic precipitator. Otherwise denied.

15. At the time of the September 21, 1995 Illinois EPA inspection, Respondent was operating feed dryer systems 651 and 661 without the secondary scrubbers operating on either feed dryer system.

RESPONSE: MGP objects to the extent it does not have in its possession any record of a September 21, 1995 Illinois EPA inspection. Subject to this objection and the General Objections referenced above, MGP admits that the secondary scrubbers were permanently removed from service before the May 1995 PM emission test. MGP further admits that tests performed by Mostardi-Platt Associates, Inc., on May 16, 1995, indicated the secondary scrubbers served no useful purpose. Only after removing the secondary

scrubbers and modifying the feed dryer ducting for the third time did MGP achieve reliable and safe operating conditions. MGP informed Illinois EPA of these admissions in a November 6, 1995 letter from Mr. David Sanborn to Mr. Richard L. Jennings of the Illinois EPA. Otherwise denied.

16. Respondent Midwest Grain has continued to operate feed dryer systems 651 and/or 661 without secondary scrubbers operating since at least 1996.

RESPONSE: MGP objects to the term “continued to operate” as vague, ambiguous and undefined. Subject to this objection and the General Objections referenced above, MGP admits that the secondary scrubbers were permanently removed from service before the May 1995 PM emission test. MGP further admits that tests performed by Mostardi-Platt Associates, Inc., on May 16, 1995, indicated the secondary scrubbers served no useful purpose. Only after removing the secondary scrubbers and modifying the feed dryer ducting for the third time did MGP achieve reliable and safe operating conditions. MGP informed Illinois EPA of these admissions in a November 6, 1995 letter from Mr. David Sanborn to Mr. Richard L. Jennings of the Illinois EPA. Otherwise denied.

17. Respondent Midwest Grain has continued to operate feed dryer system 651 and/or 661 since at least 1996 to the present knowing the feed dryer systems were exceeding construction permit emission limitations for particulate matter.

RESPONSE: MGP objects to the term “continued to operate” as vague, ambiguous and undefined. Subject to this objection and the General Objections referenced above, MGP admits since at least 1996, particulate matter emissions from feed dryer systems 651 and/or 661 exceeded construction permit emission limitations on those dates when PM emission testing was performed. MGP further admits the Illinois EPA had knowledge,

since at least 1996, that particulate matter emissions from feed dryer systems 651 and/or 661 exceeded construction permit emission limitations. Otherwise denied.

18. In the Stipulation and Proposal for Settlement, entered in the matter of *People v. Midwest Grain*, PCB 95-5, Midwest Grain agreed to cessation of operations of the fluidized bed combustion boiler by the end of calendar year 1994 as a term and condition of the settlement.

RESPONSE: MGP objects to the extent that the Stipulation and Proposal for Settlement speaks for itself. MGP further objects to the extent this request is not relevant to the subject matter of this litigation. The Stipulation and Proposal for Settlement, page 1, provides, “The parties state that this stipulation is entered into for purposes of settlement only and that neither the fact that a party has entered into this stipulation, nor any of the facts stipulated herein, shall be admissible into evidence or used for any purpose in this or any other proceeding, except to enforce the terms hereof by the parties to this agreement.” The Stipulation and Proposal for Settlement further states that the Stipulation and Proposal for Settlement “may be used as a factor ... in determining appropriate civil penalties for any future violations of the Act.” Given the limited purpose of the Stipulation and Proposal for Settlement, and subject to and without waiving any objections, MGP responds: denied.

19. In the case of *People v. Midwest Grain*, PCB 95-5, the State alleged that the fluidized bed combustion boiler could not meet percent reduction limits contained in its operating permit and thereby did not achieve BACT, and thus failed to meet Prevention of Significant Deterioration (“PSD”) requirements.

RESPONSE: MGP objects to the term “BACT” as vague, ambiguous and undefined. MGP objects to the extent that the Complaint from *People v. Midwest Grain*,

PCB 95-5, speaks for itself. MGP further objects to the extent this request is conclusory and not relevant to the subject matter of this litigation. Subject to and without waiving any objections, MGP responds: denied.

20. In paragraph 4 of Section XI, Terms of Settlement, in the Stipulation and Proposal for Settlement, entered in the matter of *People v. Midwest Grain*, PCB 95-5, Midwest Grain agreed to cease and desist from violations of the Act and the regulations promulgated thereunder.

RESPONSE: See response to request number eighteen.

21. As stated in paragraphs 5 through 9 of Section IV, Statement of Facts, in the Stipulation and Proposal for Settlement, entered in the matter of *People v. Midwest Grain*, PCB 95-5, Midwest Grain's fluidized bed combustion boiler emitted, or was capable of emitting, sulfur dioxide in the atmosphere.

RESPONSE: See response to request number eighteen.

22. As stated in paragraphs 5 through 9 of Section IV, Statement of Facts, in the Stipulation and Proposal for Settlement, entered in the matter of *People v. Midwest Grain*, PCB 95-5, Midwest Grain's quarterly emission reports for the fluidized bed combustion boiler showed that it had exceeded the 1.2 lb/mm BTU 30-day rolling average for 116 days in 1991.

RESPONSE: See response to request number eighteen.

23. As stated in paragraphs 5 through 9 of Section IV, Statement of Facts, in the Stipulation and Proposal for Settlement, entered in the matter of *People v. Midwest Grain*, PCB 95-5, on March 24, 1993, the Illinois EPA inspected Midwest Grain and found that Respondent

Midwest Grain was not meeting the 85 percent reduction in sulfur dioxide emissions for the fluidized bed combustion boiler as required by permit No. 82100034.

RESPONSE: See response to request number eighteen.

24. As stated in paragraphs 5 through 9 of Section IV, Statement of Facts, in the Stipulation and Proposal for Settlement, entered in the matter of *People v. Midwest Grain*, PCB 95-5, the Illinois EPA obtained Midwest Grain's continuous emission monitor records and found that these records did not contain the percent reduction information needed to verify compliance with the 85 percent reduction requirement of permit No. 82100034.

RESPONSE: See response to request number eighteen.

25. At the time of the filing of the complaint in the instant matter, April 7, 1997, Respondent Midwest Grain had not conducted a BACT analysis consistent with PSD program requirements to determine the appropriate PM emission limit and control technology to be applied to feed dryer systems 651 and 661.

RESPONSE: Denied.

26. At the time of the filing of the complaint in the instant matter, April 7, 1997, Respondent Midwest Grain had not conducted modeling consistent with PSD program requirements to determine the appropriate PM emission limit and control technology to be applied to feed dryer systems 651 and 661.

RESPONSE: Denied.

27. At the time that Respondent Midwest Grain commenced construction and installation of feed dryer systems 651 and 661, Respondent had not conducted a BACT analysis

consistent with PSD program requirements to determine the appropriate PM emission limit and control technology to be applied to dryer systems 651 and 661.

RESPONSE: MGP objects to the terms “BACT analysis” and “consistent with PSD program requirements” as vague, ambiguous and undefined. MGP objects to the extent that the request presupposes the MGP facility was a major stationary source and that PSD approval was required. Subject to these objections and the General Objections referenced above, MGP admits that it designed and constructed the feed dryer systems with the good faith belief that the systems would not be subject to “PSD” permitting requirements. MGP further admits that Illinois EPA supported MGP in its endeavor to construct the feed dryer systems so as not to be subject to “PSD” permitting requirements. Otherwise denied.

28. Midwest Grain’s Construction Permit No. 93020061 and/or No. 93080045 for feed dryers systems 651 and 661 require the installation and operation of secondary scrubbers during feed dryer operations.

RESPONSE: MGP objects to the extent that Construction Permit No. 93020061 and/or No. 93080045 speak for themselves. Subject to this objection and the General Objections referenced above, MGP admits that Construction Permit No. 93020061 and Construction Permit No. 93080045 state: “Permit is hereby granted ... to CONSTRUCT emission source(s) and/or air pollution control equipment consisting of ... feed dryer with a cyclone and two scrubbers” Otherwise denied.

29. Respondent Midwest Grain failed to apply for and obtain a construction permit authorizing the operation of feed dryer systems 651 and 661 without the secondary scrubbers.

RESPONSE: MGP objects to the term “failed” as vague, ambiguous and undefined. Subject to this objection and the General Objections referenced above, MGP

admits that it did not apply for and obtain a construction permit authorizing the operation of feed dryer systems 651 and 661 without the secondary scrubbers. Otherwise denied.

30. Respondent Midwest Grain has continued to operate the feed dryer systems 651 and/or 661 from at least June 30, 1995 to the present without having obtained a state operating permit from the Illinois EPA.

RESPONSE: MGP objects to the term “continued to operate” as vague, ambiguous and undefined. Subject to this objection and the General Objections referenced above, MGP admits that feed dryer systems 651 and/or 661 were operational from at least June 30, 1995 to the present without having obtained a formal state operating permit from the Illinois EPA. MGP further admits the Illinois EPA also knew that feed dryer systems 651 and/or 661 were operational from at least June 30, 1995 to the present and that MGP had not obtained a formal state operating permit from the Illinois EPA. Otherwise denied.

31. Respondent Midwest Grain commenced operation of feed dryer 661 on December 24, 1994, and has continued to operate as part of daily production processes since that date.

RESPONSE: MGP objects to the terms “commenced operation” and “continued to operate” as vague, ambiguous and undefined. Subject to this objection and the General Objections referenced above, MGP admits that feed dryer 661 was installed and started up by December 24, 1994. MGP further admits that feed dryer 661 was occasionally shut down for maintenance and repairs since that date and has only been used intermittently, on an “as needed basis” since May 2002. Otherwise denied.

32. Respondent Midwest Grain has operated feed dryer 661 prior to June 30, 1995 through the present as part of the daily production process.

RESPONSE: MGP objects to the term “operated” as vague, ambiguous and undefined. Subject to this objection and the General Objections referenced above, MGP admits that feed dryer 661 was installed and started up by December 24, 1994. MGP further admits that feed dryer 661 was occasionally shut down for maintenance and repairs since that date and has only been used intermittently, on an “as needed basis” since May 2002. Otherwise denied.

33. Respondent Midwest Grain has operated feed dryer 651 prior to June 30, 1995 through the present as part of the daily production process.

RESPONSE: MGP objects to the term “operated” as vague, ambiguous and undefined. Subject to this objection and the General Objections referenced above, MGP admits that feed dryer 651 was occasionally shut down for maintenance and repairs prior to June 30, 1995 through the present. Otherwise denied.

34. Respondent Midwest Grain emitted or had the potential to emit 250 tons per year of any air pollutant subject to regulation under the Clean Air Act, prior to July 1994.

RESPONSE: Admitted.

35. Respondent Midwest Grain constructed feed dryer systems 651 and 661 that emit or have the potential to emit particulate matter in excess of 25 tons per year, individually or in combination.

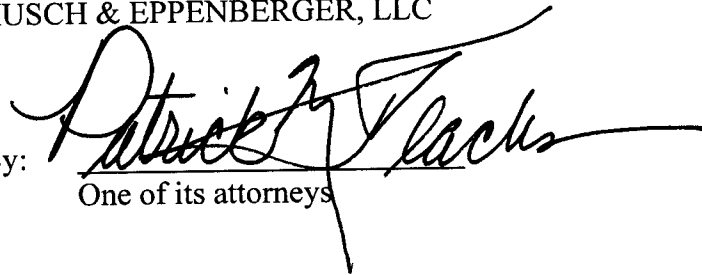
RESPONSE: MGP admits that feed dryer systems 651 and 661 were designed to emit 14 tons per year, individually or in combination. MGP further admits, based upon third party calculations and data, that it constructed feed dryer systems 651 and 661 that emit or have the potential to emit particulate matter in excess of 25 tons per year,

individually or in combination. Otherwise denied.

Respectfully submitted,

HUSCH & EPPENBERGER, LLC

By:


One of its attorneys

Husch & Eppenberger, LLC
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
(314) 480-1500

Dated: August 26, 2005