

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 97-179
)	(Enforcement- Air)
MIDWEST GRAIN PRODUCTS OF)	
ILLINOIS, INC., an Illinois corporation,)	
)	
Respondent.)	

**RESPONDENT'S REPLY TO COMPLAINANT'S RESPONSE TO RESPONDENT'S
MOTION TO STRIKE INTERROGATORIES, OR, IN THE ALTERNATIVE, MOTION
FOR PROTECTIVE ORDER LIMITING INTERROGATORIES TO PREVENT UNDUE
EXPENSE AND HARASSMENT**

COMES NOW Respondent, MGP Ingredients of Illinois, Inc., ("MGP" or "Respondent")
f/k/a Midwest Grain Products of Illinois, Inc., by and through its attorneys, and replies to
Complainant's Response to Respondent's Motion to Strike Complainant's Interrogatories. In
support of its motion, Respondent states as follows:

1. According to paragraphs 3 and 4 of Complainant's response, it has agreed to
withdraw Interrogatories 26 and 28. Thus, it will not be necessary for Respondent to address
those interrogatories in this reply.
2. Complainant repeatedly misstates in its November 28, 2005 letter and November
30 response that Respondent "refuses to provide any information" regarding the Swiss Combi
system. To the contrary, Respondent has never stated that it refused to comply with any of
Complainant's requests for information relating to the Swiss Combi system.
3. Respondent clearly presented in its September 20, 2005 letter and its motion to
strike that it disputed the relevance of the Swiss Combi system to this matter. The letter further
expressed Respondent's willingness to discuss the issue with Complainant. In the September 20
letter, Respondent stated on page 2, "We believe information related to the Swiss Combi is not

relevant for Discovery purposes in this lawsuit. We would welcome the opportunity to discuss your theory or theories why we should produce documentation related to the Swiss Combi system.” On page 3, Respondent twice stated that the Swiss Combi system was not involved in Respondent’s assessment of time and effort to respond to Interrogatories 9 and 11. Respondent is at a loss as to how these statements could possibly be taken as refusals.

4. Paragraphs 22, 27, and 34 of Respondent’s motion to strike present no evidence of a refusal by Respondent to provide information related to the Swiss Combi system. These paragraphs simply reiterate Respondent’s belief that the Swiss Combi system is not relevant to this matter. The motion also described Respondent’s willingness to discuss the relevance of the Swiss Combi system prior to the filing of the motion to strike.

5. Complainant’s letter and response make general references to Respondent’s September 20 letter and motion to strike as containing refusals to respond to Complainant’s requests for information related to the Swiss Combi system. Tellingly, Complainant has not provided a specific quote or citation wherein Respondent has actually refused to provide such information. Respondent objects to Complainant’s repeated complete mischaracterization of Respondent’s attempts to informally resolve the discovery issues.

6. Regarding Complainant’s Interrogatory 4, Complainant has not addressed the most significant issue raised by Respondent: the burden upon Respondent to comply with the request as written. As noted in Respondent’s September 20 letter, a proper response to Interrogatory 4 would require retrieving “every document generated by operational activities at MGP and the preponderance of our financial documentation.” The letter also described the additional personnel required to assemble such information.

7. Complainant responded that the information was necessary for penalty calculation purposes. Complainant states that it assumes Respondent will have operation and maintenance information compiled for Respondent’s use at trial. Complainant proceeds to

inquire of Respondent whether it has operation and maintenance information available "in any form" upon which it intends to rely at hearing. Further, Complainant states, "Should information responsive to the State's discovery request exist, the information is relevant and should be made available, in a useful and usable form."

8. Although it is very difficult to discern Complainant's intent from its response, Respondent wonders if this is Complainant's attempt at narrowing the request. Respondent perceives that Complainant will be satisfied with Respondent's response to Interrogatory 4 if Respondent provides only that operation and maintenance information that Respondent deems relevant and intends to rely upon at trial. Without withdrawing its objections to Interrogatory 4, Respondent submits it is willing to provide relevant operation and maintenance information for dryers 651 and 661 that it intends to rely upon at trial.

9. Regarding the Swiss Combi portion of the request, without withdrawing its objections to Interrogatory 4, Respondent submits it is willing to provide relevant operation and maintenance information for the Swiss Combi system that it intends to rely upon at trial so long as the Swiss Combi information request is subject to the same perceived narrowing described in the preceding paragraph.

10. Concerning Complainant's Interrogatory 9, Complainant appears to have accepted Respondent's second alternative, as set forth in Respondent's September 20 letter, to narrow the request. Without withdrawing its objections to Interrogatory 9, Respondent is willing to provide information related to the hours of operation of dryer 651 and/or 661 on a yearly basis.

11. Regarding the Swiss Combi portion of the request, without withdrawing its objections to Interrogatory 9, Respondent submits it can provide information related to the hours of operation for the Swiss Combi system so long as the Swiss Combi information request is subject to the same narrowing described in the preceding paragraph.

12. Complainant apparently contends that Interrogatory 11 consists of a general request and three subparts crafted to "fine tune" the general request.

13. Respondent reiterates its argument from its motion to strike that Complainant's Interrogatory 11 consists of four independent requests, with each request seeking information wholly unrelated to the others. The interrogatory should be revised as four separate interrogatories, providing Respondent with more detail and direction as to the information requested.

14. Complainant does not address the significant burden Respondent is faced with should it be required to respond to the interrogatory as written. However, Complainant has posed the question to Respondent as to whether Respondent would be willing to stipulate "to a given set of factual information pertinent to the relevant questions."


15. Without withdrawing its objections to Interrogatory 11, Respondent is willing to conduct an assessment of the nature of those documents related to the construction and operation of feed dryers 651 and 661, and the Swiss Combi system generated and maintained by Respondent, and the accessibility and/or availability of such documents. Further, Respondent is willing to consider the possibility of stipulating to a given set of factual information pertinent to the relevant questions.¹

WHEREFORE, for the foregoing reasons and in conjunction with the arguments set forth in Respondent's original motion to strike, or in the alternative, for a protective order, Respondent respectfully requests that the Hearing Officer grant its motion to strike Complainant's interrogatories, or in the alternative, its motion for a protective order limiting Complainant's interrogatories to prevent undue expense and harassment.

¹ Because this is the first time Complainant has raised a stipulation as an alternative, Respondent invites the Complainant to propose a stipulation for consideration and possible agreement.

Respectfully submitted,

HUSCH & EPPENBERGER, LLC

By: 
One of its attorneys
on behalf of Patrick
M. Flachs (with consent).

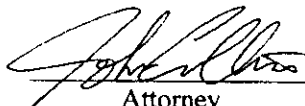
Husch & Eppenberger, LLC
190 Carondelet Plaza, Suite 600
St. Louis, Missouri 63105
(314) 480-1500

CERTIFICATE OF SERVICE

I hereby certify that I did on the 9th day of December, 2005, send a true and accurate copy of RESPONDENT'S REPLY TO COMPLAINANT'S RESPONSE TO RESPONDENT'S MOTION TO STRIKE INTERROGATORIES, OR, IN THE ALTERNATIVE, MOTION FOR PROTECTIVE ORDER LIMITING INTERROGATORIES TO PREVENT UNDUE EXPENSE AND HARASSMENT by first class mail, postage prepaid to:

Jane E. McBride
Assistant Attorney General
Environmental Bureau
500 South Second St.
Springfield, IL 62706

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Ave. East
P.O. Box 19274
Springfield, IL 62794-9274



Attorney
ON behalf of Patrick M. Flachs
(with consent).