

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE
JAN - 7 2002

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
CHIQUITA PROCESSED FOODS, LLC,)
a Wisconsin limited liability corporation)
)
Respondent.)

PCB No. 0256
(Enforcement)

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601
(VIA FIRST CLASS MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and ten copies of an ENTRY OF APPEARANCE OF EDWARD W. DWYER, ENTRY OF APPEARANCE OF DAVID M. WALTER, and RESPONDENT CHIQUITA PROCESSED FOODS, LLC's ANSWER TO COMPLAINANT'S COMPLAINT, copies of which are herewith served upon you.

Respectfully submitted,

By: 
David M. Walter

Dated: January 4, 2002

Edward W. Dwyer
David M. Walter
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CHIQU:003/Fil/NOF - Answer to Complaint

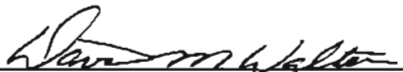
CERTIFICATE OF SERVICE

I, David M. Walter, the undersigned, certify that I have served the attached
ENTRY OF APPEARANCE OF EDWARD W. DWYER, ENTRY OF APPEARANCE
OF DAVID M. WALTER, and CHIQUITA PROCESSED FOODS, LLC'S ANSWER
TO COMPLAINANT'S COMPLAINT, upon:

Ms. Dorothy M. Gunn
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Angela Eaton Hamilton, Esq.
Assistant Attorney General
Environmental Bureau
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62706

by placing said copy in the United States Mail in Springfield, Illinois on January 4, 2002.


David M. Walter

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JAN - 7 2002

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

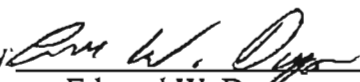
PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 CHIQUITA PROCESSED FOODS, LLC,)
 a Wisconsin limited liability corporation)
)
 Respondent.)

PCB No. 02-56
(Enforcement)

ENTRY OF APPEARANCE OF EDWARD W. DWYER

NOW COMES Edward W. Dwyer, of the law firm of HODGE DWYER ZEMAN, and hereby enters his appearance on behalf of Respondent, CHIQUITA PROCESS FOODS, LLC, a Delaware limited liability corporation, in the above-referenced matter.

Respectfully submitted,

By: 
Edward W. Dwyer

Dated: January 4, 2002

Edward W. Dwyer
David M. Walter
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CHIQ:003/Fil/EOA - EWD

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 CHIQUITA PROCESSED FOODS, LLC,)
 a Wisconsin limited liability corporation)
)
 Respondent.)

PCB No. *03-56*
(Enforcement)

ENTRY OF APPEARANCE OF DAVID M. WALTER

NOW COMES David M. Walter, of the law firm of HODGE DWYER ZEMAN,
and hereby enters his appearance on behalf of Respondent, CHIQUITA PROCESS
FOODS, LLC, a Delaware limited liability corporation, in the above-referenced matter.

Respectfully submitted,

By: *David M. Walter*
David M. Walter

Dated: January 4, 2002

Edward W. Dwyer
David M. Walter
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CHIQ:003/Fil/EOA - DMW

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 CHIQUITA PROCESSED FOODS, LLC,)
 a Wisconsin limited liability corporation)
)
 Respondent.)

PCB No. 02-56
 (Enforcement)

**CHIQUITA PROCESSED FOODS, LLC'S
 ANSWER TO COMPLAINANT'S COMPLAINT**

COUNT I

WATER POLLUTION

ALLEGATION

1. This action is brought by the Attorney General of the State of Illinois on his own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA") pursuant to terms and provisions of Section 42(d) and (e) of the Illinois Environmental Protection Act (the "Act"), 415 ILCS 5/42(d) and (3) (2000).

ANSWER

1. Paragraph 1 contains a legal conclusion for which no response is required. To the extent that Paragraph 1 contains any factual allegations, Chiquita Processed Foods, LLC ("Chiquita") lacks sufficient knowledge to form a belief as to the truth of the allegations, and in so stating, denies the same.

ALLEGATION

2. Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2000), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board (“Board”).

ANSWER

2. **Paragraph 2 contains a legal conclusion for which no response is required. To the extent that Paragraph 2 contains any factual allegations, Chiquita admits the same.**

ALLEGATION

3. The Respondent, Chiquita Processed Foods, LLC (“Chiquita”) is a Wisconsin limited liability corporation duly authorized to do business in the State of Illinois. The registered agent is CT Corporation System, 208 South LaSalle Street, Chicago, Illinois 60604-1135.

ANSWER

3. **Chiquita denies that it is a Wisconsin limited liability corporation. Chiquita admits the remaining allegations in Paragraph 3.**

ALLEGATION

4. At all times relevant to this Complaint, Chiquita has owned and operated a pumpkin processing facility located in Princeville, Peoria County, Illinois (the “facility”).

ANSWER

4. **Chiquita admits that it owns and operates a facility located in Princeville, Peoria County, Illinois (“Princeville facility”) that processes pumpkins.**

Chiquita denies that only pumpkins are processed at the Princeville facility and affirmatively states that other food products are processed as well.

Chiquita does not know what the Complainant means by the vague phrase “at all times relevant to this Complaint” and therefore denies that it has owned and operated the facility “at all times relevant to the Complaint.” Chiquita affirmatively states that it acquired the facility on September 24, 1997, in an arms length transaction, and that it has owned and operated the Princeville facility from that date to the present.

ALLEGATION

5. On July 24, 2000, the State of Illinois and Chiquita on behalf of Owatonna Canning Company and Friday Canning Corporation entered a Consent Order that requires Chiquita to ensure the lagoon system is not overloaded during periods of heavy rainfall. See Attachment A.

ANSWER

5. Chiquita denies that Paragraph 5 accurately or completely quotes the Consent Order. Paragraph 5 also contains a legal conclusion for which no response is required. The Consent Order speaks for itself.

ALLEGATION

6. Processed wastewater from the Chiquita facility travels underground through an eight-inch diameter forcemain (“the forcemain”) for two miles to a wastewater treatment system.

ANSWER

6. Chiquita admits that processed wastewater from the Chiquita facility travels underground through an eight-inch diameter forcemain to a wastewater treatment system. Chiquita denies that the forcemain to the wastewater treatment system is two (2) miles long.

ALLEGATION

7. On October 25, 2000, the forcemain ruptured, causing a release of approximately 40,000 gallons of pumpkin processing waste to Prince Run Creek. Respondent undertook responsive actions to repair the forcemain when the rupture was discovered. The repair of the forcemain was complete on October 26, 2000. Remediation of the stream was not completed until October 27, 2000.

ANSWER

7. Chiquita admits that on October 25, 2000, the forcemain ruptured. Chiquita denies that approximately 40,000 gallons of pumpkin processing waste were released, and affirmatively states that the release involved approximately 40,000 gallons of pumpkin processing waste water. Chiquita denies that all 40,000 gallons were released to Prince Run Creek, but admits that at least some of the wastewater released when the forcemain ruptured did reach the creek. Chiquita admits that it undertook responsive actions to repair the forcemain when the rupture was discovered. Chiquita affirmatively states that the actions of its Princeville facility management and employees to address this incident were exemplary.

Chiquita affirmatively states that the forcemain ruptured beneath an active railroad track that is located between the Princeville facility and Prince Run Creek. The rupture occurred sometime in the early morning hours between 1:30 a.m. and 10:30 a.m. on October 25, 2000. The release was observed, and reported to the facility manager at 10:30 a.m. on October 25, 2000, by a local resident. The location where the release was observed by the reporting local resident had been viewed earlier at 1:30 a.m. on October 25, 2000, by a Chiquita employee, at which time no release had occurred.

Chiquita immediately inspected both system outfalls and found them to be clear and without odor. Chiquita observed Prince Run Creek, took water samples at several locations, and reported its observations to Illinois EPA inspector Lyle Ray by 11:30 a.m. that same day, i.e., October 25, 2001.

After timely reporting the incident to the Illinois EPA, Chiquita resumed its search for the source of the discharge, which was located at approximately 1:30 p.m. on October 25, 2000. Chiquita informed the Illinois EPA that the source of the discharge had been located, notified the railroad of the situation, and hired an excavator to construct earthen dams to contain the discharge at its source and to excavate the pipeline beneath the railroad track.

Three (3) earthen dams were constructed on the south side of the railroad track at various distances between the source of the discharge and Prince Run Creek. Despite the difficulties created by the location of the rupture beneath the railroad track, by 5:00 p.m. on October 25, 2000, the discharge to Prince Run Creek was effectively contained by these dams.

As soon as the dams were constructed, septic-pumping equipment was moved into place and wastewater contained by the dams was pumped into honey wagons and discharged into the retention basin at the Princeville facility.

Chiquita admits that the repair of the forcemain was completed on October 26, 2000. Chiquita affirmatively states that, simultaneous to its other efforts, the pipeline was exposed on either side of the railroad track. The exposed pipe was observed to be in good condition, but had not been encased where it passed beneath the railroad tracks. It is believed that the rupture was the result of vibrations to this unencased pipe caused by the trains passing above. The old unencased pipe under the railroad track was abandoned in place, and a new nine-inch pipe in a twelve-inch casing was installed next to the abandoned pipe. The process of replacing the pipe under the railroad tracks continued through the night of October 25, 2000, and was completed at 4:45 a.m. on October 26, 2000.

Chiquita admits that remediation of the stream was completed by October 27, 2000. Chiquita affirmatively states that a portable pump was placed in Prince Run Creek and cloudy water was pumped from the creek and land applied. Chiquita affirmatively states that pumping operations at this location were completed by 2:00 a.m. on October 26, 2000. To the extent that Paragraph 7 is deemed to contain any remaining factual allegations, Chiquita denies the same.

ALLEGATION

8. On October 25 and 26, 2000, Illinois EPA and Illinois Department of Natural Resources, Division of Fisheries (“IDNR”) conducted inspections at the facility and investigated a fish kill in Prince Run Creek. The total fish kill numbered

approximately 31,835 and Prince Run Creek was impacted for approximately 6.25 miles by the pumpkin processing waste.

ANSWER

8. Chiquita lacks sufficient knowledge to form a belief as to the truth of the allegation in Paragraph 8, and in so stating, denies the same.

ALLEGATION

9. Prince Run Creek is a “water” of the State of Illinois as defined in Section 3.56 of the Act, 415 ILCS 5/3.56 (2000):

“WATERS” means all accumulations of water, surface and underground, natural, and artificial, public and private or parts thereof, which are wholly or partially within, flow through, or border upon this State.

ANSWER

9. Chiquita denies that Paragraph 9 accurately or completely quotes the above-referenced Section of the Act. The Act speaks for itself; no response is required. Paragraph 9 also contains a legal conclusion for which no response is required.

ALLEGATION

10. Section 3.55 of the Act, 415 ILCS 5/3.55 (2000), provides the following definition:

“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

ANSWER

10. Chiquita denies that Paragraph 10 accurately or completely quotes the above-referenced Section of the Act. The Act speaks for itself; no response is required.

ALLEGATION

11. Section 12 of the Act, 415 ILCS 5/12 (2000), provides, in pertinent parts:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

* * *

- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

ANSWER

11. Chiquita denies that Paragraph 11 accurately or completely quotes the above-referenced Section of the Act. The Act speaks for itself; no response is required.

ALLEGATION

12. By causing or allowing the discharge of approximately 40,000 gallons of pumpkin processing waste into Prince Run Creek on October 25, 2000, Respondent has caused or tended to cause water pollution in the State of Illinois, and has thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2000).

ANSWER

12. Paragraph 12 contains a legal conclusion for which no response is required. To the extent that Paragraph 12 is deemed to contain any factual allegations, Chiquita denies the same.

ALLEGATION

13. By causing or allowing pumpkin processing waste to accumulate on the surface and along the banks of Prince Run Creek, Respondent has created a water pollution hazard, and has thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2000).

ANSWER

13. Paragraph 13 contains a legal conclusion for which no response is required. To the extent that Paragraph 13 is deemed to contain any factual allegations, Chiquita denies the same.

COUNT II

OFFENSIVE CONDITIONS AND DISCHARGES

ALLEGATION

1-8. Complainant realleges and incorporates herein by reference paragraphs 1 through 8 of Count I as paragraphs 1 through 8 of this Count II.

ANSWER

1-8. Chiquita incorporates herein by reference its answers to Paragraphs 1 through 8 of Count I as its answers to Paragraphs 1-8 of Count II.

ALLEGATION

9. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm.

Code 302.203 provides as follows:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

ANSWER

9. Chiquita denies that Paragraph 9 accurately or completely quotes the above-referenced regulation. The regulation speaks for itself; no response is required.

ALLEGATION

10. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm.

Code 304.106 provides as follows:

Offensive Discharges

In addition to other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious level.

ANSWER

10. Chiquita denies that Paragraph 10 accurately or completely quotes the above-referenced regulation. The regulation speaks for itself; no response is required.

ALLEGATION

11. On October 25, 2000, the discharge of pumpkin processing waste contained sludge solids and had an obvious color and odor. On October 25, 2000, and continuing through October 27, 2000, Respondent caused or allowed Prince Run Creek to have an unnatural odor, color and turbidity, thereby creating offensive conditions.

ANSWER

11. Chiquita admits that on October 25, 2000, pumpkin processing wastewater was discharged when a forcemain transporting the wastewater from Chiquita's Princeville facility ruptured beneath a railroad track. Chiquita admits that the pumpkin processing wastewater contained solids and had an obvious odor and color. Chiquita denies the remaining allegations in Paragraph 11. Chiquita affirmatively states that it took all prudent measures to prevent Prince Run Creek from having an unnatural odor, color and turbidity, and to prevent Prince Run Creek from exhibiting offensive conditions. Chiquita affirmatively states that the forcemain rupture was caused by circumstances beyond its control.

ALLEGATION

12. By causing or allowing offensive conditions and discharges in Prince Run Creek, Respondent has violated Sections 302.203 and 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.106.

ANSWER

12. Paragraph 12 contains a legal conclusion for which no response is required. To the extent that Paragraph 12 is deemed to contain any factual allegation, Chiquita denies the same.

COUNT III

WATER QUALITY VIOLATIONS

ALLEGATION

1-8. Complainant realleges and incorporates herein by reference paragraphs 1 through 8 of Count I as paragraphs 1 through 8 of this Count III.

ANSWER

1-8. Chiquita incorporates herein by reference its answers to Paragraphs 1 through 8 of Count I as its answers to Paragraphs 1-8 of Count III.

ALLEGATION

9. Section 302.204 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.204, provides as follows:

pH

pH (STORET number 00400) shall be within the range of 6.5 to 9.0 except for natural causes.

ANSWER

9. Chiquita denies that Paragraph 9 accurately or completely quotes the above-referenced regulation. The regulation speaks for itself; no response is required.

ALLEGATION

10. Section 302.206 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.206, provides as follows:

Dissolved Oxygen

Dissolved oxygen (STORET number 00300) shall not be less than 6.0 mg/l (milligrams per liter) during at least 16 hours of any 25 hour period, nor less than 5.0 mg/l at any time.

ANSWER

10. Chiquita denies that Paragraph 10 accurately or completely quotes the above-referenced regulation. The regulation speaks for itself; no response is required.

ALLEGATION

11. During an inspection by the Illinois EPA conducted on October 25, 2000, pH in Prince Run Creek was outside the range of 6.5 to 9.0. Dissolved oxygen in Prince Run Creek contained less than 5.0 milligrams per liter.

ANSWER

11. Chiquita lacks sufficient knowledge to form a belief as to the truth of the allegation in Paragraph 11, and in so stating, denies the same.

ALLEGATION

12. By causing or allowing pH outside the permissible range in Prince Run Creek, Respondent has violated Section 302.204 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.204.

ANSWER

12. Paragraph 12 contains a legal conclusion for which no response is required. To the extent that Paragraph 12 is deemed to contain any factual allegation, Chiquita denies the same.

ALLEGATION

13. By causing or allowing dissolved oxygen concentrations of less than 5.0 milligrams per liter in Prince Run Creek, Respondent has violated Section 302.206 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.206.

ANSWER

13. Paragraph 13 contains a legal conclusion for which no response is required. To the extent that Paragraph 13 is deemed to contain any factual allegation, Chiquita denies the same.

COUNT IV

WASTE WATER TREATMENT FACILITY VIOLATIONS

ALLEGATION

1-6. Complainant realleges and incorporates herein by reference paragraphs 1 through 6 of Count I as paragraphs 1 through 6 of this Count IV.

ANSWER

1-6. Chiquita incorporates herein by reference its answers to Paragraphs 1 through 6 of Count I as its answers to Paragraphs 1-6 of Count IV.

ALLEGATION

7. On November 2, 1998, the Illinois EPA issued to Respondent a National Pollutant Discharge Elimination System ("NPDES") Permit No. IL0001295, authorizing the discharge of effluent from the Respondent's waste water treatment system to the Prince Run Creek.

ANSWER

7. Chiquita admits the allegations in Paragraph 7.

ALLEGATION

8. On June 7, 2001, the Illinois EPA issued to Respondent a modification to its NPDES permit. The modification allowed the inclusion of new outfalls 004, 005 and 006 for discharges of spray field tile drainage.

ANSWER

8. Chiquita admits the allegations in Paragraph 8.

ALLEGATION

9. The Respondent's NPDES permit sets forth maximum concentrations of total suspended solids (TSS), biochemical oxygen demand (BOD₅), total residual halogen, total ammonia nitrogen, total residual chlorine, and minimum and maximum pH limits, that are allowed in the Respondent's wastewater treatment system's discharge to the Prince Run Creek.

ANSWER

9. Chiquita denies that Paragraph 9 accurately or completely quotes the NPDES permit. The NPDES permit speaks for itself; no response is required.

ALLEGATION

10. Under Special Condition Numbers 11 and 12 of Respondent's NPDES permit, the Respondent is required to sample its effluent and to submit to the Illinois EPA monthly Discharge Monitoring Reports indicating the levels of TSS, BOD₅, total residual halogen, total ammonia nitrogen, and total residual chlorine and pH limits present in the effluent.

ANSWER

10. Chiquita denies that Paragraph 10 accurately or completely quotes the NPDES permit. The NPDES permit speaks for itself; no response is required.

ALLEGATION

11. The Respondent filed Discharge Monitoring Reports with the Illinois EPA to indicate the same results of the discharge from the wastewater treatment facility during July, August, September, October and November, 2000 and February, March, April, May, June and July, 2001. The sample results revealed the following exceedances of permit limits during those months.

Month	TSS		BOD ₅		total residual halogen daily max. (mg/l)	pH		total residual chlorine daily max. (mg/l)	total ammonia nitrogen	
	monthly average (mg/l)	daily maximum (mg/l)	monthly average (mg/l)	daily max. (mg/l)		min	max		mo. Ave mg/l	daily max. mg/l
Permit Limit	17	24	10	20	0.05	6.0	9.0	0.05	1.0	5.7
Outfall 002										
July, 2000					>.2			.18		
August					>.2			.09		
September	17.2	60			.4			.8		
November	20		22	22		9.33	9.33		1.85	
February, '01	37.79	58	24.64	54					3.49	
March	26.77	38	29	64					1.95	
April									22	
May	33	85	13.28	38					5.31	
June	14.40	38								
Outfall A01										
October, 2000									1.26	
November				21					1.85	
February, '01	33.85	69	65.62	100					2.49	
March	26.77	38	29	64						
July							9.33			
Outfall 001										
February, '01	37.79	58	24.64	54					3.49	
March									1.95	
April									2.2	
May	33	85	13.28	38					5.31	
Outfall 006										
June, '01	14.40	38								
July	12.75	44								

ANSWER

11. Chiquita admits that it filed Discharge Monitoring Reports (“DMRs”) with the Illinois EPA. Nevertheless, Chiquita denies that Paragraph 11 accurately or completely quotes the above-referenced DMRs or Chiquita’s permit. The DMRs and NPDES permit speak for themselves; no response is required. Paragraph 11 also contains legal conclusions, which require no response. To the extent that Paragraph 11 is deemed to contain any other factual allegations, Chiquita denies the same.

ALLEGATION

12. Section 3.55 of the Act, 415 ILCS 5/2.55 (2000), defines “water pollution” as follows:

“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

ANSWER

12. Chiquita denies that Paragraph 12 accurately or completely quotes the above-referenced Section of the Act. The Act speaks for itself; no response is required.

ALLEGATION

13. Section 12 of the Act, 415 ILCS 5/12 (2000), provides in pertinent part:
No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

* * *

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

* * *

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the board with respect to the NPDES program.

ANSWER

13. Chiquita denies that Paragraph 13 accurately or completely quotes the above-referenced Section of the Act. The Act speaks for itself; no response is required.

ALLEGATION

14. The Prince Run Creek is a "water" of the State as that term is defined under Section 3.56 of the Act, 415 ILCS 5/3.56 (2000), as follows:

"WATERS" means all accumulation of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this state.

ANSWER

14. Paragraph 14 contains a legal conclusion for which no response is required. To the extent that Paragraph 14 is deemed to contain any factual allegation, Chiquita denies the same.

ALLEGATION

15. TSS, BOD₅, total residual halogen, total ammonia nitrogen, pH, and total residual chlorine are “contaminants,” as defined under Section 3.06 of the Act, 415 ILCS 5/3.06 (2000), as follows:

“CONTAMINANT” is any solid, liquid, or gaseous matter, any color, or any form of energy, from whatever source.

ANSWER

15. Paragraph 15 contains a legal conclusion for which no response is required. Chiquita denies that either TSS (i.e., “total suspended solids”), BOD₅, total residual halogen, total ammonia nitrogen, pH, or total residual chlorine are matter, and affirmatively states that while these are all symbolic units of measurement used in quantifying various substances, the units of measurement themselves are not matter. Similarly, Chiquita denies that these units of measurement are colors. Chiquita also denies that the above-listed units of measurement are forms of energy.

ALLEGATION

16. By causing or allowing repeated permit excursion of permit levels for TSS, BOD₅, total residual halogen, total ammonia nitrogen, and total residual chlorine,

and inadequate pH in the Respondent's effluent to the Prince Run Creek, Respondent has caused or tended to cause water pollution in Illinois.

ANSWER

16. Paragraph 16 contains a legal conclusion for which no response is required. To the extent that Paragraph 16 is deemed to contain any factual allegations not otherwise answered herein, Chiquita denies the same.

ALLEGATION

17. By so causing or tending to cause water pollution, Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2000).

ANSWER

17. Paragraph 17 contains a legal conclusion for which no response is required. To the extent that Paragraph 17 is deemed to contain any factual allegations, Chiquita denies the same.

COUNT V

NPDES PERMIT VIOLATIONS

ALLEGATION

1-16. Complainant realleges and incorporates herein by reference paragraphs 1 through 16 of Count IV as paragraphs 1 through 16 of this Count V.

ANSWER

1-16. Chiquita incorporates herein by reference its answers to Paragraphs 1 through 16 of Count IV as its answers to Paragraphs 1-16 of Count V.

ALLEGATION

17. Section 304.141 of the Pollution Control Board's ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 304.141, provides, in pertinent part, as follows:

- (a) No person to whom an NPDES Permit has been issued may discharge any contaminant in his effluent in excess of the standards and limitations for that contaminant which are set forth in this permit.

ANSWER

17. **Chiquita denies that Paragraph 17 accurately or completely quotes the above-referenced regulation. The regulation speaks for itself; no response is required.**

ALLEGATION

18. Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), provides that no person shall cause, threaten, or allow the discharge of any contamination into the waters of the State in violation of any term or condition imposed by an NPDES permit for point source discharges.

ANSWER

18. **Chiquita denies that Paragraph 18 accurately or completely quotes the above-referenced Section of the Act. The Act speaks for itself; no response is required.**

ALLEGATION

19. Standard Condition 5 of Attachment H in the Respondent's NPDES Permit No. IL0001295, provides:

Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of

treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with conditions of this permit. Proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process control, including appropriate quality assurance procedures. This provision requires the operation of back-up, or auxiliary facilities, or similar systems only when necessary to achieve compliance with the conditions of the permit.

ANSWER

19. Chiquita denies that Paragraph 19 accurately or completely quotes the above-referenced NPDES Permit. The NPDES Permit speaks for itself; no response is required.

ALLEGATION

20. On February 7, 2001, and on February 25 through February 27, 2001, the Respondent pumped raw sewage lagoon waste directly to surface waters through a permitted outfall at the retention basin. Sampling of the discharge at the point of the receiving waters was done on February 7, 2001. The resulting sampling data shows that the 5-day BOD level for the wastewater being discharged at that time was 25 mg/l and the Total Suspended Solids level was 52 mg/l, in violation of the Respondents permit limits (20 and 24 mg/l, respectively).

ANSWER

20. Chiquita denies that it pumped raw sewage lagoon waste directly to surface waters through a permitted outfall at the retention basin on February 7, 2001, on February 25 through February 27, 2001, or at any other time. Chiquita affirmatively states that it conducted emergency discharges from outfalls 001 and 001A on February 7, 2001, and between February 25 through February 27, 2001.

Chiquita affirmatively states that these emergency discharges were reported to the Illinois EPA's Bureau of Water Compliance Assurance Section in a timely manner. Chiquita affirmatively states that the emergency discharges were necessitated by events beyond Chiquita's control, i.e., heavy rainfalls and rapid snow melt, which placed Chiquita's lagoons and storm water retention basin under extreme stress. Chiquita affirmatively states that its operations are seasonal, that its Princeville facility was not processing foods at the time of the emergency discharges, and that its food processing activities did not contribute to the situation that necessitated the emergency discharges.

Chiquita admits, however, that sampling of the discharge at the point of the receiving waters was done on February 7, 2001. Chiquita admits that the resulting sampling data shows that the five-day BOD level for the wastewater being discharged at that time exceeded the permitted limit of 20 mg/l and that the TSS level exceeded the permitted limit of 24 mg/l. To the extent that Paragraph 20 is deemed to contain any further allegations, Chiquita denies the same.

ALLEGATION

21. By repeatedly causing or allowing the wastewater treatment facility's discharge to the Prince Run Creek to contain concentrations of contaminants in excess of maximum limits delineated under its NPDES permit, the Respondent caused, threatened, or allowed the discharge of contaminants into a water of the State in violation of the terms or conditions of its permit.

ANSWER

21. Paragraph 21 contains a legal conclusion for which no response is required. To the extent that Paragraph 21 is deemed to contain any factual allegations not otherwise answered herein, Chiquita denies the same.

ALLEGATION

22. By so causing, threatening, or allowing the discharge of contaminants into a water of the State in violation of the terms or conditions of its NPDES permit, Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), Section 304.141(a) of the Board's Water pollution Regulations, 35 Ill. Adm. Code 304.141(a) and Standard Condition 5 of Attachment H of the NPDES Permit No. IL0001295.

ANSWER

22. Paragraph 22 contains a legal conclusion for which no response is required. To the extent that Paragraph 22 is deemed to contain any factual allegations not otherwise answered herein, Chiquita denies the same.

CHIQUITA'S AFFIRMATIVE DEFENSES

DEFENSE I TO COUNTS I, II, AND III: SATISFACTION AND DISCHARGE

1. Chiquita is a Delaware limited liability corporation duly authorized to do business in the State of Illinois.
2. Chiquita owns and operates a facility located in Princeville, Peoria County, Illinois that processes pumpkins and other canned foods. Wastewater is generated as a result of this process.
3. Chiquita acquired the Princeville facility on September 24, 1997, and has owned and operated the Princeville facility from September 24, 1997, to the present.

4. The wastewater from the Princeville facility travels underground through a forcemain to a wastewater treatment system located away from the buildings where the food products are processed.

5. On October 25, 2000, the forcemain ruptured. The forcemain rupture occurred beneath a railroad track that is located between the Princeville facility and Prince Run Creek. This railroad track is still in use.

6. The rupture occurred sometime in the early morning hours between 1:30 a.m. and 10:30 a.m. on October 25, 2000. At 10:30 a.m. on October 25, 2000, a local resident notified Chiquita that a release of pumpkin wastewater had been observed at a particular location. This location had been viewed by a Chiquita employee earlier that morning of October 25, 2000, at 1:30 a.m., at which time no release had yet occurred.

7. Upon receiving the local resident's report of a release, Chiquita immediately inspected both system outfalls and found them to be clear and without odor. Chiquita observed Prince Run Creek, took water samples at several locations, and reported its observations to Illinois EPA inspector Lyle Ray by 11:30 a.m. that same morning on October 25, 2001.

8. After timely reporting the incident to the Illinois EPA, Chiquita continued its search for the source of the discharge, which was eventually located at approximately 1:30 p.m. on October 25, 2000. Chiquita informed the Illinois EPA that the source of the discharge had been located, notified the railroad of the situation, and hired an excavator to construct earthen dams to contain the discharge at its source and to excavate the pipeline beneath the railroad track.

9. Three (3) earthen dams were constructed on the south side of the railroad track at various distances between the source of the discharge and Prince Run Creek. Despite the difficulties created by the location of the rupture beneath the railroad track, by 5:00 p.m. on October 25, 2000, the discharge to Prince Run Creek was effectively contained by these dams. Chiquita estimates that approximately 40,000 gallons of pumpkin processing wastewater were released, during the course of the discharge.

10. As soon as the dams were constructed, septic-pumping equipment was moved into place and wastewater contained by the dams was pumped into honey wagons and discharged into the retention basin at the Princeville facility.

11. Simultaneous to Chiquita's other efforts, the pipeline was exposed on either side of the railroad track. The exposed pipe was observed to be in good condition. Nevertheless, Chiquita noted that the previous owners of the Princeville facility, who had installed the pipeline, had not encased the pipeline where it passed beneath the railroad tracks. The rupture was apparently the result of years of vibrations caused by trains passing above this pipeline, which had not been sheathed in a protective casing.

12. The old pipeline under the railroad track was abandoned in place, and Chiquita had a new nine-inch pipe in a twelve-inch casing installed next to it. The process of replacing the pipe under the railroad tracks continued through the night of October 25, 2000, and was completed at 4:45 a.m. on October 26, 2000.

13. Prince Run Creek was remediated. This remediation was completed by October 27, 2000. A portable pump was placed in Prince Run Creek and cloudy water was pumped from the creek and land applied. Indeed, pumping operations at this location were completed by 2:00 a.m. on October 26, 2000.

14. Section 12 of the Act, 415 ILCS 5/12, provides, in pertinent part, as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act;

* * *

- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

15. To the extent that contaminants were discharged into the environment in any State so as to cause or tend to cause water pollution, the discharge was not caused by Chiquita, but, rather, was caused by a rupture to a pipeline after many years of vibrations from trains passing above it.

16. To the extent that contaminants were discharged into the environment in any State so as to cause or tend to cause water pollution, the discharge was not allowed by Chiquita, but, rather, Chiquita took all prudent measures to prevent a discharge of process wastewater by transporting it within an underground pipeline similar to that used to transport municipal and residential sewage.

17. To the extent that contaminants were discharged into the environment in any State so as to cause or tend to cause water pollution, the discharge was not allowed by Chiquita, but, rather, Chiquita took all prudent measures to prevent any further discharge of process wastewater by containing and remediating the wastewater released when the pipeline ruptured.

18. By taking all prudent measures to prevent the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, Chiquita satisfied and discharged its duties under Section 12(a) of the Act.

19. By taking all prudent measures to prevent the deposit of any contaminants upon the land in such place and manner so as to create a water pollution hazard, Chiquita satisfied and discharged its duties under Section 12(d) of the Act.

DEFENSE II TO COUNTS I, II, AND III: UNCONTROLLABLE CIRCUMSTANCES

1. Chiquita re-alleges and incorporates by reference Paragraphs 1-18 of Defense I as Paragraphs 1-18 of Defense II.

19. The rupture to the forcemain was apparently the result of years of vibrations caused by trains passing above it. Thus, the rupture was caused by circumstances beyond Chiquita's control. As a result, to the extent that contaminants were discharged into the environment in any State so as to cause or tend to cause water pollution, the discharge was not caused or allowed by Chiquita.

DEFENSE I TO COUNT V: SATISFACTION AND DISCHARGE

1. Chiquita re-alleges and incorporates by reference Paragraphs 1-4 of Defense I to Counts I, II, and III as Paragraphs 1-4 of Chiquita's Defense I to Count V.

5. On November 2, 1998, Chiquita was issued a NPDES permit by the Illinois EPA.

6. Chiquita conducted emergency discharges from outfalls 001 and 001A on February 7, 2001, and between February 25 through February 27, 2001. These

emergency discharges were reported to the Illinois EPA's Bureau of Water Compliance Assurance Section in a timely manner.

7. The emergency discharges were necessitated by events beyond Chiquita's control, i.e., heavy rainfalls and rapid snow melt, which placed Chiquita's lagoons and storm water retention basin under extreme stress.

8. Chiquita's operations are seasonal and its Princeville facility was not processing foods at the time of the emergency discharges. Chiquita's food processing activities did not contribute to the situation that necessitated the emergency discharges.

9. To the extent that contaminants were discharged into the environment in any State so as to cause or tend to cause water pollution, the discharge was not caused by Chiquita, but, rather, was caused by heavy rains and rapid snow melt, which necessitated emergency discharges.

10. To the extent that contaminants were discharged into the environment in any State so as to cause or tend to cause water pollution, the discharge was not allowed or threatened by Chiquita, but, rather, Chiquita took all prudent measures to prevent a discharge of contaminants by conducting controlled discharges to prevent lagoon or retention basin failure.

11. By taking all prudent measures to prevent the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, Chiquita satisfied and discharged its duties under Section 12(f) of the Act, and the Illinois Pollution Control Board's regulations.

DEFENSE II TO COUNT V: UNCONTROLLABLE CIRCUMSTANCES

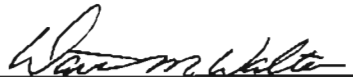
1. Chiquita re-alleges and incorporates by reference Paragraphs 1-10 of its Defense I to Counts V as Paragraphs 1-10 of Chiquita's Defense II to Count V.

11. The emergency discharges were necessitated by uncontrollable circumstances, i.e., heavy rainfalls and rapid snow melt, which placed Chiquita's lagoons and storm water retention basin under extreme stress.

12. Chiquita satisfied and discharged its duties under Section 12(f) of the Act, and the Board's regulations, since the emergency discharges were caused by uncontrollable circumstances.

Respectfully submitted:

CHIQUITA PROCESSED FOODS, LLC,
a Delaware limited liability corporation,
Respondent,

By: 
One of Its Attorneys

Dated: January 4, 2002

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CHIQ:003/Fil/Answer to Complaint