

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.)	

**MOTION TO STRIKE COMPLAINANT'S FIRST SET OF 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.'s ("MGP" or "Respondent") f/k/a Midwest Grain Products of Illinois, Inc., by and through its attorneys, and moves the Hearing Officer, pursuant to Section 101.616 of the Illinois Pollution Control Board's Rules, 35 Ill. Adm. Code 101.616, to strike Complainant's First Set of Interrogatories, or, in the alternative, enter a protective order limiting Complainant's interrogatories to prevent undue expense and harassment. *In support of its motion, Respondent states as follows:*

1. Respondent received Complainant's First Set of Interrogatories and First Set of Requests for Production on, or about July 11, 2005. Complainant's First Set of Interrogatories and First Set of Requests for Production are attached hereto as Exhibits 1 and 2, respectively.

2. Respondent began preparing responses to Complainant's discovery requests immediately upon receipt of such requests.

3. In preparing its responses, Respondent has determined that it cannot completely comply with certain of Complainant's discovery requests as written. Respondent's discovery issues amount to five interrogatories and three associated document production requests.

4. On September 20, 2005, Respondent, in an attempt to informally resolve the discovery issues, forwarded a letter to Complainant identifying such interrogatories and associated document production requests it believed could not be answered as written due to the undue expense in time and effort required to answer such requests. Respondent also identified certain discovery requests that it considered overly broad and duplicitous, and could not be expected to reasonably answer. The September 20, 2005 letter is attached hereto as Exhibit 3.

5. On September 26, 2005, Respondent, having not received any response from Complainant to the September 20 letter, forwarded a letter to Complainant requesting a response to the September 20 letter so that Respondent could continue with its production efforts. The September 26, 2005 letter is attached hereto as Exhibit 4.

6. On October 5, 2005, Respondent, having still not received any response from Complainant to the September 20 letter, forwarded yet another letter to Complainant requesting a response to the September 20 letter. The October 5, 2005 letter is attached hereto as Exhibit 5.

7. On October 12, 2005, the Hearing Officer issued an Order resolving Complainant's motion to strike Respondent's amended first set of interrogatories and presumably reinstating the discovery process. The Order is attached hereto as Exhibit 6.

8. No response to the September 20 letter was received, therefore, on October 14, Respondent, in another attempt to informally resolve the discovery issues, forwarded a letter to Complainant requesting a response by close of business, October 17, 2005. The October 14, 2005 letter is attached hereto as Exhibit 7. The letter informed Complainant that MGP was continuing "to work diligently to complete responses to the State's discovery requests." Complainant was also reminded that over three weeks had passed since Complainant was notified of Respondent's desire to informally resolve the discovery issues.

9. On October 25, 2005, the parties participated in a telephonic status conference with the Hearing Officer. During the status conference, Respondent informed the Hearing Officer that it was awaiting a response from the Complainant regarding the discovery issues identified in the September 20 letter. Complainant replied that its response would be forwarded to Respondent later that day. Respondent took Complainant's reply to mean that Complainant had prepared and was forwarding a substantive responses to Respondent's discovery issues identified in the September 20 letter.

10. At 1:10 pm, October 25, 2005, Respondent received Complainant's "response," attached hereto as Exhibit 8. The "response" asserted the existence of a "stay of discovery" while Complainant's motion to strike was pending. The "response" went on to state that the Hearing Officer's Order regarding that motion was received by Complainant on October 15 and that Complainant's counsel was "out of the office and out of town" October 16 and October 19 through October 21. More importantly, Complainant stated, "We will respond to your letter of September 20, 2005 as soon as possible."

11. Three minutes later, at 1:13 pm, Respondent received another letter from Complainant wherein Complainant's counsel corrected the dates she was "out of the office and out of town;" the new dates being October 14 and October 17 through October 21. The letter is attached as Exhibit 9.

12. Complainant's assertion of a "discovery stay" as support for its failure to respond is misplaced. The September 7, 2005 Hearing Officer Order, attached hereto as Exhibit 10, specifically states that *discovery deadlines* are stayed pending a ruling on Complainant's motion to strike. The plain language of the Order makes clear the Order only applies to discovery deadlines. Nothing in the Order speaks to the stay of attempts by either party to resolve other

discovery issues or to stay the process of responding to discovery requests that are not at issue. In fact, Respondent continued to assemble and prepare responses to Complainant's discovery requests during the discovery deadline stay.

13. Even if the September 7 Order could have been interpreted as a stay to the entire discovery process as Complainant seems to assert, why then did Complainant lay silent and wait until October 25 to raise that argument? Such a response could have been provided to Respondent on September 21 as easily as it was provided over a month later on October 25.

14. To date, some 42 days after Respondent's initial request and 22 days after the Hearing Officer's Order resolving the outstanding discovery issues, Complainant has refused to provide a substantive response to Respondent's concerns with Complainant's interrogatories.

15. Respondent is puzzled by Complainant's statement during the status conference that it would be replying to Respondent's September 20 letter, leading the parties to the reasonable perception that a substantive response would follow later that day and then forwarding a response asserting procedural issues as an answer. Such evasive conduct is prejudicial to Respondent because Respondent has been continually working to comply with its discovery obligations throughout this process.

16. Due to Complainant's conduct, Respondent has been forced to identify, review and collect information in such a manner as to slow the discovery process. As a result, Respondent has spent additional effort to comply with Complainant's discovery requests and incurred substantial costs in its efforts.

17. Pursuant to Illinois Supreme Court Rule 201(k), Respondent's counsel responsible for trial has made several reasonable attempts to resolve the discovery issues identified by Respondent. By refusing to provide a substantive reply to any of Respondent's

overtures to informally resolve the discovery issues, counsel for Complainant has essentially made herself "unavailable for personal consultation."

18. Complainant's discovery requests are, in part, overly broad, duplicative and/or unclear, causing Respondent to bear an unnecessary burden and expense in attempting to reply with such requests. Further, Complainant's refusal to provide a substantive reply to Respondent's attempts to discuss discovery issues amounts to harassment.

19. Complainant's Interrogatory Number 4 requests among other things, "all costs entailed in the purchase, installation, modification, maintenance and operation of the feed dryer systems 651 and 661, and the Swiss Combi systems..." This request encompasses virtually every document generated by operational activities at MGP and the preponderance of its financial documentation. It will be practically impossible for MGP to respond to this request as written.

20. First, MGP does not have dryer maintenance documentation prior to 1999.

21. Second, MGP will need to review all maintenance files, files related to the dryers, and retrieve any documents used in each and every work order related to the dryers. After 1999, MGP estimates that mechanic work orders for the dryers amount to several hundred instances per year. To satisfy this request, MGP estimates it will take one person, working full-time, at least one month to locate, review and organize the documents. In addition, all documentation relating to the operational costs of the dryers, including but not limited to all operator time sheets, gas readings, expense documents, management notes and meeting notes will need to be located and reviewed. MGP estimates this process will require the services of an additional employee, working full-time over three weeks to assemble this information.

22. Finally, none of the above estimates include the identification, collection and production of information and documents related to the Swiss Combi dryer. MGP sees no

relevancy of the Swiss Combi dryer to this action and has requested from Complainant its theories regarding the relevancy of the Swiss Combi dryer. Complainant has not replied to Respondent's requests to discuss the Swiss Combi dryer issue.

23. Complainant's Interrogatory Number 4 is overly broad and unduly burdensome as to time and scope. Respondent will be forced to hire additional personnel to comply with Complainant's request as written. Respondent has offered to discuss with Complainant the possibility of narrowing or focusing this request so that Respondent will not incur such a significant burden. To date, Complainant has not replied to Respondent's offer.

24. Complainant's Interrogatory Number 9 requests all information "regarding the date(s) of operation of the feed dryer systems 651 and 661 and the Swiss-Combi system... beginning 1994 through the present." Respondent cannot be reasonably expected to respond to this request.

25. First, MGP does not have dryer operation documentation prior to 1999.

26. Second, to properly respond to Complainant's request, MGP will be required to locate and review documents from three shifts per day, 365 days per year, for eleven years. This amounts to over 12,000 discrete events and an unknown (at this point) number of pages.

27. Finally, the above analysis does not take into account any documents related to the Swiss Combi dryer because Respondent does not find the Swiss Combi dryer relevant to this matter.

28. Complainant's Interrogatory Number 9 is overly broad and unduly burdensome as to time and scope. Respondent will certainly be forced to hire additional personnel to comply with Complainant's request as written. In its September 20 letter, Respondent provided what it believes to be are two very reasonable suggestions to resolve the issues identified with

Complainant's Interrogatory Number 9. To date, Complainant has not replied to Respondent's suggestions.

29. Complainant's Interrogatory Number 11 requests all information "regarding the construction and operation of feed dryer systems 651 and 661 and the Swiss-Combi systems, including emissions testing of said equipment; the construction and operation of air pollution control equipment to control PM emissions generated during operation of feed dryer systems 651 and 661; and modeling prescribed by federal Prevention of Significant Deterioration ("PSD") requirements." It will be virtually impossible for MGP to respond to this request as written.

30. First, MGP does not have dryer operation documentation prior to 1999.

31. Second, due to the broad nature of the request, MGP will be required to locate and review thousands of pages of documents related to the construction and operation of the dryers. Similar to Interrogatory Number 9, Respondent estimates that to properly reply to Interrogatory Number 11 will require an additional employee devoted exclusively to this request for almost two months.

32. Third, Complainant attempts to conceal four separate requests within Interrogatory Number 11. It appears the primary request within Interrogatory Number 11 seeks all information regarding the "construction and operation of feed dryers 651 and 661 and the Swiss-Combi systems." The Complainant then proceeds to separate by semi-colon a first sub-part requesting all information related to "emissions testing of said equipment." Emissions testing of the dryers go beyond the subject matter of construction and operation of the dryers. Specifically, the "emissions testing" subpart does nothing to "elicit details that are common to the theme of the primary question." *Swackhammer v. Sprint Corp., PCS*, 225 F.R.D. 658, (D. Kan. 2004). The second sub-part within Interrogatory Number 11 relates to the construction and

operation of air pollution control equipment. This request seeks information related to a completely different set of equipment posed in the primary request. The third sub-part concerns the wholly unrelated issue of "modeling prescribed by federal Prevention of Significant Deterioration ("PSD") requirements." The topic of modeling does not elicit details common to the construction and operation of feed dryers 651 and 661. None of the sub-parts within Interrogatory Number 11 elicit anything remotely common to the theme of the primary request. Thus, the three sub-parts within Interrogatory Number 11 should each count as individual requests.

33. Fourth, the sub-parts of Interrogatory Number 11 concerning emissions testing are duplicative of the request in Interrogatory Number 8 regarding "actual PM emissions." Further, Interrogatory 11 requests duplicative information found in Interrogatory Number 9. Both are broad requests that seek information related to the operation of feed dryer systems 651 and 661 and the Swiss Combi system.

34. Finally, Complainant has chosen again to include a request for information related to the Swiss Combi system. As noted above, Respondent is unable to link the relevancy of the Swiss Combi dryer to this proceeding.

35. Complainant's Interrogatory Number 11 is overly broad and unduly burdensome as to time and scope. Respondent will be required to hire additional personnel in order to comply with Complainant's request as written. This interrogatory also contains several sub-parts that go beyond the subject matter of the original interrogatory. Further, the request is duplicitous in that it seeks similar information found in Interrogatories 8 and 9. Respondent has offered to discuss with Complainant the possibility of restructuring this request to (1) avoid the unnecessary burden and expense this request imposes upon the Respondent; and (2) combine the

duplicative portions of Interrogatories 9 and 11 into one request. To date, Complainant has not replied to Respondent's offers.

36. Interrogatory 26 seeks information related to MGP's "decision not to modify its existing construction permit dated December 1995 for the feed dryer systems 651 and 661." Complainant is asking Respondent to prove a negative. Respondent finds this question confusing. This request is overly broad. Respondent requires more specific information in the request in order for it to respond properly.

37. Accordingly, Respondent believes it cannot reasonably be expected to answer Interrogatory 26 as posed.

38. Regarding Interrogatory Number 28, Complainant refers to the Stipulation and Proposal for Settlement ("Stipulation"), entered in the matter of *People v. Midwest Grain*, PCB 95-005. The Stipulation is attached hereto as Exhibit 11. Complainant makes an improper use of the Stipulation. Page 1 of the Stipulation 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 further states that the Stipulation "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, Complainant finds the Stipulation's relevancy as part of an interrogatory to be questionable.

39. Further, Interrogatory 28 is extraordinarily broad, duplicative and confusing. The primary request appears to be for all information "relevant to the contention that the instant case represents a repeated violation of operating permit emission limits and PSD requirements."

40. Respondent admits that it has absolutely no idea what Complainant is asking for in Interrogatory 28. Complainant's cryptic request appears to ask Respondent to provide evidence of emission limit and PSD violations. If so, this request is already covered by Interrogatories 5, 8 and 12.

41. Respondent has offered to discuss with Complainant the possibility of narrowing or clarifying this request so that Respondent can properly respond. To date, Complainant has not replied to Respondent's offer.

WHEREFORE, Respondent respectfully requests that the Hearing Officer strike Complainant's First Set of Interrogatories. In the alternative, Respondent seeks a protective order limiting Complainant's interrogatories to prevent harassment and undue expense in time and effort.

Respectfully submitted,

HUSCH & EPPENBERGER, LLC

By: 

One of its attorneys

Husch & Eppenberger, LLC
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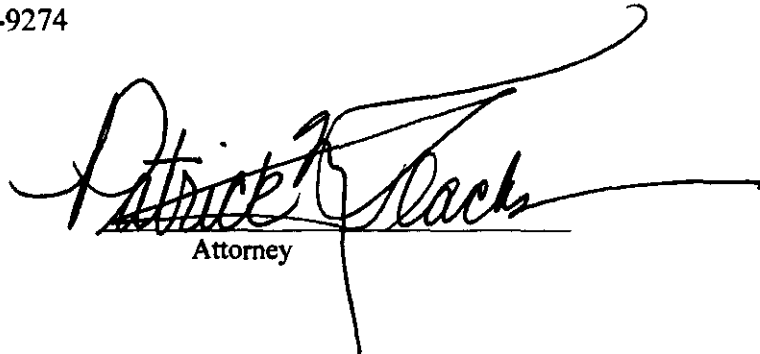
Dated: NOVEMBER 1, 2005

CERTIFICATE OF SERVICE

I hereby certify that I did on the 1st day of November, 2005, send a true and accurate copy of RESPONDENT'S MOTION TO STRIKE COMPLAINANT'S FIRST SET OF 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
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

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.)	

**COMPLAINANT'S FIRST SET OF INTERROGATORIES TO
RESPONDENT MIDWEST GRAIN PRODUCTS OF ILLINOIS, INC.**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel. Lisa Madigan, Attorney General of the State of Illinois, and propounds the following interrogatories on Respondent, MIDWEST GRAIN PRODUCTS OF ILLINOIS, INC. ("Respondent"), to be answered in accordance with the Illinois Code of Civil Procedure and the Illinois Supreme Court Rules on Civil Proceedings in the Trial Court, and the following instructions and definitions, within 28 days of the date of service hereof.

INSTRUCTIONS

- (a) With respect to each Interrogatory, in addition to supplying the information requested and identifying the specific documents referred to, please identify all documents or other evidence to which you referred in preparing your answer thereto.
- (b) If any document identified in an answer to an Interrogatory was, but is no longer, in your possession or subject to your custody or control, or was known to you, but is no longer in existence, please state what disposition was made of it or what became of it.
- (c) If any document or statement is withheld from production hereunder on the basis of a claim of privilege or otherwise, please identify each such document and the grounds upon which its production is being withheld.



(d) You are reminded of your duty under Illinois Supreme Court Rule 213(l) to seasonably supplement or amend any answers or responses to these Interrogatories whenever new or additional information becomes known to you subsequent to your answer or response.

(e) You are further reminded of your duty under Illinois Supreme Court Rule 213(d) to serve a sworn answer or an objection to each Interrogatory.

(f) If you are unable or refuse to answer any Interrogatory completely for any reason including, but not limited to, because of a claim of privilege, please so state, answer the Interrogatory to the extent possible, stating whatever knowledge or information you have concerning the portion of the Interrogatory which you do answer, and set forth the reason for your inability to answer more fully.

DEFINITIONS

As used in these Interrogatories, the terms listed below are defined as follows:

(a) "Document" or "documents" means any of the following of which you have knowledge or which are now or were formerly in your actual or constructive possession, custody or control: any writing of any kind, including originals and all nonidentical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including without limitation maps, drawings, sketches, blueprints, aerial photographs, log books, lab reports, chain-of-custody forms, weather forecasts, correspondence, memoranda, notes, desk calendars, diaries, statistics, checks, invoices, statements, receipts, returns, warranties, guarantees, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, magazines, publications, printed matter, photographs, computer printouts, teletypes, telefax, invoices, worksheets and all drafts, alterations, modifications, changes and amendments to any of the foregoing; any spreadsheets, database,

correspondence, e-mail messages, or other information of any kind contained in any computer or other electronic information storage system; and any audiotapes, videotapes, tape recordings, transcripts, or graphic or oral records or representations of any kind.

(b) "Possession, custody or control" includes the joint or several possession, custody or control not only by the person to whom these Interrogatories are addressed, but also the joint or several possession, custody or control by each or any other person acting or purporting to act on behalf of the person, whether as employee, contractor, attorney, accountant, agent, sponsor, spokesman, or otherwise.

(c) "Relates to" means supports, evidences, describes, mentions, refers to, contradicts or comprises.

(d) "Person" means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural persons, or other association separately identifiable whether or not such association has a separate juristic existence in its own right.

(e) "Identify", "identity" and "identification," when used to refer to any entity other than a natural person, mean to state its full name, the present or last known address of its principal office or place of doing business, and the type of entity (e.g., corporation, partnership, unincorporated association).

(f) "Identify", "identity", and "identification", when used to refer to a natural person, mean to state the following:

1. The person's full name and present or last known home address, home telephone number, business address and business telephone number;
 2. The person's present title and employer or other business affirmation;
- and

3. The person's employer and title at the time of the actions at which each Interrogatory is directed.

(g) "identify," "identity" and "identification," when used to refer to a document, mean to state the following:

1. The subject of the document;
2. The title of the document;
3. The type of document (e.g., letter, memorandum, telegram, chart);
4. The date of the document or, if the specific date thereof is unknown, the month and year or other best approximation of such date;
5. The identity of the person or persons who wrote, contributed to, prepared or originated such document; and
6. The present or last known location and custodian of the document.

(h) "You", "Respondent Midwest Grain", or "Midwest Grain" means Respondent Midwest Grains Products of Illinois, Inc., including, but not limited to, any employees, attorneys, independent contractors, or other agents of any kind of Respondent Midwest Grain or any agency, branch, division, or other department thereof.

(i) "Complaint" means Complainant's Complaint filed on April 7, 1997.

(j) "Swiss-Combi systems" refers to the Swiss-Combi currently in operation at the Midwest facility, and the new Swiss-Combi to be constructed.

(k) "Feed dryer systems 651 and 661" are the feed dryers installed at Respondent Midwest Grain's facility under Illinois EPA Construction Permits #93020061 and #93080045.

INTERROGATORIES

1. Please indicate the source of financing for and methods and procedures utilized

to procure services and equipment relative to the purchase, installation and/or modification of feed dryer systems 651 and 661, including cyclones and scrubbers utilized to control particulate matter ("PM"), and the Swiss Combi systems.

ANSWER

2. Please indicate the date(s) upon which construction of feed dryer system 651 and feed dryer system 661 commenced.

ANSWER

3. Identify each representative, agent, or employee of Respondent Midwest Grain and anyone outside of the control of Respondent Midwest Grain, having knowledge or information relating to the purchase, construction, operation, maintenance, or modification of feed dryer system 651 and 661, including cyclones and scrubbers, and Swiss-Combi systems Midwest Grain has or will construct.

ANSWER

4. Please provide all costs entailed in the purchase, installation, modification, maintenance and operation of the feed dryer systems 651 and 661, and the Swiss Combi systems, as well as the dates upon which each such cost was incurred and the date upon which it was paid, or the installment schedule upon which it was paid..

ANSWER

5. Please provide all information known to the Respondent and/or in the Respondent's possession and control regarding all emissions generated during the operation of

feed dryers 651 and 661 and the Swiss-Combi system currently in operation at Midwest Grain.

ANSWER

6. Please provide all information known to the Respondent and/or in its possession and control regarding, relating to or relevant to the actual and estimated emissions resulting from fluidized bed boiler operations during the period 1992 through 1994; and from operations of the three gas broilers and gluten dryer referenced in item 4 on the first page of a letter dated November 6, 1995 addressed to Richard Jennings of the Illinois EPA and authored by David Sanborn of Midwest Grain.

ANSWER

7. Please provide the actual date upon which Respondent ceased operations of the fluidized bed boiler.

ANSWER

8. Please provide all information known to the Respondent and/or in its possession and control regarding the actual PM emissions generated during the operation of feed dryer 651 and 661 during the period 1994 through the present

ANSWER

9. Please provide all information known to the Respondent and/or in its possession and control regarding the date(s) of operation of the feed dryer systems 651 and 661 and the Swiss-Combi system already in operation at Midwest Grain, beginning 1994 through the present.

ANSWER

10. Please provide all information known to the Respondent and/or in its possession and control regarding any consideration given to or any analysis or evaluation of wet electrostatic precipitator(s) or regenerative thermal oxidizer(s) to control PM emissions generated by feed dryer systems 651 and 661 including, but not limited to, best available control technology ("BACT") analysis and modeling data consistent with federal Prevention of Significant Deterioration ("PSD") program requirements, actual and/or estimated PM emissions data and calculations, and draft and/or final construction and operating permit applications.

ANSWER

11. ⁽¹⁾ Please provide all information known to the Respondent and/or in its possession and control regarding the construction and operation of feed dryer systems 651 and 661 and the Swiss-Combi systems, ⁽²⁾ including emissions testing of said equipment; ⁽²⁾ the construction and operation of air pollution control equipment to control PM emissions generated during operation of feed dryer systems 651 and 661; and ⁽⁴⁾ modeling prescribed by federal Prevention of Significant Deterioration ("PSD") requirements.

ANSWER

12. Please provide all information known to the Respondent and/or in its possession and control regarding all factual issues pertinent to Complainant's allegation that Respondent constructed feed dryer systems 651 and 661 causing a significant net emission increase in PM in excess of 25 tons per year resulting in a major modification as defined by federal PSD requirements without first applying for and obtaining a construction permit granting PSD

approval to construct feed dryer systems 651 and 661, conducting a pre-construction review, and implementing best available control technology ("BACT").

ANSWER

13. Please provide all information known to the Respondent and/or in its possession and control regarding all factual issues pertinent to Complainant's allegation that Respondent caused or allowed the emission of PM generated during the operation of feed dryers 651 and 661 in excess of 1.1 pounds per hour and 3.2 pounds per hour limits set forth within construction permit numbers 93020061 and 93080045, respectively, beginning 1994 through the present.

ANSWER

14. Pursuant to Illinois Supreme Court Rule 213(f), please provide the name, address and phone number of each fact witness who will testify at trial and describe in detail the subject of each witness's testimony. With regard to each witness, please provide the following information:

- a. His or her full name, place of employment, job title, current address and telephone number

ANSWER

- b. A detailed statement regarding the subject matter on which each witness is expected to testify.

ANSWER

- c. State the dates on which you met or consulted with the witness.

ANSWER

- d. Describe in detail the substance of all facts, assumptions, opinions, and conclusions about which the witness is expected to testify.

ANSWER

- e. Identify each document which support the substance of the facts or opinions about which the witness is expected to testify.

ANSWER

- f. Identify the information and documents provided to the witness for use in this matter.

ANSWER

- g. Identify each document the witness has prepared and which summarizes the facts or opinions about which the witness is expected to testify and provide all reports of the witness.

ANSWER

15. Please identify documentation and/or written material of any kind known to the Respondent and/or in the possession and control of the Respondent, generated by or relied upon by witnesses identified in response to Complainant's interrogatory 14 submitted pursuant to Supreme Court Rule 213(f) pertinent to the subject matter of the witness' testimony

ANSWER

16. Identify each and every opinion witness or expert opinion witness with whom the Respondent has communicated or consulted or whom Respondent expects to testify at hearing in this matter. Pursuant to Illinois Supreme Court Rule 213(f), please provide the name, job title, address and phone number of each opinion witness who will offer any testimony and state:

- a. describe in detail the anticipated subject matter of the opinion witness's testimony;

ANSWER

- b. describe in detail the conclusions and opinions of the opinion witness and the basis for such conclusions and opinions;

ANSWER

- c. describe in detail the substance of all facts and assumptions that serve as the basis of, or taken into account in, the witness' conclusions and/or opinions.

ANSWER

- d. describe in detail the qualifications of each opinion witness to provide the anticipated testimony;

ANSWER

- e. identify all documents and other things that provide the basis for the person's opinions, or on which the person relied in developing his or her opinions;

ANSWER

- f. identify each document the expert has prepared and which states in full or summarizes the facts or opinions about which the witness is expected to testify and provide all reports of the expert.

ANSWER

- g. identify any and all occasions on which the person has given opinion testimony in a deposition, trial, arbitration, mediation, or other evidentiary proceeding;

ANSWER

- h. identify all occasions on which the Respondent has retained the person in the past,

ANSWER

- i. identify all documents that constitute, contain, report, or otherwise relate to the person's opinions.

ANSWER

- j. identify the information and documents that were provided to the expert for use in this matter.

ANSWER

17. Identify all documents including, but not limited to, treatises, articles, publications

or journals containing the opinions or conclusions of any expert witness expected to be utilized by the Respondent at hearing, or otherwise disclosed, relative to the calculation of civil penalties, illegal profits, or economic benefit derived from non-compliance with federal or state laws and regulations.

ANSWER

18. Identify all documents utilized or relied upon in responding to Complainant's first set of interrogatories.

ANSWER

19. Please provide all information known to the Respondent and/or in its possession and control regarding applicable business/financial standards employed within your industry and utilized by the Respondent at the time of the selection of dryer systems 651 and 661 for installation at Midwest Grain in its evaluation and analysis of the reasonableness of the vendor selection and the reasonableness of and justification for the technology selection.

ANSWER

20. Please provide all information known to the Respondent and/or in its possession and control regarding any and all analyses or evaluations conducted by the Respondent at the time of the selection of dryer systems 651 and 661 for installation at Midwest Grain regarding the reasonableness of the selection of the vendor who supplied dryer systems 651 and 661 and the reasonableness of and justification for the selection of the technology represented by dryer systems 651 and 661.

ANSWER

21. Please identify all individuals either in the employ of Respondent Midwest Grain, or outside the employment of Midwest Grain who had or have knowledge of any and all analyses or evaluations conducted by the Respondent at the time of the selection of dryer systems 651 and 661 for installation at Midwest Grain regarding the reasonableness of the selection of the vendor who supplied dryer systems 651 and 661 and the reasonableness of and justification for the selection of the technology represented by dryer systems 651 and 661.

ANSWER

22. Please provide all information that served as the basis for Robert Fuhrman's statement: "MGP apparently engaged a reputable equipment manufacturer that guaranteed equipment performance within permit limits, MGP is entitled to receive credit for its good faith effort to comply."

ANSWER

23. Please provide all information pertinent to any and all analysis conducted by Midwest Grain or its surety company relative to the financial stability of the vendor(s) who supplied dryer systems 651 and 661, and in particular with regard to its/their ability to adequately support any guarantee or warranty of the systems.

ANSWER

24. Please indicate whether and what kind of offer security and performance security Respondent Midwest Grain required of the vendor(s) who supplied dryer systems 651 and 661, and all components of the systems and air pollution control technology applied in the systems i.e. surety, performance bonding, other bonding/insurance, performance/progress payments, or

retainage or other form of security.

ANSWER

25. Please provide all information pertinent to Respondent Midwest Grain's determination that the following payment schedule for the vendor who supplied dryer systems 651 and 661 was reasonable.

25 percent upon execution of Agreement

10 percent upon receipt of general equipment layout drawings for approval

60 percent upon delivery of partial and unit shipments

05 percent upon start-up, not to exceed 90 days after last delivery.

Please include the basis for establishing this schedule and information as to who proposed it, all discussions pertinent to this schedule, who reviewed it and approved it by Respondent Midwest Grain, and whether Midwest had utilized similar payment schedules under other contracts or agreements, and whether Respondent Midwest Grain believes it to be a reasonable schedule today.

ANSWER

26. Please provide all information pertinent to Respondent Midwest Grains decision not to modify its existing construction permit dated December 1995 for the feed dryer systems 651 and 661.

ANSWER

27. Please indicate the weighted average cost of capital ("WACC") Respondent believes is applicable to itself, and all other rates and factors that might be pertinent in an

economic benefit calculation prepared for litigation to be presented at hearing, the basis for selection of said rates and factors, and the actual amounts and numbers assigned in Respondent's calculation of economic benefit.

ANSWER

28. In the Stipulation and Proposal for Settlement, entered in the matter of *People v. Midwest Grain*, PCB 95-5, it is evident the 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 of a case wherein the State's contended that the fluidized bed combustion boiler could not meet percent reduction limits contained in the operating permit and thereby did not achieve BACT, and thus failed to meet Prevention of Significant Deterioration ("PSD") requirements. In the instant matter, it is the State's contention that Respondent Midwest Grain again installed equipment that failed to meet BACT, and thus violated PSD requirements. Please provide all information known to the Respondent and/or in its control and possession pertinent and relevant to the contention that the instant case represents a repeated violation of operating permit emission limits and PSD requirements.

ANSWER

29. Please identify all persons who assisted with the preparation of your responses to these Interrogatories, whom you or your attorney(s) or other agents consulted in the preparation of your responses to these interrogatories, and/or who otherwise provided any information used in the preparation of your responses to these Interrogatories, and indicate the Interrogatories with which each such person assisted or was consulted or provided information.

ANSWER

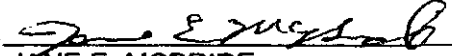
Respectfully Submitted,

PEOPLE OF THE STATE OF ILLINOIS,

ex. rel. LISA MADIGAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:



JANE E. MCBRIDE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 7/8/05

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.)	

**COMPLAINANT'S FIRST SET OF REQUESTS FOR PRODUCTION
TO RESPONDENT MIDWEST GRAIN PRODUCTS OF ILLINOIS, INC.**

NOW COMES Complainant, People of the State of Illinois, ex rel. Lisa Madigan, Attorney General of the State of Illinois, and propounds the following requests for production on Respondent, MIDWEST GRAIN PRODUCTS OF ILLINOIS, INC. ("Respondent"), to be answered in accordance with the Illinois Code of Civil Procedure, the Illinois Supreme Court Rules on Civil Proceedings in the Trial Court, and the following instructions and definitions, within 28 days of the date of service hereof.

INSTRUCTIONS

(a) Please produce all documents requested herein for copying at the offices of the Attorney General for the State of Illinois, 500 South Second Street, Springfield, Illinois, within 28 days of the date of service of these Requests for Production, or provide copies of the documents requested herein to counsel for the Complainant by that date.

(b) If any document was previously in your possession or subject to your custody or control that these Requests for Production would require you to produce, but is no longer in your possession or subject to your custody or control, or was known to you, but is no longer in existence, please state what disposition was made of it or what became of it.

(c) If any document is withheld from production hereunder on the basis of a claim of



privilege or otherwise, please identify each such document and the grounds upon which its production is being withheld.

(d) You are reminded of your duty under Illinois Supreme Court Rule 214 to seasonably supplement any responses to these Requests for Production to the extent that documents, objects or tangible things responsive to these Requests for Production come into your possession or control or become known to you subsequent to your response hereto.

(e) You are further reminded of your duty under Illinois Supreme Court Rule 214 to produce the requested documents as they are kept in the usual course of business or organized and labeled to correspond with the categories in the Request, and to produce all retrievable information in computer storage in printed form.

(f) If you are unable or refuse to answer any Request for Production completely for any reason, including, but not limited to, because of a claim of privilege, please so state, answer the Request for Production to the extent possible, stating whatever knowledge or information you have concerning the portion of the Request for Production which you do answer, and set forth the reason for your inability or refusal to answer more fully.

DEFINITIONS

As used in these Requests for Production, the terms listed below are defined as follows:

(a) "Document" or "documents" means any of the following of which you have knowledge or which are now or were formerly in your actual or constructive possession, custody or control: any writing of any kind, including originals and all nonidentical copies (whether different from the originals by reason of any notation made on such copies or otherwise), including without limitation maps, drawings, sketches, blueprints, aerial photographs, log books, lab reports, chain-of-custody forms, weather forecasts, correspondence, memoranda, notes, desk calendars, diaries, statistics, checks, invoices, statements, receipts, returns, warranties,

guarantees, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort of conversations, telephone calls, meetings or other communications, bulletins, magazines, publications, printed matter, photographs, computer printouts, teletypes, telefax, invoices, worksheets and all drafts, alterations, modifications, changes and amendments to any of the foregoing; any spreadsheets, database, correspondence, e-mail messages, or other information of any kind contained in any computer or other electronic information storage system; and any audiotapes, videotapes, tape recordings, transcripts, or graphic or oral records or representations of any kind.

(b) "Possession, custody or control" includes the joint or several possession, custody or control not only by the person to whom these Requests for Production are addressed, but also the joint or several possession, custody or control by each or any other person acting or purporting to act on behalf of the person, whether as employee, contractor, attorney, accountant, agent, sponsor, spokesman, or otherwise.

(c) "Relates to" means supports, evidences, describes, mentions, refers to, contradicts or comprises.

(d) "Person" means any natural person, firm, corporation, partnership, proprietorship, joint venture, organization, group of natural persons, or other association separately identifiable whether or not such association has a separate juristic existence in its own right.

(e) "You", "Respondent Midwest Grain", or "Midwest Grain", means Respondent Midwest Grain Products of Illinois, Inc., including, but not limited to, any employees, attorneys, independent contractors, or other agents of any kind of Respondent Midwest Grain or any agency, branch, division, or other department thereof.

(f) "Complaint" means Complainant's Complaint filed on April 7, 1997.

(g) "Swiss-Combi systems" refers to the Swiss-Combi currently in operation at the Midwest facility, and the new Swiss-Combi to be constructed.

(h) "Feed dryer systems 651 and 661" are the feed dryers installed at Respondent Midwest Grain's facility under Illinois EPA Construction Permits #93020061 and #93080045.

REQUESTS FOR PRODUCTION

1. Please produce any and all documents relating to financing, the source of capital utilized as well as the actual purchase, installation and modification of feed dryer systems 651 and 661, including cyclones and scrubbers utilized to control particulate matter ("PM"), and the Swiss-Combi systems. These documents may include, but not be limited to, communications and internal memoranda regarding the source of financing for and methods and procedures utilized to procure services and equipment relative to the purchase, installation or modification of each; loan documentation; loan applications; documentation concerning any internal or external transaction undertaken to facilitate financing dryers 651 and 661 and the Swiss-Combi systems; purchase agreements; documents concerning the order and requisition of each system and/or components; all orders and /or contracts; letter agreements; agreements of any nature; status reports; correspondence; invoices; bills of lading; delivery documentation; memoranda, and notes, and responsive documents concerning the source of funding may include, but not be limited to, documents concerning use of cash reserves, bonds issued or stock sold.

2. Please provide any and all documents relating to costs associated with the purchase, installation, modification, maintenance and operation of the feed dryer systems 651 and 661, and the Swiss Combi systems.

3. Please provide any and all documents relevant to all emissions generated during

the operation of feed dryers 651 and 661 and the Swiss-Combi system currently in operation at Midwest Grain.

4. Please produce all corporate financial records for Midwest Grain Products of Illinois, Inc. and MGP Ingredients of Illinois, Inc. for the years 1994 through the present, including but not limited to annual corporate financial reports; annual reports to stockholders; certified auditor statements; income statements; balance sheets; statements of cash flows; statements of stockholders' equity; memoranda generated by MGP or the Securities and Exchange Commission (10-K statements) regarding or relating to annual sales of alcohol, ethanol, distillers grain and distillers feed, annual profit resulting from alcohol, ethanol, distillers grain and distillers feed sales before taxes; gross profit, net profit, net after tax profit margin, and net profit resulting from alcohol, distillers grain and distillers feed sales after taxes.

5. Please produce all records and documents concerning or containing calculations, formulas and data regarding actual and estimated emissions resulting from fluidized bed boiler operations during the period 1992 through June 1994; and from operations of the three gas broilers and gluten dryer referenced in item 4 on the first page of a letter dated November 6, 1995 addressed to Richard Jennings of the Illinois EPA and authored by David Sanborn of Midwest Grain.

6. Please produce all documents, including any documents concerning or containing calculations, formulas, test data and notes, relevant to actual PM emissions generated during the operation of feed dryer systems 651 and 661 during the period 1994 through the present.

7. Please produce all records and documents concerning the date(s) of operation of the feed dryer systems 651 and 661 and the Swiss-Combi system already in operation at Midwest Grain, beginning 1994 through the present.

8. Please produce all communication, including but not limited to emails, written hard copy correspondence, facsimile transmittals and notes or logs of phone conversations, between representatives or employees of Midwest Grain and the Illinois Environmental Protection Agency relative to proposed construction and operation of wet electrostatic precipitator(s) or regenerative thermal oxidizer(s) to control PM emissions generated by feed dryer systems 651 and 661.

9. Please produce all communication, including but not limited to e-mails, written hard copy correspondence, facsimile transmittals, drafts, reports, analysis, documentation of any kind and notes or logs of phone conversations, between representatives or employees of Midwest Grain and the Illinois Environmental Protection Agency relative to the construction and operation of feed dryer systems 651 and 661 and the Swiss-Combi systems, including emissions testing of said equipment; the construction and operation of air pollution control equipment to control PM emissions generated during operation of feed dryer systems 651 and 661; and modeling prescribed by federal Prevention of Significant Deterioration ("PSD") requirements.

10. Please produce all documents and communications, including but not limited to e-mails, written hard copy correspondence, pre-construction reviews, post-construction reviews, emissions data and data analysis, facsimile transmittals and notes or logs of phone conversations, relevant to all factual issues pertinent to Complainant's allegation that Respondent constructed feed dryer systems 651 and 661 causing a significant net emission increase in PM in excess of 25 tons per year resulting in a major modification as defined by federal PSD requirements without first applying for and obtaining a construction permit granting PSD approval to construct feed dryer systems 651 and 661, conducting a pre-construction review, and implementing best available control technology ("BACT").

11. Please produce all documents and communications, including but not limited to e-mails, written hard copy correspondence, pre-construction reviews, post-construction reviews, emissions data and data analysis, facsimile transmittals and notes or logs of phone conversations, relevant to all factual issues pertinent to Complainant's allegation that Respondent caused or allowed the emission of PM generated during the operation of feed dryers 651 and 661 in excess of 1.1 pounds per hour and 3.2 pounds per hour set forth within construction permit numbers 93020061 and 93080045, respectively, beginning 1994 through the present.

12. Please produce all written materials known to the Respondent and/or in the possession and control of the Respondent, generated by or relied upon by fact witnesses identified in response to Complainant's interrogatory 14 and 15 submitted pursuant to Supreme Court Rule 213(f) pertinent to the subject matter of the witness' testimony.

13. Please produce all documentation identified in response to Complainant's interrogatory 16 submitted pursuant to Supreme Court Rule 213(f).

14. Produce all documents including, but not limited to, treatises, articles, publications or journals containing the opinions or conclusions of any expert witness expected to be utilized by the Respondent at hearing, or otherwise disclosed, relative to the calculation of civil penalties, illegal profits, or economic benefit derived from non-compliance with federal or state laws and regulations.

15. Produce all documents identified by Respondent in any response to any of Complainant's first set of interrogatories.

16. Please produce all documents utilized or relied upon in responding to Complainant's first set of interrogatories.

17. Please produce all calculations and documents containing and pertinent to any

and all analyses or evaluations conducted by the Respondent at the time of the selection of dryer systems 651 and 661 for installation at Midwest Grain regarding the reasonableness of the selection of the vendor who supplied dryer systems 651 and 661, including the cyclones and scrubbers, and the reasonableness of and justification for the selection of the technology represented by dryer systems 651 and 661, including the cyclones and scrubbers.

18. Please produce all calculations and documents containing any pertinent applicable business/financial standards employed within your industry and utilized by the Respondent at the time of the selection of dryer systems 651 and 661 for installation at Midwest Grain in its evaluation and analysis of the reasonableness of the vendor selection and the reasonableness of and justification for the technology selection.

19. Please produce all documentation and correspondence pertinent to or exchanged between Respondent Midwest Grain and the vendor(s) (including but not limited to Productization, Inc. and CMI Corp) for the feed dryer systems 661 and 651 and all components of that system, including the cyclones and primary and secondary scrubbers, including all documents regarding the offer and purchase of the equipment, including any warranty involved in the transaction, the design, construction and installation of the equipment, all documentation concerning the testing of and performance of the equipment, all documentation regarding modification of the equipment, all documentation regarding the failure of the equipment to perform and all documentation generated regarding any litigation or threat of litigation, or response to threat of litigation between Midwest Grain and the vendor(s).

20. Please produce all documentation and correspondence regarding all modeling contemplated, initiated and/or performed with regard to issues pertinent to this lawsuit, including all inputs to the modeling.

21. Please provide documentation regarding all alternative air pollution control

equipment considered relative to the performance and function of the feed dryer systems 651 and 661, all evaluation and analysis conducted regarding said alternative pollution control equipment, and the cost of all evaluation, analysis and permit applications for any alternative pollution control equipment.

22. Please provide all documentation regarding any and all repairs and modifications made to feed dryer systems 651 and 661.

23. Please provide all documentation regarding any and all emissions testing and sampling conducted regarding feed dryer systems 651 and 661.

24. Please provide all documentation pertinent to the analysis and evaluation of feed dryer systems 651 and 661 pertinent to air pollution control.

25. Please provide all documentation pertinent to Respondent Midwest Grain's evaluation and analysis conducted in response to alleged violations of air pollution, state permit requirements, and federal PSD program requirements relevant to feed dryer systems 651 and 661.

26. Please provide all documentation relevant to the evaluation of alternative technologies that resulted in the selection of all equipment and components utilized in feed dryer systems 651 and 661.

27. Please provide all documentation, including all correspondence and e-mails, pertinent to all communications with the Illinois EPA regarding the alleged violations or air pollution, state permit requirements, federal PSD program requirements, and all work conducted pertinent to those allegations, including equipment analysis, testing, modification, evaluation of alternative technologies, modeling, permit applications and any and all other compliance actions.

28. Please provide any and all documentation relevant to, regarding or pertinent to

all draft permit applications and permit applications, and responses to permit applications, for the construction and/or operation of air pollution control technology for feed dryer systems 651 and 661, alternative technology to feed dryer systems 651 and 661, and the modification of feed dryer systems 651 and 661.

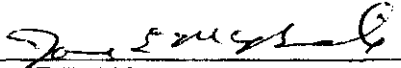
Respectfully Submitted,

PEOPLE OF THE STATE OF ILLINOIS,

ex. rel. LISA MADIGAN, Attorney General
of the State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY:


JANE E. MCBRIDE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: 2/8/05

**Husch &
Eppenger, LLC**
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Patrick.Flachs@husch.com

September 20, 2005

Jane McBride
Assistant Attorney General
Office of the Attorney General
500 South Second St.
Springfield, IL 62706

Re: *People v. MGP Ingredients of Illinois, Inc.* PCB No. 97-179

Dear Ms. McBride:

Pursuant to our clients' efforts to comply with the Discovery process so this matter may be brought to a conclusion and Rule 201(k) of the Illinois Supreme Court Rules, we have reviewed your various Interrogatories and Request for Document Production with the appropriate MGP representatives. During that review, we have identified issues with Interrogatories 4, 9, 11, 26, and 28. In an effort to attempt to informally resolve those issues we see with the Interrogatory (and in any concomitant or related Request for Documents), I will outline our concerns in an effort to informally resolve these Discovery issues.

Interrogatory No. 4 (Document Request No. 2)

It is virtually impossible for us to "... provide all costs entailed in the purchase, installation, modification, maintenance and operation of the feed dryer systems 651 and 661, and the Swiss Combi system, as well as the dates upon which each such cost was incurred and the date upon which it was paid, or installment schedule upon which it was paid."

This request encompasses virtually every document generated by operational activities at MGP and the preponderance of our financial documentation. In addition, there are several practical issues related to this request. First, MGP does not have maintenance documentation for hours worked prior to 1999. After 1999, we estimate the mechanic work orders by themselves encompass of several hundred instances per year. In order to find these documents, and to satisfy your Interrogatory and Document Request we would have to first find the files related to the dryers, then review the maintenance

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Husch & Eppenberger, LLC

Jane McBride
Assistant Attorney General
September 20, 2005
Page: 2

files; find those files related to the dryers; and, pull the materials used in each work order (if they are apparent) and determine the associated costs from financial data and information. Moreover, we cannot assure the accuracy of this information, so the documentation you would receive would, at best, be an estimate. This effort in our estimation would require one person, working full-time at least one month to find, collect and produce.

In addition, all the documentation relating to the operational costs of the dryers, including all operator time sheets, gas readings and expense documents; along with management notes including internal MGP meetings and those with the IEPA would have to be found and collected. We estimate this would take an additional person, working full-time at least 3 ½ weeks to assemble this information. We would like to discuss how we might narrow or focus this request to obtain the documents or information necessary for your purpose.

Our client has committed to obtaining, collecting and providing all the costs entailed in the purchase, installation and modification of feed dryer system 651 and 661. We might, however, require an additional week or two from the current production date to accomplish this task.

None of these estimates include the identification, collection and production of information and documents related to the Swiss Combi dryer. 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.

Interrogatory No. 9 (Document Request No. 7)

To comply with your request that we “. . . provide all information known to the Respondent and/or in its possession and control regarding the dates of operation of feed dryer system 651 and 661 . . . beginning in 1994 through the present”, would require that we find and copy information from three shifts per day, 365 days per year, for 11 years. This amounts to over 12,000 discreet events and an unknown (at this point) number of pages. In addition, we currently possess only related documents from 1999 to the present and have not yet located any logs prior to that date.

We have two suggestions how to handle/narrow/meet your requests. First, is for you or your representatives to come to the MGP facility in Pekin whereupon we will provide you or your representative access to those logs we currently possess and those we are

Husch & Eppenberger, LLC

Jane McBride
Assistant Attorney General
September 20, 2005
Page: 3

able to locate. Subject to reasonable restrictions (e.g., business hours and space), we could arrange for this review at your earliest convenience. The second suggestion is that you narrow this Interrogatory and Document Request to information related to the hours of operation of dryer 651 and/or 661 on a yearly basis. We can readily provide this information to you and represent that it accurately depicts the dryers' operations.

Again, the Swiss Combi system was not involved in this analysis.

Interrogatory No. 11 (Document Request No. 7)

This Interrogatory, like Interrogatory No. 9, is quite broad; “. . . provide all information known . . . or in its possession and control regarding the construction and operation of feed dryer systems . . .”. It also appears to actually subsume the request of Interrogatory No. 9: operation viz. construction and operation; and then adds specific additional requests for emissions testing; construction and operation of air pollution control equipment to control PM emissions (we are not sure what this means); and “modeling” (which appear to be discreet requests in and of themselves).

This request, like No. 9 would require nearly two months for document collection and production by itself. We would like to discuss how we might restructure this request and coordinate production with Interrogatory No. 9.

Again, the Swiss Combi system was not involved in this analysis.

Interrogatory No. 26

We find this request that we “prove a negative” confusing. It does, however, appear to ask for the inverse of what MGP seeks in our Interrogatories 10, 21, 26, and 27 and our Request for Admissions 1 thru 4. Accordingly, I think we should be able, through meaningful discussions, be able to resolve this request.

Interrogatory No. 28

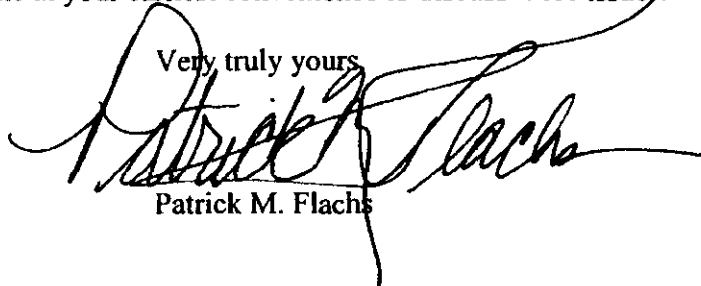
Setting aside the conclusory statements contained in the first portion of the Interrogatory, and the improper use of the Stipulation and Proposal for Settlement, the fact is that this request is extraordinarily broad; how does one show that a repeated violation is caused by the installation of equipment that would only fail? In short, we need to discuss either a narrowing or clarification of this Interrogatory.

Husch &
Eppenberger, LLC

Jane McBride
Assistant Attorney General
September 20, 2005
Page: 4

I think we can come relatively close to the current production/Discovery schedule, if we can resolve the issues I have outlined for you with regard to these five Interrogatories. Please contact me at your earliest convenience to discuss these issues.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick M. Flachs", with a long horizontal flourish extending to the right.

Patrick M. Flachs

**Husch &
Eppenger, LLC**
Attorneys and Counselors at Law

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www.husch.com

DIRECT DIAL: (314) 480-1524
Patrick.Flachs@husch.com

September 26, 2005

VIA FACSIMILE AND REGULAR MAIL

Jane McBride, Esq.
Assistant Attorney General
Office of the Attorney General
500 South Second St.
Springfield, IL 62706

Re: *People v. MGP Ingredients of Illinois, Inc.* PCB No. 97-179

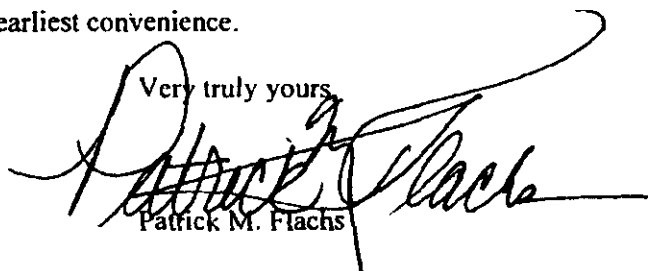
Dear Ms. McBride:

Other discovery issues notwithstanding, we have not received either your response or any contact from you about the discovery issues, and requests for coordination we raised concerning the Complainant's Interrogatories and Request for Production.

It would be most helpful to us if we received a response so we might continue our production efforts.

Please contact us at your earliest convenience.

Very truly yours,


Patrick M. Flachs

PMF:cil

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October 5, 2005

VIA FACSIMILE AND REGULAR MAIL

Jane McBride, Esq.
Assistant Attorney General
Office of the Attorney General
500 South Second St.
Springfield, IL 62706

Re: *People v. MGP Ingredients of Illinois, Inc.* PCB No. 97-179

Dear Ms. McBride:

I write again to ask you coordinate with us about Discovery issues in this case. Attached is a photocopy of my September 20, 2005 letter, which outlined those Discovery issues related to your Interrogatories and Request for Documents.

Our client continues to meet its Discovery obligations and your response would greatly facilitate those efforts.

Please contact us at your earliest convenience.

Very truly yours,


Patrick M. Flachs

PMF:cll

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October 12, 2005

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STATE OF ILLINOIS
Pollution Control Board

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

HEARING OFFICER ORDER

This order addresses issues arising from the amended first set of interrogatories to the People of the State of Illinois (People) filed on July 21, 2005 by MGP Ingredients of Illinois, Inc. (MGP). On September 9, 2005, the People filed a motion to strike MGP's amended first set of interrogatories, or, in the alternative, for protective order limiting the number of interrogatories to prevent undue expense and harassment. MGP filed its response in opposition on September 21, 2005. On October 11, 2005, the People filed a reply to MGP's response.

For the reasons set forth below, the hearing officer finds that MGP has exceeded the maximum allowable interrogatories because several questions seek too much information to be deemed a single interrogatory. Additionally, this order finds that other interrogatories are overly broad, duplicative, or unclear as alleged by the People. Rather than striking individual interrogatories, the hearing officer strikes MGP's amended first set of interrogatories in its entirety. This leaves to MGP the discretion to hone its interrogatories and determine which to forego asking. The hearing officer grants MGP 30 days from the date of this order to serve a second amended set of interrogatories, and the People shall have 30 days to respond.

BACKGROUND

Respondent MGP operates a facility in Pekin, Tazewell County, that produces ethyl alcohol, anhydrous fuel alcohol, wheat gluten and distiller's feed. In 1993, MGP obtained a construction permit to replace two existing feed dryers. The permit limited particulate matter (PM) emissions to 3.2 pounds per hour. Emissions within these limits do not trigger the requirements for a Prevention of Significant Deterioration (PSD) permit.

The People's four-count April 7, 1997 complaint charges MGP with

1. violations of PSD requirements in failing to complete a Best Available Control Technology (BACT) analysis, obtain a PSD construction permit, and install a BACT system;
2. air pollution by discharge of PM in excess of permit limitations;



3. various permit violations including excess particulate emissions, failure to operate secondary scrubbers, deviation from approved plans without supplemental permit, and failure to modify construction permit;
4. operation of dryers #651 and #661 without permit.

More specifically, the complaint alleges that stack testing on one of the dryers in 1995 indicated actual emissions of 17.1 pounds per hour. The inspector from the Illinois Environmental Protection Agency (Agency) determined that MGP had constructed a major modification without a PSD permit and BACT system. The complaint further alleges that, because MGP has the potential to release PM emissions that exceed 25 tons per year, MGP is a "major stationary source" subject to PSD regulations.

In its answer filed on May 7, 1997, MGP denied committing the alleged violations, and asserted four affirmative defenses. On August 21, 1997, the Board found that only two of these were valid defenses: 1) that due to the discontinuance of its fluidized bed coal boiler in 1994, MGP was no longer a "major stationary source" subject to PSD regulations; and 2) that MGP was in compliance with a compliance commitment agreement, so that the complaint was improper under Section 31(a) of the Environmental Protection Act (Act), as amended and effective August 1, 1996. 415 ILCS 5/31(a).

On March 17, 2005, the parties reported to the hearing officer that settlement negotiations had reached an impasse, and a discovery schedule was established.

RELEVANT PROCEDURAL RULES

Section 101.616 of the Board's procedural rules entitled "Discovery" provides in pertinent part

For purposes of discovery, the Board may look to the Code of Civil Procedure and the Supreme Court Rules for guidance where the Board's procedural rules are silent. . .

- a) All relevant information and information calculated to lead to relevant information is discoverable. . . 35 Ill. Adm. Code 101.616(a).

Section 101.620(a) of the Board's procedural rules entitled "Interrogatories" provides in pertinent part that "unless ordered otherwise by the hearing officer, a party may serve a maximum of 30 written interrogatories, including subparts, on any other party." 35 Ill. Adm. Code 101.616(a).

RESPONDENT'S AMENDED FIRST SET OF INTERROGATORIES

For administrative economy, this order will not repeat or discuss each of the parties' arguments in detail. Moreover, as they are irrelevant to this enforcement action, the parties' arguments regarding MGP's request for information from the Agency under the Freedom of Information Act are not considered here.

In general, the People object to MGP's amended first set of interrogatories on the grounds that the interrogatories, including subparts, "are too numerous [i.e. exceed the allowable limit of 30 by at least 23]...duplicitous. . . request information that is not relevant and beyond the time period alleged within the complaint, or are so ambiguous as to prevent the People from responding. . .[are] a form of harassment. . . and a broad fishing expedition" that will require the People to review a very large amount of information, causing undue expense in time and effort. (Motion at 4, para. 11). Additionally, the People assert that interrogatory numbers 7, 8, 11, and 19 request information that does not relate to one primary question.

In response, MGP argues that its interrogatories are properly formatted and are within the scope of discovery. As to the "subpart as separate interrogatory" issue, MGP states that the committee comments concerning Supreme Court rule 213 are silent. Looking to the Federal Rules of Civil Procedure, MGP cites consensus in federal case law that interrogatory subparts are counted as part of one interrogatory if the subparts elicit details that are common to the theme of the primary question. (Kendall v. GES Exposition Serv., Inc., 1997 U.S. Dist. Lexis 15827; Swackhammer v. Sprint Corp. PCS, 225 F.R.D. 658, 664-65 (D. Kan. 2004); Banks v. Office of the Senate Sergeant-at-Arms, 222 F.R.D. 7, 10-11 (D. D.C. 2004)). Response at 4-6.

Interrogatories 1-6

The first six interrogatories request information about the individuals who are assisting the People with this case, and witnesses who will testify at hearing. The hearing officer finds that these requests are not unduly burdensome. Each of these interrogatories, including subparts, counts as one request.

Interrogatory 7

The primary question in interrogatory 7 is whether the facility is a "major stationary source." MGP has asserted as an affirmative defense that the shutdown of the fluidized bed coal boiler in 1994 meant that the facility was no longer a major stationary source, thus PSD program requirements were no longer applicable.

Interrogatory 7 asks the People to identify all equipment, processes, operations and fugitive emissions which had the potential to emit more than 25 tons of PM per year from 1989 to present. Each subsection further requests a significant amount of information.

The People assert that the complaint pertains only to the major modification of the two feed dryers constructed in 1993, and argue that information on other equipment and information regarding emissions before the dryers were built is not relevant.

The hearing officer agrees that this interrogatory is overly broad and unduly burdensome as to time period and scope. As the People argue, the subparts of the interrogatory go beyond the subject matter of the initial interrogatory. Moreover, MGP has failed to demonstrate the relevance of the information requested.

Interrogatory 8

Since interrogatory 8 asks no initial question, the hearing officer considers subsection (a) to be the primary question. Subsection (a) requests all information used in the major modification determination, and subsection (c) asks who was involved in the determination. While (a) and (c) are reasonably related, subsections (b) and (d) request information not related to how the determination was made, such as what BACT system would have been applicable to such major modification, and what were the limitations on the maximum capacity to emit PM from such major modification.

The People argue that this interrogatory asks more than a single question. MGP argues that the entire question relates to major modifications. The hearing officer finds that this interrogatory is overly broad because subsections (b) and (d) are not directly related to how the major modification was determined.

Interrogatories 9 and 10

The People requested clarification as to the difference between interrogatories 9 and 10. Despite MGP's explanation that one relates to permit modifications, and the other to permit application modifications, the hearing officer finds that the difference between these questions is unclear.

Interrogatory 11

Interrogatory 11 asks the People to itemize the penalties it seeks, and to state how it arrived at those amounts. MGP further asks about methods for attributing economic benefit accruing to MGP. The hearing officer finds that this interrogatory is not overly broad or unduly burdensome, and qualifies as a single interrogatory. The subparts all sufficiently relate to a single subject matter: penalty calculation.

Interrogatory 14

The People argue that interrogatory 14 counts as two requests: 1) identification of all communications regarding economic and technological feasibility; and 2) a description of the technical feasibility and economically reasonable technology available to control the PM emissions at the facility. The hearing officer finds that these requests are not reasonably related, and must count as two interrogatories. The request for communication about feasibility seeks information quite different than the request for the control data available.

Interrogatory 16

The People argue that interrogatory 16 asks for information about communications concerning BACT analysis which is duplicative of information requested in numbers 8 and 12. The hearing officer finds this interrogatory to be duplicative.

Interrogatory 18

Interrogatory 18 seeks all communications relating to the permitting, operation and shutdown of the fluidized bed combustion boiler or any dryers at the facility from 1987 to present.

The People argue that this request is overly broad because it involves two types of equipment—the boilers (also subject of interrogatory 7) and the dryers. Also, the People argue that the request is overly broad because there are other dryers at the facility that are not the subject of this complaint, and the request specifies a time period that is outside and not relevant to the complaint. The hearing officer agrees that this request seeks too much information to be deemed a single interrogatory.

Interrogatory 19

Interrogatory 19 asks the People to: 1) describe any and all communications regarding particulate air emission modeling related to the facility; 2) identify all data relating to air emission tests conducted at the facility; 3) identify emission data associated with the facility; and/or 4) identify air particulate modeling related to the facility.

The People argue that the requests for data relating to air emission tests and emission data associated with the facility are not relevant to other parts of the question regarding modeling data. MGP's response clarifies that the interrogatory intended to ask only for the air emission data used in modeling. Accordingly, this request is acceptable as a single interrogatory.

Interrogatory 20

Interrogatory 20 requests the time period used for calculation of emission limits “for the project which is the subject of the complaint”, including information about the “look back” period. The People requested further definition of “look back”, and points out that interrogatories 7, 8, and 17 appear to seek information on this issue. MGP did not respond. The hearing officer agrees that this interrogatory is not specific enough to allow the People to answer.

Interrogatory 21

Interrogatory 21 asks the People to identify exemptions that were considered by the Agency regarding PM emissions at the facility, and the bases for denial of such exemptions. The People read this to ask for all possible exemptions under the Act. MGP explains that this question only seeks information regarding any exemptions actually considered. With this clarification, the hearing officer agrees with MGP that the interrogatory is not overly broad or unduly burdensome.

Interrogatory 22

The People argue that interrogatory 22 is overly broad in its request for all information relating to any PSD permitting for the facility, including air emission evaluations, and effects on

attainment and/or nonattainment classification of the surrounding vicinity. The People suggest that this subject is covered in interrogatories 9, 10, and 17. As MGP did not address this objection, the hearing officer finds this request duplicative.

Interrogatory 24

The primary question in interrogatory 24 is the Agency's analysis of the facility's "monetary losses." The subparts request a breakdown by the penalty amount requested in settlement negotiations, BACT determination, and the determination of economically reasonable technology. The People requested clarification of the undefined term "monetary losses." As MGP did not address this objection, the hearing officer finds that the People cannot reasonably be expected to answer the interrogatory as posed.

Interrogatory 26

Interrogatory 26 asks for information regarding the Agency's analysis of MGP's good faith efforts to control PM emissions, including an analysis of MGP's attempts to hold the dryer manufacturer's supplier accountable. Although the People's motion does not state whether such analysis was conducted, the People argue that this question is ambiguous, especially as to what constitutes "good faith efforts". MGP's response did not address this interrogatory.

The hearing officer finds that the People cannot reasonably be expected to answer the interrogatory as posed. Additionally, the hearing officer finds that interrogatory 26 involves two separate subject matters.

Interrogatory 28

Interrogatory 28 asks for the Agency's analysis of the severity of the PM emissions, economic loss due to unemployment, and economic impact of a shut down of the facility. The hearing officer agrees with the People that these requests are insufficiently related to be considered a single interrogatory.

CONCLUSION

For the reasons enumerated above, the hearing officer strikes MGP's amended first set of interrogatories in its entirety. This leaves to MGP the discretion to hone its interrogatories and to determine which to forego asking. The hearing officer grants MGP 30 days from the date of this order to serve a second amended set of interrogatories, and the People shall have 30 days to respond.

IT IS SO ORDERED.

Carol Webb

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on October 12, 2005, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on October 12, 2005:

Dorothy M. Gunn
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph St., Ste. 11-500
Chicago, Illinois 60601



Carol Webb
Hearing Officer
Illinois Pollution Control Board
600 S. Second Street, Suite 402
Springfield, Illinois 62704
217/524-8509
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PCB 1997-179
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Environmental Bureau
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October 14, 2005

Via Facsimile 217-524-7740

Jane McBride
Office of the Attorney General
500 South Second St.
Springfield, IL 62706

Re: ***People v. MGP Ingredients of Illinois, Inc. PCB No. 97-179***

Dear Ms. McBride:

MGP continues to work diligently to complete responses to the State's discovery requests. Over three weeks ago, we informed you that MGP was having difficulty preparing responses to some of your requests. Specifically, we had identified issues with Interrogatories 4, 9, 11, 26 and 28. We have repeatedly tried to informally resolve these issues with you. (Please see the attached letters from Pat Flachs, dated September 20, September 26 and October 5, 2005.) We have yet to receive any response whatsoever from you concerning these requests.

If we do not receive a written response to the above discovery issues by the close of business, Monday October 17, 2005, you leave us no alternative other than filing a motion with the Hearing Officer to strike such interrogatories.

Please contact me if you have any questions.

Sincerely,
HUSCH & EPPENBERGER, LLC

By: 
John E. Collins

cc: Pat Flachs
Enclosures

2171830.01

ST. LOUIS • DOWNTOWN ST. LOUIS • KANSAS CITY • JEFFERSON CITY • SPRINGFIELD • PEORIA
CHATANOOGA • DOWNTOWN MEMPHIS • EAST MEMPHIS • NASHVILLE





OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

FAX TRANSMITTAL SHEET

ENVIRONMENTAL BUREAU - SPRINGFIELD
FAX NO. (217) 524-7740

DATE: 10/25/05
TO: Pat Flacks, Intake Callers
FAX NO.: (314) 480-1505
FROM: J. McEnroe
PHONE: (217) 782-8033
NUMBER OF PAGES: 2 (INCLUDING THIS PAGE)

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1001 East Main, Carbondale, Illinois 62901 • (618) 529-6400 • TTY: (618) 529-6403 • Fax: (618) 529-6416

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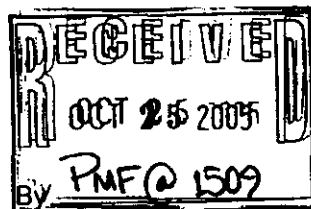
OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

October 25, 2005

Mr. Patrick Flachs
Mr. John Collins
Husch & Eppenger, LLC
190 Carondelet Plaza
Suite 600
St. Louis, Missouri 63105-3441

Via facsimile: (314) 480-1505



Re: *People v. Midwest Grain Products*
PCB No. 97-179

Dear Mr. Flachs and Mr. Collins:

I am writing to correct an error in a letter I just sent, dated today.

I was out of the office and out of town on October 14, 2005, and October 17 through October 21, 2005. I am sorry for the original error.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jane E. McBride".

Jane E. McBride
Assistant Attorney General
(217) 782-9033

cc: Dennis Brown, Esq., IEPA

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOISLisa Madigan
ATTORNEY GENERALFAX TRANSMITTAL SHEETENVIRONMENTAL BUREAU - SPRINGFIELD
FAX NO. (217) 524-7740

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OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan

ATTORNEY GENERAL

October 25, 2005

Mr. Patrick Flachs
Mr. John Collins
Husch & Eppenger, LLC
190 Carondelet Plaza
Suite 600
St. Louis, Missouri 63105-3441

Via facsimile: (314) 480-1505

Re: *People v. Midwest Grain Products*
PCB No. 97-179

Dear Mr. Flachs and Mr. Collins:

I am in receipt of Mr. Collins letter of October 14, 2005.

As you are well aware, there was a stay of discovery in effect in this matter during the time Plaintiff's motion to strike was pending. The Hearing Officer's order regarding that motion was received by this office on Thursday, October 15, 2005. I was out of the office and out of town on October 16, 2005, and October 19 through October 21, 2005.

We will respond to your letter of September 20, 2005 as soon as possible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jane E. McBride", is written over a horizontal line.

Jane E. McBride
Assistant Attorney General
(217) 782-9033

cc: Dennis Brown, Esq., IEPA

ILLINOIS POLLUTION CONTROL BOARD

September 7, 2005

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

HEARING OFFICER ORDER

On September 7, 2005, the parties participated in a telephone status conference with the hearing officer. Complainant has just filed a motion to strike respondent's amended interrogatories, and respondent will file a response within 14 days. The discovery deadlines are stayed pending a ruling on this motion.

The parties are directed to participate in a telephone status conference with the hearing officer at 2:00 p.m. on October 25, 2005. The status conference shall be initiated by the complainant.

IT IS SO ORDERED.

Carol Webb

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274
217/524-8509
webbc@ipcb.state.il.us



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 95-
)	(Enforcement)
MIDWEST GRAIN PRODUCTS OF ILLINOIS,)	
INC., an Illinois corporation,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by ROLAND W. BURRIS, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency ("Agency"), and Respondent, MIDWEST GRAIN PRODUCTS OF ILLINOIS, ("Midwest Grain"), by its attorneys, Husch & Eppenberger, do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein is agreed to only for the purposes of settlement. 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. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement and any Pollution Control Board ("Board") Order accepting same may be used as a factor to be considered under Section 42(h) of the Act, 415 ILCS 5/42(h), in determining appropriate civil penalties for any future violations of the Act.



This Stipulation and Proposal for Settlement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 et seq.

II.

AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for Settlement and to legally bind them to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondent, as well as the Respondent's successors and assigns. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this settlement the failure of its officers, directors, agents, servants or employees to take such action as shall be required to comply with the provisions of this settlement.

IV.

STATEMENT OF FACTS

1. The Agency is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4, and charged, inter alia, with the duty of enforcing the Act.

2. At all times relevant to the Complaint, Midwest Grain is an Illinois corporation with its manufacturing facility located at South Front Street, Box 1069, Pekin, Tazewell County, Illinois ("Facility").

3. At its Facility, Midwest Grain produces ethyl alcohol for beverages and industrial purposes, anhydrous fuel alcohol, wheat gluten, and distiller's feed.

4. During its production process, Midwest Grain employs three natural gas-fired boilers and previously operated a fluidized bed combustion boiler using high sulfur coal for steam and electricity generation.

5. The fluidized bed combustion boiler previously emitted, or was capable of emitting sulfur dioxide into the atmosphere.

6. Midwest Grain timely submitted to the Agency its quarterly excess emission reports for sulfur dioxide for calendar year 1991.

7. Midwest Grain's quarterly emission reports showed that it had exceeded the 1.2 lb/mm BTU 30-day rolling average for 116 days in 1991.

8. On March 24, 1993, the Agency inspected Midwest Grain and found that Respondent was not meeting the 85% reduction in sulfur

dioxide emissions as required by permit No. 82100034.

9. The Agency also obtained Respondent's continuous emission monitor records and found that these records did not contain the percent reduction information needed to verify compliance with the 85% reduction requirement of permit No. 82100034.

10. On April 6, 1993, the Agency sent a compliance inquiry letter to Respondent for alleged violations of permit No. 82100034 and Prevention of Significant Deterioration of Air Quality ("PSD"). Midwest Grain responded to the compliance inquiry letter on April 21, 1993.

11. Section 9(a) and (b) of the Act, 415 ILCS 5/9(a) and (b), provides:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;
- b. Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

12. Section 201.141 of the Illinois Pollution Control Board's ("Board") Air Pollution Regulations, 35 Ill. Adm. Code 201.141, titled, Prohibition of Air Pollution, provides:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

13. Special condition No. 2(a)(ii) of Midwest Grain's permit No. 82100034, provides:

- 2a. The emissions from the boiler shall not exceed the following emission limits:
- ii. SO₂ - 1.2 lbs/10⁶ btu and 15 percent of the potential combustion concentration (85 percent reduction) on a 30-day rolling average basis.

14. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1), provides:

d. No person shall:

- 1. Violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto.

15. Section 165 of the Clean Air Act, 42 U.S.C. §7475 provides, in pertinent part:

- a) No major emitting facility of which construction is commenced after the date of the enactment of this part may be constructed in any area to which this part applies unless--

* * *

- 4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility;

16. Pursuant to Section 165 of the Clean Air Act, as amended, the United States Environmental Protection Agency has adopted an air program for the approval and promulgation of implementation plans, 40 CFR Part 52.

17. 40 CFR 52.21(b)(1)(i)(b), as made enforceable by Section 9.1(d)(1) of the Act, titled, Prevention of Significant Deterioration of Air Quality, provides the following definition.

- (1) (i) Major stationary source means:
- (b) Notwithstanding the stationary source size specified in paragraph (b)(1)(i) of this section, any stationary source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant subject to regulation under the Act; or . . .

18. 40 CFR 52.21(j)(2), (r)(1), as made enforceable by Section 9.1(d)(1) of the Act, titled, Prevention of Significant Deterioration of Air Quality, provides in pertinent part:

40 C.F.R. 52.21

(j) * * *

- (2) A new major stationary source shall apply best available control technology for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts.

* * *

- (r)(1) Any owner or operator who constructs or operates a source or modification not in accordance with the application submitted pursuant to this section or with the terms of any approval to construct, or any owner or operator of a source or modification subject to this section who commences construction after the effective date of these regulations without applying for and receiving approval hereunder, shall be subject to appropriate

enforcement action.

v.

ALLEGED VIOLATIONS

1. Complainant alleges that Respondent caused or allowed excess sulfur dioxide emissions from its fluidized bed combustion boiler between January 3-13 and 22-27, 1991; April 9-11, and 13-17, 1991; June 7-30, 1991; July 1-17, 1991; and October 30-December 31, 1991, for a total of 116 days in 1991.

2. Complainant alleges that Midwest Grain failed to reduce sulfur dioxide emissions from the fluidized bed boiler by 85% during calendar year 1992, and March 25-April 15, 1993 and nine days in 1993.

3. Complainant alleges that Midwest Grain violated special condition 2(a)(ii) of its fluidized bed combustion boiler operating permit No. 82100034 by not achieving the 85% reduction from March 25-April 15, 1993 and June 3, 8, 12, 14-19, 1993.

4. Complainant alleges that Midwest Grain is a major emitting facility subject to Section 165 of the Clean Air Act. The percent reduction limitations contained in Midwest Grain's operating permit No. 82100034 for the fluidized bed combustion boiler were assumed to be best available control technology ("BACT"). Complainant alleges that Midwest Grain has failed to meet the 85% reduction limitation, thereby not achieving BACT.

5. Complainant alleges that Midwest Grain's acts and omissions constitute the following violations: Sections 9(a) and (b) of the Act, 415 ILCS 5/9(a) and (b), Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141 and Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) and 40 CFR 52.21(j)(2), (r)(1).

VI.

NATURE OF RESPONDENT'S OPERATIONS

Midwest Grain produces ethyl alcohol for beverages and industrial purposes, anhydrous fuel alcohol, wheat gluten, and distiller's feed. Its facility consists of grain receiving by truck and rail; grain cleaning and storage; alcohol fermenting, distilling, storage, and truck, barge and rail load-out; a process line and storage tanks for fuel alcohol; and a process line including a barrel filling and dump line for beverage alcohol. The facility has three natural gas-fired boilers and formerly utilized one fluidized bed combustion boiler which used high sulfur coal for steam and electricity generation.

VII.

EXPLANATION OF ALLEGED FAILURES TO COMPLY WITH THE ACT

Midwest Grain has no explanation acceptable to the Agency for its alleged failure to comply with the Act and Board regulations. Midwest Grain contends that special condition No. 4 of its operating permit No. 82100034 provides for excess emissions during "startup, malfunction and breakdown." Midwest Grain believes that if the excess emissions during startup, malfunction and breakdown were eliminated from the rolling average tests and other emission tests, the Company would be in compliance with all conditions of its operating permit. Midwest Grain also believes that unless emissions during startup, malfunction or breakdown are exempted, the boiler and auxiliary systems were not capable of achieving an 85% removal rate even utilizing best available control technology ("BACT").

VIII.

FUTURE PLANS OF COMPLIANCE

Midwest Grain shall conform with all permit operating conditions, all requirements of the Act and the Board's Air Pollution Regulations and 40 CFR Part 52.21.

IX.

IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c), provides:

- (c) In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:
- (1) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
 - (2) the social and economic value of the pollution source;
 - (3) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
 - (4) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
 - (5) any subsequent compliance.

In response to these factors the Complainant states as follows:

1. Midwest Grain's alleged emissions of excess sulfur dioxide for 116 days in 1991, Midwest Grain's alleged failure to reduce sulfur dioxide emissions from the fluidized bed combustion boiler by 85% during calendar year 1992 and 31 days in 1993 and its alleged failure to achieve BACT, allegedly posed a health threat to

the citizens of Illinois.

2. The Facility has social and economic value.

3. The production of alcohol at the facility in compliance with the Act and Board regulations would have been suitable to the area.

4. It was technically practicable and economically reasonable to reduce sulfur dioxide emissions, resulting from the production process at Midwest Grain's facility.

5. Complainant has no knowledge of any claimed or actual violations of the Act by Midwest Grain subsequent to the dates alleged herein.

X.

CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h), provides:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2) or (b)(3) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

- (1) the duration and gravity of the violation;
- (2) the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this act by the violator and other persons similarly subject to the Act; and

- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors the Complainant states as follows:

1. Midwest Grain's alleged wrongful conduct, as set forth in Section V herein, occurred during 116 days in 1991, during calendar year 1992 and 31 days in 1993. Complainant alleges that the violations posed a potential health threat to the citizens of Illinois.

2. According to Agency records, Midwest Grain exhibited due diligence in attempting to correct the violations and comply with the requirements of the Act and Board regulations as soon as the violations were made known to Midwest Grain by the Agency.

3. It is presently unknown whether Midwest Grain accrued an economic benefit from the alleged non-compliance with the Act.

4. A civil penalty of Fifteen Thousand Dollars (\$15,000.00) will serve to deter any future violations of the Act and regulations adopted thereunder and will enhance voluntary compliance with the law.

5. Complainant's records do not reflect previously adjudicated violations of the Act by Midwest Grain.

XI.

TERMS OF SETTLEMENT

1. Midwest Grain neither admits nor denies the violations alleged by the Complainant herein.

2. Midwest Grain, shall pay a civil penalty of Fifteen Thousand Dollars (\$15,000.00) into the Illinois Environmental Protection Trust Fund within thirty (30) days from the date on which

the Board adopts a final opinion and order approving this Stipulation and Proposal for Settlement. Payment shall be made by certified check or money order, payable to the Treasurer of the State of Illinois, designated to the Illinois Environmental Protection Trust Fund, and shall be sent by first class mail to:

Illinois Environmental Protection Agency
Fiscal Services Section
2200 Churchill Road
P.O. Box 19276
Springfield, IL 62794-9276

A copy of the check shall be sent to:

Zemeheret Bareket-Ab
Assistant Attorney General
Environmental Control Division
100 W. Randolph St., 12th Floor
Chicago, Illinois 60601

Respondent's Federal Employers Identification Number is 48-0911013 and shall appear on the face of the certified check or money order.

3. Midwest Grain shall permanently shut down the fluidized bed combustion boiler by the end of calendar year 1994.

4. Midwest Grain shall cease and desist from the violations of the Act and the regulations promulgated thereunder.

XII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects Midwest Grain's responsibility to comply with any federal, state or local laws and regulations, including but not limited to, the Act, 415 ILCS 5/1 et seq., and the Board's Air Pollution Regulations.

XIII.

RIGHT OF ENTRY

In addition to any other authority at law, the Agency, its employees and representatives, and the Illinois Attorney General, his agents and representatives, by notice to Midwest Grain shall have the right of entry to the facility at all reasonable times, for the purposes of conducting inspections of Midwest Grain's operations. The Agency, its employees and representatives, and the Attorney General, his agents and representatives, may take any photographs or samples they deem necessary in order to conduct their inspection.

XIV.

RELEASE FROM LIABILITY

In consideration of Respondent's payment of a Fifteen Thousand Dollar (\$15,000.00) civil penalty, and commitment to refrain from further violations of the Act and regulations promulgated thereunder, the Complainant releases, waives and discharges Respondent and its officers, directors, employees, agents, successors and assigns from any further liability or penalties from claimed violations of the Act and regulations which were the subject matter of the Complaint herein. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto.

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

8200 [8598 ON XR/X1] 80:91 03M 5002/11/80

AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

ROLAND W. BURRIS
Attorney General of the
State of IllinoisBy: Matthew J. Dunn
MATTHEW J. DUNN, Chief
Environmental Control Division
Assistant Attorney GeneralDated: 1/6/95ILLINOIS ENVIRONMENTAL
PROTECTION AGENCYBy: Joseph E. Svobeda
JOSEPH E. SVOBEDA
General Counsel
Division of Legal CounselDated: January 3, 1995

c:zbst7r

FOR THE RESPONDENT:

MIDWEST GRAIN PRODUCTS OF
ILLINOIS, INC.By: Anthony J. PetricolaName: ANTHONY J. PETRICOLATitle: CORPORATE VICE PRESIDENT, ENGINEERINGDated: DECEMBER 14, 1994