

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

MIDWEST GRAIN PRODUCTS
OF ILLINOIS, INC.,
an Illinois corporation,

Respondent.

No. 97- 179

(Enforcement)

NOTICE OF FILING

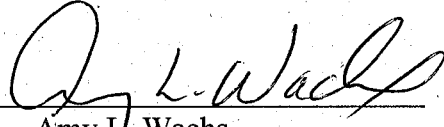
To: Jane E. McBride
Assistant Attorney General
500 South Second Street
Springfield, IL 62706

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center, 100 West Randolph
Suite 11-500
Chicago, IL 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board Respondent Midwest Grain Products of Illinois, Inc.'s Answer to the Complaint filed by People of the State of Illinois, copies of which are herewith served upon you.

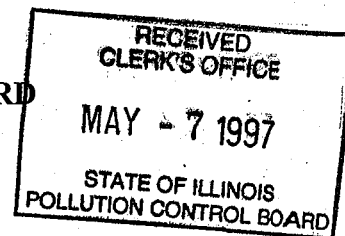
Respectfully submitted,
HUSCH and EPPENBERGER

By


Amy L. Wachs
100 N. Broadway, Suite 1300
St. Louis, Missouri 63102
(314) 421-4800

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD



PEOPLE OF THE STATE OF ILLINOIS,

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ANSWER

COMES NOW Respondent Midwest Grain Products of Illinois, Inc. ("Midwest Grain"), by its attorneys, Husch & Eppenberger, and answers the Complaint of the People of the State of Illinois ("Complainant") as follows:

Count I

Prevention of Significant Deterioration Violation

1. Midwest Grain lacks sufficient information to form a belief as to the truth of the allegations of paragraph 1 and thereby denies same.
2. Midwest Grain admits the allegations of paragraph 2.
3. Midwest Grain admits the allegations of paragraph 3.
4. Midwest Grain admits the allegations of paragraph 4.
5. Midwest Grain admits the allegations of paragraph 5.
6. Midwest Grain admits the allegations of paragraph 6.

7. Midwest Grain admits the allegations of paragraph 7.
8. Midwest Grain submits that the permit is the best evidence of its contents. To the extent that the allegations of paragraph 8 deviate from the permit terms, Midwest Grain denies same.
9. Midwest Grain submits that the permit is the best evidence of its contents. To the extent that the allegations of paragraph 9 deviate from the permit terms, Midwest Grain denies same.
10. Midwest Grain admits that it commenced construction of each new feed dryer after obtaining construction permit #9302006 and #93080045. Midwest Grain denies each and every allegation in paragraph 10 that is not specifically admitted.
11. Midwest Grain admits that it conducted a stack test in May, 1995, which measured particulate matter emissions of 17.1 pounds per hour but denies any allegation in paragraph 11 not specifically admitted.
12. Midwest Grain admits that the stack testing was designed to be representative of both dryers, but denies any allegation in paragraph 12 not specifically admitted.
13. Midwest Grain admits the allegations of paragraph 13.
14. Midwest Grain lacks knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 14 and therefore denies the same.
15. Paragraph 15 alleges a legal conclusion to which no response is required. To the extent that paragraph 15 alleges facts against Midwest Grain, Midwest Grain denies the same.
16. Paragraph 16 alleges a legal conclusion to which no response is required. To the extent that paragraph 16 alleges facts against Midwest Grain, Midwest Grain denies the same.

17. Paragraph 17 alleges a legal conclusion to which no response is required. To the extent that paragraph 17 alleges facts against Midwest Grain, Midwest Grain denies the same.

18. Paragraph 18 alleges a legal conclusion to which no response is required. To the extent that paragraph 18 alleges facts against Midwest Grain, Midwest Grain denies the same.

19. Midwest Grain denies the allegations of paragraph 19.

20. Midwest Grain denies the allegations of paragraph 20.

21. Midwest Grain denies the allegations of paragraph 21.

22. Midwest Grain denies the allegations of paragraph 22.

23. Midwest Grain denies the allegations of paragraph 23.

24. Midwest Grain admits that its facility was considered a major source for particulate matter at the time it constructed a fluidized bed boiler in 1982. Midwest Grain denies each and every allegation in paragraph 24 not specifically admitted herein.

25. Midwest grain denies the allegations of paragraph 25.

26. Midwest Grain denies the allegations of paragraph 26.

27. Midwest grain denies the allegations of paragraph 27.

Count II

Air Pollution

1-14. Midwest Grain realleges and incorporates by reference its responses to paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of Count II.

15. Paragraph 15 alleges a legal conclusion to which no response is required. To the extent that paragraph 15 alleges facts against Midwest Grain, Midwest Grain denies the same.

16. Paragraph 16 alleges a legal conclusion to which no response is required. To

the extent that paragraph 16 alleges facts against Midwest Grain, Midwest Grain denies the same.

17. Midwest Grain lacks sufficient information to form a belief as to the truth of the allegations of paragraph 17 and thereby denies same.

Count III

Permit Violations

1-14. Midwest Grain realleges and incorporates by reference its responses to paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of Count III.

15. Paragraph 15 alleges a legal conclusion to which no response is required. To the extent that paragraph 15 alleges facts against Midwest Grain, Midwest Grain denies the same.

16. Midwest Grain denies the allegations of paragraph 16.

17. Midwest Grain admits that it did not operate the scrubbers on certain dates but denies any other allegation of paragraph 17. Midwest Grain further submits that the scrubbers provide no additional emission control and the impact of not operating the scrubbers is negligible.

18. Midwest Grain submits that the permits are the best evidence of their contents. To the extent that the allegations of paragraph 8 deviate from the permit terms, Midwest Grain denies same.

19. Midwest Grain admits that on certain dates it has not operated the scrubbers but denies all other allegations of paragraph 19. Midwest Grain further submits that the scrubbers provide no additional emission control and the impact of not operating the scrubbers is negligible.

20. Midwest Grain denies the allegations of paragraph 20.

Count IV

Operating Without Operating Permit

1-14. Midwest Grain realleges and incorporates by reference its responses to paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of Count IV.

15. Paragraph 15 alleges a legal conclusion to which no response is required. To the extent that paragraph 15 alleges facts against Midwest Grain, Midwest Grain denies the same.

16. Paragraph 16 alleges a legal conclusion to which no response is required. To the extent that paragraph 16 alleges facts against Midwest Grain, Midwest Grain denies the same.

17. Midwest Grain admits it has submitted a CAAPP application for the facilities, including the new dryers. Midwest Grain denies any other allegation of paragraph 17.

18. Midwest Grain submits that the permits are the best evidence of their contents. To the extent that the allegations of paragraph 18 deviate from the permit terms, Midwest Grain denies same.

19. Midwest Grain admits it has operated dryer #651 but denies any other allegation of paragraph 19.

20. Midwest Grain submits that the permit is the best evidence of its contents. To the extent that the allegations of paragraph 20 deviate from the permit terms, Midwest Grain denies same.

21. Midwest Grain admits that it has operated dryer 661, but denies any other allegation of paragraph 21.

22. Midwest Grain denies the allegations of paragraph 22.

Affirmative Defenses

Further answering, Midwest Grain states the following affirmative defenses:

A. Midwest Grain discontinued use of its fluidized bed coal boiler in 1994. At the time the coal boiler use was discontinued, Midwest Grain ceased its status as a "major stationary source" and the PSD program requirements were no longer applicable to Midwest Grain.

B. Midwest Grain acted in good faith and built an emission control system for its grain dryers which was designed to restrict emissions from the dryers to a level below the level for a "major modification" subject to PSD program requirements. This emission control system was reviewed and approved by the Illinois Environmental Protection Agency ("IEPA") as part of Midwest Grain's construction permit application. Through no fault of Midwest Grain, the system did not function as designed and has had difficulty restricting the emission of very small particles. Midwest Grain has worked steadily to improve upon the emission control system. Midwest Grain has been in frequent contact with IEPA regarding its difficulties with the system. To the extent Midwest Grain is in violation of PSD regulations, the Act or its permit terms, if at all, the violation is due to an unavoidable mistake in that its emission control equipment has failed to live up to its design specifications.

C. Pursuant to discussions with IEPA, Midwest Grain has agreed to purchase and install additional emission control equipment, at substantial expense. Midwest Grain's commitment to IEPA to install new emission control equipment constitutes a Compliance Commitment Agreement. Midwest Grain is in compliance with the Compliance Commitment Agreement, therefore, these allegations should not have been brought.

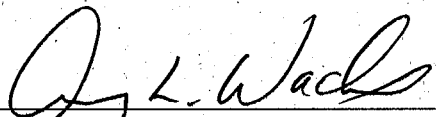
D. Midwest Grain filed an application for an operating permit on March 16, 1995.

To date, IEPA has not acted upon the operating permit application, although Midwest Grain has extended the review period for the operating permit application three times (the last time for an indefinite period). Midwest Grain has also filed an application for a Clean Air Act Permit. Midwest Grain has been in frequent contact with IEPA and IEPA has not alleged that an operating permit is required at this time. At no time has Midwest Grain disregarded the provisions of the Board's air permit regulations and it has worked steadily with IEPA to remedy the difficulties it has had as a result of the unexpected difficult engineering for its emissions.

WHEREFORE, Midwest Grain, by and through its attorneys, Husch & Eppenberger, respectfully requests dismissal of this Complaint, in whole or in part, or, in the alternative, determining the appropriate penalties, and granting such other relief as may be appropriate.

Respectfully submitted,

HUSCH and EPPENBERGER

By 

Charles E. Merrill #06211606

Amy L. Wachs, *Pro hac vice*

Tracy S. Menges #06231131

100 N. Broadway, Suite 1300

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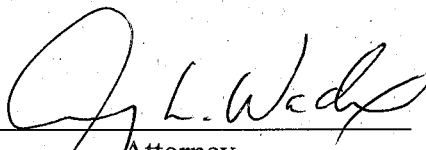
CERTIFICATE OF SERVICE

I hereby certify that I did on the 6th day of May, 1997, send a true and accurate copy of the foregoing instrument by first class mail, postage prepaid to Complainant's attorney:

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

and the originals and ten copies of the foregoing instrument by first class mail, postage prepaid to:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
Suite 11-500
100 West Randolph
Chicago, IL 60601



Attorney

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