

UNITED STATES PROTECTION AGENCY

2616042

In RE:

UNION CHEMICAL CO., INC.)
P.O. Box 243)
Union, Maine 04862)
)
Proceeding under Section)
3008 of the Resource)
Conservation and)
Recovery Act, 42 U.S.C.)
§6928)

Superfund Records Center
SITE: Union Chemical
BREAK: 195
OTHER: 530182

ANSWER TO COMPLAINT



SDMS DocID 530182

NOW COMES the Union Chemical Co., through and by its attorney, Clifford H. Goodall, Esq. of Augusta, Maine, and answers the Complaint of the Environmental Protection Agency which was filed pursuant to §3008 of the Resource Conservation and Recovery Act, 42 U.S.C. §6928. Said Complaint being dated November 1, 1983 and which was received by the Union Chemical Co. on November 7, 1983.

Union Chemical Co., Inc. (hereinafter cited as "Union") answers the said Complaint of the Regional Administrator, United States Environmental Protection Agency (hereinafter cited as "EPA") as follows:

1. Union admits the allegations contained in Paragraph 1 of the Complaint.
2. Union admits the allegations contained in Paragraph 2 of the Complaint and answers further by stating that the storage of hazardous waste in tanks and containers is short-term and is only for the purpose of holding and storing them while awaiting incineration in a fluidized bed incinerator.

3. Union admits the allegations contained in Paragraph 3 of the Complaint.

4. Union admits the allegations contained in Paragraph 4 of the Complaint except that it denies that the facility is a disposal facility for hazardous waste in addition to being a generator treatment and storage facility.

5. Union admits the allegations contained in Paragraph 5 of the Complaint.

6. Union admits the allegations contained in Paragraph 6 of the Complaint.

7. Union admits the allegation alleged in the first sentence of Paragraph 7 but does not have sufficient information to either admit or deny the second sentence in Paragraph 7. Said second sentence alleges that the deadline for filing the Part B hazardous waste permit application was December 18, 1982. It was Union's understanding and belief that said Part B application was to be filed on or before December 20, 1982. Said belief and understanding is based on a letter received by Union Chemical Co. from the State of Maine Department of Environmental Protection dated November 5, 1982. Attached hereto as Exhibit A is that letter. The first paragraph of that letter states that "this letter is to officially remind you about certain responsibilities your firm has regarding RCRA Part 'B' TSDf licensing." Same letter went on to say in the next paragraph that "the deadline for filing Part 'B'

data with EPA, Region #1 is December 20, 1982." (emphasis added) Union relied upon the instruction letter of the Maine Department of Environmental Protection Agency which was a co-licensing agency with the EPA and which was coordinating licensing activities with the EPA. Note paragraph numbered One in said letter in said Exhibit A which states that the DEP was "trying to reduce duplication of workload and misunderstanding in the regulatory agency, EPA is coordinating its TSDf licensing effort very closely with the State DEP."

8. Union does not have sufficient knowledge to either admit or deny the allegations contained in Paragraph 8 of the Complaint and therefore denies the allegations contained in Paragraph 8. Union further answers Paragraph 8 by incorporating as if set out in whole its answer to Paragraph 7. Union also further answers Paragraph 8 by stating that the Part B permit application was deposited in the United States Post Office for delivery to the Region #1 EPA prior to December 20, 1982. In addition, Union further answers by stating that December 20, 1982 was a Monday. It is Union Chemical Co.'s belief that Part B permit application was deposited in the U.S. mails in sufficient time to be delivered to Region #1 offices in Boston on December 18, 1982. Union does not have sufficient knowledge to make any allegations as to whether or not EPA was available to receive the permit application on December 18 and therefore suggests and alleges that the proximate cause for the EPA having received the application on Monday, December 20 rather than Saturday, December 18 was the inability of

the post office to deliver the application on the date in which it was due. Union Chemical also refers to the Maine Department of Environmental letter and discussion regarding that letter cited above in the answer to Paragraph 7.

9. Union does not have sufficient information to either admit or deny the details of the allegations contained in the first and second sentences of Paragraph 9 of the Complaint. And further answers by admitting that Union did receive a Notice of Deficiency (NOD). Union further admits the allegations contained in sentence three of Paragraph 9. Union does not have sufficient information to either admit or deny the allegation contained in sentences four and five of Paragraph 9, therefore it denies the allegation.

10. Union does not have sufficient information to either admit or deny the allegations contained in Paragraph 10 but answers further by stating that it is its belief that, based on conversation with Regulatory personnel within the EPA at the time, that it may have filed its response to the NOD on June 6, 1983. Said response was hand delivered to the EPA at its Region #1 offices in Boston with hand delivery being made to William Sarro. Mr. Sarro at the time in which the response to the NOD was delivered did not mention anything regarding the tardiness of the response. Further, recent conversations with Mr. Sarro, indicate that he was not concerned with the tardiness of the response. June 3, the alleged due date, was a Friday and June 6 the following Monday. Union answers further by stating that

it had been in contact with EPA personnel to discuss the contents of its response to the NOD and that said personnel were aware because of these discussions and contacts that the response was being prepared.

11. Union denies the allegations contained in Paragraph 11 of the Complaint and answers further by stating that the information requirements for the Part B application are vague, unclear and that the determination which is alleged to have been made by the EPA is arbitrary and capricious as it does not take into consideration the uniqueness and the one-of-a-kind characteristics of the processes and equipment of Union. Furthermore Union has learned that EPA has based its determination on allegations and hearsay evidence reported to the EPA by residents of the community in which the facility is located with said evidences having the sole objective of having Union Chemical Co. put out of business. Union further answers by stating that the EPA has become, therefore, through this complaint unknowingly instruments to the hostile activities of some of the people in the community. Union answers further by stating that the Town of Hope through its Planning Board and Board of Appeals have jurisdiction over the facility and after extensive hearings have granted licenses to the facility. Union also answers by stating that the local community as a whole is supportive of the project and has so voted at town meetings by rejecting the proposals presented at town meetings by Union's opponents.

Union further answers the allegations contained in Paragraph 11 of the Complaint by stating that the EPA also has made

arbitrary and capricious determinations because of a prejudice and bias which prohibits the EPA from objectively evaluating the processes and equipment used by Union. Personnel of EPA Region #1 have referred to the project as being "homemade" and have reported to staff of Maine's Congressional Delegation that the equipment and processes does not make them confident in its ability to perform. Said lack of confidence is in spite of and is in contradiction to the scientific studies and reports regarding the equipment and processes efficiency. Copies of all these reports have been supplied to the EPA on a regular basis.

Union Chemical further answers the allegations contained in Paragraph 11 of the Complaint by stating that the EPA is the cause for the delay in the submission of some of the data necessary to provide assurance as to the processes and equipment's efficiency. EPA on several occasions requested delays in the testing of the air emissions from the plant. Preliminary data of the most intensive and recent studies indicate that the destruction removal efficiency (DRE's) of the five principal organic hazardous constituents (POHCS) equal or exceed 99.99%. The POHCS' which were chosen for the test consist of complex chemicals extremely difficult to destroy and which may not even appear in the waste stream fed into the incinerator. Said waste stream existing of chemicals which have a DRE in excess of 99.99%. Please see attached preliminary data of tests conducted November 3 and 4 of 1983. Said letter and table of data is attached as Exhibit B.

Union answers further by stating that the EPA staff observed the tests the results of which are outlined in Exhibit B and that EPA staff never during the observation of those tests mentioned the Complaint which is dated November 1. Further Union answers by stating that the tests were originally scheduled for late summer but were delayed until November at the request of EPA staff.

Union further answers that staff of EPA have reported to the personnel of Maine's Congressional Delegation that an additional reason for the filing of this Complaint was to set an example. Given the facts as outlined heretofore in this answer Union alleges that this is not a proper matter for purposes of setting examples to the hazardous waste industry.

12. Union admits the allegations contained in Paragraph 12 of the Complaint and answers further by stating that the State of Maine, through the Department of Environmental Protection, had concurrent jurisdiction over Union. Union also further adds that the State of Maine now has exclusive jurisdiction over the application and that the Maine Department of Environmental Protection has made a determination that a complete application has been filed for Part B and the permanent license of the facility.

In addition Union further answers by stating that conversations with staff of the DEP indicates that the DEP is reluctant and opposes the submission of additional technical data to the EPA for its review without that technical data being provided to the EPA through the

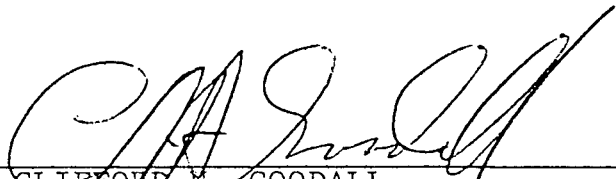
DEP with DEP's request for technical review assistance. Union therefore submits the technical data which accompanies this answer over the objection of DEP.

REQUEST

Union Chemical Co. therefore requests that the EPA dismiss in its entirety the Complaint and assessment of penalties contained in that Complaint.

Union Chemical Co. requests a hearing as provided in §3008(b) of RCRA and in accordance with 5 U.S.C. §554.

Dated: December 7, 1983


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December 7, 1983

HAND DELIVERED

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region One
John F. Kennedy Federal Building
Boston, Massachusetts

Superfund Records Center

SITE: _____

BREAK: _____

OTHER: _____

Re: EPA v. Union Chemical Co.

Dear Sir or Madam:

Please find enclosed an answer filed this day with EPA, Region One. This answer is in response to EPA's complaint dated November 1, 1983.

Included in the answer to the complaint is a request for a hearing.

Please contact me regarding the scheduling and procedural matters relating to that hearing.

Best regards,


CLIFFORD H. GOODALL

CHG/jh
Enclosures
cc: Union Chemical Co.