THE STOLAR PARTNERSHIP
ATTORNEYS AT LAW
THE LAMMERT BUILDING
911 WASHINGTON AVENUE
ST. LOUIS, MISSOURI 63101
(314) 231-2800

TELEX: 880984 (SHESH STL)
TELEFAX: (314) 436-8400

SANDRA L. OBERKFELL

H.M. STOLAR
(RETIRED 1984)

RECEIVED
MAR 09 1992
RCOM SECTION

March 6, 1992

VIA FEDERAL EXPRESS

Ms. Vanessa Cobbs
Regional Hearing Clerk
United States Environmental
Protection Agency, Region VII
726 Minnesota Avenue
Kansas City, Kansas 66101

Re: Matter of The Knapheide Mfg. Co.,
Docket No. VII-92-H-0008

Dear Ms. Cobbs:

On behalf of our client, The Knapheide Mfg. Co., we file herewith Respondent's Answer in the above-referenced matter. I have also enclosed an additional copy of said Answer. Please date-stamp the additional copy and return it to me for my files.

Very truly yours,

Sandra L. Oberkfell

Sandra L. Oberkfell

SLO:lml
Enclosure
cc: Robert W. Richards, Esq.
Mr. Harold D. Huggins
Mr. Ruben McCullers

R00036088
RCRA Records Center

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII
726 MINNESOTA AVENUE
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

IN THE MATTER OF	)	
	)	
Knapheide Manufacturing Co. West Quincy, Missouri,	)	Docket No. VII-92-H-0008
	)	
Respondent.	)	RESPONDENT REQUESTS PUBLIC HEARING
	)	
Proceedings under Section 3008 of the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C Sections 6901 et seq.	)	

ANSWER AND REQUEST FOR HEARING

COMES NOW Respondent, Knapheide Manufacturing Co., and for its Answer to the document entitled "Complaint, Compliance Order, and Notice of Opportunity to Request Hearing" (the "Complaint") issued in these proceedings by the United States Environmental Protection Agency (the "EPA") states as follows:

1. Respondent states that the averments contained in the first sentence of Paragraph 1 of the Complaint are statements of law, and therefore, Respondent is required neither to admit nor deny the same. Respondent admits the remaining averments contained in Paragraph 1 of the Complaint.

2. Respondent states that the averments contained in the first three sentences of Paragraph 2 of the Complaint are statements of law, and therefore, Respondent is required neither to

admit nor deny the same. Respondent states that it is without knowledge or information sufficient to form a belief as to the averments contained in the last sentence of Paragraph 2 of the Complaint, and therefore, denies the same.

3. Respondent states that the averments contained in Paragraph 3 of the Complaint are statements of law, and therefore, Respondent is required neither to admit nor deny the same. (For purposes of this Answer, Respondent has assumed that all references in the Complaint to "10 C.S.R. §§25-7.262(1)," incorporating by reference the Federal regulations set forth in 40 C.F.R. Part 262, were intended by Complainant to read "10 C.S.R. §§25-5.262(1).")

4. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in Paragraph 4 of the Complaint, and therefore, denies the same.

5. Respondent admits the averments contained in Paragraph 5 of the Complaint that the EPA has proposed the civil penalties set forth in Paragraph 5 of the Complaint. Respondent denies the averments with respect to the proposed penalties. Further answering, Respondent states that the proposed penalties are inappropriate.

6. Respondent admits the averments contained in Paragraph 6 of the Complaint.

7. Respondent admits the averments contained in Paragraph 7 of the Complaint.

8. Respondent admits the averments contained in Paragraph 8 of the Complaint.

9. Respondent admits the averments contained in Paragraph 9 of the Complaint, except that Respondent is without knowledge and information sufficient to form a belief as to the truth of the averment contained in Paragraph 9 of the Complaint that the date on which Respondent was issued said identification number was January 12, 1981, and therefore, denies the same.

10. Respondent admits the averments contained in the first sentence of Paragraph 10 of the Complaint. Respondent admits the averments contained in the second sentence of Paragraph 10 of the Complaint that the Respondent was issued notices of violations by MDNR, but Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in said sentence of Paragraph 10 of the Complaint that such notices of violations were issued by MDNR to Respondent on the basis of information obtained during the September 25, 1989 and March 15, 1991 inspections or that Respondent was issued notices of violations by MDNR for violations noted during the inspections, and therefore, denies the same. Respondent states that it is without knowledge or information sufficient to form a belief as to the truth of the averments contained in the last sentence of Paragraph 10 of the Complaint, and therefore, denies the same.

COUNT I

11. Respondent incorporates herein by reference its answers to Paragraphs 6 through 10 of the Complaint as its answer to Paragraph 11.

12. Respondent states that the averments contained in Paragraph 12 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

13. Respondent admits the averments contained in the first sentence of Paragraph 13 of the Complaint. Respondent denies the averments contained in the second and third sentences of Paragraph 13 of the Complaint and further states that said averments constitute a conclusion of law, not an averment of fact.

14. Respondent admits the averments contained in Paragraph 14 of the Complaint that the EPA has proposed the civil penalty set forth in said Paragraph 14. Respondent denies the averments with respect to the proposed penalty. Further answering, Respondent states that the proposed penalty is inappropriate.

COUNT II

15. Respondent incorporates herein by reference its answers to Paragraphs 6 through 14 of the Complaint as its answer to Paragraph 15.

16. Respondent is without knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 16 of the Complaint concerning what the

September 25, 1989 inspection "showed," and therefore, denies the averments contained in Paragraph 16 of the Complaint.

17. Respondent is without knowledge and information sufficient to form a belief as to the truth of the averments contained in Paragraph 17 of the Complaint concerning what the March 15, 1991 inspection "showed," and therefore, denies the averments contained in Paragraph 17 of the Complaint.

18. Respondent admits that the Toxic Characteristic Leachate Procedure (TCLP) sample analysis of the waste paint filters and overspray paper dated March 12, 1991 which was provided by Respondent to MDNR after the March 15, 1991 inspection, contains the writings averred in Paragraph 18 of the Complaint that one sample contained leachable chrome at 6.25 ppm, which exceeds the toxic characteristic level of 5.00 ppm for leachable chrome. Respondent denies that the analysis of that sample "showed" that all waste paint filters and overspray paper waste from the Facility were D007 waste pursuant to 40 C.F.R. §261.24. (For purposes of this Answer, Respondent has assumed that the reference in the last sentence of Paragraph 18 of the Complaint to "40 C.F.R. 262.24" was intended by Complainant to read "40 C.F.R. §261.24.")

19. Respondent denies the averments contained in the first sentence of Paragraph 19 of the Complaint. Respondent admits the averments contained in the second sentence of Paragraph 19 of the Complaint.

20. Respondent is without knowledge and information sufficient to form a belief as to the truth of the averment

contained in Paragraph 20 of the Complaint regarding the classification of its waste as D007 and, therefore, denies the averments contained in Paragraph 20 of the Complaint.

21. Respondent states that the averments contained in Paragraph 21 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

22. Respondent states that the averments contained in Paragraph 22 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

23. Respondent states that the averments contained in Paragraph 23 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

24. Respondent admits the averments contained in Paragraph 24 of the Complaint that it did not have interim status or a permit for treatment or storage of D007 hazardous wastes. Respondent denies the remaining averments contained in the first sentence of Paragraph 24 of the Complaint. Respondent states that the averment contained in the last sentence of Paragraph 24 of the Complaint is a conclusion of law, and not an averment of fact, and therefore, Respondent is required neither to admit nor deny the same.

25. Respondent states that the averments contained in Paragraph 25 of the Complaint are statements of law, which law

speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

26. Respondent admits that it did not have a closure plan for a D007 hazardous waste treatment unit or a D007 hazardous waste storage unit. Respondent denies the remaining averments contained in the first sentence of Paragraph 26 of the Complaint. Respondent states that the averment contained in the last sentence of Paragraph 26 of the Complaint is a conclusion of law, and not an averment of fact, and therefore, Respondent is required neither to admit nor deny the same.

27. Respondent states that the averments contained in Paragraph 27 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

28. Respondent admits that it did not have financial assurance for closure of a D007 hazardous waste treatment unit or a D007 hazardous waste storage unit. Respondent denies the remaining averments contained in the first sentence of Paragraph 28 of the Complaint. Respondent states that the averment contained in the last sentence of Paragraph 28 of the Complaint is a conclusion of law, and not an averment of fact, and therefore, Respondent is required neither to admit nor deny the same.

29. Respondent states that the averments contained in Paragraph 29 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

30. Respondent admits the averments contained in the first sentence of Paragraph 30 of the Complaint that Respondent did not provide liability coverage for bodily injury and property damage for sudden accidental occurrences arising from operation of a hazardous waste treatment or storage facility. Respondent states that the averment contained in the last sentence of Paragraph 30 of the Complaint is a conclusion of law, and not an averment of fact, and therefore, Respondent is required neither to admit nor deny the same.

31. Respondent admits the averments contained in Paragraph 31 of the Complaint that the EPA has proposed the civil penalty set forth in said Paragraph 31. Respondent denies the averments with respect to the proposed penalty. Further answering, Respondent states that the proposed penalty is inappropriate.

COUNT III

32. Respondent incorporates herein by reference its answers to Paragraphs 6 through 31 of the Complaint as its answer to Paragraph 32.

33. Respondent states that the averments contained in Paragraph 33 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

34. Respondent is without knowledge and information sufficient to form a belief as to the truth of the averments contained in the first sentence of Paragraph 34 of the Complaint concerning what the March 15, 1991 inspection "showed," and

therefore, denies the averments contained in the first sentence of Paragraph 34 of the Complaint. Respondent states that the averment contained in the last sentence of Paragraph 34 of the Complaint is a conclusion of law, and not an averment of fact, and therefore, Respondent is required neither to admit nor deny the same.

35. Respondent admits the averments contained in Paragraph 35 of the Complaint that the EPA has proposed the civil penalty set forth in said Paragraph 35. Respondent denies the averments with respect to the proposed penalty. Further answering, Respondent states that the proposed penalty is inappropriate.

COUNT IV

36. Respondent incorporates herein by reference its answers to Paragraphs 6 through 35 of the Complaint as its answer to Paragraph 36.

37. Respondent states that the averments contained in Paragraph 37 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

38. Respondent is without knowledge and information sufficient to form a belief as to the truth of the averments contained in the first sentence of Paragraph 38 of the Complaint concerning what the September 25, 1989 inspection "showed," and therefore, denies the averments contained in the first sentence of Paragraph 38 of the Complaint. Respondent states that the averment contained in the last sentence of Paragraph 38 of the Complaint is

a conclusion of law, and not an averment of fact, and therefore, Respondent is required neither to admit nor deny the same.

39. Respondent admits the averments contained in Paragraph 39 of the Complaint that the EPA has proposed the civil penalty set forth in said Paragraph 39. Respondent denies the averments with respect to the proposed penalty. Further answering, Respondent states that the proposed penalty is inappropriate.

COUNT V

40. Respondent incorporates herein by reference its answers to Paragraphs 6 through 39 of the Complaint as its answer to Paragraph 40.

41. Respondent states that the averments contained in Paragraph 41 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

42. Respondent is without knowledge and information sufficient to form a belief as to the truth of the averments contained in the first sentence of Paragraph 42 of the Complaint concerning what the September 25, 1989 inspection "showed," and therefore, denies the averments contained in the first sentence of Paragraph 42 of the Complaint. Respondent states that the averment contained in the last sentence of Paragraph 42 of the Complaint is a conclusion of law, and not an averment of fact, and therefore, Respondent is required neither to admit nor deny the same.

43. Respondent admits the averments contained in Paragraph 43 of the Complaint that the EPA has proposed the civil penalty set forth in said Paragraph 43. Respondent denies the averments with respect to the proposed penalty. Further answering, Respondent states that the proposed penalty is inappropriate.

COUNT VI

44. Respondent incorporates herein by reference its answers to Paragraphs 6 through 43 of the Complaint as its answer to Paragraph 44.

45. Respondent states that the averments contained in Paragraph 45 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

46. Respondent is without knowledge and information sufficient to form a belief as to the truth of the averments contained in the first sentence of Paragraph 46 of the Complaint concerning what the September 25, 1989 inspection "showed," and therefore, denies the averments contained in the first sentence of Paragraph 46 of the Complaint. Respondent states that the averment contained in the last sentence of Paragraph 46 of the Complaint is a conclusion of law, and not an averment of fact, and therefore, Respondent is required neither to admit nor deny the same.

47. Respondent admits the averments contained in Paragraph 47 of the Complaint that the EPA has proposed the civil penalty set forth in said Paragraph 47. Respondent denies the averments with

respect to the proposed penalty. Further answering, Respondent states that the proposed penalty is inappropriate.

COUNT VII

48. Respondent incorporates herein by reference its answers to Paragraphs 6 through 47 of the Complaint as its answer to Paragraph 48.

49. Respondent states that the averments contained in Paragraph 49 of the Complaint are statements of law, which law speaks for itself, and therefore, Respondent is required neither to admit nor deny the same.

50. Respondent is without knowledge and information sufficient to form a belief as to the truth of the averments contained in the first sentence of Paragraph 50 of the Complaint concerning what the September 25, 1989 inspection "showed," and therefore, denies the averments contained in the first sentence of Paragraph 50 of the Complaint. Respondent states that the averment contained in the last sentence of Paragraph 50 of the Complaint is a conclusion of law, and not an averment of fact, and therefore, Respondent is required neither to admit nor deny the same.

51. Respondent admits the averments contained in Paragraph 51 of the Complaint that the EPA has proposed the civil penalty set forth in said Paragraph 51. Respondent denies the averments with respect to the proposed penalty. Further answering, Respondent states that the proposed penalty is inappropriate.

COUNT VIII

52. Respondent incorporates herein by reference its answers to Paragraphs 6 through 51 of the Complaint as its answer to Paragraph 52.

53. Respondent states that the averments in Paragraph 53 of the Complaint are statements of law, and therefore, Respondent is required neither to admit nor deny the same.

54. Respondent is without knowledge and information sufficient to form a belief as to the truth of the averments contained in the first sentence of Paragraph 54 of the Complaint concerning what the September 25, 1989 inspection "showed," and therefore, denies the averments contained in the first sentence of Paragraph 54 of the Complaint. Respondent states that the averment contained in the last sentence of Paragraph 54 of the Complaint is a conclusion of law, and not an averment of fact, and therefore, Respondent is required neither to admit nor deny the same.

55. Respondent admits the averments contained in Paragraph 55 of the Complaint that the EPA has proposed the civil penalty set forth in said Paragraph 55. Respondent denies the averments with respect to the proposed penalty. Further answering, Respondent states that the proposed penalty is inappropriate.

COMPLIANCE ORDER, NOTICE OF OPPORTUNITY TO REQUEST HEARING, AND SETTLEMENT CONFERENCE

56-65. Respondent states that Paragraphs 56 through 65 of the Complaint do not contain averments of fact, and therefore, Respondent is required neither to admit nor deny the same. Further

answering, to the extent Paragraphs 56 through 65 of the Complaint do contain any averments of fact, Respondent denies said averments.

AFFIRMATIVE DEFENSES

A. Respondent incorporates herein by reference its answers to Paragraphs 6 through 55 of the Complaint as an affirmative defense.

B. Respondent has at all times acted in good faith to comply with the numerous, complex and continuously changing Federal and state regulations governing solid waste management.

C. The risk of human or environmental exposure to hazardous waste and/or hazardous constituents as a result of Respondent's alleged actions and/or inactions was, at worst, relatively low considering the level of toxicity of the wastes involved in this matter, Respondent's implementation of procedures for detecting/preventing releases, the absence of any release, the lack of significant physical waste mismanagement and other pertinent and material factors.

D. No actual harm to human health or the environment resulted from Respondent's alleged actions and/or inactions.

E. Respondent met most or all important aspects of the requirements of the regulatory provisions cited in the Complaint.

F. Respondent obtained such permits for the operation of its incinerator as were deemed necessary by MDNR following submission of required test results.

G. Respondent did not willfully or totally disregard a regulatory purpose or procedure.

H. Respondent's alleged actions and/or inactions did not constitute multiple regulatory violations.

I. Respondent has not received any economic benefit as a result of the actions and/or inactions alleged in the Complaint.

J. The corporate structure of Respondent regarding control and oversight responsibility for compliance with RCRA and other environmental laws was changed significantly throughout the period of any alleged actions and/or inactions.

K. The penalties proposed by the Complainant in the Complaint are inappropriate based upon those factors which the Complainant must consider pursuant to §3008(a)(3) of RCRA, 42 U.S.C. §6928(a)(3) (as discussed in the 1990 RCRA Civil Penalty Policy), including the seriousness of the violations, any good faith efforts by the Respondent to comply with applicable requirements, and any economic benefit accruing to the Respondent, as well as such other matters as justice may require.

REQUEST FOR HEARING

Respondent requests a hearing upon the issues raised by the Complaint and this Answer, pursuant to 40 C.F.R. §22.15.

THE STOLAR PARTNERSHIP

3/6/92
Date

By: Sandra L. Oberkfell
SANDRA L. OBERKFELL MBE #35300

911 Washington Avenue, 7th Floor
St. Louis, Missouri 63101
(314) 231-2800

Attorneys for Respondent
Knapheide Manufacturing Company

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon Robert W. Richards, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, and Mr. Ruben McCullers, WSTM/RCRA, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, by mailing a true and correct copy of the same to such address by certified mail, return receipt requested, on this 6th day of March, 1992.

Sandra L. Oberkfell