

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

HILDA L. SOLIS, Secretary of Labor,)	
United States Department of Labor)	
)	
Complainant,)	
)	OSHRC Docket No. 08-1104
v.)	
)	
IMPERIAL SUGAR COMPANY; IMPERIAL-)	
SAVANNAH, L.P.; and their Successors,)	OSHA Inspection No. 310988712
)	
Respondents.)	

**COMPLAINANT’S MOTION TO COMPEL RESPONSES TO
INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS
AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 2200.52(e) of the Occupational Safety and Health Review Commission, which incorporates Rule 37(a) of the Federal Rules of Civil Procedure, Complainant moves for an Order compelling Respondents to provide complete responses to Complainant's First Interrogatories and Requests for Production of Documents (as enumerated below and attached hereto as Exhibits B and C). As grounds for this Motion, Complainant shows as follows:

I. CERTIFICATION

Pursuant to Fed. R. Civ. P. 37(a)(2)(B), the undersigned counsel hereby certify that they have, in good faith, conferred with counsel for Respondents in an effort to secure the information and material described herein without court action. A copy of the parties' written communications confirming the issues discussed are attached hereto as Exhibit A.

II. DISPUTED DISCOVERY RESPONSES

On December 11, 2008, Complainant served Respondents with First Interrogatories and Requests for Production of Documents, pursuant to Rules 52, 53, and 55 of the Rules of

Procedure for the Occupational Safety and Health Review Commission, and Federal Rules of Civil Procedure 33 and 34. (See Exhibits B and C, attached hereto). On January 12, 2009, in response to several Interrogatories and Requests for Documents, which are summarized below, Respondents included in their response the following statement in pertinent part:

[P]ursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

Respondents provided the answer above in response to the following Interrogatories:

Interrogatory No. 1: State all facts, identify all persons with knowledge of the facts, and identify all documents upon which Imperial relies in support of its denial in its Answer of the allegations contained in the Complaint. In answering this Interrogatory, please specify to which paragraph of the Complaint the facts, persons, and/or documents that you identify relate.

Interrogatory No. 2: State all facts, identify all persons with knowledge of the facts, and identify all documents upon which Imperial relies in support of its affirmative defenses in its Answer. In answering this Interrogatory, please specify to which affirmative defense the facts, persons, and/or documents that you identify relate.

Interrogatory No. 3: Please identify all facts, all persons with knowledge of the facts, and all documents that Imperial possessed, received, or created prior to February 7, 2008, that pertained to the hazards associated with sugar dust and/or cornstarch, including but not limited to the hazards of fire, explosion, combustion, deflagration, an/or dust accumulations.

Interrogatory No. 4: Please identify all facts, all persons with knowledge of the facts, and all documents that Imperial possessed, received, reviewed, or created prior to February 7, 2008, that pertain to cleanliness and/or housekeeping with respect to sugar dust and/or cornstarch at the facility, including but not limited to standards for cleanliness, determinations of acceptable levels of accumulation, communications of cleanliness standards and accumulation levels to employees, and cleaning and inspection schedules.

Interrogatory No. 7: Identify all facts, all persons with knowledge of the facts, and all documents regarding accumulations of sugar dust and/or cornstarch in places of employment and workrooms on the floors and/or elevated surfaces at the facility.

Interrogatory No. 8: Identify all oral or written communications made or received before February 7, 2008 by Imperial, on the hazards of fire, explosion, combustion, deflagration, or dust accumulation between or among the directors, officers, managers, supervisors, employees, representatives, and/or agents of Imperial.

Interrogatory No. 9: Identify all facts, all persons with knowledge of the facts, and all documents regarding the electrical classification of locations, including the classification of Class II hazardous locations, as defined by 29 C.F.R. § 1910.399, at the facility.

Interrogatory No. 10: Identify all facts, all persons with knowledge of the facts, and all documents regarding deflagration relief venting and/or deflagration suppression systems for sugar conveyance and processing equipment utilized by Imperial at the facility.

Interrogatory No. 11: Identify all facts, all persons with knowledge of the facts, and all documents regarding the maintenance of dust collector systems and screw augers at the facility.

Interrogatory No. 12: Identify all facts, all persons with knowledge of the facts, and all documents regarding the type of materials that should be used for exterior walls or roofs in Class II, Division 1 or 2 areas at the facility.

Interrogatory No. 13: Identify all facts, all persons with knowledge of the facts, and all documents regarding the use of bearing temperature, belt alignment, and vibration detection monitors on processing and conveyance equipment, including the bulk material steel conveyor belts and inside of the bucket elevators at the facility.

Interrogatory No. 14: Identify all facts, all persons with knowledge of the facts, and all documents regarding scrubber machines and/or gasoline and propane powered industrial trucks that were used at the facility, including but not limited to the areas in which the scrubber machines and/or trucks were used, and any ratings for hazardous locations that were held by the trucks and/or scrubber machines.

Interrogatory No. 15: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 2, Items 16 through 19.

Interrogatory No. 16: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 2, Item 25(a) and (b).

Interrogatory No. 17: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 1, Item 1.

Interrogatory No. 18: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 1, Item 3.

Interrogatory No. 19: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 1, Items 7 through 14.

Interrogatory No. 20: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation, 1, Items 15 through 19.

Interrogatory No. 21: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 1, Items 20 through 51.

Interrogatory No. 23: Identify all oral and written communications by Imperial before February 7, 2008, on the explosion that occurred at the Domino Sugar Plant in Baltimore, Maryland on November 2, 2007.

(Exhibit B, attached hereto).

Respondents also provided the answer above in response to the following Requests for

Documents:

1. All documents that Imperial contends support its denial of the allegations contained in the Citations and Notifications of Penalty.
2. All documents that concern or relate to sugar dust or cornstarch accumulations at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.
3. All documents that concern or relate to the dangers and/or hazards associated with sugar dust and/or cornstarch, including documents concerning the combustive and/or explosive nature of sugar dust and/or cornstarch at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.

4. All documents that concern or relate to cleanliness and/or housekeeping, including but not limited to the dangers and/or hazards associated with lack of cleanliness and/or housekeeping, the standard or degree of cleanliness and/or housekeeping set by Imperial, the methods used to measure cleanliness and/or housekeeping, and persons who were responsible for ensuring standards were met at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.
5. All documents that concern or relate to the electrical classification of locations, including the classification of Class II hazardous locations, as defined by 29 C.F.R. § 1910.399, at the facility.
6. All documents that concern or relate to “hot work,” work with or on energized equipment, and/or work with potential ignition sources at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.
7. All documents that relate to deflagration relief venting or deflagration suppression systems for sugar conveyance and processing equipment at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.
8. All documents that relate to the design, construction, and maintenance of dust collector systems at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.
9. All documents that relate to the maintenance of screw augers at the facility.
10. All documents that relate to the type of materials that should be used for exterior walls or roofs in Class II, Division 1 or 2 areas at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.
11. All documents that relate to the use of bearing temperature, belt alignment, and vibration detection monitors on processing and conveyance equipment, including the bulk material steel conveyor belts and inside of the bucket elevators any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.
12. All documents that relate to scrubber machines and/or gasoline and propane powered industrial trucks that were used at the facility, including but not limited to the areas in which the scrubber

machines and/or trucks were used, and any ratings for hazardous locations that were held by the trucks and/or scrubber machines.

13. All documents that support or refute Imperial's denial in its Answer of the allegations in the Complaint.

14. All documents that support or refute Imperial's affirmative defenses raised in its Answer to the Complaint.

18. All documents Imperial intends to rely upon to support its contention that it did not commit violations as alleged in the Complaint and Citations and Notifications of Penalty.

19. All documents Imperial intends to rely upon to support its contention that it did not commit Willful violations as alleged in the Complaint and Citations and Notifications of Penalty.

20. All documents Imperial intends to rely upon to support its contention that it should not be subject to instance-by-instance penalties for Willful violations as alleged in the Complaint and Citations and Notifications of Penalty.

21. All documents Imperial intends to rely upon to support its contention that it should not be subject to instance-by-instance penalties for Willful violations as alleged in the Complaint and Citations and Notifications of Penalty.

26. All documents that relate to the conditions identified in Citation 2, Items 16 through 19.

27. All documents that relate to the conditions identified in Citation 2, Item 25(a) and (b).

28. All documents that relate to the conditions identified in Citation 1, Item 1.

29. All documents that relate to the conditions identified in Citation 1, Item 3.

30. All documents that relate to the conditions identified in Citation 1, Items 7 through 14.

31. All documents that relate to the conditions identified in Citation, 1, Items 15 through 19.
32. All documents that relate to the conditions identified in Citation 1, Items 20 through 51.

(Exhibit C, attached hereto).

In response to Complainant's Requests for Documents, Respondents provided a single disc containing 199 pages of documents (numbered "IMPERIAL-0000001 to IMPERIAL-0000199"), consisting primarily of (1) e-mail correspondence from Graham H. Graham, Respondents' Vice President of Operations at the time of the February 7, 2008, Port Wentworth refinery explosion, and (2) 102 pages of documents that Respondents received from Mr. Graham through his private legal counsel. Respondents have not produced any other documents in response to Complainant's first discovery requests and have not identified with specificity, by Bates number, document name, or otherwise, any other documents that are responsive to Complainant's discovery requests.

In addition, in response to Complainant's First Interrogatory Nos. 1-4, 7, and 9-25, seeking the identification of persons with knowledge of facts regarding Respondents' defenses, affirmative defenses, and various hazards and conditions specified in these interrogatories, Respondents' provided the following response:

[P]ersons listed in Appendix A to these responses may have knowledge of facts [that are the subject of the Request]. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

Respondents subsequently asserted that identification of persons with knowledge regarding the matters set forth in Complainant's several interrogatories is "asking Imperial counsel" to do

Complainant's job. (Exhibit A, April 24, 2009, letter at p. 4). Respondents assert that Complainant interviewed, or had opportunity to interview, "each and every employee of the company...presumably to obtain the very information now sought in the discovery requests," and that if Complainant failed to ask questions of these persons about these subject areas, "such failure should not be suffered by Imperial." (Id.).

III. ARGUMENT AND CITATION OF AUTHORITY

"Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, **including the existence, description, nature, custody, condition and location of any books, documents,** or other tangible things and **the identity and location of persons having knowledge** of any discoverable matter." Fed.R.Civ.P. 26(b)(1) (emphasis added). Complainant's interrogatories and requests for documents clearly seek relevant information including the existence of documents and identities of persons with relevant knowledge of certain specified topics.

A. Interrogatories

1. Respondents are required to specify the records that are responsive to Complainant's discovery requests.

Rule 33(d) of the Federal Rules of Civil Procedure ("Option to Produce Business Records") provides in relevant part:

If the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information), and if the burden of deriving or ascertaining the answer will be substantially the same for either party, the responding party may answer by:

(1) specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as readily as the responding party could.

Fed.R.Civ.P. 33(d) (emphasis added). Rule 37(a)(4) provides that “an evasive or incomplete” answer is to be treated as a “failure to answer.” Fed.R.Civ.P. 37(a)(4).

Rule 33(d) requires that, if documents are referenced as responsive to an interrogatory, all such documents be identified in some manner so that the party that served the discovery request may as easily locate responsive documents as the party responding to the requests. An Interrogatory response asserting Rule 33(d), whether expressly or not, requires more than a broad identification of documents kept in the normal course of business. A responding party may refer to business records in lieu of a narrative response **if those records are clearly identified.**

USCFTC v. American Derivatives Corp, 2007 WL 1020838, *3 (N.D.Ga., Mar. 30, 2007)

(emphasis added); L.H. v. Schwarzenegger, 2007 WL 2781132, *2 (E.D.Cal., Sept. 21, 2007)

(“[[I]n situations where a requesting party has asked for much information, and this information could be gleaned from reference to the responding party's records, the law permits a responding party to specifically direct the requesting party to such records.[] The reference to such records, however, must be specific and designed to provide the information requested.”)

Here, Respondents’ broad and general reference to unidentified records that they state were previously produced, or to which “access” was provided during the OSHA inspection, does not meet the requirements of Rule 33. Respondents’ invocation of Rule 33(d), in referencing documents in response to interrogatories in lieu of providing written responses, must include specification of the records that Respondents believe contain responsive information, and in “sufficient detail” to enable Complainant to locate such records. Respondents have not made this effort in response to the initial requests or Complainant’s subsequent requests made in a good faith effort to resolve this matter.

To the extent that Respondents would rely upon 29 C.F.R. 2200.52(c) and claim that Complainant has had “ample opportunity” to obtain the information sought by discovery, Commission Rule 2200.52(c) provides only that the “frequency or extent of the discovery methods provided by these rules may be limited **by the Commission or Judge if it is determined that:** (1) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (2) the party seeking discovery has had ample opportunity to obtain the information sought by discovery in the action; or (3) the discovery is unduly burdensome or expensive, taking into account the needs of the case, limitations on the parties’ resources, and the importance of the issues in litigation.” (emphasis added). There has been no legal determination that the discovery sought by Complainant should be limited due to any of the reasons set forth in the rule. Further, Respondents have not identified with any specificity the responsive documents, which they claim Complainant had “ample opportunity” to obtain, thus making it impossible for Complainant to ascertain what documents the Respondents deem are responsive and purportedly cumulative or burdensome to produce at this time. Respondents’ position requires Complainant to respond to her own discovery requests, which is not the intent of the discovery procedures, either in letter or in spirit.

2. Respondents are required to identify the persons with knowledge regarding the subject areas identified in several interrogatories.

In response to several interrogatories (First Interrogatory Nos. 1-4, 7, and 9-25) seeking the identification of persons with knowledge of the facts pertaining to several different subject areas,¹ Respondents referred Complainant to a list of over 100 individuals in Respondents’

¹ The interrogatories at issue request the identification of persons with knowledge of facts regarding: Respondents’ defenses (#1), affirmative defenses (#2), hazards associated with sugar dust and/or cornstarch (such as fire, explosion, combustion, deflagration, and/or dust accumulations) (#3), housekeeping with respect to sugar dust

Appendix A to their discovery responses, which is a 2 ½ page list of management and non-management employees. (Exhibit A, Appendix A). Respondents state in response to each of the interrogatories at issue that persons on this list “may have knowledge of facts responsive to Complainant’s First Interrogatories, facts related to Imperial’s denials of defenses to the allegations in the Complaint, and facts related to Imperial’s efforts to reduce the hazards alleged in the Complaint.” (Id.). Respondents make no effort to identify which of these persons, in fact, have knowledge that Respondents deem responsive to any of the interrogatories. As such, Respondents would have Complainant identify such persons based on any information that Complainant may have obtained during the investigation.

Respondents’ position appears to be that Complainant’s sole opportunity to determine what persons have knowledge of the requested facts was during the investigation, and that, if Complainant did not obtain the information or did not interview every management and non-management employee of Respondents and its contractors, then Complainant is not entitled to the discovery it now seeks. Respondents’ position also assumes that the only persons with the requested knowledge are those whom Complainant allegedly interviewed or had the “opportunity” to interview during the investigation, and that no information or facts could have developed or been discovered by Imperial since the issuance of the citations in July 2008.

Contrary to Respondents’ assertion, discovery requests asking Respondents to identify the persons that they believe have knowledge of the matters set forth in the interrogatories is not

and/or cornstarch at the facility (#4), accumulations of sugar dust and/or cornstarch on workroom floors and elevated surfaces (#7), electrical classification locations (#9), relief venting and deflagration suppression systems (#10), maintenance of dust collector systems and screw augers(#11), the types of materials that should be used for exterior walls or roofs in Class II, Division 1 or 2 areas (#12), the use of detection devices for bearing temperature, belt alignment, and vibration detection monitors (#13), scrubber machines and/or powered industrial trucks and their locations of use (#14), conditions cited in Citation 2, Items 16 through 19 (#15), conditions cited in Citation 2, Items 25(a) and (b) (#16), conditions cited in Citation 1, Item 1 (#17), conditions cited in Citation 1, Item 3 (#18), conditions cited in Citation 1, Items 7 through 14 (#19), conditions cited in Citation 1, Items 15 through 19 (#20), conditions cited in Citation 1, Items 20 through 51 (#21), and persons with knowledge of facts and reasons that any Citation classified as “willful” should not be so classified (#25).

“asking Imperial counsel” to do Complainant’s job; rather, Respondents’ refusal to provide the requested information requires Complainant to both serve and answer its own discovery responses. (Exhibit A, April 24, 2009, letter at p. 4). Complainant thus seeks an order compelling Respondents to provide responses to the interrogatories at issue.

B. Requests for Production of Documents

Pursuant to Rule 34(b)(2)(B), when responding to a request for documents,

For each item or category [requested], the response must either state that inspection and related activities will be permitted as requested or state an objection to the request, including the reasons.

Respondents’ objection to producing documents, which they believe were already provided during the inspection, is an inadequate and incomplete response to Complainant’s document requests, as Respondents have again failed to identify what documents that they believe are responsive to each request. Complainant, therefore, cannot identify whether such documents are, in fact, already in her possession as a result of the investigation. Further, Respondents’ position that they “provided access to” unidentified documents during the investigation is vague and not responsive to the requests. Complainant has absolutely no way of identifying or obtaining such documents other than via discovery in this proceeding. If documents that were allegedly made available but not produced during the investigation are responsive to any of the requests, Respondents are obligated to produce them in discovery.

Respondents’ position again assumes that no documents were obtained, identified, or discovered since the citations were issued. However, Respondents clearly have documents that were not provided during the investigation, which is evidenced by exhibits Respondents filed in this proceeding in connection with their Motion for Partial Summary Judgment, concerning the bucket elevator specifications and speeds. (See Exhibits A-F in Attachment 1 to Respondents’

Motion for Partial Summary Judgment, filed January 27, 2009). No such documents were produced to Complainant during in the investigation or in response to her discovery requests.

Respondents have unilaterally and impermissibly limited the extent of discovery pursuant to 29 C.F.R. § 2200.52(c), which is a matter solely within the power of the Commission or the Judge. See 29 C.F.R. § 2200.52(c) (“The frequency or extent of the discovery methods provided by these rules may be limited by the Commission or Judge” if certain determinations are made); see also Fed.R.Civ.P. 26(b)(2)(C)(i) (“On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule” if certain determinations are made). Complainant thus seeks an order compelling Respondents’ to provide responses to the discovery requests at issue.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, Complainant respectfully requests that the present Motion be granted.

Respectfully submitted, this 1st day of June, 2009.

ADDRESS:

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ANGELA F. DONALDSON
Trial Attorney

SOL Case No. 08-60093

Attorneys for the Complainant

CERTIFICATE OF SERVICE

I certify that all parties have consented that all papers required to be served may be served and filed electronically. I further certify that a copy of Complainant's Motion to Compel Responses to Interrogatories and Requests for Production of Documents and Memorandum in Support, with all exhibits thereto, was electronically served on June 1, 2009 on the following parties:

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s/Karen E. Mock
KAREN E. MOCK
Senior Trial Attorney

SOL Case No. 08-60093

Secretary of Labor v. Imperial Sugar Company; Imperial-Savannah, L.P.

OSHRC Docket No. 08-1104

Exhibit A

To

Complainant's Motion to Compel and Memorandum in Support

U.S. Department of Labor

Office of the Solicitor
61 Forsyth Street SW
Atlanta, Georgia 30303



Via Electronic Mail

March 25, 2009

Charles H. Morgan, Esq.
Alston & Bird, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424

Re: Secretary of Labor v. Imperial Sugar Company; Imperial-Savannah, L.P.
OSHRC Docket No. 08-1104; Region IV
SOL Case No. 08-60093

Dear Mr. Morgan:

In reviewing Respondents' Responses to Complainant's Interrogatories and Requests for Production of Documents, I have found several issues that we need to address to try to avoid Complainant taking them up with Administrative Law Judge Covette Rooney in a motion to compel production. I have outlined the issues below and set forth a proposed resolution.

1. Respondents indicate responsive documents will be produced, except to the extent they were previously produced during the OSHA inspection. Thus far, in response to Complainant's written discovery, Respondents have produced just one (1) CD containing approximately 200 pages of material related to Graham Graham. Complainant does not seek to have Respondents produce documents again. However, it is unclear whether Respondents have produced all responsive documents available to date. Please clarify whether additional documents have been identified and when they will be produced. To the extent Respondents are relying on documents produced during the inspection, please identify the documents responsive to each request or interrogatory by Bates number or a detailed description so Complainant may locate them in her files.

2. Respondents object to producing documents or information they believe they "provided access to" during the inspection. Complainant does not believe this is a valid objection to discovery requests. Respondents know exactly what documents they did and did not provide to OSHA during the inspection. Relevant documents and information not produced, e.g. what Respondents relied upon in support of their Motion for Partial Summary Judgment, are clearly responsive to Complainant's discovery requests (see e.g. Interrogatory No. 13). Please produce all responsive information and documents Respondents assert they "provided access to" during the inspection.

Working for America's Workforce

Charles H. Morgan, Esq.
Page Two
March 25, 2009

3. To the extent Respondents are withholding the production of responsive documents or information based on one or more privileges, please identify the documents in accordance with Fed. R. Civ. P. 26(b)(5) so Complainant may "assess the claim."

4. Respondents' "self-critical analysis privilege" is not a valid basis for withholding information or documents responsive to Complainant's discovery requests. Please produce any responsive information or documents to the extent not previously produced during the inspection.

5. Respondents' objection to information or documents which may contain "sensitive business information" or personal information about former or current employees is not a valid basis for withholding responsive information or documents. Please produce such material and identify it so it can be handled accordingly.

6. Respondents' answers to Document Requests 21 through 25 and 33, subparts d, g, h, and j do not indicate that responsive documents have been or will be produced. ~~Please produce responsive documents. If Respondents contend they have no responsive documents, please so state. If Respondents are refusing to produce responsive documents, provide the legal basis for the refusal. The objections to these responses are the same as those contained in the vast majority of the responses and, thus, do not adequately explain the basis for non-production.~~

7. Respondents' responses to numerous document requests object on the ground that the request "is overbroad as to both time and scope." Please state whether Respondents imposed a time or scope limit to the responses and documents produced, the time frame imposed, and the basis for any such limitation.

8. Respondents' answers to the Interrogatories refer to over 100 persons identified by name only in Appendix A as persons who "may have knowledge of facts." For example, Interrogatory No. 22 seeks the identification of persons with knowledge of NFPA 61. The response does not indicate whether any of the 104 persons in Appendix A have knowledge of this industry standard. Respondents have an obligation to engage in a good faith inquiry with respect to the information sought in the Interrogatories. For each Interrogatory, please identify current or former members of Respondents' management who have knowledge of the facts sought in each Interrogatory and state the facts known.

9. Respondents' answer to Interrogatory No. 24 only goes back 5 years. Given the magnitude of the events on February 7, 2008, such a short time frame is unreasonable. Please respond for the time period requested.

Charles H. Morgan, Esq.
Page Three
March 25, 2009

10. Respondents' answer to Interrogatory No. 6 is non-responsive and the objection, which is the same as almost every other objection to every other interrogatory fails to explain the basis for the non-responsive answer. Please provide a full and complete answer to Interrogatory No. 6.

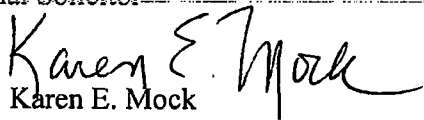
11. Respondents' responses to Interrogatories do not comply with Fed. R. Civ. P. 33(b). Please provide answers that are signed, under oath, as required by the Federal Rules of Procedure.

Thank you for your prompt attention to these issues. If Complainant does not receive documents and/or a reply by April 3, 2009, we will conclude that none will be forthcoming and will proceed with a motion to compel production.

Sincerely,

Stanley E. Keen
Regional Solicitor

By:


Karen E. Mock
Senior Trial Attorney

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April 10, 2009

Via Email

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Atlanta, Georgia 30303

Re: *Imperial Sugar Company, et al.*, Docket No. 08-1104: Response to Letter
Dated March 25, 2009

Dear Karen:

This letter responds to your letter dated March 25, 2009 regarding alleged deficiencies in Imperial's responses to Complainant's discovery requests.

1. You have asked whether Imperial will produce additional documents that are responsive to the Secretary's discovery requests.

RESPONSE:

To date, Imperial has produced all documents that have been determined to be responsive to the requests and are known to be in their possession, custody, and control. We are, however, continuing to investigate, review company records, and develop our defenses. Accordingly, we expect to produce additional documents, and some of those will likely be produced in the next thirty days.

2. You note that Imperial has objected to producing certain documents and/or information to which Complainant has already been "provided access to" during OSHA's investigation. You request that Imperial produce all responsive information regardless of whether Complainant has already been provided access to it.

RESPONSE:

Pursuant to 29 C.F.R. § 2200.52(c), Imperial will object to discovery that is "unreasonably cumulative or duplicative, or is obtainable from some other source that is more

convenient, less burdensome, or less expensive; where Complainant has “had ample opportunity to obtain the information sought”; or where the discovery is “unduly burdensome or expensive.” Accordingly, Imperial has objected to providing information or documents that are duplicative of or redundant to the information or documents it already produced or provided access to throughout Complainant’s comprehensive investigations and in response to Complainant’s six Subpoenas *duces tecum*. As you know, Complainant propounded six subpoenas *duces tecum* containing 160 separate requests for documents (some containing multiple subparts). To date, Imperial has provided to Complainant over 30,000 pages of documents in response to these requests. In addition, throughout the investigation, Imperial provided OSHA with virtually unlimited access to various repositories of historical records that were responsive to the subpoenas and may be responsive to the current discovery requests. By agreement reached between Complainant and Imperial, OSHA’s several investigators at the Port Wentworth site were permitted, at any time they requested over the course of their six-month investigation, to comb through several thousand pages of company records—including company correspondence, engineering diagrams, construction plans, specifications lists, contract records, equipment manuals, etc. Moreover, Imperial has expended an extraordinary amount of time, effort, and money responding to OSHA’s numerous demands for documents and other information, coordinating and defending witness interviews, and otherwise supporting OSHA’s comprehensive investigations. To the extent that Complainant’s discovery requests in this litigation require Imperial to repeat these efforts, Complainant would impose an unreasonable burden on Imperial and would waste the resources of both Imperial and the U.S. Government.

I will note, however, that we are continuing to investigate, review company records, and develop our defenses. To the extent we uncover documents that are responsive to Complainant’s discovery requests, and which have not already been produced to or otherwise made available to Complainant, such documents will be produced.

3. You request that Imperial provide a privilege log regarding any responsive documents or information withheld on grounds of privilege.

RESPONSE:

Imperial will develop a privilege log in the form contemplated by 29 C.F.R. § 2200.52(c). We expect to complete the log by the end of next week. Imperial requests that Complainant also provide a privilege log regarding any documents or information responsive to Imperial’s requests that have been or will be withheld on grounds of privilege.

4. You contend that the “self-critical analysis privilege” is not a valid basis for withholding information or documents, and you request that Imperial produce any documents or information previously withheld on this basis.

RESPONSE:

Imperial did state, in its "General Objections" preceding its specific responses to Complainant's Interrogatories and Requests for Production of Documents, that it will object to discovery requests "seeking information protected by ... the self-critical analysis privilege." Imperial did not, however, assert this objection with respect to any specific interrogatory or document request, and Imperial has not withheld any information or documents on this basis. We do understand, however, that Complainant has followed and will follow the "Final Policy Concerning the Occupational Safety and Health Administration's Treatment of Voluntary Employer Safety and Health Self-Audits," 65 Fed. Reg. 46,498 (Jul. 28, 2000). To date, Imperial has produced numerous documents covered by this policy, with the understanding that Complainant will abide by this policy.

5. You contend that respondents' objections on the bases of "sensitive business information" and "personal information" are not valid bases for withholding information or documents, and you request that Imperial produce any documents or information otherwise withheld on these bases.

RESPONSE:

Imperial did state, in its "General Objections" preceding its specific responses to Complainant's Interrogatories and Requests for Production of Documents, that it will object to discovery requests seeking "information that is confidential, including, but not limited to, confidential information in, or relating to, personnel files of current or former employees and sensitive business information." Imperial did not, however, assert this objection with respect to any specific interrogatory or document request, and Imperial has not withheld any information or documents on this basis. If Imperial determines that a document responsive to Complainant must be protected because it is a personnel file of a current or former employee or contains confidential sensitive business information, Imperial will produce the document subject to a confidentiality agreement reached between the parties.

6. You have asked Imperial to specify whether they will be producing documents in response to Complainant's Request Nos. 21-25 and 33(d), (g), (h), and (j).

RESPONSE:

In Request Nos. 21-25, Complainant requests "all documents that relate to" NFPA 61-2002, Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities (2002 Edition) (Req. No. 21); NFPA 70, National Electrical Code (Req. No. 22); American National Standards Institute (ANSI) B30.16-1973 (Req. No. 23); American Society of Mechanical Engineers (ASME) B31.1-2007 (Req. No. 24); and NFPA 101-2000, Life Safety Code (Req. No. 21); or any "previous or subsequent iterations, updates, or editions" of these publications.

Imperial properly objected to this Request on grounds that it is vague and unclear as to the information sought (the term "all documents that relate to" is exceedingly vague), is

overbroad as to time and scope (there is no limitation at all), is unduly burdensome (particularly due to the vagueness, lack of parameters as to time and scope, etc.),¹ and to the extent it seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. As such, these Requests purport to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules.

To the extent responsive documents have not already been produced to Complainant, Imperial will agree to produce any documents it discovers to be in its possession, custody, or control and which (1) are communications between Imperial employees or between Imperial employees and third parties in which any of these publications are mentioned; or (2) are internal memoranda, notes, or similar records created by Imperial employees that reference any of these publications. Imperial will limit its searches of records responsive to this request to the five year period preceding the February 2008 accident.

In Request No. 33, Complainant requests certain documents identified by Graham H. Graham during his sworn interview conducted on June 11, 2008.

In Request 33(d), Complainant requests "All written reports and/or assessments (including photographs) of the Gramercy facility prepared by Michael Lastie and/or ICU since February 1, 2008." Imperial maintains its objections to this Request and will not produce documents responsive to the Request for the reasons stated therein, particularly the fact that the requested documents are protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the requested information pertains to Gramercy and thus is not relevant to the litigation at hand and is not likely to lead to the discovery of admissible evidence. As noted by Complainant in its reply to Imperial's motion to consolidate the two cases pending against its Port Wentworth and Gramercy facilities, "these cases reflect the very essence of uncommon parties and militate in favor of maintaining separate proceedings ... the facts relating to specific items are unique in each instance."

In Request 33(g), Complainant requests "All written reports and/or assessments (including photographs) of the Gramercy facility prepared by Chilworth Associates and/or Steve Luzik since February 1, 2008." Imperial maintains its objections to this Request and will not produce documents responsive to the Request for the reasons stated therein, particularly the fact that the requested documents are protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the requested information pertains to Gramercy and thus is not relevant to the litigation at hand and is not likely to lead to the discovery of admissible evidence. As noted by Complainant in its reply to Imperial's motion to consolidate the two cases pending against its Port Wentworth and Gramercy facilities, "these

¹ As an example, as stated, this request would encompass any manual or other book (of the thousands maintained in the facility's library and in other areas), that references these publications in any manner, even if in a manner that is wholly irrelevant to the claims and defenses in this case

cases reflect the very essence of uncommon parties and militate in favor of maintaining separate proceedings ... the facts relating to specific items are unique in each instance.”

In Request 33(h) Complainant requests “Graham H. Graham’s letter to Oscar Brennan regarding safety and/or health issues *circa* February 2008.” Imperial maintains its objections to this Request. Among the other objections asserted, Imperial notes that the requested information pertains to Gramercy and thus is not relevant to the litigation at hand and is not likely to lead to the discovery of admissible evidence. As noted by Complainant in its reply to Imperial’s motion to consolidate the two cases pending against its Port Wentworth and Gramercy facilities, “these cases reflect the very essence of uncommon parties and militate in favor of maintaining separate proceedings ... the facts relating to specific items are unique in each instance.”

In Request 33(j), Complainant requests “All documents identifying or discussing the approximately 100 pieces of equipment which did or do not meet the hazardous classification criteria at the Gramercy facility.” Imperial maintains its objections to this Request. Among the other objections asserted, Imperial notes that the requested information pertains to Gramercy and thus is not relevant to the litigation at hand and is not likely to lead to the discovery of admissible evidence. As noted by Complainant in its reply to Imperial’s motion to consolidate the two cases pending against its Port Wentworth and Gramercy facilities, “these cases reflect the very essence of uncommon parties and militate in favor of maintaining separate proceedings ... the facts relating to specific items are unique in each instance.”

7. You contend that several of Imperial objections assert that the requests are “overbroad as to both time and scope,” and you request that Imperial states “whether Respondents imposed a time or scope limit to the responses and documents produced, the time frame imposed, and the basis for any such limitation.”

RESPONSE:

As you know, several Requests have no limitation whatsoever as to both time and scope. Imperial believes that the scope of Complainant’s requests should be limited to documents and other information that are relevant to the claims and defenses in this case or will otherwise lead to the discovery of admissible evidence. As to time, Imperial contends that any requests seeking documents older than 5 years prior to the February 2008 accident are overbroad.

8. You note that Imperial has provided a list (Appendix A) of persons who may have knowledge of facts responsive to various requests, and you request that Imperial specifically identify all “current and former members of Imperial management who have knowledge of the facts sought in each Interrogatory and state the facts known.”

RESPONSE:

Where Complainant has requested that Imperial “identify all persons with knowledge of the facts” related to particular subjects, Imperial has objected on grounds that such a request is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. Imperial stands by these objections. In lieu of requiring Imperial to interview several hundred employees that may possess any level of knowledge regarding the broad subject areas identified in Complainant’s requests, Imperial has noted that the persons listed in Appendix A to its responses may have knowledge of facts related to the particular subject areas. Moreover, upon information and belief, Imperial believes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, presumably in order to obtain information regarding the particular subject areas. Thus, Imperial contends that Complainant has had “ample opportunity to obtain the information sought.” 29 C.F.R. § 2200.52(c).

9. You contend that Imperial’s answer to Interrogatory No. 24 only goes back 5 years, which you contend is unreasonable. Complainant seeks responsive information for the time period of 20 years preceding the February 2008 accident.

RESPONSE:

In this interrogatory, Complainant requests the identification of “all oral and written communications by Imperial during the past 20 years and before February 7, 2008, on fires, combustion, explosions, or deflagrations that occurred in Imperial’s work areas where sugar dust or cornstarch existed. Imperial has asserted several objections to this interrogatory. Among other objectionable aspects, the interrogatory is exceedingly broad. Is Imperial to search for and identify every oral communication made by the company regarding these topics over the course of 20 years? Subject to the objections asserted, Imperial will produce any documents or information known to be in its possession, custody, or control that evidences communications regarding these topics in the five years before the accident.

10. You contend that Imperial’s answer to Interrogatory No. 6 is non-responsive, and the objections asserted are insufficient.

RESPONSE:

In this interrogatory, Complainant asks Imperial to “identify each person who supplied information used in answering these interrogatories and, as to each person so identified, list the interrogatories for which such person supplied information.” Imperial stands by its objections to this interrogatory. Moreover, Imperial’s attorneys drafted its responses to the interrogatories based on information gathered through their investigation, including document reviews and interviews of the witnesses listed in Appendix A, all of whom, it is believed, were interviewed by OSHA, on one or more occasions, presumably in order to obtain the very information now sought in the interrogatories served on Imperial.

Karen E. Mock, Esq.
April 10, 2009
Page 7

11. You contend that Imperial answers to Complainant's Interrogatories do not comply with Fed. R. Civ. P. 33(b).

RESPONSE:

Imperial will identify appropriate persons to sign the responses in accordance with Fed. R. Civ. P. 33(b). Imperial request that Complainant also comply with Fed. R. Civ. P. 33(b).

Sincerely,

/s/ Matthew J. Gilligan

Matthew J. Gilligan

MJG:mjg

cc : Angela Donaldson, Esq.
Matthew J. Gilligan, Esq.
Ashley D. Brightwell, Esq.
Jeremy Tucker, Esq.

LEGAL02/31262958v1

U.S. Department of Labor

Office of the Solicitor
61 Forsyth Street SW, Room 7T10
Atlanta, Georgia 30303



April 15, 2009

VIA ELECTRONIC MAIL

Charles H. Morgan, Esq.
Matt Gilligan, Esq.
Alston & Bird, LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424

Re: Secretary of Labor v. Imperial Sugar Company; Imperial-Savannah, L.P.
OSHRC Docket No. 08-1104; Region IV
Inspection No. 310988712
SOL Case No. 08-60093

Dear Counsel:

In response to your correspondence dated April 10, 2009, please be advised that the Secretary strongly disagrees with Imperial's position that responsive documents need not be produced in discovery in this matter based on Imperial's contention, in the most general terms, that Complainant had "access" to records during the inspection. Imperial has not provided any specific response or information that it, in good faith, has determined that documents responsive to the Complainant's discovery requests have already been provided or made available to the Complainant. Imperial could do so by identifying such documents by name or by Imperial's bates numbers, but instead Imperial only generally asserts that Complainant had "virtually unlimited access to various repositories of historical records that... may be responsive to the current discovery requests."

Imperial's position requires Complainant to ascertain whether "several thousand pages of company records" (by Imperial's description) that were provided or made available during the inspection are responsive to any of the pending discovery requests. This, of course, is not the Complainant's obligation under the rules pertaining to discovery, nor, as a practical matter, does Complainant have the ability to determine whether all responsive documents were provided or made available during the inspection and up to the present time. Imperial's position in this regard effectively requires Complainant to answer her own discovery requests, which is contrary to the discovery procedures and their purpose. See Secretary v. N.L. Industries, Inc., 11 O.S.H. Cas. (BNA) 2156 (1984) (employer's inadequate response to complainant's discovery requests

Working for America's Workforce

Charles H. Morgan, Esq.
Matt Gilligan, Esq.
April 15, 2009
Page 2 of 2

“invited the Secretary to a game of ‘blind man’s bluff,’” was dilatory and in bad faith, prejudiced complainant’s case, and was properly sanctioned). Imperial’s insistence that unnamed “records” were made available to Complainant during the inspection simply does not qualify as a response to Complainant’s requests for document. Therefore, we will have no choice but to file a motion to compel if Imperial does not respond to the Secretary’s requests for documents, or supplement its responses, by the close of business, Friday, April 24, 2009. We will not agree to proceed with any depositions (other than the depositions referenced in Judge Rooney’s March 31, 2009, Order) until the responses are provided.

Imperial is also not relieved of its obligation to provide documents that it has obtained since the time of the inspection, which are responsive to the Complainant’s discovery requests. Imperial’s position regarding allegedly “duplicative” discovery suggests that the universe of responsive documents were provided during the inspection and that the only responsive documents that have surfaced since that time are limited to the approximately 200 pages of documents produced by Imperial in this litigation. This is clearly not the case. As requested in our correspondence dated April 13, 2009, Complainant seeks the production of all records pertaining to work performed at the Port Wentworth facility by Haver Filling Systems, Inc. No such records were previously provided. It has also come to our attention that Imperial possesses documents dating back to November 2008, which concern computer forensic analyses of computer equipment or data, which is relevant to these proceedings and likely relevant to the deposition of Graham H. Graham currently scheduled for April 29 and/or 30, 2009. Such documents are responsive to Complainant’s requests for documents (see First Request for Documents, Nos. 1, 13, 14, 18, 19). If records pertaining to computer forensic analyses are not provided to us by the close of business on Monday, April 20, 2009, we will seek cancellation of the deposition of Mr. Graham, not to be rescheduled until the documents have been provided and we have had opportunity to review same.

If you have any questions, please contact me at (404) 302-5459 or Angela Donaldson at (404) 5451.

Very truly yours,

Stanley E. Keen
Regional Solicitor

By: s/Karen E. Mock
Karen E. Mock
Senior Trial Attorney

ALSTON & BIRD LLP

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1201 West Peachtree Street
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Matthew J. Gilligan

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April 24, 2009

Via Email

Karen E. Mock, Esq.
Office of the Solicitor
U.S. Department of Labor
61 Forsyth Street, SW
Room 7T10
Atlanta, Georgia 30303

Re: *Imperial Sugar Company, et al.*, Docket No. 08-1104: Response to Letter
Dated April 17, 2009

Dear Karen:

This letter responds to your letter dated April 17, 2009 regarding alleged deficiencies in Imperial's responses to Complainant's discovery requests.

1. With respect to documents Imperial previously produced to Complainant during the OSHA investigation, you contend that Imperial must now identify which interrogatory or production request each document is responsive to, and identify each such document by Bates label.

RESPONSE:

While we are willing to work toward complying with your demands in this regard, we still maintain our objections, pursuant to 29 C.F.R. § 2200.52(c), to discovery that is "unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive"; where Complainant has "had ample opportunity to obtain the information sought"; or where the discovery is "unduly burdensome or expensive." Requiring Imperial to provide information or documents that are duplicative of or redundant to the information or documents it already produced or provided access to throughout Complainant's comprehensive investigations and in response to Complainant's six Subpoenas *duces tecum* is "unreasonably cumulative and duplicative."

During its six-month investigation, Complainant asked for information and documents in specific subject categories listed in six subpoenas *duces tecum* containing 160 separate requests for documents (some containing multiple subparts). Imperial produced over 30,000 pages of

documents in response to these requests and provided OSHA with virtually unlimited access to various repositories of historical records that were responsive to the subpoenas and may be responsive to the current discovery requests. Complainant's discovery requests now ask for documents in several specific subject categories that overlap or are otherwise similar to the categories listed in the six subpoenas *duces tecum*. Complainant now wants Imperial to repeat the entire process, reviewing the documents already produced for responsiveness to several subject areas now listed in a different format and in a different order. This is "unduly burdensome or expensive," considering that Complainant has "had ample opportunity to obtain the information sought" during its six-month investigation.

Nevertheless, in the interest of cooperative discovery, Imperial is in the process of reviewing its previous productions and identifying the specific document requests to which each previously produced document or collection of documents is responsive. We expect to complete this process by the middle of next week.

2. You disagree with Imperial's position that it will not produce documents that OSHA elected not to request and obtain from Imperial despite having unlimited access such documents during its investigation.

RESPONSE:

While we are willing to work toward complying with your demands in this regard, we still maintain our objection, pursuant to 29 C.F.R. § 2200.52(c), to discovery that is "unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive"; where Complainant has "had ample opportunity to obtain the information sought"; or where the discovery is "unduly burdensome or expensive."

As you know, throughout the investigation, Imperial provided OSHA with virtually unlimited access to various repositories of historical records that were responsive to the subpoenas and may be responsive to the current discovery requests. By agreement reached between Complainant and Imperial, OSHA's several investigators at the Port Wentworth site were permitted, at any time they requested over the course of their six-month investigation, to comb through several thousand pages of company records—including company correspondence, engineering diagrams, construction plans, specifications lists, contract records, equipment manuals, etc. Moreover, Imperial expended an extraordinary amount of time, effort, and money facilitating these document reviews, responding to OSHA's demands for the documents they identified, and copying and producing the documents.

Despite these efforts during OSHA's six-month investigation, Complainant now demands that Imperial return to these repositories and repeat what OSHA has already done. This would impose an unreasonable burden on Imperial and would waste the resources of both Imperial and the U.S. Government.

Nevertheless, in the interest of cooperative discovery, Imperial is in the process of collecting and reviewing additional repositories of documents, *previously accessible to OSHA*, that may be responsive to Complainant's current document requests. We have collected several thousands of pages of documents and expect to complete this process within the next 30 days.

In addition, we are continuing to investigate, review company records, and develop our defenses. To the extent we uncover documents that are responsive to Complainant's discovery requests, and which have not already been produced to or otherwise made available to Complainant, such documents will be produced.

3. Documents pertaining to Haver Filling Systems.

RESPONSE:

These documents are provided as an enclosure to this letter, Bates label numbers IMPERIAL 0002873-0002883.

4. Computer Forensic Analyses of Computer Equipment or Data.

RESPONSE:

On April 20, 2009, we produced copies of the reports from Kroll OnTrack and Sirius Solutions, LLP regarding their forensic analyses related to a document named "Weekly Operations Focus WE 20th January 2008.doc." Specific clarifying information regarding that production is provided in our April 20 letter.

5. You contend that records related to operations in Gramercy must be produced in the litigation involving Port Wentworth.

RESPONSE:

Imperial maintains its objection to producing documents pertaining to Gramercy. Such requests seek documents that are not relevant to the litigation at hand and not likely to lead to the discovery of admissible evidence. As noted by Complainant in its reply to Imperial's motion to consolidate the two cases pending against its Port Wentworth and Gramercy facilities, "these cases reflect the very essence of uncommon parties and militate in favor of maintaining separate proceedings ... the facts relating to specific items are unique in each instance."

6. You contend that Imperial is obligated to identify all "persons who have knowledge of facts sought in interrogatories."

RESPONSE:

While we are willing to work toward complying with your demands in this regard, we stand by the objections set forth in our original response. To the extent Complainant seeks to have Imperial “identify all persons with knowledge of the facts” related to particular subjects, such a request is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and may seek information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In lieu of requiring Imperial to interview or re-interview several hundred employees that may possess any level of knowledge regarding the broad subject areas identified in Complainant’s requests, Imperial has noted that the persons listed in Appendix A to its responses may have knowledge of facts related to the particular subject areas.

Complainant is essentially asking Imperial counsel to do her job. Complainant has previously interviewed, or had the unrestricted opportunity to interview, each and every employee of the company, from the most junior up to the President and CEO—presumably to obtain the very information now sought in the discovery requests. Thus, Complainant has had “ample opportunity to obtain the information sought.” 29 C.F.R. § 2200.52(c). If Complainant failed to ask those employees about these subject areas, which are central to Complainant’s allegations in this case, such failure should not be suffered by Imperial.

Nevertheless, in the interest of cooperative discovery, Imperial will attempt to create a list of those employees it presently knows to have knowledge regarding the subject areas identified in the interrogatories. Of course, without interviewing or re-interviewing every employee at the Port Wentworth facility (which Imperial does not intend to do), the list will not be comprehensive.

7. You state that it is “not unreasonable to ask Imperial to identify fires and other related events for the last 20 years” and that “numerous people with extensive tenure with the company could be asked about these events.”

RESPONSE:

Complainant has requested the identification of “all oral and written communications by Imperial during the past 20 years and before February 7, 2008, on fires, combustion, explosions, or deflagrations that occurred in Imperial’s work areas where sugar dust or cornstarch existed.” Imperial has asserted several objections to this interrogatory, and has agreed to produce any documents or information known to be in its possession, custody, or control that evidences communications regarding these topics in the five years before the accident. To the extent the interrogatory seeks information pertaining to events prior to that period, it is exceedingly overbroad.

You note that “numerous people with extensive tenure with the company could be asked about these events.” Again, Complainant has previously interviewed, or had the unrestricted opportunity to interview, each and every employee of the company, from the most junior up to the President and CEO—presumably to obtain the very information now sought in this request.

Karen E. Mock, Esq.
April 24, 2009
Page 5

Thus, Complainant has had "ample opportunity to obtain the information sought." 29 C.F.R. § 2200.52(c). If Complainant failed to ask these employees about "fires and other related events for the last 20 years," which the Complainant apparently believes is important information in this case, such failure should not be suffered by Imperial.

8. Identification of persons who supplied information used in answering the Complainant's interrogatories.

RESPONSE:

Imperial stands by its objections to this interrogatory. Imperial's attorneys drafted its responses to the interrogatories based on information gathered through their investigation, including document reviews and interviews of the witnesses listed in Appendix A to Imperial's responses, all of whom, it is believed, were interviewed by OSHA, on one or more occasions, presumably in order to obtain the very information now sought in the interrogatories served on Imperial. In drafting the responses, Imperial's counsel did not rely on particular individuals to "supply information" needed for each response, but instead relied on the comprehensive body of knowledge formed by multiple counsel over the course of a six-month OSHA investigation, which included multiple witness interviews, document reviews, and other information-gathering techniques. To the extent that Complainant demands the identity of those individuals who may have provided information, over time, that was helpful in responding to Complainant's interrogatories, Imperial refers to Appendix A.

Karen, I want to assure you that we are working extremely hard to identify and produce every document in the company's possession or control that is responsive to Complainant's discovery requests. We understand our legal obligations, and we understand that you need the documents and information you have requested in order to prepare adequately for depositions and trial. The efforts required to search for, collect, review for responsiveness, review for privilege, label, and produce responsive documents has taken more time than we would prefer, and certainly more time than you would prefer. We are, however, diligently working to get you the information and documents you need. At the same time, we acknowledge and appreciate your efforts to date, and we understand that you also have worked extremely hard to identify and produce documents responsive to Imperial's initial requests. Thank you for your efforts, and thank you for your continued cooperation in working through the discovery process.

Sincerely,

/s/ Matthew J. Gilligan

Matthew J. Gilligan

Karen E. Mock, Esq.
April 24, 2009
Page 6

MJG:mjg
Enclosure

cc : Angela Donaldson, Esq.
Charles H. Morgan, Esq.
Ashley D. Brightwell, Esq.
Jeremy Tucker, Esq.
LEGAL02/31279515v1

Secretary of Labor v. Imperial Sugar Company; Imperial-Savannah, L.P.

OSHRC Docket No. 08-1104

Exhibit B

To

Complainant's Motion to Compel and Memorandum in Support

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,)	
)	
Complainant,)	
)	
v.)	OSHRC DOCKET NO. 08-1104
)	REGION IV
)	
IMPERIAL SUGAR COMPANY;)	
IMPERIAL-SAVANNAH, L.P.)	
)	
)	
Respondents.)	
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**RESPONDENTS IMPERIAL SUGAR COMPANY &
IMPERIAL-SAVANNAH, L.P.'S RESPONSES TO
COMPLAINANT'S FIRST INTERROGATORIES TO RESPONDENTS**

Respondents, Imperial Sugar Company and Imperial-Savannah, LP's (hereinafter "Respondents" or collectively "Imperial"), pursuant to applicable law, respond to Complainant's First Interrogatories to Respondents as follows:

PREAMBLE

Complainant has already conducted lengthy and comprehensive investigations at Imperial's facilities in Port Wentworth, Georgia and Gramercy, Louisiana. Each investigation lasted over four (4) months. Over twenty (20) OSHA officials were directly involved in the investigations. Throughout the investigations, OSHA conducted numerous walk-around inspections, employee interviews, consultant visits, and reviews of Imperial's documentary records. OSHA conducted over 200 interviews of Imperial employees, former employees, and contractors. OSHA also conducted thirteen (13) sworn interviews (via deposition) of company managers and corporate personnel—including Imperial's Chief Executive Officer, Senior Vice President of Human Resources, Vice President of Operations, Vice President of Sugar

Technology, Risk Manager, and Corporate Safety Director. OSHA investigators had virtually unlimited access to both facilities and the equipment within those facilities—including the damaged areas at the Port Wentworth site. OSHA took over 1,000 photographs of relevant facilities and equipment.

Meanwhile, Complainant propounded six subpoenas *duces tecum* containing 160 separate requests for documents (some containing multiple subparts). To date, Imperial has provided to Complainant over 30,000 pages of documents in response to these requests. In addition, throughout the investigation, Imperial provided OSHA with virtually unlimited access to various repositories of historical records that were responsive to the subpoenas and may be responsive to the Interrogatories herein. By agreement reached between Complainant and Imperial, OSHA's several investigators at the Port Wentworth site were permitted, at any time they requested over the course of their four-month investigation, to comb through several thousand pages of company records—including company correspondence, engineering diagrams, construction plans, specifications lists, contract records, equipment manuals, etc.

Imperial has expended an extraordinary amount of time, effort, and money responding to OSHA's numerous demands for documents and other information, coordinating and defending witness interviews, and otherwise supporting OSHA's comprehensive investigations. To the extent that Complainant's discovery requests in this litigation require Imperial to repeat these efforts, Complainant would impose an unreasonable burden on Imperial and would waste the resources of both Imperial and the U.S. Government. Accordingly, Imperial will object to discovery requests seeking information or documents that are duplicative of or redundant to the information or documents it has already produced or provided access to throughout Complainant's comprehensive investigations.

RESERVATION OF RIGHTS WITH REGARD TO ANSWERS

(a) The following responses represent the best information ascertained by Imperial to date. Imperial reserves the right at any time to revise, correct, add to, or clarify any of its responses herein.

(b) The responses herein are subject to the right of Imperial to object on any grounds, at any time, to a demand for further response to these or other discovery requests or other discovery procedures involving or relating to the subject matter of the discovery requests responded to herein.

(c) By responding to these discovery requests, Imperial does not concede the relevancy or admissibility of any information provided.

GENERAL OBJECTIONS

Imperial sets forth below its general objections, which are incorporated into each specific response to each individual discovery request, set out following Imperial's general objections.

(a) Imperial objects to any discovery requests seeking information protected by the attorney-client privilege or the work product/trial preparation materials doctrine, such as attorney-client correspondence, legal memoranda, or materials prepared in anticipation of litigation; or the self-critical analysis privilege.

(b) Imperial objects to discovery requests seeking information that is confidential, including, but not limited to, confidential information in, or relating to, personnel files of current or former employees and sensitive business information.

(c) Imperial objects to the instructions and definitions contained in Complainant's Interrogatories to the extent such instructions and definitions are vague and confusing, and to the extent such instructions and definitions purport to impose upon Imperial burdens or obligations

that are different or greater than those provided for under applicable rules or laws.

(d) Imperial objects to any requests that seek information not relevant to any claim or defense in this action.

**IMPERIAL SUGAR'S RESPONSES AND OBJECTIONS TO
COMPLAINANT'S FIRST INTERROGATORIES**

INTERROGATORY NO. 1: State all facts, identify all persons with knowledge of the facts, and identify all documents upon which Imperial relies in support of its denial in its Answer of the allegations contained in the Complaint. In answering this Interrogatory, please specify to which paragraph of the Complaint the facts, persons, and/or documents that you identify relate.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts in support of its denial of the allegations contained in Paragraphs VI and VIII of the Complaint. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents upon which Imperial relies in support of its denial of the allegations contained in Paragraphs VI and VIII of the Complaint, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 2: State all facts, identify all persons with knowledge of the facts, and identify all documents upon which Imperial relies in support of its affirmative defenses in its Answer. In answering this Interrogatory, please specify to which affirmative defense the facts, persons, and/or documents that you identify relate.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts in support of its affirmative defenses to Paragraphs VI and VIII of the

Complaint. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents upon which Imperial relies in support of its affirmative defenses to Paragraphs VI and VIII of the Complaint, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 3: Please identify all facts, all persons with knowledge of the facts, and all documents that Imperial possessed, received, or created prior to February 7, 2008, that pertained to the hazards associated with sugar dust and/or cornstarch, including but not limited to the hazards of fire, explosion, combustion, deflagration, and/or dust accumulations.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in

addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the hazards associated with sugar dust and/or cornstarch, including but not limited to the hazards of fire, explosion, combustion, deflagration, and/or dust accumulations. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that Imperial possessed, received, or created prior to February 7, 2008 that pertain to the hazards associated with sugar dust and/or cornstarch, including but not limited to the hazards of fire, explosion, combustion, deflagration, and/or dust accumulations, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 4: Please identify all facts, all persons with knowledge of the facts, and all documents that Imperial possessed, received, reviewed, or created prior to February 7, 2008, that pertain to cleanliness and/or housekeeping with respect to sugar dust and/or cornstarch at the facility, including but not limited to standards for cleanliness, determinations of acceptable levels of accumulation, communications of cleanliness standards and accumulation levels to employees, and cleaning and inspection schedules.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, and calls for Imperial to speculate at its peril as to the information sought. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to cleanliness and/or housekeeping with respect to sugar dust and/or cornstarch at the facility, including but not limited to standards for cleanliness, determinations of acceptable levels of accumulation, communications of cleanliness standards and accumulation levels to employees, and cleaning and inspection schedules. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that Imperial possessed, received, or created prior to February 7, 2008 that pertain to cleanliness and/or housekeeping with respect to sugar dust and/or cornstarch at the facility, including but not limited to standards for cleanliness, determinations of acceptable levels of accumulation, communications of cleanliness standards and accumulation levels to employees, and cleaning and inspection schedules, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged

documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 5: Please identify all expert witnesses that Imperial may call to testify at the hearing on this matter and provide the following information for each:

- (a) name, title, address and telephone number;
- (b) profession or occupation;
- (c) complete occupational history, including duties performed;
- (d) complete educational background;
- (e) field(s) in which he or she is an expert;
- (f) the subject matter on which the expert is expected to testify, the substance of the facts and opinion to which the expert is expected to testify and a summary of the grounds for each opinion;
- (g) documents reviewed or relied upon in forming opinions;
- (h) the date and time when the expert visited the cited worksite;
- (i) previous cases, including case name, docket no., and court, in which the expert has given testimony on the same or similar issues; and
- (j) books, journals, magazines, treatises, articles, lectures or other presentations in which the expert has discussed subject matter similar to that which is at issue in this case.

ANSWER:

Imperial objects to this Interrogatory on grounds that it purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules; and it seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response. Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it has not yet determined which fact and/or expert witnesses it

expects to call at the hearing in this matter, but will supplement this response as appropriate and required.

INTERROGATORY NO. 6: Identify each person who supplied information used in answering these interrogatories and, as to each person so identified, list the interrogatories for which such person supplied information.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules.

INTERROGATORY NO. 7: Identify all facts, all persons with knowledge of the facts, and all documents regarding accumulations of sugar dust and/or cornstarch in places of employment and workrooms on the floors and/or elevated surfaces at the facility.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to accumulations of sugar dust and/or cornstarch in places of employment and workrooms on the floors and/or elevated surfaces at the facility. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents regarding accumulations of sugar dust and/or cornstarch in places of employment and workrooms on the floors and/or elevated surfaces at the facility, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 8: Identify all oral or written communications made or received before February 7, 2008 by Imperial, on the hazards of fire, explosion, combustion, deflagration, or dust accumulation between or among the directors, officers, managers, supervisors, employees, representatives, and/or agents of Imperial.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client

privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

With respect to documents regarding communications made or received before February 7, 2008 by Imperial, on the hazards of fire, explosion, combustion, deflagration, or dust accumulation between or among the directors, officers, managers, supervisors, employees, representatives, and/or agents of Imperial, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 9: Identify all facts, all persons with knowledge of the facts, and all documents regarding the electrical classification of locations, including the classification of Class II hazardous locations, as defined by 29 C.F.R. § 1910.399, at the facility.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those

provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the electrical classification of locations, including the classification of Class II hazardous locations, as defined by 29 C.F.R. § 1910.399, at the facility. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to electrical classification of locations at the facility, including classification of Class II hazardous locations as defined by 29 C.F.R. § 1910.399, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 10: Identify all facts, all persons with knowledge of the facts, and all documents regarding deflagration relief venting and/or deflagration suppression systems for sugar conveyance and processing equipment utilized by Imperial at the facility.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to deflagration relief venting and/or deflagration suppression systems for sugar conveyance and processing equipment utilized by Imperial at the facility. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to deflagration relief venting and/or deflagration suppression systems for sugar conveyance and processing equipment utilized by Imperial at the facility, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided

access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 11: Identify all facts, all persons with knowledge of the facts, and all documents regarding the maintenance of dust collector systems and screw augers at the facility.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the maintenance of dust collector systems and screw augers at the facility. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to the maintenance of dust collector systems and screw augers at the facility, Imperial states that, subject to and without waiving the foregoing

specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 12: Identify all facts, all persons with knowledge of the facts, and all documents regarding the type of materials that should be used for exterior walls or roofs in Class II, Division 1 or 2 areas at the facility.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the type of materials that should have been used for exterior walls or roofs in Class II, Division 1 or 2 areas at the facility. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members

of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to the type of materials that should have been used for exterior walls or roofs in Class II, Division 1 or 2 areas at the facility, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 13: Identify all facts, all persons with knowledge of the facts, and all documents regarding the use of bearing temperature, belt alignment, and vibration detection monitors on processing and conveyance equipment, including the bulk material steel conveyor belts and inside of the bucket elevators at the facility.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have

knowledge of facts pertaining to the use of bearing temperature, belt alignment, and vibration detection monitors on processing and conveyance equipment, including the bulk material steel conveyor belts and inside of the bucket elevators at the facility. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to the use of bearing temperature, belt alignment, and vibration detection monitors on processing and conveyance equipment, including the bulk material steel conveyor belts and inside of the bucket elevators at the facility, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 14: Identify all facts, all persons with knowledge of the facts, and all documents regarding scrubber machines and/or gasoline and propane powered industrial trucks that were used at the facility, including but not limited to the areas in which the scrubber machines and/or trucks were used, and any ratings for hazardous locations that were held by the trucks and/or scrubber machines.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those

provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to scrubber machines and/or gasoline and propane powered industrial trucks that were used at the facility, including but not limited to the areas in which the scrubber machines and/or trucks were used, and any ratings for hazardous locations that were held by the trucks and/or scrubber machines. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to scrubber machines and/or gasoline and propane powered industrial trucks that were used at the facility, including but not limited to the areas in which the scrubber machines and/or trucks were used, and any ratings for hazardous locations that were held by the trucks and/or scrubber machines, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 15: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 2, Items 16 through 19.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory is redundant and duplicative of other Interrogatories served on Respondent herein. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the conditions identified in Citation 2, Items 16 through 19. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to the conditions identified in Citation 2, Items 16 through 19, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control

containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 16: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 2, Item 25(a) and (b).

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory is redundant and duplicative of other Interrogatories served on Respondent herein. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the conditions identified in Citation 2, Item 25(a) and (b). Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to the conditions identified in Citation 2, Item 25(a) and (b), Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 17: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 1, Item 1.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory is redundant and duplicative of other Interrogatories served on Respondent herein. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the conditions identified in Citation 1, Item 1. Upon

information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request.

Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to the conditions identified in Citation 1, Item 1, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 18: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 1, Item 3.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory is redundant and duplicative of other Interrogatories served on Respondent herein. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new

information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the conditions identified in Citation 1, Item 3. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to the conditions identified in Citation 1, Item 3, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 19: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 1, Items 7 through 14.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory is redundant and duplicative of other Interrogatories served on Respondent

herein. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the conditions identified in Citation 1, Items 7 through 14. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to the conditions identified in Citation 1, Items 7 through 14, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 20: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation, I, Items 15 through 19.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the

information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory is redundant and duplicative of other Interrogatories served on Respondent herein. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the conditions identified in Citation, I, Items 15 through 19. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to the conditions identified in Citation, I, Items 15 through 19, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document

requests).

INTERROGATORY NO. 21: Identify all facts, all persons with knowledge of the facts, and all documents regarding the conditions identified in Citation 1, Items 20 through 51.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory is redundant and duplicative of other Interrogatories served on Respondent herein. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to the conditions identified in Citation 1, Items 20 through 51. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to the conditions identified in Citation 1, Items 20 through 51, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d),

Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 22: Identify any and all of Imperial's directors, officers, managers, supervisors, employees, representatives, and/or agents who had knowledge of the industry standard, NFPA 61-2002, *Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities* (2002 Edition), or any previous or subsequent iterations, updates, or editions.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that one or more of the persons listed in Appendix A to these responses may have knowledge of the existence of NFPA 61-2002, *Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities* (2002 Edition). Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request.

Current or former members of Imperial's management may be contacted only through counsel for Imperial.

INTERROGATORY NO. 23: Identify all oral and written communications by Imperial before February 7, 2008, on the explosion that occurred at the Domino Sugar Plant in Baltimore, Maryland, on November 2, 2007.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of communications among Imperial employees about the explosion that occurred at the Domino Sugar Plant in Baltimore, Maryland, on November 2, 2007. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents that pertain to communications by Imperial before February 7, 2008, on the explosion that occurred at the Domino Sugar Plant in Baltimore, Maryland, on November 2, 2007, Imperial states that, subject to and without waiving the foregoing specific

objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 24: Identify all oral and written communications by Imperial during the past 20 years and before February 7, 2008, on fires, combustion, explosions, or deflagrations that occurred in Imperial's work areas where sugar dust or cornstarch existed.

ANSWER:

Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts pertaining to communications among Imperial employees during the 5 years before February 7, 2008 about fires, combustion, explosions, or deflagrations that occurred in Imperial's work areas where sugar dust or cornstarch existed. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on

one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents pertaining to written communications by Imperial during the 5 years before February 7, 2008 about fires, combustion, explosions, or deflagrations that occurred in Imperial's work areas where sugar dust or cornstarch existed, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

INTERROGATORY NO. 25: If Imperial contends that any Citation that is classified as "willful" should not be so classified, please identify all facts and reasons, all persons with knowledge of the facts and reasons, and all documents that support Respondent contention.

ANSWER:

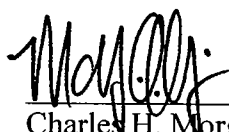
Imperial objects to this Interrogatory on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, and calls for Imperial to speculate at its peril as to the information sought. In addition, the Interrogatory purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that the persons listed in Appendix A to these responses may have knowledge of facts in support of its contention that any Citation classified as "willful" should not

be so classified. Upon information and belief, Imperial notes that Complainant has previously interviewed each of the referenced persons, on one or more occasions, to obtain information sought in this request. Current or former members of Imperial's management may be contacted only through counsel for Imperial.

With respect to documents upon which Imperial relies in support of its contention that any Citation classified as "willful" should not be so classified, Imperial states that, subject to and without waiving the foregoing specific objections or the foregoing general objections, and pursuant to Federal Rule of Civil Procedure 33(d), Imperial will produce non-privileged documents in its possession and/or control containing information responsive to this Interrogatory, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

Respectfully submitted this 12th day of January 2009.



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Attorneys for Respondents

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,)
)
 Complainant,)
)
 v.)
)
 IMPERIAL SUGAR COMPANY;)
 IMPERIAL-SAVANNAH, L.P.)
)
 Respondents.)
)

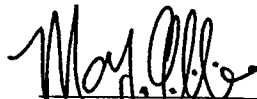
OSHRC DOCKET NO. 08-1104
REGION IV

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the within and foregoing
RESPONDENTS IMPERIAL SUGAR COMPANY & IMPERIAL-SAVANNAH, L.P.'S
RESPONSES TO COMPLAINANT'S FIRST INTERROGATORIES TO RESPONDENTS by
certified U.S. Mail, return receipt requested with adequate postage affixed thereon, addressed as
follows:

Sharon D. Calhoun, Esq.
Karen E. Mock, Esq.
Christopher D. Helms, Esq.
Office of the Solicitor
U.S. Department of Labor
61 Forsyth Street S.W.
Room 7T10
Atlanta, Georgia 30303

This 12th day of January 2009.


Matthew J. Gilligan

APPENDIX A

Upon information and belief, the following Imperial employees may have knowledge of facts responsive to Complainant's First Interrogatories, facts related to Imperial's denials of and defenses to the allegations in the Complaint, and facts related to Imperials efforts to reduce the hazards alleged in the Complaint. Discovery is ongoing, and Imperial reserves the right to change, amend, or supplement this list in the event it learns new or additional information.

Management Employees

Baderschneider, Eric D
Baderschneider, Hannah
Beasley, Russell D
Boulware, Scott W
Bryan, Danny
Bryan, Donny M
Burke, John E
Carbonell, Juan C
Clarke, Gil
Cobb, Larry E
Crews, Adam N
Cuthbert, James E
Exley, Loren Derrick
Gilliard, Edwin Douglas
Gordon, Christopher
Graham, Graham
Green, Isaac
Hall, Scott
Hammond, James "Tennessee"
Harrison, Brian
Holliday, Ray D
Jaudon, Eddie
Jones Jr, Harmon
Kelley, Arthur L
Kelly, Michael G
Kerby, Mitch
Kight, Derek
Lee, Moses
Long, Bruce
Malphus, Brooker A
Mausoof, Aamir R
Morgan, Henry L

Pevey, Darren L
Pinckney, Tyrone
Rivers, Marvin
Scott, Julius L
Sheptor, John
Sikes, Douglas E
Snipes, Donald Ray
Stokes, Jerome
Strozzo, Timothy D
Usher, Timothy D
Weaver Jr, James E
Weitman, Walter L
Williams, Larry J
Williams, Raymond M
Wilson Jr, Thomas E
Zeigler, Dwayne R
Zeigler, Ray C

Non-Management Employees

Barrett, Jeremy E
Bashlor, William Ray
Boyd, Nathan B.
Brinson Jr, Leslie T
Brown, Vincent L
Burnett Jr, Willie E
Butler, Kevin Leon
Buttress-Doyle, Patrick W
Collins, Andre Henry
Cox Jr, Emory E
Crutchfield Jr, Roderick E
Cuyler, Michael C
Daniels, Lonnie Aswad
Davis, Raymond
Davis, William Michael
Denmark, DeAndre D.
Devine, Sheridan B.
Douse, Diane M
Duran, Joshua Edward
Durden, Wade Clifford
Edwards, Darren R
Edwards, Kyle M
Gale, Donald E
Garvin, Willie L
Gent, Glendoria B

Goodwill, Lindsay Batten
Hall, Thomas C
Hamilton, Cynthia G
Hickman, Johnny
Holloway, Barry L
Hopkins, Richard L
Jaudon, Joseph E
Jenkins, Willie E.
Johnson, Jason Nicholas
Johnson, Jerry J
Johnson, Richard Devant
Johnson, Richard L
Johnson, Willie J
Kelly Jr, Willie James
Maennche, Kerry
Martin, Michael J
Mitchum, Joseph M
Monroe, Shirley Smith
Moore, Eric Leonard
Mulherin, Thomas O
Reddick, Demond Lester
Simmons, Reginald S.
Smith, Herbert A
Smith, Hilton
Steele, Willie L
Stevens Jr, Raleigh H
Terry, Eric
Walthour, Sheila
Wilson, Rabon J
Wise, Nathaniel

Secretary of Labor v. Imperial Sugar Company; Imperial-Savannah, L.P.

OSHRC Docket No. 08-1104

Exhibit C

To

Complainant's Motion to Compel and Memorandum in Support

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,)	
)	
Complainant,)	
)	
v.)	OSHRC DOCKET NO. 08-1104
)	REGION IV
)	
IMPERIAL SUGAR COMPANY;)	
IMPERIAL-SAVANNAH, L.P.)	
)	
)	
Respondents.)	
)	

**RESPONDENTS IMPERIAL SUGAR COMPANY &
IMPERIAL-SAVANNAH, L.P.'S RESPONSES TO
COMPLAINANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS**

Respondents, Imperial Sugar Company and Imperial-Savannah, LP's (hereinafter "Respondents" or collectively "Imperial"), pursuant to applicable law, respond to Complainant's First Requests for Production of Documents as follows:

PREAMBLE

Complainant has already conducted lengthy and comprehensive investigations at Imperial's facilities in Port Wentworth, Georgia and Gramercy, Louisiana. Each investigation lasted over four (4) months. Over twenty (20) OSHA officials were directly involved in the investigations. Throughout the investigations, OSHA conducted numerous walk-around inspections, employee interviews, consultant visits, and reviews of Imperial's documentary records. OSHA conducted over 200 interviews of Imperial employees, former employees, and contractors. OSHA also conducted thirteen (13) sworn interviews (via deposition) of company managers and corporate personnel—including Imperial's Chief Executive Officer, Senior Vice President of Human Resources, Vice President of Operations, Vice President of Sugar

Technology, Risk Manager, and Corporate Safety Director. OSHA investigators had virtually unlimited access to both facilities and the equipment within those facilities—including the damaged areas at the Port Wentworth site. OSHA took over 1,000 photographs of relevant facilities and equipment.

Meanwhile, Complainant propounded six subpoenas *duces tecum* containing 160 separate requests for documents (some containing multiple subparts). To date, Imperial has provided to Complainant over 30,000 pages of documents in response to these requests. In addition, throughout the investigation, Imperial provided OSHA with virtually unlimited access to various repositories of historical records that were responsive to the subpoenas and may be responsive to the Requests herein. By agreement reached between Complainant and Imperial, OSHA's several investigators at the Port Wentworth site were permitted, at any time they requested over the course of their four-month investigation, to comb through several thousand pages of company records—including company correspondence, engineering diagrams, construction plans, specifications lists, contract records, equipment manuals, etc.

Imperial has expended an extraordinary amount of time, effort, and money responding to OSHA's numerous demands for documents and other information, coordinating and defending witness interviews, and otherwise supporting OSHA's comprehensive investigations. To the extent that Complainant's discovery requests in this litigation require Imperial to repeat these efforts, Complainant would impose an unreasonable burden on Imperial and would waste the resources of both Imperial and the U.S. Government. Accordingly, Imperial will object to discovery requests seeking information or documents that are duplicative of or redundant to the information or documents it has already produced or provided access to throughout Complainant's comprehensive investigations.

RESERVATION OF RIGHTS WITH REGARD TO ANSWERS

(a) The following responses represent the best information ascertained by Imperial to date. Imperial reserves the right at any time to revise, correct, add to, or clarify any of its responses herein.

(b) The responses herein are subject to the right of Imperial to object on any grounds, at any time, to a demand for further response to these or other discovery requests or other discovery procedures involving or relating to the subject matter of the discovery requests responded to herein.

(c) By responding to these discovery requests, Imperial does not concede the relevancy or admissibility of any information provided.

GENERAL OBJECTIONS

Imperial sets forth below its general objections, which are incorporated into each specific response to each individual discovery request, set out following Imperial's general objections.

(a) Imperial objects to any discovery requests seeking information protected by the attorney-client privilege or the work product/trial preparation materials doctrine, such as attorney-client correspondence, legal memoranda, materials prepared in anticipation of litigation; or the self-critical analysis privilege.

(b) Imperial objects to discovery requests seeking information that is confidential, including, but not limited to, confidential information in, or relating to, personnel files of current or former employees and sensitive business information.

(c) Imperial objects to the instructions and definitions contained in Complainant's Interrogatories to the extent such instructions and definitions are vague and confusing, and to the extent such instructions and definitions purport to impose upon Imperial burdens or obligations

that are different or greater than those provided for under applicable rules or laws.

(d) Imperial objects to any requests that seek information not relevant to any claim or defense in this action.

REQUESTS TO PRODUCE

REQUEST NO. 1: All documents that Imperial contends support its denial of the allegations contained in the Citations and Notifications of Penalty.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 2: All documents that concern or relate to sugar dust or cornstarch accumulations at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for

Imperial to speculate at its peril as to the information sought, assumes facts that are in dispute, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 3: All documents that concern or relate to the dangers and/or hazards associated with sugar dust and/or cornstarch, including documents concerning the combustive and/or explosive nature of sugar dust and/or cornstarch at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has

already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 4: All documents that concern or relate to cleanliness and/or housekeeping, including but not limited to the dangers and/or hazards associated with lack of cleanliness and/or housekeeping, the standard or degree of cleanliness and/or housekeeping set by Imperial, the methods used to measure cleanliness and/or housekeeping, and persons who were responsible for ensuring standards were met at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 5: All documents that concern or relate to the electrical classification of locations, including the classification of Class II hazardous locations, as defined by 29 C.F.R. § 1910.399, at the facility.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the

information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, assumes facts that are in dispute, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 6: All documents that concern or relate to "hot work," work with or on energized equipment, and/or work with potential ignition sources at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or

control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 7: All documents that relate to deflagration relief venting or deflagration suppression systems for sugar conveyance and processing equipment at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 8: All documents that relate to the design, construction, and maintenance of dust collector systems at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the

information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 9: All documents that relate to the maintenance of screw augers at the facility.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter

and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 10: All documents that relate to the type of materials that should be used for exterior walls or roofs in Class II Division 1 or 2 areas at any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, calls for Imperial to make a legal conclusion, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 11: All documents that relate to the use of bearing temperature, belt alignment, and vibration detection monitors on processing and conveyance equipment, including the bulk material steel conveyor belts and inside of the bucket elevators in any facility owned, operated, or in any way controlled by Imperial on or before February 7, 2008.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for

Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 12: All documents that relate to scrubber machines and/or gasoline and propane powered industrial trucks that were used at the facility, including but not limited to the areas in which the scrubber machines and/or trucks were used, and any ratings for hazardous locations that were held by the trucks and/or scrubber machines.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter

and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 13: All documents that support or refute Imperial's denial in its Answer of the allegations in the Complaint.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 14: All documents that support or refute Imperial's affirmative defenses raised in its Answer to the Complaint.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the

information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 15: All documents that Imperial relied on to respond to any of the Interrogatories served herewith.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules.

REQUEST NO. 16: All documents, photographs, videos, or other material generated by any investigation conducted by Imperial, Imperial's insurer, or by any other person or entity on Imperial's behalf, regarding the accident at the facility on February 7, 2008.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

REQUEST NO. 17: All documents, photographs, videotapes, notes, contemporaneous or otherwise, taken, recorded or written by Imperial, Imperial's agents, employees or personnel pertaining to the conditions and practices comprising the contested Citations and Notifications of Penalty.

RESPONSE:

Imperial objects to this Request on grounds that it is incomprehensible, is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new

information contrary to or in addition to this response.

REQUEST NO. 18: All documents Imperial intends to rely upon to support its contention that it did not commit violations as alleged in the Complaint and Citations and Notifications of Penalty.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 19: All documents Imperial intends to rely upon to support its contention that it did not commit Willful violations as alleged in the Complaint and Citations and Notifications of Penalty.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, and seeks information protected by the

attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 20: All documents Imperial intends to rely upon to support its contention that it should not be subject to instance-by-instance penalties for Willful violations as alleged in the Complaint and Citations and Notifications of Penalty.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 21: All documents that relate to NFPA 61-2002, Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities (2002 Edition), or any previous or subsequent iterations, updates, or editions.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to time and scope, is unduly burdensome, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules.

REQUEST NO. 22: All documents that relate to NFPA 70, National Electrical Code or any previous or subsequent iterations, updates, or editions.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to time and scope, is unduly burdensome, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules.

REQUEST NO. 23: All documents that relate to American National Standards Institute (ANSI) B30.16-1973 or any previous or subsequent iterations, updates, or editions.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to time and scope, is unduly burdensome, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules.

REQUEST NO. 24: All documents that relate to American Society of Mechanical Engineers (ASME) B31.1-2007 or any previous or subsequent iterations, updates, or editions.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to time and scope, is unduly burdensome, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules.

REQUEST NO. 25: All documents that relate to NFPA 101-2000, Life Safety Code or any previous or subsequent iterations, updates, or editions.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to time and scope, is unduly burdensome, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, the Request purports to impose upon Imperial obligations that

are different or greater than those provided for under the Commission Rules, the Federal Rules of Civil Procedure and/or other applicable rules.

REQUEST NO. 26: All documents that relate to the conditions identified in Citation 2, Items 16 through 19.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 27: All documents that relate to the conditions identified in Citation 2, Item 25(a) and (b).

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In

addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 28: All documents that relate to the conditions identified in Citation 1, Item 1.

RESPONSE;

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 29: All documents that relate to the conditions identified in Citation 1, Item 3.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 30: All documents that relate to the conditions identified in Citation 1, Items 7 through 14.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or

control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 31: All documents that relate to the conditions identified in Citation, 1, Items 15 through 19.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 32: All documents that relate to the conditions identified in Citation 1, Items 20 through 51.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad as to both time and scope, is unduly burdensome, calls for

Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

REQUEST NO. 33: Any and all documents identified by Graham H. Graham during his sworn interview conducted on June 11, 2008, including but not limited to the following:

- a. All communications from Graham H. Graham to any member of Imperial Sugar Company management regarding safety and health issues, including but not limited to, the bullet-pointed list of safety and health concerns he submitted to the Imperial Sugar CEO and COO (with attached bullet pointed list of safety and health concerns of Amir Mausooof) as a result of Port Wentworth facility visits and/or Gramercy facility visits since October 1, 2007;

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

b. All weekly or other periodic communications (a/k/a "rolling lists") of safety and health issues at Port Wentworth facility and/or the Gramercy facility noting concerns, corrective action taken, and outstanding items (including photographs) since October 1, 2007;

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

c. All postings at the Port Wentworth and/or facilities of safety and health issues which Graham H. Graham indicated needed to be corrected (including photographs) since October 1, 2007;

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

- d. All written reports and/or assessments (including photographs) of the Gramercy facility prepared by Michael Lastie and/or ICU since February 1, 2008;

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine.

- e. All memorandum, electronic mail, or any other documents reflecting communications by Graham H. Graham regarding safety and health concerns at the Port Wentworth and/or Gramercy facilities, whether submitted by Mr. Graham or received by Mr. Graham since October 1, 2007;

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

f. All periodic updates or other reports contained in the Imperial Sugar Company PeopleSoft computer system which reflect the review, approval, rejection, or modification of capital expenditures related to safety and/or health issues since October 1, 2007;

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine. In addition, discovery is ongoing, and Imperial reserves the right to change, amend, or supplement its response in the event it learns new information contrary to or in addition to this response.

Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

g. All written reports and/or assessments (including photographs) of the Gramercy facility prepared by Chilworth Associates and/or Steve Luzik since February 1, 2008;

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, calls for Imperial to speculate at its peril as to the information sought, seeks documents not likely to lead to the discovery of admissible evidence, seeks documents not likely to lead to the discovery of information relevant to the claims and defenses in this matter, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine.

h. Graham H. Graham's letter to Oscar Brennan regarding safety and/or health issues *circa* February 2008;

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, calls for Imperial to speculate at its peril as to the information sought, seeks documents not likely to lead to the discovery of admissible evidence, and seeks documents not likely to lead to the discovery of information relevant to the claims and defenses in this matter.

i. Graham H. Graham's presentation materials to the Imperial Sugar Company board of directors *circa* January 2008;

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, seeks documents not likely to lead to the discovery of admissible evidence, seeks documents not likely to lead to the discovery of information relevant to the claims and defenses in this matter, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine.

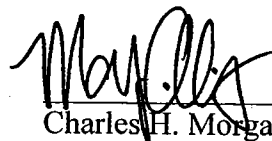
Subject to and without waiving these specific objections or the foregoing general objections, Imperial states that it will produce non-privileged documents in its possession and/or control containing information responsive to this Request, except to the extent Imperial has already produced or provided access to such documents during the investigation of this matter and in response to Complainant's six Subpoenas *duces tecum* (containing one hundred and sixty (160) document requests).

- j. All documents identifying or discussing the approximately 100 pieces of equipment which did or do not meet the hazardous classification criteria at the Gramercy facility.

RESPONSE:

Imperial objects to this Request on grounds that it is vague and unclear as to the information sought, is overbroad, is unduly burdensome, calls for Imperial to speculate at its peril as to the information sought, seeks documents not likely to lead to the discovery of admissible evidence, seeks documents not likely to lead to the discovery of information relevant to the claims and defenses in this matter, and seeks information protected by the attorney-client privilege and/or work-product/trial-preparation materials doctrine.

Respectfully submitted this 12th day of January 2009.



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UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,)
)
 Complainant,)
)
 v.)
)
 IMPERIAL SUGAR COMPANY;)
 IMPERIAL-SAVANNAH, L.P.)
)
 Respondents.)
)

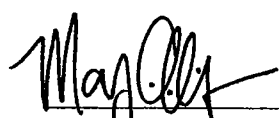
OSHRC DOCKET NO. 08-1104
REGION IV

CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the within and foregoing
RESPONDENTS IMPERIAL SUGAR COMPANY & IMPERIAL-SAVANNAH, L.P.'S
RESPONSES TO COMPLAINANT'S FIRST REQUESTS FOR PRODUCTION OF
DOCUMENTS by certified U.S. Mail, return receipt requested with adequate postage affixed
thereon, addressed as follows:

Sharon D. Calhoun, Esq.
Karen E. Mock, Esq.
Christopher D. Helms, Esq.
Office of the Solicitor
U.S. Department of Labor
61 Forsyth Street S.W.
Room 7T10
Atlanta, Georgia 30303

This 12th day of January 2009.



Matthew J. Gilligan