UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

January 16, 2014

REPLY TO THE ATTENTION OF
E-19J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED: 7009 1680 0000 7663 8906

Honorable Susan L. Biro
Office of Administrative Law Judges
U. S. Environmental Protection Agency
Ariel Rios Building, Mailcode: 1900L
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

RE:	In The Matter of:	Wayne R. Erickson 14362 Chillicothe Road Novelty, Ohio 44072
	Docket No.	CWA-05-2014-0003
	Complaint Date:	November 13, 2013
	Total Proposed Penalty:	$90,000.00

Dear Judge Biro:

Enclosed is the Respondent's Answer to an Administrative Complaint and Request for Hearing.

Please assign an Administrative Law Judge to this case.

If you have questions contact me at (312) 886-3713.

Sincerely,

LaDawn Whitehead
Regional Hearing Clerk

Enclosures

cc: Mr. Wayne R. Erickson
14502 Aldersyde Drive
Burton, Ohio 44021
(440) 343-7097

Kathleen Schnieders
Associate Regional Counsel
Office Regional Counsel
U.S. EPA, Region 5
Chicago, Illinois 60604-3590
(312) 353-8912

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:	Docket No. CWA-05-2013-0003
Wayne R. Erickson, Individual, Novelty, Ohio	Answer, Affirmative Defenses and Request for Hearing
Respondent.	

Below is Respondent's Answer to the Complaint filed by Region 5 of the United States Environmental Protection Agency (USEPA) filed with the Hearing Clerk on November 13, 2013 (Complaint), and received at my parents residence on November 18, 2013. On December 17, 2013, I filed an extension of time to file this Answer with the Hearing Clerk. Having not received notice whether my request has been granted or denied, I am submitting this answer within 30 days of submitting my requested extension.

I. Response to General Allegations

1. Respondent admits that USEPA has initiated an administrative action by filling of the Complaint. All other statements in Paragraph 1 of the Complaint are conclusions of law, not factual allegations, for which a response is not required.

2. Respondent admits that "Wayne R. Erickson, 14362 Chillicothe Road, Novelty, Ohio" is named as Respondent. Respondent denies that he owns or resides at 14362 Chillicothe Road, Novelty, Ohio. Respondent admits that Wayne R. Erickson is identified as owner on the deeds to the parcels listed in Paragraph 3 of the Complaint.

3. Respondent admits that the parcels listed in Paragraph 3 of the Complaint abut Aldersyde Drive in Burton Township, Geauga County, Ohio. Respondent lacks knowledge regarding all other factual allegations in Paragraph 3 of the Complaint, including the accuracy of Figure 1, and thus such allegations are denied.

4. Respondent admits that he purchased Parcel Number 04-135-000 in 2003 and purchased all other parcels identified in Paragraph 3 of the Complaint in 2004. Because it is unclear what is meant by "at all times relevant to the Complaint", Respondent denies all other factual allegations set forth in Paragraph 4 of the Complaint.

5. Respondent denies that the site contained 4.46 acres of wetlands at the time he purchased the parcels in 2003 and 2004. Respondent has no knowledge of the existence of or exact acreage of wetlands or the exact linear feet of stream on the property at the time he purchased the parcels, and thus such factual allegations are denied. Respondent denies all other factual allegations in Paragraph 5 of the Complaint.

6. Respondent admits that from 2006 to 2010, certain areas of the parcels identified in Paragraph 3 of the Complaint were disturbed by earthmoving activities, some of which involved the use of a bulldozer or dump truck . Respondent denies that all areas identified on Figure 2 of the Complaint were subject to the addition of dirt, clay, topsoil, sand, and bricks by Respondent (or those acting on behalf of Respondent) from 2006 to 2010. Respondent affirmatively alleges that areas depicted as impacted on Figure 2 were stripped, cleared, filled, graded or otherwise disturbed at the time Respondent purchased the parcels. Respondent has no knowledge of the areas of wetlands, if any, that are/were located on the property as purportedly depicted on Figure 2 of the Complaint, and thus denies such factual allegations.

7. Respondent admits that he did not have a permit pursuant to Section 404 during 2006 to 2010. Respondent denies that such a permit was required for the activities alleged in Paragraph 6. All other statements in Paragraph 7 are conclusions of law, not factual allegations, for which a response is not required.

8. All statements in Paragraph 8 are conclusions of law, not factual allegations, for which a response is not required.

9. Respondent reasserts its Response in Paragraph 6 of this Answer. All additional statements in Paragraph 9 are conclusions of law, not factual allegations, for which a response is not required.

10. Respondent reasserts its Response in Paragraph 6 of this Answer. All additional statements in Paragraph 9 are conclusions of law, not factual allegations, for which a response is not required.

11. Respondent reasserts its Response in Paragraph 6 of this Answer. All additional statements in Paragraph 9 are conclusions of law, not factual allegations, for which a response is not required.

12. Respondent reasserts its Response in Paragraph 6 of this Answer. All additional statements in Paragraph 9 are conclusions of law, not factual allegations, for which a response is not required.

13. Respondent denies that all areas identified on Figure 2 of the Complaint were subject to the addition of dirt, clay, topsoil, sand, and bricks by Respondent (or those acting on behalf of Respondent) from 2006 to 2010. Respondent affirmatively alleges that areas depicted as impacted on Figure 2 were stripped, cleared, filled, graded or otherwise disturbed at the time Respondent purchased the parcels. Respondent has no knowledge of the areas of wetlands, if any, that are/were located on the property as purportedly depicted on Figure 2 of the Complaint, and thus denies such factual allegations. Respondent has no knowledge of the maps, plats or photos referenced in Paragraph 13 of the Complaint, and thus denies such allegations.

14. At the time Respondent purchased the parcels, a large portion of the parcels was high land, and was not inundated or saturated by surface or groundwater. Respondent has no knowledge of the remaining allegations set forth in Paragraph 14 of the Complaint, and thus denies such allegations.

15. Respondent has no knowledge of the areas of wetlands, if any, that are/were located on the property as purportedly depicted on Figure 2 of the Complaint, and thus denies such factual allegations. Respondent further denies that the entirety of the 4.46 acres of land depicted by Figure 2 of the Complaint were undisturbed at the time he purchased the parcels. All additional statements in Paragraph 15 are conclusions of law, not factual allegations, for which a response is not required.

16. Respondent has no knowledge relating to Dietrich Creek, and thus denies such allegations. Respondent affirmatively alleges, to his understanding, that Hopsons Creek runs through one of the parcels identified in Paragraph 3 of the Complaint. All additional statements in Paragraph 16 are conclusions of law, not factual allegations, for which a response is not required.

17. Respondent has no knowledge relating to Dietrich Creek, and thus denies such allegations. All additional statements in Paragraph 17 are conclusions of law, not factual allegations, for which a response is not required.

18. Respondent has no knowledge relating to the alleged water flow, and thus denies such allegations. All additional statements in Paragraph 18 are conclusions of law, not factual allegations, for which a response is not required.

19. All statements in Paragraph 19 are conclusions of law, not factual allegations, for which a response is not required.

20. All statements in Paragraph 20 are conclusions of law, not factual allegations, for which a response is not required. Respondent denies any such alleged actions constitute a violation of law.

21. All statements in Paragraph 21 are conclusions of law, not factual allegations, for which a response is not required. Respondent denies any such alleged actions constitute a violation of law.

22. All statements in Paragraph 22 are conclusions of law, not factual allegations, for which a response is not required.

23. Respondent has no actual knowledge relating to the date upon which USEPA issued a Finding of Violation and Order referenced in Paragraph 13 of the Complaint, and thus denies such allegations.

24. Respondent admits that an Order was delivered to his parents residence at 14362 Chillicothe Road, Novelty, Ohio on October 29, 2010. [CONFIRM]

25. Respondent admits that he has not complied with the Order, but denies that the alleged actions require such actions. Respondent has since that time entered into good faith discussions with USEPA to resolve this issue.

II. Response to Proposed Civil Penalty

26. Respondent denies that USEPA's bases set forth in Section II of the Complaint supports a civil penalty of $90,000. All other statements in Section II are conclusions of law or are otherwise not factual allegations for which a response is not required.

27. Respondent contests USEPA's proposed penalty and asserts that it is inappropriate for the following reasons:

a. Respondent did not engage in any activity that would subject him to a penalty pursuant to the Clean Water Act, or any other laws, regulations or permits.

b. USEPA's factors associated with its proposed penalty results in an excessive penalty, especially considering penalties assessed by USEPA in similar circumstances.

c. Mitigating factors, as outlined in Respondent's correspondence to USEPA dated January 27, 2012, render the assessment of a civil penalty inappropriate and the amount proposed inappropriate.

d. USEPA's imposition of a civil penalty and the amount of civil penalty are barred by, or excessive when considered in light of, the equitable principles of estoppel, waiver, clean hands, laches, and other equitable considerations.

e. Respondent has no ability to pay the proposed civil penalty, as more fully outlined in Respondent's correspondence to USEPA dated January 27, 2012.

III. Affirmative Defenses

28. USEPA fails to state a claim against Respondent for which relief can be granted.

29. USEPA's imposition of this administrative proceeding and imposition of a civil penalty are barred by the equitable principles of estoppel, waiver, clean hands, laches, and other equitable considerations.

30. This tribunal lacks jurisdiction over Respondent because USEPA failed to comply with legal requirements of service of the Complaint and the Order.

31. Any and all actions or omissions concerning compliance with the Clean Water Act have not resulted in any economic benefit to Respondent.

32. Respondent at all times acted in good faith.

33. USEPA fails to meet its burden of proof that any discharge to wetlands was the responsibility of Respondent.

34. Any and all actions of Respondent were exempt from permitting requirements.

35. Actions comprising USEPA's alleged violation, and other improvements that Respondent has made to the parcels, have resulted in environmental benefits.

IV. Request for Hearing

36. Pursuant to the statements and laws set forth in Section III of the Complaint, and any and all other governing laws, Respondent requests a hearing in this matter.

V. Sections IV through VII of the Complaint

37. Sections IV through VII of the Complaint do not contain factual allegations or otherwise do not contain statements for which a response is required. To the extent Sections IV through VII of the Complaint do contain factual allegations, Respondent denies such allegations for lack of knowledge.

Respondent reserves the right to amend these pleadings and to add such further affirmative defenses as discovery and development of the case may disclose.

Respondent respectfully requests that the Complaint be dismissed in its entirely and that no civil penalties be imposed.

Dated January 13, 2014.

Wayne R. Erickson, Respondent

14502 Aldersyde Drive
Burton, Ohio 44021
440-343-7097

CERTIFICATE OF SERVICE

I certify that on January 14, 2014 (1) the original and one copy of this Answer, Affirmative Defenses, and Request for Hearing was filed with:

Regional Hearing Clerk (E-19J)
Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

And two copies to:

U.S. Environmental Protection Agency Headquarters Hearing Clerk (1900L)
Office of Administrative Law Judges
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

Via first class mail, postage prepaid, and a copy was sent via facsimile (312 582-5152), and (2) a copy of this Answer, Affirmative Defenses, and Request for Hearing was served by first class mail, postage prepaid

Kathleen Schnieders (C-14J)
Associate Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

Wayne R. Erickson
Respondent

In the Matter of: Wayne R. Erickson
14362 Chillicothe Road
Novelty, Ohio 44072
Docket Number: CWA-05-2014-0003

Certificate of Service

I certify that I filed the original and one copy of the Respondent's Answer, and mailed the original copies and case file via certified mail to Ms. Sybil Anderson (MC: 1900R), Office of Administrative Law Judges, U.S. EPA, 1200 Pennsylvania Avenue, N. W. Washington, DC 20460. CERTIFIED MAIL RECEIPT NUMBER: 7009 1680 0000 7663 8906

I certify that I delivered a copy of the Respondent's Answer by electronic mail to:

Kathleen Schnieders, Regional Counsel
Schniders.kathleen@epa.gov

Ann Coyle, Regional Judicial Officer
coyle.ann@epa.gov

I also certify that I mailed a copy of the Respondent's Answer by first class mail to:

Mr. Wayne R. Erickson
14502 Aldersyde Drive
Burton, Ohio 44021

On the 16 day of January 2014.

LaDawn Whitehead
Regional Hearing Clerk
Region 5