



UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

RECEIVED  
JUL 11 2011

IN THE MATTER OF )  
 )  
MR. ALLEN BARRY, )  
MR. TIM BARRY )  
d/b/a ALLEN BARRY LIVESTOCK, )  
 )  
RESPONDENTS )

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

DOCKET NO. CWA-05-2010-0008

ORDER TO SHOW CAUSE

As you previously have been notified, I have been designated by the November 5, 2010, Order of the Chief Administrative Law Judge to preside in the above captioned matter. This proceeding arises under the authority of Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32.

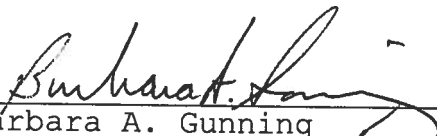
In accordance with an Order Directing Settlement Conference and Status Report, issued on March 4, 2011, the parties engaged in "brief settlement discussions on March 23, 2011," but were unable to reach a settlement in this matter. See Settlement Status Report ("SR") at 2, filed by Complainant on March 25, 2011. A Prehearing Order ("PHO") was issued on March 30, 2011, setting forth a schedule for the parties' information exchange with which the parties were instructed to comply strictly.

In accordance with the PHO, Complainant submitted its initial prehearing exchange information on May 13, 2011. The file before me reflects that as of July 6, 2011, Respondent has failed to file either a prehearing exchange or a statement electing only to conduct cross-examination of Complainant's witnesses as its manner of defense, as required by the PHO. On June 30, 2011, the undersigned received a captioned letter ("Letter") from Respondent's counsel stating that he has been called up for active duty in the U.S. Navy and is attending

initial training out of state.<sup>1</sup> In this document, Respondent's counsel states that Respondent's Certified Public Accountant ("CPA") "forgot to put the financial together for [counsel]," which has caused delay in reaching a settlement. Respondent's counsel then requests a general extension of two weeks to receive the supporting financial documentation from the CPA. However, this generalized request does not address the overdue prehearing exchange and does not comply with the PHO. In addition, Respondent has not filed a motion for an extension of the filing deadline.

Under Section 22.17(a) of the Rules of Practice, 40 C.F.R. § 22.17(a), a party may be found to be in default upon failure to comply with the information exchange requirements of Section 22.19(a) of the Rules of Practice, 40 C.F.R. § 22.19(a), or an order of the Administrative Law Judge.

Therefore, Respondent is **ordered to show cause**, if any, on or before **July 20, 2011**, why he failed to meet the filing deadline set by the PHO and why a default order should not be entered for failing to meet this deadline.

  
Barbara A. Gunning  
Administrative Law Judge

Dated: July 6, 2011  
Washington, D.C.

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<sup>1</sup> Based on the filing of the Letter, Respondent's current counsel, Mr. James E. Meason, remains counsel-of-record in this matter. Considering the possibility of Mr. Meason's deployment, the parties are reminded that any substitute counsel must file a Notice of Appearance with this Tribunal.

**In the Matter of Mr. Allen Barry, Mr. Tim Barry d/b/a Allen Barry Livestock, Respondent.  
Docket No. CWA-05-2010-0008**

CORRECTED CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order to Show Cause**, dated July 6, 2011, was sent this day in the following manner to the addressees listed below.



Mary Angeles  
Legal Staff Assistant

Original and One Copy by Facsimile and Pouch Mail to:

La Dawn Whitehead  
Regional Hearing Clerk  
U.S. EPA, Region V  
77 West Jackson Boulevard, E-19J  
Chicago, IL 60604-3590  
Fx: 312.886.0747

Copy by Facsimile and Pouch Mail to:

Luis Oviedo, Esq.  
Associate Regional Counsel  
ORC, U.S. EPA, Region V  
77 West Jackson Boulevard, C-14J  
Chicago, IL 60604-3590  
Fx: 312.886.7160

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Copy by Facsimile / Certified and Regular Mail to:  
[CRR #7005-0390-0002-5028-8825]

James E. Meason, Esq.  
Attorney at Law  
113 W. Main Street  
Rockton, IL 61072-2416  
Fx: 815.624.5905

**Dated: July 6, 2011  
Washington, DC**

**In the Matter of Mr. Allen Barry, Mr. Tim Barry d/b/a Allen Barry Livestock, Respondent.  
Docket No. CWA-05-2010-0008**

CERTIFICATE OF SERVICE

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