

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

05 APR 26 PM 12: 23

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Barton-Keller Saw Mill)	
Independence, Kansas)	Docket No. CAA-07-2005-0205
)	
Respondent)	

ANSWER OF RESPONDENT BARTON-KELLER SAW MILL LLC TO ADMINISTRATIVE COMPLAINT AND REQUEST FOR A HEARING

NOW COMES the respondent, Barton-Keller Saw Mill, LLC ("Barton-Keller"), and states as follows as its answer to the United States Environmental Protection Agency's (hereinafter "EPA") Complaint, and Notice for Opportunity for Hearing (hereinafter "Complaint") under Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. § 7413(d).

JURISDICTION

1. Paragraph 1 alleges conclusions of law to which no response is required and Respondent denies each and every allegation of that paragraph.

2. Paragraph 2 alleges conclusions of law to which no response is required and Respondent denies each and every allegation of that paragraph.

PARTIES

3. Respondent has insufficient knowledge or information to admit or deny the allegations in Paragraph 3 and therefore denies same.

4. Respondent admits the allegations in Paragraph 4.

STATUTORY AND REGULATORY BACKGROUND

5. Paragraph 5 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

6. Paragraph 6 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

7. Paragraph 7 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

8. Paragraph 8 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

9. Paragraph 9 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

10. Paragraph 10 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

11. Paragraph 11 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

12. Paragraph 12 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

13. Paragraph 13 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

VIOLATIONS

14. Paragraph 14 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

GENERAL ALLEGATIONS

15. Paragraph 15 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

16. Paragraph 16 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

COUNT I

17. Respondent incorporates by reference its answers to Paragraphs 15-16 herein.

18. Paragraph 18 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

19. Paragraph 19 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

COUNT II

20. Respondent incorporates by reference its answers to Paragraphs 15-16 herein.

21. Paragraph 21 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

22. Paragraph 22 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

COUNT III

23. Respondent incorporates by reference its answers to Paragraphs 15-16 herein.

24. Paragraph 24 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

25. Paragraph 25 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

RELIEF

26. Paragraph 26 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

PROPOSED PENALTY

27. Paragraph 27 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

28. Paragraph 28 alleges conclusions of law to which no response is required and Respondent therefore denies each and every allegation of that paragraph.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

29. Paragraph 29 of the Complaint consists of statements of law, legal conclusions, and/or statements to which no response is required. To the extent that Paragraph 29 can be interpreted to contain any allegation of fact, Respondent denies each and every such allegation.

30. Paragraph 30 of the Complaint consists of statements of law, legal conclusions, and/or statements to which no response is required. To the extent that Paragraph 30 can be interpreted to contain any allegation of fact, Respondent denies each and every such allegation.

31. Respondent hereby requests a hearing to contest any and all material facts contained in the Complaint, and to contest the appropriateness of the proposed penalty, as provided for by 4 U.S.C. § 554 and 40 CFR § 22.15(c).

32. Paragraph 32 of the Complaint consists of statements of law, legal conclusions, and/or statements to which no response is required. To the extent that Paragraph 32 can be interpreted to contain any allegation of fact, Respondent denies each and every such allegation.

33. Paragraph 33 of the Complaint consists of statements of law, legal conclusions, and/or statements to which no response is required. To the extent that Paragraph 33 can be interpreted to contain any allegation of fact, Respondent denies each and every such allegation.

34. Paragraph 34 of the Complaint consists of statements of law, legal conclusions, and/or statements to which no response is required. To the extent that Paragraph 34 can be interpreted to contain any allegation of fact, Respondent denies each and every such allegation.

INFORMAL SETTLEMENT CONFERENCE

35. Respondent hereby requests a hearing to contest any and all material facts contained in the Complaint, and to contest the appropriateness of the proposed penalty, as provided for by 4 U.S.C. § 554 and 40 CFR § 22.15(c).

36. Paragraph 36 of the Complaint consists of statements of law, legal conclusions, and/or statements to which no response is required. To the extent that Paragraph 36 can be interpreted to contain any allegation of fact, Respondent denies each and every such allegation.

37. Paragraph 37 of the Complaint consists of statements of law, legal conclusions, and/or statements to which no response is required. To the extent that Paragraph 37 can be interpreted to contain any allegation of fact, Respondent denies each and every such allegation.

38. Paragraph 38 of the Complaint consists of statements of law, legal conclusions, and/or statements to which no response is required. To the extent that Paragraph 38 can be interpreted to contain any allegation of fact, Respondent denies each and every such allegation.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

39. The Respondent's conical burner boundary only encompasses a single area and not two areas required by the definition of Commercial and industrial solid waste incineration unit at 40 CFR § 62.14840. Therefore, the claims and proposed penalties of the Complaint are inappropriate and unwarranted.

SECOND DEFENSE

39. The Complaint fails to state a claim for which relief can be granted and/or fails to satisfy statutory and/or regulatory subject matter jurisdiction prerequisites.

THIRD DEFENSE

40. The claims asserted in the Complaint are barred by the equitable doctrines of estoppel and/or waiver.

FOURTH DEFENSE

41. Some or all of the violations alleged in the Complaint are de minimis in nature, effect, and/or duration.



Robert J. Lambrechts (Mo. #37411)
2345 Grand Blvd., Suite 2800
Kansas City, MO 64108-2684
Tele: (816) 460-5814
Fax: (816) 292-2001

Attorney for Respondent