

**BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.**

**ATTORNEYS AT LAW
1000 29TH AVENUE NORTH
P.O. Box 357**

MYRTLE BEACH, SOUTH CAROLINA 29578

TELEPHONE (843) 448-2400

TELECOPIER (843) 448-3022

HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY**
EDWARD B. BOWERS, JR..*
BRADLEY D. KING
M. EDWIN HINDS, JR.
JILL F. GRIFFITH
DAVID B. MILLER ****

Writer's Direct Line: 843-282-5393

E-Mail: Lhearl@BellamyLaw.com

C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
JEFFREY W. KING***
MARTIN C. DAWSEY
ROBERT S. SHELTON ****
HOWELL V. BELLAMY, III
ASHLEY P. MORRISON
GEORGE W. REDMAN, III
W. JOSEPH CUNNINGHAM***
BENJAMIN A. BAROODY

* CERTIFIED SPECIALIST IN TAXATION LAW
** FELLOW OF THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
*** ALSO MEMBER OF NORTH CAROLINA BAR
**** CERTIFIED MEDIATOR

October 14, 2009

Regional Hearing Clerk
U.S. EPA - Region 4
Pat Bullock
61 Forsythe Street, S. W.
Atlanta, Georgia 30303

**Re: Administrative Complaint
Docket No. CWA-04-2009-5504**

2009 OCT 20 AM 7:27
RECEIVED
ENVIRONMENTAL
PROTECTION AGENCY
REGIONAL OFFICE
ATLANTA, GA

Dear Ms. Bullock:

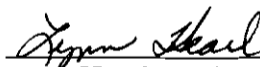
Enclosed please find Russell Wise's Answer to the Administrative Complaint, Docket No. CWA-04-2009-5504, with the U. S. Environmental Protection Agency EPA.

Should you have questions or concerns, please give us a call at 843-282-5393.

With kindest regards, I remain

Sincerely,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.



Lynn Hearl, Assistant to Howell V. Bellamy, III

/lh
Enclosure

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 4

RECEIVED
EPA REGION 4
2009 OCT 20 AM 7:27

IN THE MATTER OF:)
)
Russell Wise)
Cool Springs, South Carolina)
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RESPONDENT)
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RESPONDENT'S ANSWER TO
ADMINISTRATIVE COMPLAINT
FOR CLASS II PENALTY UNDER
SECTION 309 (g) OF THE CLEAN
WATER ACT, 33 U.S.C. § 1319(g)

Docket No. CWA-04-2009-5504

ANSWER TO ADMINISTRATIVE COMPLAINT

COMES NOW, Respondent, Russell Wise ("*Wise*"), by and through his attorneys, Howell V. Bellamy, Jr., and Howell V. Bellamy, III, and in Answer to the Administrative Complaint states as follows:

I. Statutory Authority

FOR A FIRST DEFENSE
(General Denial)

1. Except as is hereinafter expressly admitted, each and every allegation of the Administrative Complaint is denied and strict proof demanded.

2. Responding to the allegations of **Paragraph One (1)** of the Complaint, said allegations call for legal conclusions and no response is required; to the extent a response is required, this Respondent denies the same, and demands strict proof thereof.

II. Statutory and Regulatory Background

3. Responding to the allegations of **Paragraph Two (2)** of the Complaint, said allegations are jurisdictional in nature and no response is required; to the extent any response is required, the Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to *Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), Section 301 of the CWA, 33 U.S.C. § 1311, and 33 U.S.C. § 1319(g)(2)(B)*, and denies any allegations inconsistent therewith, and demands strict proof.

4. Responding to the allegations of **Paragraph Three (3)** of the Complaint, said allegations are jurisdictional in nature and no response is required; to the extent any response is required, the Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to the following: *Section 301(a) of the CWA, 33 U.S.C. § 1311(a), Section 404 of the CWA, 33 U.S.C. § 1314, and Section 404 of the CWA, 33 U.S.C. § 1344*, and denies any allegations inconsistent therewith, and demands strict proof.

5. Responding to the allegations of **Paragraph Four (4)** of the Complaint, said allegations are jurisdictional in nature and no response is required; to the extent any response is required, the Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to *Section 502(12) of the CWA, 33 U.S.C. § 1362(12)*, and denies any allegations inconsistent with therewith, and demands strict proof.

6. Responding to the allegations of **Paragraph Five (5)** of the Complaint, said allegations are jurisdictional in nature and no response is required; to the extent any response is required, the Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to *Section 502(14) of the CWA, 33 U.S.C. § 1362(14)*, and denies any

allegations inconsistent therewith, and demands strict proof.

7. Responding to the allegations of **Paragraph Six (6)** of the Complaint, said allegations are jurisdictional in nature and no response is required; to the extent any response is required, the Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to *Section 502(7) of the CWA, 33 U.S.C. § 1362(7)*, and denies any allegations inconsistent therewith, and demands strict proof.

8. Responding to the allegations of **Paragraph Seven (7)** of the Complaint, said allegations are jurisdictional in nature and no response is required; to the extent any response is required, the Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to Federal regulations under *40 C.F.R. § 232.2*, and denies any allegations inconsistent therewith, and demands strict proof.

9. Responding to the allegations of **Paragraph Eight (8)** of the Complaint, said allegations are jurisdictional in nature and no response is required; to the extent any response is required, the Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to Federal regulations under *40 C.F.R. Part 232.2* and *33 C.F.R. Part 328.3(b)*, and denies any allegations inconsistent therewith, and demands strict proof.

III. Allegations of the Administrative Complaint

10. Responding to the allegations of **Paragraph Nine (9)** of the Complaint, this Respondent admits, at all times relevant to this Complaint, he was the owner of a tract of land located adjacent to Chinners Swamp, on Edwards Road, near the city of Cool Springs, Horry County, South Carolina; and as to the remaining allegations of **Paragraph Nine (9)**, this Respondent is without knowledge to either admit or deny if his property is located near latitude 33° 58.8' north and

longitude 79° 8.5' west (the Site); and, therefore, denies the same, and demands strict proof thereof. Further, Respondent craves reference to Exhibits A and B of the Complaint.

11. Responding to the allegations of **Paragraph Ten (10)** of the Complaint, this Respondent admits that he is a person. As to the remaining allegations, this Respondent craves reference to *Section 502(5) of the CWA, 33 U.S.C. § 1362(5)*, and denies any allegations inconsistent therewith, and demands strict proof.

12. Responding to the allegations of **Paragraph Eleven (11)** of the Complaint, this Respondent denies said allegations to the extent they occurred during unauthorized activities associated with the clearing and filling of wetlands for a lake, and demands strict proof thereof.

13. Responding to the allegations of **Paragraph Twelve (12)** of the Complaint, this Respondent is without sufficient knowledge to either admit or deny said allegations of **Paragraph Twelve (12)**; to the extent a response is required, this Respondent denies the same, and demands strict proof.

14. Responding to the allegations of **Paragraph Thirteen (13)** of the Complaint, said allegations call for legal conclusions and no response is required; to the extent a response is required, this Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to *CWA § 502(6)*, and denies any allegations inconsistent therewith, and demands strict proof.

15. Responding to the allegations of **Paragraph Fourteen (14)** of the Complaint, said allegations call for legal conclusions and no response is required; to the extent a response is required, this Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to *CWA § 502(14)*, and denies any allegations inconsistent therewith,

and demands strict proof.

16. Responding to the allegations of **Paragraph Fifteen (15)** of the Complaint, said allegations call for legal conclusions and no response is required; to the extent a response is required, this Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to *CWA § 502(12)*, and denies any allegations inconsistent therewith, and demands strict proof.

17. Responding to the allegations of **Paragraph Sixteen (16)** of the Complaint, this Respondent admits so much of **Paragraph Sixteen (16)** as alleges that on or about **May 30, 2001**, the United States Army Corp of Engineers (COE) communicated to the Natural Resource Conservation Service (on behalf of Respondent) that Respondent's proposed farm pond was exempt from permit requirements under *Section 404(f) of the CWA, 33 U.S.C. § .1344(f)*, provided that the construction met the following conditions: 1) the pond does not exceed the size required to facilitate a normal farming/ranching operation; 2) specifically constructed for the purpose of irrigating livestock/pastureland; 3) impacts to wetlands were minimized; 4) no discharges of toxic substances or hazardous materials during pond construction; 5) the farm pond construction will not convert extensive areas of water to dry land or impede the circulation or result in significant alterations to the flow, reach or size of waters of the United States; 6) BMPs such as stabilization and sediment controls are to be utilized during and after pond construction. As to the remaining allegations of **Paragraph Sixteen (16)**, this Respondent craves reference to letter dated **May 30, 2001**, and denies any allegations inconsistent therewith, and demands strict proof.

18. Responding to the allegations of **Paragraph Seventeen (17)** of the Complaint, this Respondent admits so much of **Paragraph Seventeen (17)** as alleges that on or **March 10**,

2003, the COE issued Respondent a cease and desist order providing Respondent with three options to come into compliance: 1) meet the conditions necessary to maintain the *404(f) exemption*; 2) apply for a *404 permit*, or 3) return the site to its prior condition and abandon the pond construction. Further, this Respondent admits that he communicated with COE several times, and that he was trying in good faith to comply with the conditions necessary to maintain his exemption under *Section 404(f) of the CWA, 33 U.S.C. § 1344(f)*. Further, this Respondent craves reference to all communications on or about June 30, 2003, regarding COE recommending that the EPA take an enforcement action against this Respondent for my alleged violations of the CWA due to my alleged failure to comply with my cease and desist order. As to the remaining allegations of **Paragraph Seventeen (17)** of the Complaint, this Respondent craves reference to the Memorandum of Agreement between the COE and EPA on the enforcement matters, and denies any allegations inconsistent therewith, and demands strict proof.

19. Responding to the allegations of **Paragraph Eighteen (18)** of the Complaint, said allegations call for legal conclusions and no response is required; to the extent a response is required, this Respondent denies the same, and demands strict proof thereof. Further, this Respondent craves reference to the following: *Section 404 of the CWA, 33 U.S.C. § 1344*, *Section 404(f) of the CWA, 33 U.S.C. § 1344(f)*, *Section 404 of the CWA, 33 U.S.C. § 1344*, and *Section 301(a) of the CWA, 33 U.S.C. § 1311(a)* of **Paragraph Eighteen (18)**, and denies any allegations inconsistent therewith, and demands strict proof.

20. Responding to the allegations of **Paragraph Nineteen (19)** of the Complaint, said allegations call for legal conclusions and no response is required from this Respondent; to the extent a response is required, this Respondent denies the same, and demands strict proof thereof.

Further, this Respondent craves reference to the following: *Section 404 of the CWA, 33 U.S.C. § 1344*, and *Section 301 of the CWA, 33 U.S.C. § 1311*, and denies any allegations inconsistent therewith, and demands strict proof. As to the remaining allegations of **Paragraph Nineteen (19)** of the Complaint, this Respondent craves reference to the Memorandum of Agreement between the COE and EPA on the enforcement matters, and denies any allegations inconsistent therewith, and demands strict proof.

Since the inception of this matter, this Respondent has communicated, met with, and attempted in good faith to resolve all outstanding issues asserted by the EPA. Accordingly, this Respondent, upon information and belief, thought this matter had been resolved by the parties. As such, this Respondent requests a settlement Conference in order to discuss the facts of this case, and hopefully arrive at a settlement.

FOR A SECOND DEFENSE
(Failure to State a Cause of Action)

21. Respondent reiterates each and every allegation set forth above as if fully incorporated herein.

22. The Complainant fails to state facts sufficient to constitute a cause of action, and therefore should be dismissed pursuant to **Rule 12(b)(6) of the Federal Rules of Civil Procedure**.

FOR A THIRD DEFENSE
(Laches, Waiver & Estoppel)

23. Respondent reiterates each and every allegation set forth above as if fully incorporated herein.

24. Upon information and belief, some or all of the Complainant's claims are barred

by the Doctrines of Laches, Waiver, and Estoppel.

FOR A FOURTH DEFENSE
(Sole Superseding and Intervening Negligence of Others)

25. Respondent reiterates each and every allegation set forth above as if fully incorporated herein.

26. That whatever damages, if any, which may have been sustained by the Complainant in this action were the result of, were due solely to, caused solely by or were the direct and proximate result of the intervening superseding and unforeseeable negligence of others over whom the Respondent had no control so as to bar the Complainant from recovery against the Respondent.

FOR A FIFTH DEFENSE
(Reserves the right to assert Additional Defenses)

27. Respondent reiterates each and every allegation set forth above as if fully incorporated herein.

28. Upon information and belief, some or all of the Complainant's claims are barred by the Statute of Limitations.

FOR A SIXTH DEFENSE
(Reserves the right to assert Additional Defenses)

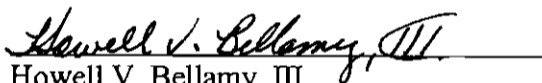
29. Respondent reiterates each and every allegation set forth above as if fully incorporated herein.

30. Respondent reserves any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in this matter that is consistent with the Federal Rules of Civil Procedure.

WHEREFORE, having fully answered this Administrative Complaint, the Respondent prays for the following:

- a. Administrative Complaint be dismissed with prejudice in accordance with *Rules 22.16(a) and 22.20(a)* in accordance with a motion to dismiss;
- b. Respondent requests a hearing under *Section 309(g) of the CWA, 33 U.S.C. § 13 19(g)*, to contest issues of fact contained in Complaint, and the appropriateness of the proposed penalty in the amount of One Hundred Seventy-Seven Thousand Five Hundred and No/100 (\$177, 500.00) for the alleged violations stated in this Complaint;
- c. Respondent requests a settlement Conference in order to discuss the facts of this case, and hopefully arrive at a settlement; and
- d. For such other and further relief as this Administrator of the EPA deems just and proper.

BELLAMY, GUTENBERG, COPELAND, EPIS.,
GRAVELY & BOWERS, P.A.
1000 29th Ave. N.
Myrtle Beach, South Carolina 29577
843-282-5393
Attorney for the Respondent


Howell V. Bellamy, III
Howell V. Bellamy, Jr.

October 14, 2009
Myrtle Beach, SC

