

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	Docket No. CWA-07-2009-0093
Stilwell Oil Company)	
Stiwell, Kansas)	COMPLAINT AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Respondent.)	
)	Proceeding to Assess Class II Civil Penalty
)	Under Clean Water Act Section 311 for
)	Spill Prevention Control and
)	Countermeasure Violations

ANSWER TO COMPLAINT

COMES NOW Stilwell Oil Company by and through its attorney Ernest C. Ballweg of the firm of Johnston, Ballweg & Tuley, L.C., and in response to the Complaint filed states and alleges:

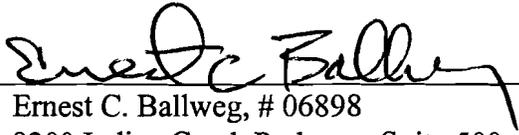
1. Respondent admits the allegations as set out in paragraphs 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 19, 20, 23, 25, 27 and 28 of the Complaint.
2. Respondent has insufficient information to admit or deny paragraphs 17, 18, 21, 22, 23 and 34 and further pleads that the contentions set out therein appear to be issues of law and legal interpretation and to be determined by the Administrator.
3. Respondent denies each and every other allegation of the Complaint.
4. Plaintiff requests an informal conference to discuss the facts of the case and the possibility of settlement.
5. Respondent requests a formal administrative hearing.
6. As an affirmative defense, respondent states that at all times herein respondent made

reasonable attempts to comply with the regulations; had previously retained the services of Williams and Company Consulting, Inc., and others in an effort to provide a spill prevention control and counter measure plan; and the failure to have the plan previously completed prior to May, 2009 is a result of factors beyond the control of this answering respondent.

7. As further affirmative defenses hereto, respondent states that the proposed fine is inconsistent with the statutory factors to be considered in Section 311(b)(8). Respondent operates a small business and should be entitled to considerations thereunder. In addition, the proposed fine fails to take into consideration the efforts of respondent to comply with the regulations; the lack of any history of prior violations; the fact that said fine represents double jeopardy in that respondent has been recently subject to proceedings in the State of Kansas, County of Johnson involving the same issue; and the proposed fine fails to take into consideration the economic impact imposed upon respondent nor the expenses incurred by respondent to become into compliance.

WHEREFORE, respondent prays that proceedings be dismissed and for such other relief as appears just and equitable.

JOHNSTON, BALLWEG & TULEY, L.C.

By: 
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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Answer was deposited in the United States mail, postage prepaid, this 3rd day of September, 2009, to:

Demetra O. Salisbury
Attorney, Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101


Ernest C. Ballweg