



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

October 4, 2010

REPLY TO THE ATTENTION OF
E-19J

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: **Mr. Allen Barry, Mr, Tim Barry d/b/a Allen Barry Livestock**
Docket No.: **CWA-05-2010-0008**
Complaint Date: **March 17, 2010**
Total Proposed Penalty: **\$75,000.00**

Dear Judge Biro:

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

Please assign an Administrative Law Judge to conduct this case.

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

Sincerely,

A handwritten signature in black ink that reads "La Dawn Whitehead".

La Dawn Whitehead
Regional Hearing Clerk

Enclosure

cc: Mr. Allen Barry
Mr. Tim Barry dlb/a
Allen Barry Livestock
1448 Route 72 East
Leaf River, Illinois 61010
(815) 624-6517

Luis Oviedo
Associate Regional Counsel
Office Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd., C-14J
Chicago, Illinois 60604-3590
(312) 353-9538

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
Mr. Allen Barry, Mr. Tim Barry) DOCKET NO. V-W-10-A9-
) CWA-05-2010-0008
)
d/b/a Allen Barry Livestock)
)
1448 Route 72 East)
)
Leaf River, Illinois 61010)

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JOINT ANSWER TO COMPLAINT

Allen Barry and Tim Barry (Respondents), by and through their attorney, James E. Meason, pursuant to Federal Rule of Civil Procedure (FRCP) 8, respectfully files this Joint Answer to Complaint, stating as follows:

ANSWER

1. Admit as to Allen Barry. Deny as to Tim Barry.
2. Admit as to Allen Barry. Deny as to Tim Barry.
3. Deny as to being a "point source of a discharge of pollutants". Neither admit nor deny with regard to a "permit."
4. Admit to issuance of an NPDES permit. Neither admit nor deny with regard to whether an NPDES permit is still in effect.
5. Deny
6. Admit existence of Section 301, but neither admit nor deny that the expired NPDES permit pertains to Respondents' facility.
7. Pursuant to FRCP 8(b), Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment.
8. Pursuant to FRCP 8(b), Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment.
9. Deny.
10. Pursuant to FRCP 8(b), Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment.

11. Admit.
12. Deny.
13. Pursuant to FRCP 8(b), Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment.
14. Pursuant to FRCP 8(b), Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment.
15. Admit.
16. Deny.
17. Pursuant to FRCP 8(b), Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment.
18. Pursuant to FRCP 8(b), Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment.
19. Pursuant to FRCP 8(b), Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment.
20. No response is required.
21. No response is required.
22. No response is required.
23. No response is required.
24. No response is required.
25. No response is required.
26. No response is required.
27. No response is required.

ASSERTION OF AFFIRMATIVE DEFENSES

1. Respondents maintain the Clean Water Act's chief regulatory provision prohibits "point source" discharges of pollutants into "navigable waters" unless otherwise permitted by the statute. A "point source" is "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel

or other floating craft, from which pollutants are or may be discharged.¹ The Act also broadly defines “navigable waters” as “waters of the United States.”


2. In U.S. v. Rapanos,¹ the court limited the scope of the term “navigable waters.” The plurality opinion concluded “the waters of the United States’ include only relatively permanent, standing or flowing bodies of water.” This definition excludes intermittent or ephemeral streams. In other words, the plurality decided waters of the United States must be of a semi-permanent nature and abut open water to qualify as “navigable waters.”

3. The waters at issue in this case do not meet the Rapanos criteria, and therefore, Respondents have no liability.

Respectfully submitted,

Allen Barry and Tim Barry

By:


James E. Meason
Respondents' Attorney

Date:

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¹ 126 S.Ct. 2208 (2006).

ATTESTATION

STATE OF ILLINOIS)
)
COUNTY OF WINNEBAGO) SS.

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Allen Barry and Tim Barry, being first duly sworn under oath, states that they have read the foregoing document, and the statements made herein are true, correct and complete to the best of their knowledge and belief.



Signature

SUBSCRIBED and SWORN to before me this
29 day of September, 2010.





Judith L. Heil
Notary Public

CERTIFICATE OF SERVICE

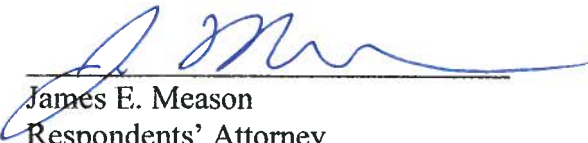
I certify that I deposited the enclosed Appearance and Joint Answer to Complaint in the mail, proper postage prepaid, in Rockton, Illinois, at 12:30 p.m., on September 29, 2010, sending them to the following persons:

Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604-3590

and

Luis Oviedo, Assistant Regional Counsel
Region 5, U.S. EPA
Office Regional Counsel, (C-14J)
77 West Jackson Blvd.
Chicago, IL 60604

Allen Barry and Tim Barry, Respondents

By: 
James E. Meason
Respondents' Attorney

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DEFENDANTS' APPEARANCE

I enter my appearance for the defendants, Mr. Allen Barry and Mr. Tim Barry d/b/a Allen Barry Livestock.

Respectfully submitted,

ALLEN BARRY and TIM BARRY, Defendants

BY: 
James E. Meason

Dated: September 28, 2010

Prepared by:
James E. Meason #4955
Attorney at Law
113 W. Main Street
Rockton, IL 61072-2416
(815) 624-6517

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