



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAR 17 2010

REPLY TO THE ATTENTION OF:

WC-15J

**CERTIFIED MAIL 7001 0320 0006 0191 0400**  
**RETURN RECEIPT REQUESTED**

Mr. Allen Barry  
Mr. Tim Barry d/b/a  
Allen Barry Livestock  
1448 Route 72 East  
Leaf River, Illinois 61010

Subject: Notice of Proposed Assessment of a Class II  
Administrative Penalty Pursuant to Section 309(g) of the Clean Water Act  
Docket No. **CWA-05-2010-0008**

Dear Messrs. Barry:

Enclosed is a copy of an "Administrative Complaint," which I have filed against Mr. Allen Barry, Mr. Tim Barry d/b/a Allen Barry Livestock (ABL), under the authority of Section 309(g) of the Clean Water Act ("Act"), 33 U.S.C. §1319(g). In the Complaint, the U.S. Environmental Protection Agency alleges that the ABL violated Section 402 of the Act. The Complaint describes the alleged violations.

ABL may request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. I invite you to pay particular attention to the section of the Complaint entitled "Notice of Opportunity to Request a Hearing." If ABL fails to request a hearing within 30 days of receipt of the Complaint, ABL waives its right to a hearing and may become liable for the entire proposed civil penalty. If ABL requests a hearing, ABL may be represented by an attorney, or represent itself at any point in these proceedings.

The rules governing these proceedings are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, 64 Fed. Reg. 40,138 (July 1, 2001). I have enclosed a copy for your reference.

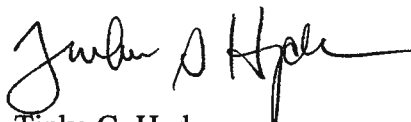
Whether or not ABL requests a hearing, I invite ABL to confer informally with EPA concerning the alleged violations and the amount of the proposed penalty. Again, ABL may be represented by an attorney at any conference, whether the meeting occurs in person or by telephone. EPA encourages all parties to pursue settlement during an informal conference. If the

parties reach a satisfactory settlement, a mutually negotiated and executed Consent Agreement will resolve this matter. The issuance of such a Consent Agreement will constitute a waiver by ABL of its right to a hearing on, and judicial appeal of, the agreed civil penalty.

A request for an informal conference does not extend the 30 days during which ABL may request a hearing on the proposed penalty assessment. You may pursue the two procedures simultaneously. If ABL has any questions or wishes to discuss settlement of this matter, please contact Valdis Aistars, Water Division (WC-15J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone Mr. Aistars at (312) 886-0264. For questions regarding legal issues, please contact Luis Oviedo, Assistant Regional Counsel at (312) 353-9538.

We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde", with a long horizontal flourish extending to the right.

Tinka G. Hyde  
Director, Water Division

Enclosures

cc: Mike Garretson, IEPA  
Tim Kluge, IEPA  
Lee Heeren, Rockford District Office, IEPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAR 17 2010

REPLY TO THE ATTENTION OF: WC-15J

**CERTIFIED MAIL 7001 0320 0006 0191 0394**  
**RETURN RECEIPT REQUESTED**

Michael Garretson, Manager  
Bureau of Water  
Compliance Assurance Section #19  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9274

Subject: Notice of Proposed Administrative Assessment of Class II Civil Penalty:  
Mr. Allen Barry, Mr. Tim Barry d/b/a Allen Barry Livestock  
Docket No. **CWA-05-2010-0008**

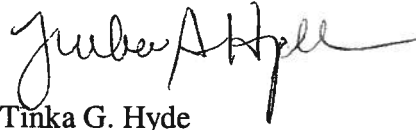
Dear Mr. Garretson:

Enclosed is a copy of the Administrative Complaint which the U.S. Environmental Protection Agency has issued to Mr. Allen Barry, Mr. Tim Barry d/b/a Allen Barry Livestock for violations of Section 402 of the Clean Water Act (Act), 33 U.S.C. § 1342. Region 5 has issued the Complaint to propose administrative assessment of a Class II civil penalty against Mr. Allen Barry, Mr. Tim Barry d/b/a Allen Barry Livestock for violations of Section 402 of the Clean Water Act. Because the violations occurred in Illinois, EPA would like to offer you an opportunity to confer with us regarding the proposed assessment.

You may request a conference with EPA anytime within twenty (20) days of receipt of this letter. The conference may be in person or by telephone and may cover any matters relevant to the proposed assessment. A copy of EPA's procedures governing the assessment of Class II civil penalties under the Act is also enclosed.

If you wish to request a conference or if you have any comments or questions regarding this matter, please call Valdis Aistars at (312) 886-0264. For questions regarding legal issues, please contact Luis Oviedo at (312) 353-9538.

Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde", with a long horizontal flourish extending to the right.

Tinka G. Hyde  
Director, Water Division

Enclosure

cc: Regional Hearing Clerk

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**Mr. Allen Barry, Mr. Tim Barry**

**d/b/a Allen Barry Livestock**

**1448 Route 72 East**

**Leaf River, Illinois 61010**

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**DOCKET NO. V-W-10-AO-**

**CWA-05-2010-0008**

**RECEIVED**  
**MAR 17 2010**

**REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY**

**ADMINISTRATIVE COMPLAINT**

**I. STATUTORY AUTHORITY**

This Complaint is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency by Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 5, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA, Region 5 (herein "Complainant"). This Class II Administrative Complaint is issued in accordance with, and this action will be conducted under, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits," 40 C.F.R. Part 22, including rules related to Administrative Proceedings governed by Section 554 of the Administrative Procedures Act, 40 C.F.R. § 22.50-22.52.

Based on the following Findings, Complainant finds that Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Allen Barry and Tim Barry (herein "Respondent") is doing business as Allan Barry Livestock and as such, the Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122 .2.

2. At all relevant times, Respondent owned or operated a feedlot located at 1448 Route 72 East, Leaf River, Illinois 61010 (herein "the facility"), and was, therefore, an "owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the facility was a "point source" of a "discharge" of "pollutants" with its storm water runoff from the facility's animal confinement area, to the receiving waters of Mill Creek, and thence to the Rock River, which are "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2. Respondent's permit lists the point source as Allen Barry Livestock, and lists three discharge points as lagoon overflow (001), feedlot runoff (002), and silage pit leachage (003). The receiving water of the United States as listed in the permit is the tributary to Mill Creek.

4. A National Pollutant Discharge Elimination System (NPDES) permit (IL0067229) was issued to Allen Barry Livestock on September 26, 1996, became effective on October 1, 1996, and expired on September 30, 2001. The facility applied for a renewal of the permit on March 30, 2001. Since a new permit has not been reissued, the expired permit is still in effect.

5. Because Respondent owns or operates a NPDES permitted facility that acts as a point source of discharges of pollutants to waters of the U.S., Respondent and the facility were subject to the Act and the NPDES program.

6. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342. Respondent's NPDES permit contains a series of special conditions, discharge limitations, and operating requirements for Respondent's facility.

7. On March 27, 2007, EPA investigators conducted an inspection of the facility. The inspection revealed that the feedlot was not in compliance with several of the limitations and requirements in its NPDES permit. Specifically, Section 1(a) – Discharge Limitations – of the Permit prohibits discharge of livestock wastes (including feedlot runoff) to waters of the State except overflow from livestock waste handling facilities that is caused by catastrophic precipitation events and Section 1(b)-Discharge Limitations- of the Permit requires that the facility be maintained in a state of availability to contain the precipitation and runoff from a 25-year, 24 hour precipitation event (i.e., 4.9 inches in 24-hours). At the time of inspection, inspectors observed that the facility lacked the capacity to contain the precipitation and runoff from a 25-year, 24 hour precipitation event as required by its permit. The inspectors also observed that feedlot runoff was being discharged to the unnamed tributary of Mill Creek.

8. Special Condition 1 requires that livestock holding areas which do not have livestock waste handling facilities available to contain runoff and precipitation from a 25 year, 24 hour precipitation event must have vegetative cover maintained at all times livestock are present on said area. The inspection revealed that livestock holding areas at this facility did not have waste handling facilities available to contain runoff and precipitation from a 25 year, 24 hour precipitation event and further lacked vegetative cover for parts of the feedlot that had livestock present and/or showed the presence of livestock without a vegetative cover. This is a violation of Special Condition 1 of Respondent's permit.

9. Permit Section 1 (c) – Discharge Limitations – requires that livestock waste handling facilities that are livestock waste disposal areas must be utilized in such a manner that livestock waste shall be assimilated into the land thereby excluding discharge of livestock wastes to waters of the State. The inspection revealed that runoff from the stacked manure in the pasture located in the southeastern corner of the production area discharges to the unnamed tributary of Mill Creek. Allen Barry failed to utilize its livestock waste disposal areas in such a manner that waste is assimilated into the land, excluding discharge of livestock wastes to waters of the U.S. This is a violation of Section 1(c). Discharge Limitations of its permit.

10. The inspection also revealed that Respondent failed to monitor, measure, and record information regarding the amount of rainfall, the level of wastes stored in containment facilities, the quantity of wastes removed from those facilities, and the measurement methods, date and time of measurements, and the person performing the measurements must be kept. This is a violation



of section 3 b., c., and d. “Monitoring Requirements” of its permit. Section 5 of the Permit – Record Retention – requires that Respondent retain all records and information resulting from the monitoring activities required by the permit. The inspection revealed that records required by the Permit were not retained, in violation of Section 5.

11. On September 14, 2007, EPA issued to Respondent Administrative Order Docket Number V-W-07-AO-06, under the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a). That Order, among other things, required Respondent to: 1) immediately cease and desist from discharging pollutants in storm water runoff from the facility’s animal confinement areas to Will Creek; 2) submit to EPA, within ten (10) days, information that documents compliance with Section 2 “Field Application of Livestock Wastes;” 3) submit to EPA, within ninety (90) days, a complete Comprehensive Nutrient Management Plan; and 4) submit to EPA, within twenty (20) days, a record of the costs required to ensure that the livestock operation is in compliance with the requirements of the NPDES permit. On April 22, 2009 the Respondent was issued a certified letter notifying him that the facility was still in non-compliance and in violation of the AO, its permit, and the CWA. The AO required compliance with each of the terms cited in this Complaint.

12. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), Respondent is liable for a civil penalty in an amount not to exceed \$16,000 per day for each day during which a violation continues, up to a maximum of \$177,500.

13. EPA has notified the Illinois Environmental Protection Agency (IEPA) of the issuance of this Complaint and has afforded the State of Illinois an opportunity to consult with EPA regarding the assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

14. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days in which to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

### III. PROPOSED PENALTY

15. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 5 hereby proposes to assess against Respondent a penalty of seventy five thousand dollars (\$75,000).

16. The proposed penalty amount was determined based on the statutory factors specified in Section 309(g)(3), 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

### IV. FAILURE TO FILE AN ANSWER

17. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, Respondent must file an Answer to this

Complaint within thirty (30) days after service of this Complaint whether or not Respondent requests a hearing as discussed below.

18. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15. Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

19. If Respondent does not file an Answer to this complaint within thirty (30) days after service of this Complaint, a Default Order may be issued against Respondent pursuant to 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by Respondent without further proceedings sixty (60) days after a Final Default Order is issued.

20. Respondent must send its Answer to this Complaint, including any request for hearing, and all other pleadings to:

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

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

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

21. The Answer must be signed by Respondent, Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. §§ 22.05 and 22.15, including the name, address, and telephone number of Respondent and Respondent's counsel. All other pleadings must be similarly signed and filed.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

22. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22, with supplemental Rules at 40 C.F.R. § 22.38.

23. Any request for hearing should be included in Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

24. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to

present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

## VI. SETTLEMENT

25. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Valdis Aistars by fax at 312-582-5861.

26. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (CAFO) pursuant to 40 C.F.R. § 22.18(b). The issuance of a CAFO would waive Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and to hold a hearing on the issues raised in the Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the CAFO.

27. Neither assessment nor payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

Tinka G. Hyde  
Tinka G. Hyde  
Director, Water Division  
U.S. EPA, Region 5

3-15-10  
Date

RECEIVED  
MAR 17 2010

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

CWA-05-2010-0008

CERTIFICATE OF SERVICE

I certify that the foregoing Class II Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered: Regional Hearing Clerk (E-13J)  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, Illinois 60604-3590

Copy by certified mail,  
return receipt requested: Mr. Allen Barry, Mr. Tim Barry  
1448 Route 72 East  
Leaf River, Illinois 61010

Carbon copy hand-delivered: *see bcc list*

Dated: *Daniel Moore*

RECEIVED  
MAR 17 2010  
REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY