

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

KEN PETSKA)

Respondent)

Proceeding under Section 309(g) of the)
Clean Water Act, 33 U.S.C. §1319(g))

) Docket No. CWA-07-2009-0014

)
)
) RESPONSE TO COMPLAINT AND
) REQUEST FOR HEARING
)

COMES NOW, Ken Petska, Respondent named in the above-entitled matter, and in
Response to the Complaint filed herein, states as follows:

1. The Respondent denies each and every allegation set forth in the Complaint filed herein, excepting those allegations admitted specifically herein.
2. The Respondent admits the allegations set forth in paragraph 1, 3, 4, 5, 6, 7, 8, 9, 10, and 14, as set forth in the Complaint filed herein.
3. The Respondent neither admits or denies the allegations set forth in paragraph 2 of the complaint filed herein, however, the Respondent acknowledges receipt of the Complaint filed herein.
4. The Respondent specifically denies the allegations set forth in paragraph 11, 12, and 13 of the Complaint filed herein. The Respondent affirmatively states that trees, limbs, and other materials were naturally deposited near the upstream end of an island during normal ice jam and flooding actions of the North Loup River. The Respondent affirmatively alleges that such natural actions were the cause of accretion closing off the channel/chute adjacent to the island, thereby creating accretion land. Such accretion land was naturally vegetated due to lower river flows and the Respondent's action in enhancing the access path to such accretion land was not the primary cause of the impacts alleged in paragraph 16 of the Complaint filed herein.

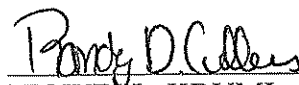
5. The Respondent acknowledges not having obtained a 404 permit as alleged in paragraph 19 of the Complaint filed herein prior to enhancing the access to the accretion land as described above.
6. The Respondent neither admits nor denies the allegations set forth in paragraph 22 of the Complaint filed herein and affirmatively states that the Respondent is not contesting the Agency's authority to assess a civil penalty as alleged herein.
7. The Respondent denies the allegations set forth in paragraph 23 of the Complaint filed herein and affirmatively states that Respondent believes the fine is excessive for the reason that the alleged impact to the North Loup River is primarily caused by natural flow of the river, including ice jams, spring flooding, deposit of trees, and normal accretion processes, rather than actions of the Respondent. Further, the Respondent further indicates that the Respondent does not object to an informal settlement and will continue working simultaneously herein to obtain a settlement and mitigation of this matter.
8. The Respondent affirmatively states that bonafide issues of his ability to pay exist as the property impacted is agricultural property with a low economic return, the economic condition of the area has deteriorated with the temporary closing of the ethanol plant and the Respondent's position and ability to pay is compromised.

9. The Respondent requests an opportunity for hearing in this matter if the informal settlement conference process is not successful and further requests that a hearing be scheduled at such time in advance as to allow the informal settlement conference to be completed.

Dated this 6th day of February, 2009.



Ken Petska, Respondent

BY: 

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CULLERS, P.C., L.L.O.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon the following interested parties on this 6th day of February, 2009, by United States mail, postage prepaid:

William A. Spratlin, Director
Water, Wetlands, and Pesticides Division
United States Environmental Protection
Agency, Region 7
901 North 5th Street
Kansas City, KS 66101

Chris Muehlberger
Assistant Regional Counsel
United States Environmental Protection
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Randy D. Cullers, #20972