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***(Not For Service of Legal Papers)*

Michael A. Somma

Michael J. Sullivan

February 15, 2017

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Re: Answer
Matter of Binghamton Burial Vault
Docket No. CWA-02-2017-3303

Dear Sir:

Enclosed please find the Answer on behalf of Binghamton Burial Vault Co., on the above named matter. Please note that the Respondent has requested a Hearing upon the issues raised by the Complaint and Answer.

If you have any questions, please feel free to contact me.

Sincerely,



Michael A. Somma, Esq.

MAS/nmg

cc: Tim Murphy, Esq.

U.S. Environmental
Protection Agency-Region 2
2017 FEB 16 AM 10:55
REGIONAL HEARING
CLERK

UNITED STATES :: REGION 2
ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF

VERIFIED ANSWER

BINGHAMTON BURIAL VAULT CO. INC.,

Docket No. CWA-02 2017-3303

Respondent.

Respondent, Binghamton Burial Vault Co., Inc., as and for its response to the allegations contained in the Complaint issued by the United States Environmental Protection Agency (EPA) to Binghamton Burial Vault Co. Inc., herein states the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Admits to the allegations contained in paragraphs "1", "2", "5", "6 (b)", "6(b)(i)", "6(c)".
2. Denies the allegations contained in paragraphs "6(a)", "6(a)(i)", "6(a)(iii)", "6(a)(iii)(1)", "6(c)(i)", "6(c)(ii)", "7" and "8".
3. Lacks knowledge of information sufficient to form a belief and hence denies the allegations contained in paragraph "4", "6(a)(ii)" and "6(d)(i)".
4. Respondent denies each and every allegation of the Complaint not heretofore specifically admitted, controverted or denied.

**AS AND FOR A FIRST, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE,
THE RESPONDENT STATES AS FOLLOWS:**

5. Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE,
THE RESPONDENT STATES AS FOLLOWS:**

6. Respondent denies that any of its actions or inactions were willful, wanton,

U.S. Environmental Protection Agency
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malicious or reckless.

**AS AND FOR A THIRD, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE,
THE RESPONDENT STATES AS FOLLOWS:**

7. Respondent could not and did not foresee the risks of the damages or injuries alleged by the Environmental Protection Agency.

**AS AND FOR A FOURTH, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE,
THE RESPONDENT STATES AS FOLLOWS:**

8. Some of the injuries and damages complained of in the Complaint were the proximate result of the negligence of third parties over whom this Respondent has no control.

**AS AND FOR A FIFTH, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE,
THE RESPONDENT STATES AS FOLLOWS:**

9. The conditions and damages complained of by the Environmental Protection Agency resulted from natural causes and this Respondent is not liable for any injuries and damages sustained on account of said natural causes.

**AS AND FOR A SIXTH, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE,
THE RESPONDENT STATES AS FOLLOWS:**

10. The alleged injuries and damages complained of were due to unavoidable circumstances and causes beyond the control or fault of this Respondent.

**AS AND FOR A SEVENTH, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE,
THE RESPONDENT STATES AS FOLLOWS:**

11. The business of this Respondent is in the public interest, convenience and necessity, and it is operated and conducted in a reasonable manner in compliance with the

law.

**AS AND FOR AN EIGHTH, SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE,
THE RESPONDENT STATES AS FOLLOWS:**

12. Respondent denies that the Environmental Protection Agency has suffered any losses or damages, in any event, any losses or damages sustained are de minimus, remote, speculative, and/or transient and hence are not cognizable at law.


**ADDITIONAL CIRCUMSTANCES AND ARGUMENTS WHICH
CONSTITUTE THE GROUNDS OF DEFENSE:**

Respondent has always operated its business in compliance or in substantial compliance with the rules and regulations of the Environmental Protection Agency and the State of New York. The instances enumerated in the Complaint dated November 3, 2016 are not an accurate depiction of Respondent's operation and Respondent intends to present evidence that the trough from the cement mixing activity inside the garage does not lead directly to the Town of Fenton Municipal Separate Storm Sewer System (MS4) as alleged and did not directly connect with sewer MS4 at the time of inspection. Respondent also intends to present evidence that the storm water catch basins on site are cleaned regularly and are not regularly filled with sediment and/or gravel and are cleaned constantly in order to allow continued operation of Respondent's business. Respondent also will present evidence that it regularly employs good and solid business practices and the instances indicated in the complaint of potential problems are not constant problems but were the result of an inspection at a busy time of year. The identified problems were fixed promptly and no longer represent a potential for problems.

Respondent also intends to contest the amount of fine (\$25,000.00) sought to be imposed by the complaint as excessive under the circumstances.

Respondent requests a hearing on the Complaint .

Dated: February 14 , 2017



BRIAN ABBEY
President
Binghamton Burial Vault Co. Inc.


To: Tim Murphy, Esq.
Assistant Regional Counsel
Water and General Law Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866
(212) 637-3236

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 16th Floor
New York, New York 10007-1866

VERIFICATION

STATE OF NEW YORK :
: SS:
COUNTY OF BROOME :

I am the Respondent in the within action. I have read the foregoing Answer and know the contents thereof. The contents are true to my own knowledge except as to matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.


BRIAN ABBEY
President
Binghamton Burial Vault Co. Inc.

Sworn to before me this 14th
day of February, 2017


NOTARY PUBLIC

MICHAEL A. SOMMA
Notary Public, State of New York
#4953510
Qualified in Broome County
Commission Expires July 17, 2019


CLIENT CERTIFICATION

I, BRIAN ABBEY, as President of Binghamton Burial Vault Co. Inc., under penalty of perjury, that I have carefully read and reviewed the annexed Verified Answer, and that all information contained in that document is true and accurate in all respects to the best of my knowledge and understanding.

I FURTHER CERTIFY, under penalty of perjury, that neither my attorney, nor anyone acting on my attorney's behalf, was the source of any information contained in the annexed Certification required by 22 NYCRR 202.16(e), is relying entirely upon the information provided by me and upon my certification that all such information is true and accurate.

I FURTHER CERTIFY that the annexed document includes all information which I provided to my attorney which is relevant to such document and that my attorney has not deleted, omitted or excluded any such information.

Dated: February 14, 2017



BRIAN ABBEY
President
Binghamton Burial Vault Co. Inc.

ATTORNEY CERTIFICATION

I, MICHAEL A. SOMMA, ESQ., HEREBY CERTIFY, under penalty of perjury, that I have no actual knowledge that the substance of any statements of fact contained in the annexed document are false. This Certification is based solely and exclusively upon information provided by the client, and upon the client's certification to the undersigned attorney that such information is not false, and is not based upon any review, audit, examination, inquiry or investigation made by the undersigned attorney or anyone acting on behalf of said attorney.

PLEASE TAKE FURTHER NOTICE that this Certification is made by the attorney as an Officer of the Court and is directed solely and exclusively to the Court in accordance with 22 NYCRR 202.16(e) and is expressly not directed or extended to the opposing party herein.

PLEASE TAKE FURTHER NOTICE that the opposing party may not and should not rely upon this Attorney Certification in assessing the truth or validity of the information contained in the annexed document. The credibility of this submission is no greater than the credibility of the client represented by the undersigned attorney and the opposing party should give this document no greater credence because it bears this Attorney Certification.

Dated: February 14, 2017



Michael A. Somma