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Attorneys for Respondent

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR**

In the matter of:)	
)	
Mike Vierstra)	Docket No. CWA-10-2010-0018
d/b/a Vierstra Dairy,)	
)	ANSWER TO COMPLAINT
Twin Falls, Idaho)	
)	
Respondent.)	
_____)	

COMES NOW Respondent, doing business as Vierstra Dairy, through his attorney of record, and answers and denies the allegations of the Complaint as follows:

I

Answering paragraph 2.8, respondent denies the allegations contained therein as follows: the discharge was a proximate result of the flow of rainwater through a compost pile owned by one Jack McCall which flow continued into the Low Line Canal.

II

Answering paragraph 2.9, respondent denies the allegations contained therein to the extent they assert that respondent was intentionally discharging dairy wastes into the Low Line Canal. The

ORIGINAL

discharge occurred as a result of the following circumstances: the respondent was in the process of filling his wastewater lagoon with water and, using a water pump, was irrigating his fields with associated piping and risers. Unbeknownst to respondent, an unknown person had removed a cleanout plug at one end of the piping allowing water and affluent to be carried into the Low Line Canal.

III

Answering paragraphs 2.10 and 2.11, respondent denies the allegations based upon the fact that at the time of the alleged discharge the Low Line Canal was dry and not flowing into the Pacific Ocean.

IV

Answering paragraphs 2.12, 2.13, and 2.14, to the extent that these allegations include allegations of unlawful discharge as to paragraph 2.8 and intentional discharge as to paragraph 2.9, they are denied.

V

Answering paragraph 3.3 of the Complaint, respondent denies that the alleged violations are significant, that he has very poor control to prevent cattle waste from entering the Low Line Canal, and that respondent's poor management of his wastewater has resulted in the discharge of a large volume of manure-contaminated feedlot wastewater to waters of the United States. The factual basis for these denials are set forth in paragraphs I and II above.

VI

Answering paragraph 3.4, respondent denies the allegations contained therein based upon the circumstances set forth in paragraph I, II, and III above.

VII

Answering paragraphs 3.5 and 3.6, respondent is without knowledge or information sufficient to form a belief as to whether he has “significant prior history” of violations and whether he has a “checkered past of compliance” unless more definite allegations are interposed.

VIII

Answering paragraph 3.7, respondent’s dairy operation is operating at a loss and he lacks the resources to pay a civil penalty.

Therefore respondent prays for relief as hereinafter set forth.


REQUEST FOR HEARING

Respondent requests hearing on the alleged facts set forth in the Complaint and this Answer as well as the appropriateness of the proposed penalties.

Wherefore, respondent prays for relief as follows:

1. That the hearing officer find and conclude that respondent should not be subjected to any penalty.
2. For such other and further relief as the hearing officer deems appropriate.

DATED this 8th day of December, 2009.



Allen B. Ellis
Attorney for respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Answer in the matter of Mike Vierstra d/b/a/
Vierstra Dairy, Docket No. CWA-10-2010-0018, was sent to the following persons, in the manner
specified, on the 8th day of December, 2009:

Original and one copy, mailed:

Carol Kennedy, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101

A true and correct copy was sent by U.S. mail to:

Mark A. Ryan
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 10
1435 N. Orchard St.
Boise, Idaho 83706

Allen B. Ellis

