

Carroll & Carroll Lawyers, P.C.
Counselors & Attorneys at Law
Since 1905

U.S. Environmental
Protection Agency-Reg 2

2015 MAY 18 PM 2: 03

REGIONAL HEARING
CLERK

Julia M. Zimmer Paralegal

Lee Carroll (1904-2004)
John Benjamin Carroll, P.C.
Woodruff Lee Carroll, P.C.

May 14, 2013

Via US Express Mail
Regional Hearing Clerk
US Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007

Re: Docket No. CWA-02-2013-3601

Dear Clerk,

Enclosed please find an original and two copies of the Motion for Adjournment of Time to Answer the Claimant's Motion for Accelerated Decision on Liability with supporting Affidavit of John Benjamin Carroll dated the 14th of May, 2015, and an Affidavit of Service in the above reference matter.

We appreciate your courtesies in this regard.

Respectfully Submitted,



John Benjamin Carroll, P.C.
JBC/jmz
Enc.

cc: (one copy)
Lauren Fischer, Esq.
Assistant Regional Counsel
US Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007

2015 MAY 18 PM 2:03

REGIONAL HEARING
CLERK

IN THE MATTER OF:

Michael B. Rapasadi

2106 Lake Road
Oneida, NY 13421

Thomas R. Rapasadi

2106 Lake Road
Oneida, NY 13421

Respondents.

**Proceeding pursuant to § 309(g)
of the Clean Water Act, 33 U.S.C. § 1319(g)**

**Proceeding to Access Class I
Civil Penalties Pursuant to Section
309(g) of the Clean Water Act**


Docket No. CWA-02-2013-3601

**RESPONDENTS MOTION FOR ADJOURNMENT OF TIME TO ANSWER
THE CLAIMANTS MOTION FOR ACCELERATED DECISION ON LIABILITY**

Upon the attached affidavit of John Benjamin Carroll dated the 14 day of May, 2015, the undersigned on behalf of the above Respondents hereby moves for a 45 days adjournment of time to Answer the claimant's Motion of Accelerated Decision of Liability.

Dated: May 14, 2015

Carroll and Carroll Lawyers, P.C.


By: John Benjamin Carroll, P.C.
440 South Warren Street
Syracuse, New York 13202
Telephone: 315-474-5356

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007**

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**RESPONDENTS MOTION FOR ADJOURNMENT OF TIME TO ANSWER
THE CLAIMANTS MOTION FOR ACCELERATED DECISION ON LIABILITY**


John Benjamin Carroll, first being duly sworn deposes and says:

- 1) I counsel for the Respondent herein and in charge of preparing his case.
- 2) I have no recollection of any prior notice of the Motion of the Claimant for Accelerated Decision. On this short notice, I cannot collect and organize the facts, expert and lay testimony.
- 3) It is our intention to cross examine the EPA witnesses in general and in particular on the jurisdiction of the Agency over the premises involved. I do not see how that can be done by an expedited proceeding and were, and if, an Order were made, we would immediately claim absence of due process.

- 4) To counter the allegations I will require expert affidavit in which we intend to challenge the jurisdiction of the EPA under the relevant Supreme Court decisions. We need time to draw a lay witness affidavit to support the factual aspects. These I believe will show an absence of jurisdiction under the applicable criteria. We are advised by our client that he has knowledgeable local lay parties concerning the water flow and other jurisdictional facts and wants their participation. We will need the time to place this material in affidavit form in addition to the other reasons advanced.
- 5) I have attempted to confer with the Claimant's attorney for consent but the call has not yet been answered.

Respectfully submitted,

Carroll and Carroll Lawyers, P.C.


By: John Benjamin Carroll, P.C.
440 South Warren Street
Syracuse, New York 13202
Telephone: 315-474-5356

Sworn to before me this
14th day of May, 2015


Notary Public

JULIA M ZIMMER
Notary Public - State of New York
No. 01ZI6259918
Qualified in Onondaga County
My Commission Expires April 16, 2016

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 Broadway
New York, New York 10007**

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AFFIDAVIT OF MAILING

I, Julia Zimmer, being duly sworn, deposes and says that deponent is not a party to this action, is over 18 years of age, and resides in Syracuse, NY 13206.

That on the 14th day of May, 2015 deponent served copies of Respondents Motion for Adjournment of Time to Answer the Claimants Motion for Accelerated Decision on Liability, in the above reference matter to:

(Original and two copies)
Regional Hearing Clerk
US Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007

(Additional Copies)
Lauren Fischer, Esq.
Assistant Regional Counsel
US Environmental Protection Agency
290 Broadway, 16th Floor
New York, NY 10007

by depositing same enclosed in a postpaid properly addressed wrapper, with Express Mail postage, in a post office-official depository under the exclusive care and custody of the United States Post Office Department within the State of New York.

Julia Zimmer
Julia Zimmer

Sworn to before me this
14 day of May, 2015.

Wendy M. Luedtke
Notary Public

My commission expires

9/3/18.

#02 CA 6079830