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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

In the matter of:

Lowell Vos  
d/b/a Lowell Vos Feedlot  
Woodbury County, Iowa

Respondent.

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)  
) Docket No. CWA-07-2007-0078  
)  
) MOTION TO TOLL TIME TO  
) FILE ANSWER AND MOTION  
) FOR ADDITIONAL INFORMATION  
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**BACKGROUND**

On August 21, 2009, Lowell Vos (Vos) filed an Application for Attorney’s Fees and Costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412<sup>1</sup>, (herein referred to as the “Application.”) In the Application, Vos alleges that he is entitled under EAJA to reimbursement for expenses he incurred in litigating a Clean Water Act complaint brought by EPA Region 7 alleging violations of Sections 301, 308, and 402, 33 U.S.C. §§ 1311, 1318, and/or 1342 . The decision in the underlying CWA adjudication became final on or around July 23, 2009.

Pursuant to 5 U.S.C. § 504 (c)(1), EPA promulgated rules to establish uniform procedures for the submission and consideration of applications for an award of fees and other expenses. These rules are found at 40 CFR Part 17.

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<sup>1</sup> Vos seeks to bring this action under 28 U.S.C. § 2412. However, 5 U.S.C. § 504 is the appropriate statute to pursue an Equal Access to Justice Act action associated with an administrative adjudication. In this motion EPA will refer to 5 U.S.C. § 504 as though Vos had sought to proceed under the appropriate statute.

## **MOTION TO TOLL TIME TO FOR EPA TO FILE ANSWER**

EPA moves that the thirty (30) days EPA has to file an answer should be tolled starting September 4, 2009, the date this motion was filed with the Regional Hearing Clerk. The information described below is necessary for EPA to adequately assess and brief Vos' EAJA claim. As a result, good cause is shown to toll the date to answer until this information is provided.

## **MOTION FOR ADDITIONAL INFORMATION**

### Request for additional net worth information

40 CFR 17.12(a) requires that the applicant must submit with its application for an award of fees a detailed exhibit showing the applicant's net worth at the time the proceeding was initiated. Section 17.12(a) also provides that the Presiding Officer may require an applicant to file additional information to determine the applicant's eligibility for an award.

As submitted, the net worth statements that Vos attached to his Application as Exhibit A fail to meet the requirements of Section 17.12. Significant portions of the net worth statements provided to EPA are illegible. Other portions reference schedules that are not included with the application. Thus, the statements submitted are incomplete and/or unreadable. Section 17.12 requires Vos to, among other things; disclose all entities or affiliates of his business and their net worth. It is impossible to discern from Vos' net worth statements if he has met this burden.

Furthermore, 40 CFR § 17.12(b) requires that the net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. Vos' application does appear not contain any such information.

In its submitted form, the Application does not meet the requirements of 5 U.S.C. 504 and 40 CFR § 17.12. Without this action, it is impossible to evaluate whether Vos is eligible to seek relief under EAJA. EPA moves that the Presiding Officer require Vos provide net worth statements that are legible and fulfill the requirements of 40 CFR § 17.12.

### Request for additional documentation of fees and expenses

Section 17.13(b) requires that documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided. The expense documentation in the application notes that attorney fees were paid but not by whom. The application does not meet the requirements of Section 17.3(b) and is incomplete.

EPA notes that while the underlying litigation was pending, it was advertised in the Iowa Cattlemen Association (ICA) monthly publication that the ICA had established a legal defense

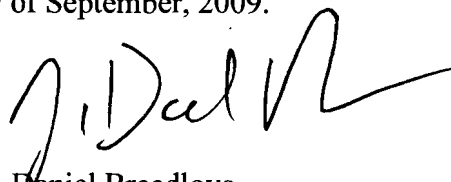
fund to assist Vos in his efforts to litigate the violations alleged by EPA.<sup>2</sup> The probability is significant that this legal defense fund paid at least a portion of the expenses Vos for which now seeks compensation. It is impossible to differentiate the source of payment from the documentation presented in the application.

As a result, EPA moves that the Presiding Officer require Vos to provide receipts, cancelled checks or other substantiation that document the actual amounts he paid for the expenses claimed. EPA further moves that the Presiding Officer require Vos to disclose and document any payments to him from a third party or provide certification that no assistance was received. Finally, EPA moves that the Presiding Officer require Vos' counsel to disclose any arrangements that may have existed between counsel and the ICA or other industry groups regarding compensation for the services and expenses at issue.

### CONCLUSION

For the reasons stated above, Complainant requests that the Presiding Officer grant EPA's motion to toll the time to file an answer and motion to provide additional information.

RESPECTFULLY SUBMITTED this 4 day of September, 2009.



J. Daniel Breedlove  
Assistant Regional Counsel  
Region 7

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<sup>2</sup> The publication actually solicited funds for two member cattlemen but since the other matter was settled it may be presumed that a lion's share of the assistance may have been available for Mr. Vos.

**CERTIFICATE OF SERVICE**

I certify that the foregoing "Motion to Dismiss, Motion to Toll Time to File Answer, and Motion for Additional Information was sent to the following persons, in the manner specified, on the date below:

Original and one copy, by hand delivery:

Kathy Robinson, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy, by pouch mail and Facsimile:

Honorable William B. Moran  
Administrative Law Judge  
EPA Office of Administrative Law Judges  
Mail Code 1900L  
Aerial Rios Building  
Washington, D.C. 20460

Copy, by mail and electronic mail:

Eldon McAfee, Esq.  
Beving, Swanson, & Forrest, PC  
321 Walnut, Suite 200  
Des Moines, Iowa 50309

Dated: \_\_\_\_\_

9/4/09

  
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U.S. EPA Region VII