

DONALD ZEE, P.C.

ATTORNEYS AT LAW
1 WINNERS CIRCLE - SUITE 140
ALBANY, NEW YORK 12205
TELEPHONE (518) 489-9423
TELEFAX (518) 489-9428
E-MAIL: DonaldZeePC@MSN.COM

DONALD ZEE
LINDA S. LEARY
ANDREW BRICK

LEGAL ASSISTANT
CHERI A. McGEARY

October 15, 2013

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2013 OCT 18 P 4: 09
REGIONAL HEARING
CLERK

**RE: Matter of Robert Iovinella and BTL Properties, Inc.
Docket No. CWA-02-2013-3313**

Dear Clerk:

Enclosed for service upon you please find one original and one copy of Respondents' Answer, Request for Hearing and Request for Informal Conference.

Sincerely,

DONALD ZEE, P.C.

By: 

ANDREW BRICK, ESQ.

AB:sam

Enc.

Cc: Tim Murphy, Esq. Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, NY 10007-1866

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF:

Mr. Robert Iovinella and BTL Properties, LLC
90 West Campbell Road
Schenectady, New York 12306

Beckers Crossing Phases IV and V
Duff Bambury Court
Rotterdam, New York 12306

SPDES Permit No. NYR10G140

Proceeding pursuant to Sections 308 and 309(a)
of the Clean Water Act, 33 U.S.C. §§1318 and
1319(a)

**RESPONDENT'S ANSWER TO
PROCEEDING TO ASSESS A
CLASS 1 CIVIL PENALTY**

DOCKET No. CWA-02-2013-3313

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. 2
2013 OCT 18 P 4:08
REGIONAL HEARING
CLERK

The Law Offices of Donald Zee, P.C., by Andrew Brick, Esq., on behalf of Robert Iovinella and BTL Properties, Inc.¹, the Respondents in the above captioned matter hereby submit this Answer to the Complaint.

I. PRELIMINARY STATEMENT

1. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
2. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.

II. STATUTORY AND REGULATORY PROVISIONS AND PERMIT REQUIREMENTS

1. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.

¹ The Respondent is a domestic business corporation (Inc.) not a limited liability company (LLC) as stated in the caption.

2. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
3. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
4. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
5. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
6. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
7. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
8. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
9. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
10. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
11. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
12. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
13. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
14. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
15. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
16. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.

17. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
18. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.

III. FINDINGS OF FACT

1. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
2. Admits the allegation but lacks knowledge related to the allegation as to whether Respondent is an owner or operator within the meaning of 40 CFR 122.2.
3. Admits the allegation but lacks knowledge related to the allegation as to whether Respondent is an owner or operator within the meaning of 40 CFR 122.2.
4. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
5. Admits the allegation.
6. Admits the allegation.
7. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
8. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
 - a) Respondents deny the allegation.
 - b) Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
 - i. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
 - ii. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
 - iii. Denies the allegation.
 - iv. Denies the allegation.

- v. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
 - c) Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
 - d) Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
 - e) Respondents deny the allegation.
 - f) Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
 - g) Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
 - h) Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
 - i) Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
9. Respondents deny the allegations.
 10. Respondents deny the allegations.
 11. Respondents admit the allegation.
 12. Respondents admit the allegation.
 13. Respondents admit the allegation.
 14. Respondents admit the allegation.
 15. Respondents admit the allegation.

IV. CONCLUSIONS OF LAW AND FINDINGS OF VIOLATION

1. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint
2. Respondents lack knowledge related to the factual allegations contained in this particular paragraph of the Complaint.
3. Respondents deny the allegation.
4. Respondents deny the allegation.
5. Respondents deny the allegation.

6. Respondents deny the allegation

AFFIRMATIVE DEFENSES

- The Complaint is based upon incorrect facts.
- The facts as alleged in the Complaint, even if true, fail to constitute any violation of the CWA.
- The penalty proposed is excessive in light of Respondents history of full compliance with applicable rules, regulations, statutes and permitting requirements for this and other construction projects.
- The penalty proposed is excessive compared to the severity of the violations alleged, their isolated occurrence, and the duration for which they allegedly existed.
- The proposed penalty is excessive in light of Respondents prompt remedial actions to abate any violations alleged.
- The proposed penalty is excessive in light of Respondents prompt response to EPA staff concerns and good faith efforts to immediately communicate with EPA staff to address and remediate any concerns raised by them. The violations alleged, if they existed, were the result of factors beyond the control of the Respondents; more specifically, extreme and prolonged adverse weather conditions.

REQUEST FOR FORMAL HEARING

Pursuant to 40 C.F.R. §22.15(c), Respondents by this Answer hereby request a Hearing wherein they will submit testimony and documentation to demonstrate that the proposed penalty is excessive.

REQUEST FOR AN INFORMAL SETTLEMENT CONFERENCE

Pursuant to 40 C.F.R. §22.11(c), Respondents request an Informal Settlement Conference wherein Respondents will submit relevant information previously not known to the Complainant that demonstrates that the findings herein are without merit or, alternatively, that the proposed penalty is not warranted.

Respondents on this date have attempted to contact Mr. Tim Murphy, Esq., Office of Regional Counsel to schedule a Conference as instructed by the Complaint but were informed by Mr. Murphy's outgoing voicemail message that he will not be in the office until the existing ongoing federal government shutdown is ended. Respondents will again seek to contact Mr. Murphy as soon as the federal government shutdown is ended.

Please allow the foregoing to serve as Respondents Robert Iovinella and BTL Properties, Inc. Answer with Affirmative Defenses, Request for Formal Hearing, and Request for Informal Conference in the above captioned matter.

DATED: October 15, 2013

Respectfully Submitted,

DONALD ZEE, P.C.

By: 
Andrew Brick, Esq.

DONALD ZEE, P.C.
Attorneys for Respondents
I Winners Circle, Suite 140
Albany, NY 12205
(518) 489-9423
(518) 489-9428 (fax)