

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V

2008 AUG 21 PM 3:14

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Michael Aukerman,
d/b/a as Michael Aukerman Excavating
3180 County Road 203
McComb, Ohio

**ANSWER OF RESPONDENT
MICHAEL AUKERMAN DBA
MICHAEL AUKERMAN EXCAVATING**

No. CWA-05-2008-0004

FIRST DEFENSE

The Respondent, Michael Aukerman, as an answer to Administrative Complaint states that:

1. He admits that the statutes as set forth in paragraphs 1, 4, 5, 6, 7, & 8 of the Complaint are as written.
2. He denies those allegations in paragraphs 2 & 9, in that he is without information sufficient to form a belief as to the truth of the allegations contained therein.
3. He admits those allegations in paragraph 3.
4. He denies those allegations in paragraphs 10, 11, & 12.

SECOND DEFENSE

Michael Aukerman as an answer to count one of the Complaint states that:

1. He admits and denies all allegations in paragraph 13 as previously admitted and denied in his first defense.
2. He admits that the statutes set forth in paragraph 14 of the Complaint are as written.

3. He denies all allegations in paragraph 15, 16, 17 & 18.

THIRD DEFENSE

Michael Aukerman as an answer to count two of the Complaint states that:

1. He admits and denies all allegations in paragraph 19 as previously admitted and denied in his first and second defense.
2. He admits that the statute as set forth in paragraph 20 of the Complaint is as written.
3. He denies all allegations in paragraphs 21, 22, 23 & 24.

FOURTH DEFENSE

Michael Aukerman as an answer to count three of the Complaint states that:

1. He admits and denies all allegations in paragraph 25 as previously admitted and denied in his first, second and third defenses.
2. He admits that the statute set forth in paragraph 26 of the Complaint is as written.
3. He denies all allegations in paragraphs 27, 28, 29 & 30.

FIFTH DEFENSE

Michael Aukerman as an answer to count four of the Complaint states that:

1. He admits and denies all allegations in paragraph 31 as previously admitted and denied in his first, second, third and fourth defenses.
2. He denies all allegations in paragraphs 32, 33, 34, 35 & 36.

SIXTH DEFENSE

Michael Aukerman as a response to the proposed civil penalties states that:

1. He specifically denies the proposed penalty of \$102,000 as set forth in the Complaint.

2. Michael Aukerman does not have the ability or the financial assets required to pay any form of penalty that may be assessed
3. Michael Aukerman is currently on the brink of insolvency.

AFFIRMATIVE DEFENSES

Michael Aukerman as affirmative defenses to the Complaint states that:

1. The time frame alleged in the Complaint involves alleged violations of the Clean Water Act during a period of time that any disposals were made in compliance with directions given by the Hancock County Health Departments.
2. The proposed penalty is beyond the financial means of Michael Aukerman. Essentially, his assets and debts are equalized and he is on the brink of insolvency.
3. Alleged violations of record keeping are in dispute to the extent that the information requested was never presented or demanded through the local health departments, which he had contacted.
4. As set forth, a hearing is specifically requested.

REQUEST FOR HEARING

Michael Aukerman requests a hearing on the allegations in the Administrative Complaint and the amount of civil penalty that has been proposed.

WHEREFORE, Michael Aukerman requests that the Administrative Complaint be dismissed and/or in the alternative, the proposed penalties be eliminated, as he is in compliance and has been in compliance with all requirements of the Clean Water Act since July 2006.

Respectfully submitted,

OXLEY, MALONE, HOLLISTER, O'MALLEY &
WARREN, P.L.L.

BY Robert B. Hollister
Robert B. Hollister (0003285)
Attorney for Michael Aukerman, d/b/a Michael
Aukerman Excavating
301 E. Main Cross Street
P.O. Box 1086
Findlay, Ohio 45839-1086
(419) 422-8713

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of Respondent Michael Aukerman has been sent by overnight courier this 20th day of August, 2008 to: Richard L. Wagner, Senior Attorney, Office of Regional Counsel (C-29A), U.S. Environmental Protection Agency, 77 West Jackson Blvd, Chicago, IL 60604-3590; and Regional Hearing Clerk (R-19J), EPA Region 5, 77 West Jackson Blvd., Chicago, IL, 60604-3590.

Robert B. Hollister
Robert B. Hollister
Attorney for Michael Aukerman, d/b/a/
Michael Aukerman Excavating

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V

2008 AUG 21 PM 3:14