

# BRENNAN, MANNA & DIAMOND

ATTORNEYS & COUNSELORS AT LAW

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November 25, 2009

Hon. Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-2001

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REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

**Re: Barton Septic Tank Service  
Docket No. CWA-05-2009-0009**

Dear Judge Gunning:

Enclosed please find Respondent's Prehearing Exchange for this civil administrative action which will be filed today with the Regional Hearing Clerk, pursuant to your Prehearing Order dated September 10, 2009.

Sincerely,



Christopher B. Congeni

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encl.

cc: Ms. LaDawn Whitehead  
Regional Hearing Clerk, Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (E-19J)  
Chicago, IL 60604-3590

Hon. Barbara A. Gunning

November 25, 2009

Page 2

Mr. Jeffery M. Trevino  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA Region V  
77 West Jackson Boulevard, C-14J  
Chicago, IL 60604-3590

Mr. Richard Antolak  
Barton Septic Tank Service  
70170 Provident Fairpoint Road  
St. Clairsville, OH 43950

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U.S. ENVIRONMENTAL  
PROTECTION AGENCY

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 ) DOCKET NO. CWA-05-2009-0009  
BARTON SEPTIC TANK SERVICE, )  
 )  
RESPONDENT )

RESPONDENT PREHEARING EXCHANGE

On September 10, 2009, the Court ordered the Respondent of this civil administrative action to file its Prehearing Exchange by December 1, 2009. Therefore, Respondent hereby files its Prehearing Exchange.

**I. Prospective Witnesses and Testimony**

- A. Richard Antolak  
Owner of Barton Septic Tank Service  
70170 Provident Fairpoint Road  
St. Clairsville, OH 43950

Mr. Antolak will testify as to his experience regarding over 30 years of domestic, residential and commercial sewage dumping. Mr. Antolak will also rebut the claims regarding Barton Septic Tank Service, 70170 Provident Fairpoint Road, St. Clairsville, OH 43950.

- B. Gary Antolak  
Barton Septic Tank Service  
70170 Provident Fairpoint Road  
St. Clairsville, OH 43950

Mr. Antolak will testify as to the ability to pay for Barton Septic Tank Service, 70170 Provident Fairpoint Road, St. Clairsville, OH 43950. He also will testify as to certain occasions from July 1, 2004 to August 2, 2005 regarding domestic septic application to agricultural land.

- C. On-site Engineer and Restoration Specialist  
Brownfield Restoration Group, LLC  
1000 South Cleveland Massillon Road, Suite 106  
Akron, OH 44333

Note that the actual inspector and engineer will be named at a later date. This engineer and restoration specialist will testify as to the physical site inspection of the land in question and will also testify as to the preparation of a report document and the findings of the investigation, which will be submitted at a later date and his research of file reviews regarding environmental history of the property. Lastly, he will testify as to the current state and recovery of the property in question.

## **II. Documents and Exhibits**

Currently, the documents submitted to the Court are all of the documents that have been submitted thus far to Jeffrey Trevino, Regional Counsel for the District V EPA. Those have been enclosed and sent to the Regional Clerk for filing. These documents include: (1) 2006, 2007 and 2008 personal and business tax returns. This regards the Respondent's ability to pay the above-captioned fine.

(2) Also enclosed are receipts and invoices from Belmont County Sanitary Sewer District indicating that, since mid 2005, Respondent Antolak has not applied any domestic sewage of any kind to the area and property in question.

(3) Thirdly, his personal monthly expenses will be included and will be used to show Respondent Antolak's inability to pay the above-captioned \$55,000 amount.

## **III. Desired Hearing Location**

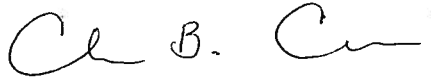
Respondent prefers the Court to hold the hearing in Akron, Ohio, the location of Respondent's attorney. Respondent is currently without the means to make the trip to Chicago for the hearing. Further, Respondent's wife is having back surgery and he needs to be with her to care for her. The additional time required for him to travel to Chicago will affect his ability to care for her and pay pending personal expenses.

However, if the Court decides to hold the hearing in Chicago, Illinois pursuant to Sections 22.21(d) and 22.19(d) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, the Respondent will follow the Court's order and make the trip to Chicago.

**IV. The Proposed Civil Penalty**

The proposed civil penalty right now is \$55,000.

Respectfully submitted,



Christopher B. Congeni  
Attorney for Respondent  
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Akron, OH 44305  
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UNITED STATES  
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BEFORE THE ADMINISTRATOR

IN THE MATTER OF )  
 ) DOCKET NO. CWA-05-2009-0009  
BARTON SEPTIC TANK SERVICE, )  
 )  
RESPONDENT )

CERTIFICATE OF SERVICE

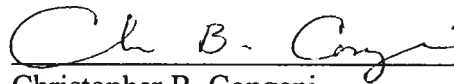
This is to certify that I filed by first class mail with LaDawn Whitehead, Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, IL 60604-3590, the original document entitled Respondent's Prehearing Exchange for this civil administration action this 25<sup>th</sup> day of November, 2009 and that I issued to the Court and Complainant by first class mail a copy of the original document:

Judge Barbara A. Gunning  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-2001

Mr. Jeffrey M. Trevino  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. EPA Region V  
77 West Jackson Boulevard, C-14J  
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