

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7  
901 NORTH 5<sup>TH</sup>

KANSAS CITY, KANSAS 66101

05 JAN 20 AM 11:03

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF: )  
)  
ROGER HARDERS )  
1775 County Road M )  
Wahoo, Nebraska 68066, )  
)  
Respondent. )  
)  
Proceedings under Section 309(a)(3) of the )  
Clean Water Act, 33 U.S.C. § 1319(a)(3). )  
\_\_\_\_\_ )

ANSWER TO COMPLAINT AND  
REQUEST FOR HEARING

Docket No. CWA-07-2004-0332

Respondent Roger Harders hereby answers the United States Environmental Protection Agency's ("Agency") Complaint and Notice of Opportunity for Hearing as follows:

**JURISDICTION**

1. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 1, and therefore denies the same.
2. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 2, and therefore denies the same.

**PARTIES**

3. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 3, and therefore denies the same.
4. The Respondent admits that he is a private individual. The Respondent affirmatively alleges that he resides at 659 West Seventh Street, Apartment 3, Wahoo, Nebraska 68066. The Respondent denies any remaining allegations set forth in Paragraph 4.

## **STATUTORY AND REGULATORY FRAMEWORK**

5. The allegations contained in Paragraph 5 represent the Agency's characterization of applicable law, to which no response is required. The Respondent affirmatively alleges that the statutes referenced therein speak for themselves and are the best evidence of their content and meaning.

6. The allegations contained in Paragraph 6 represent the Agency's characterization of applicable law, to which no response is required. The Respondent affirmatively alleges that the statute referenced therein speaks for itself and is the best evidence of its content and meaning.

7. The allegations contained in Paragraph 7 represent the Agency's characterization of applicable law, to which no response is required. The Respondent affirmatively alleges that the statutes and regulations referenced therein speak for themselves and are the best evidence of their content and meaning.

8. The allegations contained in Paragraph 8 represent the Agency's characterization of applicable law, to which no response is required. The Respondent affirmatively alleges that the regulation referenced therein speaks for itself and is the best evidence of its content and meaning.

9. The allegations contained in Paragraph 9 represent the Agency's characterization of applicable law, to which no response is required. The Respondent affirmatively alleges that the statutes referenced therein speak for themselves and are the best evidence of their content and meaning.

## **GENERAL ALLEGATIONS**

10. The Respondent admits the allegation set forth in Paragraph 10.

11. The Respondent denies the allegations set forth in Paragraph 11.

12. The Respondent denies the allegations set forth in Paragraph 12.

13. The Respondent affirmatively alleges that Paragraph 13 calls for a legal conclusion to which no response is required. To the extent a response is required, the Respondent alleges that the regulation provided therein speaks for itself, and therefore denies the allegations in Paragraph 13.

14. The Respondent denies the allegations set forth in Paragraph 14. Upon information and belief, the Respondent affirmatively alleges that if any “wetlands” have been impacted, the impact is at most three-tenths of an acre.

15. The Respondent admits the subject property is owned by his two minor children. The Respondent denies the remaining allegations contained in Paragraph 15.

16. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 16, and therefore denies the same.

17. The Respondent is without knowledge or information sufficient to form a belief as to the truth of the allegation set forth in Paragraph 17, and therefore denies the same.

18. The Respondent admits having received the letters referenced in Paragraph 18. The Respondent denies the remaining allegations set forth in Paragraph 18.

19. The Respondent affirmatively alleges that Paragraph 19 calls for a legal conclusion to which no response is required. To the extent a response is required, the Respondent affirmatively alleges that the statute provided therein speaks for itself, and therefore denies the allegations in Paragraph 19.

20. The Respondent affirmatively alleges that Paragraph 20 calls for a legal conclusion to which no response is required. To the extent a response is required, the

Respondent affirmatively alleges that the statute referenced therein speaks for itself, and therefore denies the allegations in Paragraph 20.

21. The Respondent affirmatively alleges that Paragraph 21 calls for a legal conclusion to which no response is required. To the extent a response is required, the Respondent affirmatively alleges that the statute referenced therein speaks for itself, and therefore denies the allegations in Paragraph 21.

22. The Respondent affirmatively alleges that Paragraph 22 calls for a legal conclusion to which no response is required. To the extent a response is required, the Respondent affirmatively alleges that the statutes and regulations referenced therein speak for themselves, and therefore denies the allegations contained in Paragraph 22.

#### **COUNT ONE – UNPERMITTED DISCHARGE**

23. The Respondent realleges and incorporates by reference his prior responses to paragraphs 1 through 22, as set forth above.

24. In response to the allegations contained in Paragraph 24, the Respondent admits that he has not obtained a permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344 related to the activities described in the Complaint.

25. The Respondent affirmatively alleges that the Paragraph 25 calls for a legal conclusion to which no response is required. To the extent a response is required, the Respondent affirmatively alleges that the statutes provided therein speaks for themselves, and therefore denies the allegations contained in Paragraph 25.

26. The Respondent denies the allegations set forth in Paragraph 26. The Respondent affirmatively alleges, without admitting culpability, that he is actively investigating the possibility of settlement of this matter with the Agency.

## **RELIEF**

27. The allegations contained in Paragraph 27 represent the Agency's characterization of applicable law, to which no response is required. The Respondent affirmatively alleges that the statutes and regulations referenced therein speak for themselves and are the best evidence of their content and meaning.

28. The allegations contained in Paragraph 28 represent the Agency's characterization of applicable law, to which no response is required. The Respondent affirmatively alleges that the statutes referenced therein speak for themselves and are the best evidence of their content and meaning. The Respondent affirmatively alleges that he is unable to pay the referenced civil penalty. The Respondent further affirmatively alleges that the civil penalty action is barred by the applicable statute of limitations, 28 U.S.C. § 2462.

29. The Respondent lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 29 and, therefore, denies the same.

30. The Respondent lacks knowledge and information sufficient to admit or deny the allegations contained in Paragraph 30 and, therefore, denies the same.

31. The Respondent affirmatively alleges that no response is required to Paragraph 31. To the extent a response is required, the Respondent denies the allegations contained in Paragraph 31.

32. The allegations contained in Paragraph 32 represent the Agency's characterization of applicable law, to which no response is required. The Respondent affirmatively alleges that the statutes referenced therein speak for themselves and are the best evidence of their content and meaning.

## **NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

### **ANSWER AND REQUEST FOR HEARING**

33. The Respondent affirmatively alleges that no response is required to Paragraph 33. To the extent a response is required, the Respondent denies the allegations contained in Paragraph 33.

34. The Respondent affirmatively alleges that no response is required to Paragraph 34. To the extent a response is required, the Respondent denies the allegations contained in Paragraph 34.

35. The Respondent affirmatively alleges that no response is required to Paragraph 35. To the extent a response is required, the Respondent denies the allegations contained in Paragraph 35.

36. The Respondent hereby requests that a hearing be held upon the issues raised by the Complaint in this matter.

37. The allegations contained in paragraph 37 represent the Agency's characterization of applicable law, to which no response is required. The Respondent affirmatively alleges that the statutes and regulations referenced therein speak for themselves and are the best evidence of their content and meaning.

38. The Respondent affirmatively alleges that no response is required to Paragraph 38. To the extent a response is required, the Respondent denies the allegations contained in Paragraph 38.

### **INFORMAL SETTLEMENT CONFERENCE**

39. The Respondent affirmatively alleges that no response is required to Paragraph 39. The Respondent affirmatively alleges that he is actively pursuing settlement of this litigation with the Agency.

40. The Respondent affirmatively alleges that no response is required to Paragraph 40. To the extent a response is required, the Respondent denies the allegations contained in Paragraph 40.

41. The Respondent affirmatively alleges that no response is required to Paragraph 41. To the extent a response is required, the Respondent denies the allegations contained in Paragraph 41.

42. The Respondent affirmatively alleges that no response is required to Paragraph 42. To the extent a response is required, the Respondent denies the allegations contained in Paragraph 42.

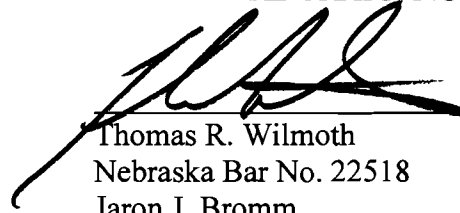
### **AFFIRMATIVE DEFENSES**

The Respondent for his Affirmative Defenses states and alleges as follows:

1. The Respondent was served with process in this matter on November 21, 2004.
2. Any work performed by or on behalf of the Respondent was performed more than five years before the Respondent was served with process in this matter.
3. The Complaint is barred in whole or in part by the applicable Statute of Limitations, 28 U.S.C. § 2462.

Dated this 19th day of January, 2005.

FENNEMORE CRAIG, P.C.

A handwritten signature in black ink, appearing to read 'T. Wilmoth', is written over a horizontal line. The signature is stylized and cursive.

Thomas R. Wilmoth  
Nebraska Bar No. 22518  
Jaron J. Bromm  
Nebraska Bar No. 22875  
1221 N Street, Suite 801  
Lincoln, NE 68508-2028  
Telephone: 402-323-6200  
Facsimile: 402-323-6210

Curtis A. Bromm  
EDSTROM BROMM LAW OFFICE  
551 North Linden  
P.O. Box 277  
Wahoo, NE 68066  
Telephone: 402-443-3225  
Facsimile: 402-443-4005



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 NORTH 5<sup>TH</sup>  
KANSAS CITY, KANSAS 66101

IN THE MATTER OF: )  
)  
ROGER HARDERS )  
1775 County Road M )  
Wahoo, Nebraska 68066, )  
)  
Respondent. )  
)  
Proceedings under Section 309(a)(3) of the )  
Clean Water Act, 33 U.S.C. § 1319(a)(3). )  
\_\_\_\_\_ )

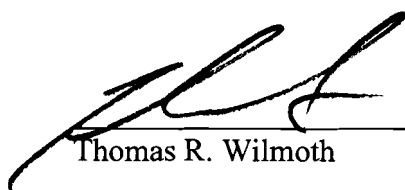
CERTIFICATE OF SERVICE

Docket No. CWA-07-2004-0332

I certify that on this 19th day of January, 2005, I sent via Federal Express the original and one true copy of ANSWER TO COMPLAINT AND REQUEST FOR HEARING to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5<sup>th</sup> Street, Kansas City, Kansas 66101.

I further certify that on the same date I sent via Federal Express a copy of ANSWER TO COMPLAINT AND REQUEST FOR HEARING to:

Steven L. Sanders  
Assistant Regional Counsel  
United States Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

  
\_\_\_\_\_  
Thomas R. Wilmoth