

K & R AUTO SALVAGE INC.



950 Smithfield Road • North Providence, RI 02904 • Tel — 401-353-9200 • Fax — 401-353-8668

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EPA ORC
Office of Regional Hearing Clerk

February 15, 2016

Regional Hearing Clerk
Environmental Protection Agency, Region 1
5 Post Office Square (ORC-18)
Boston, Massachusetts 02109-3912

Re: In the Matter of K & R Auto Salvage, Inc.
Docket#: CWA-01-2016-0025

Dear Clerk:

Please find enclosed the following document(s):

1. K & R Auto Salvage, Inc.'s Answer to Complaint and Request for Hearing; and
2. Certificate of Service.

If you have any questions regarding this letter or the enclosed document, please feel free to contact me.

Sincerely,

Daniel N. Turcotte, Chief Operations Officer

Enclosure(s):

Cc: Joana Jerison, Legal Enforcement Manager, USEPA, Region 1, New England, 5 Post Office Square,
Suite 100, Boston, MA 02109-3912

2-15-2016

Regional Hearing Clerk
Environmental Protection Agency, Region 1
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In the matter of K & R Auto Salvage, Inc.
Docket #: CWA-01-2016-0025

K & R Auto Salvage, Inc.'s Answer to Complaint and Request for Hearing

Now comes the respondent, K & R Auto Salvage, Inc. (hereinafter referred to as "Respondent"), in the above captioned matter and answers the complaint as follows:

1. Respondent admits so much of the complaint that alleges that EPA conducted an inspection of the facility on August 19, 2015.
2. Respondent admits that it is the operator of the facility located at 950 Smithfield Road, North Providence, RI 02904.
3. Respondent denies that it has violated Section 311(j) of the Act by failing to comply with the Oil Pollution Prevention regulations as noted on the Spill Prevention Control and Countermeasure Plan ("SPCC") Inspection Findings and Violations Form attached and incorporated by reference to the complaint.
4. Respondent admits that it submitted a draft SPCC plan to EPA on September 8, 2015.
5. Respondent admits that it submitted a final SPCC plan to EPA on November 17, 2015.
6. In further answering, the Respondent states on the date of the inspection, Respondent had a partially filled out SPCC Plan in its possession when the investigator asked to see the Plan.
7. Respondent reviewed the partially filled out SPCC Plan with the investigator on August 19, 2015.

Defenses

8. Respondent, at the time of the investigation, informed the investigator that Respondent believed that it was not subject to Section 311(j) of the Act due to Respondent's reasonable interpretation of Title 40, Chapter I, Subchapter D, Part 112, § 112.1 (d) (1) which reads: " The owner or operator of any facility, equipment, or operation that is not subject to the jurisdiction of the Environmental Protection Agency (EPA) under section

311(j)(1)(C) of the CWA, as follows: (i) **Any onshore or offshore facility, that due to its location, could not reasonably be expected to have a discharge as described in paragraph (b) of this section.** This determination must be based solely upon the consideration of the geographical and location aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.)

9. The Investigator insisted that Respondent was subject to Section 311(j) because of the proximity of Respondent's facility to the Wenscott Reservoir.
10. In reliance upon the Investigator's representations regarding the requirement to file due to the Wenscott Reservoir, Respondent submitted a draft SPCC plan to EPA on September 8, 2015 and a final SPCC plan to EPA on November 17, 2015.
11. Respondent's facility is located northwest of the Wenscott Reservoir. The Wenscott Reservoir is an isolated body of water that is 1600 feet +/- from the Respondent's facility. Wenscott Reservoir is not adjacent to any navigable waterway, nor is it an interstate waterway nor does it affect interstate commerce.
12. The Investigator visited the premises on August 19, 2015 before the effective date of August 28, 2015 implementing the most recent change to the EPA's Clean Water Rule (the "Rule"). The Rule "...redefined what constitutes "waters of the United States."¹
13. On August 27, 2015, Hon. Ralph R. Erickson, of the U.S. District Court of North Dakota, enjoined the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers from enforcing Fed. Reg. 37,054-127.
14. On October 9, 2015, the U.S. Court of Appeals for the 6th Circuit enjoined national enforcement of the Rule by the EPA and the US Corps of Army Engineers until a determination was made by the Court as to whether or not the Court had jurisdiction over the issues presented relative to whether or not the EPA exceeded its authority in redefining the definition of "waters of the United States."²

¹ See "States of North Dakota, et al. v U.S. Environmental Protection Agency, et al." Memorandum Opinion and Order Granting Plaintiff's Motion for Preliminary Relief., U.S. District Court of North Dakota- Southeastern Division, C.A. #: 3:15-cv-59

² See State of Ohio et al. v. U.S. Army Corps of Engineers, 6th Circuit, U.S. Court of Appeals, Nos. 15-3799/3822/3853/3887; File Name: 15a0246p.06; the Petition for Review of a Final Rule from the United States Army Corps of Engineers and the Environmental Protection Administration. No. EPA-HQ-OW-2011; Judicial Panel on Multi-District Litigation, No. 135, Decided and Filed: October 9, 2015. Hon. KEITH, McKEAGUE and GRIFFIN.

15. It is Respondent's position herein that under the circumstances stated above, the Respondent's submission of the final SPCC Tier II Plan does not constitute a voluntary act of submission by Respondent to the jurisdiction of the EPA.
16. It is Respondent's position herein that under the conditions defined in the Rule as described in *Rapanos v. United States*, 547 U.S. 715 (2006); and due to the unique geographical and location aspects of the Respondent's facility, **including distant proximity to navigable waters, land contour, drainage, etc.**; Respondent is not subject to the requirements of Section 311(j) of the Act in that it is exempt from the CWA pursuant to Title 40, Chapter I, Subchapter D, Part 112, § 112.1 (d) (1) (i).
17. It is Respondent's position herein that the facility is not subject to the jurisdiction of the EPA under section 311(j)(1)(C) of the CWA pursuant to Title 40, Chapter I, Subchapter D, Part 112, § 112.1 (a) (1) et seq. because it could not reasonably be expected to have a discharge as described in paragraph (b) of section § 112.1; .

WHEREFORE, the Respondent requests the following relief:

1. Enter judgment in favor of the Respondent; and
2. Dismiss the complaint with prejudice; and
3. Deny the complainant's request for civil penalty; and
4. Provide other relief deemed appropriate and just.

Respondent:

By: 

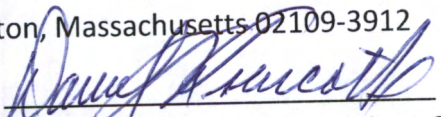
Daniel N. Turcotte, Chief Operations Officer,
K & R Auto Salvage, Inc.
950 Smithfield Road
North Providence, RI 02904
Ph: (401) 353-9200
Fax: (401) 353 8668
Email: KandRParts@gmail.com

CERTIFICATE OF SERVICE

K & R Auto Salvage, Inc., hereby certifies that on this date K & R has served a copy of the Answer to Complaint and Request for Hearing via certified mail, postage prepaid, to the following entities:

Joana Jerison, Legal Enforcement Manager
United States Environmental Protection Agency
REGION I – New England

5 Post Office Square – Suite 100
Boston, Massachusetts 02109-3912

By: 
Daniel N. Turcotte, Chief Operations Officer,