

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET  
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

08 SEP 10 AM 11:00  
ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

IN THE MATTER OF )

POVERTY KNOB FARM, INC. )

IDA COUNTY, IOWA )

Respondent. )

) Docket No. CWA-07-2008-0030

) **RESPONDENT'S REPLY TO**  
) **COMPLAINANT'S MOTION**  
) **FOR DISCOVERY OR IN THE**  
) **ALTERNATIVE MOTION IN**  
) **LIMINE**

COMES NOW the Respondent, Poverty Knob Farm, Inc., by and through its attorney, Eldon L. McAfee, and submits the following Reply to Complainant's Motion for Discovery or in the Alternative Motion in Limine regarding paragraph 4 of the Prehearing Order:

1. On February 20, 2008, prior to submitting its Initial Prehearing Exchange, Respondent submitted a completed Business Organization Ability to Pay Claim to EPA. See attached Exhibit A.

2. Following this submission, EPA verbally notified Respondent's attorney that EPA had determined that based on the information submitted on February 20, 2008, Respondent had the ability to pay the proposed penalty and that EPA was rejecting Respondent's Business Organization Ability to Pay Claim.

3. Respondent stated the following in paragraph 4 of its Initial Prehearing Exchange:

“Respondent has notified EPA that it is unable to pay the proposed penalty and/or that the proposed penalty will have an adverse impact on the Respondent’s ability to continue in business. Respondent has submitted the requested documentation to EPA and EPA has rejected Respondent’s submissions. However, Respondent has recently been requested by EPA to submit updated financial information as a result of any changed financial conditions subsequent to the initial submissions. Respondent will continue to work with EPA regarding this issue.”

4. Respondent has contacted its accountant for assistance in providing additional and updated information to EPA regarding its ability to pay the proposed penalty. Respondent and Respondent’s accountant are preparing Respondent’s 2007 federal income tax return which is due on September 15, 2008. Once this information is prepared, Respondent will submit this information as a Supplemental Prehearing Exchange to supplement Exhibit A regarding Respondent’s ability to pay the proposed penalty. Respondent plans to have the Supplemental Prehearing Exchange submitted no later than September 24, 2008.

5. EPA states in its motion that the Business Organization Ability to Pay Claim previously provided by Respondent (Exhibit A) was incomplete and is now out of date. Respondent has not been notified by EPA as to how Exhibit A was incomplete and Respondent states that Exhibit A meets the requirements of the law to show Respondent’s inability to pay the proposed penalty. However, Respondent is willing to obtain and submit as a Supplemental Prehearing Exchange more current information to support Exhibit A. In doing so, Respondent respectfully reserves the right to challenge in this

proceeding EPA's rejection of Exhibit A and the extent and nature of the information required in Exhibit A.

WHEREFORE Respondent respectfully requests that Complainant's Motion for Discovery be denied. Respondent further respectfully requests that Respondent be allowed until September 24, 2008 to submit a Supplemental Prehearing Exchange with updated financial information regarding its ability to pay the proposed penalty. Respondent further respectfully requests that Complainant's Alternative Motion in Limine be denied. Respondent further respectfully requests for such further relief that is deemed equitable and just.

Dated this 8th day of September, 2008.

BEVING, SWANSON & FORREST, P.C.



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ATTORNEY FOR RESPONDENT

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause herein at their respective addresses disclosed on the pleadings of record on the 8th day of September 2008.

By:  U.S. Mail  FAX  
 Hand Delivered  Overnight Courier  
 Federal Express  Other: \_\_\_\_\_

Signature: Nancy Franklin

Original and one copy to:

Kathy Robinson  
Regional Hearing Clerk  
U.S. EPA  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

A copy by regular U.S. Mail to:

Judge William B. Moran  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
1200 Pennsylvania Ave., N.W.  
**Mail Code 1900L**  
Washington, D.C. 20005

A copy by regular U.S. mail to:

J. Daniel Breedlove  
Asst. Regional Counsel  
U.S. EPA  
Region VII  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

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