

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:** )  
 )  
**Mr. Allen Barry, Mr. Tim Barry** )  
 )  
**d/b/a Allen Barry Livestock** )  
 )  
**1448 Route 72 East** )  
 )  
**Leaf River, Illinois 61010** )

**DOCKET NO. V-W-10-A9-**

**CWA-05-2010-0008**

**RECEIVED**

**JUL 22 2011**

**REGIONAL HEARING CLERK  
USEPA  
REGION 5**

**JOINT ANSWER TO ORDER TO SHOW CAUSE**

Allen Barry and Tim Barry (Respondents), by and through their attorney, James E. Meason, respectfully files this Joint Answer to Order to Show Cause, stating as follows:

1. Attorney Meason is a commissioned officer in the U.S. Navy, holding the rank of Commander and serving as an Intelligence Officer. On June 17, 2011, the U.S. Navy placed Commander Meason on active military duty. His estimated detachment date is May 21, 2012.
2. The Servicemembers' Civil Relief Act (SCRA) (50 U.S.C. 501-596) protects soldiers, sailors, airmen, Marines, Coastguardsmen, and commissioned officers in the Public Health Service and National Oceanic and Atmospheric Administration, from civil proceedings while in active military service and for up to a year after leaving active duty.
3. SCRA "applies to any court or agency in any jurisdiction subject to this Act." See, SCRA section 102.
4. Because the very nature of military service often compromises the ability of service members to fulfill their financial and other obligations, Congress has long recognized the need for protective legislation. SCRA's purpose is to ameliorate the civil pressure on service members during and after their terms of active military service.
5. The U.S. Environmental Protection Agency (USEPA) is an agency of the U.S. Government, and this proceeding is an administrative proceeding pursuant to USEPA's statutory authority. Therefore, it is a covered civil proceeding under SCRA.
6. Commander Meason did the best he could to bring this matter to conclusion prior to his being placed on active duty, and has worked on this matter as time was available since that time. Stated another way, Commander Meason first sought to ensure that Respondents were in full statutory and regulatory compliance with all alleged violations, and then sought to settle the civil penalty aspect of this litigation short of a hearing on this matter. Respondents are in full compliance with all statutory and regulatory

requirements. Respondents do not have any documents to exchange with Petitioner's counsel other than those already provided.

7. Further, Plaintiff's counsel mischaracterizes by omission the settlement status of this matter. USEPA field inspectors visited Respondent's cattle feed lot site in April, 2011, at Respondents' request, determined at that time that no further corrective action was necessary, and that Respondents were in full compliance with the alleged violations. This was communicated directly by the inspectors to Commander Meason orally, as Commander Meason was present during the inspection. Of note, this site visit was coordinated between the parties' counsels. Further, as witnessed by the USEPA inspectors, Respondents' cattle feed lot operation has all but shut down owing to the death of the industry in northern Illinois and the age (90) of Allen Barry; Timothy Barry is disabled and not actively involved in the feed lot.

8. Since that inspection, Petitioner's and Respondents' counsels have been in regular telephone contact with one another in an attempt to reach a settlement on the appropriate civil penalty. Further, based on his communications with the USEPA inspectors, Petitioner's counsel also reiterated to Commander Meason that Respondents were in full compliance. Concurrently, Respondents' certified public accountant was working on their financials. Timothy Barry has had a Chapter 7 bankruptcy discharge granted on April 19, 2011, and this information previously was provided to Petitioner's counsel. Further, ancillary litigation in Ogle County, Illinois, Circuit Court (pursuant to the lifting of the automatic stay) is ongoing, involving both Respondents. This information also previously was provided to Petitioner's counsel.

9. On the practical side of this matter, there is nothing to determine other than the appropriate civil penalty. Petitioner's litigation stance is not professional given the level of cooperation exhibited by Respondents in bringing this matter to a swift corrective action conclusion since Commander Meason's involvement, and Petitioner's knowledge of Commander Meason's mobilization status. Should Petitioner not respond to Respondents' July 18, 2011, settlement proposal before July 24, 2011, the date Commander Meason flies to Fort Bragg, North Carolina for further training prior to his one-year deployment, Attorney David Smith, the Barrys' family attorney, will file an Appearance with this body to conclude the civil penalty phase of this proceeding.

10. Therefore, because Petitioner substantially misconstrued the status of this case to the ALJ, and Respondents' failure to meet the filing deadline is at least in part related to Commander Meason's mobilization, and as such is protected by the SCRA, this jurisdiction cannot proceed with a Rule to Show Cause. In fact, the Rule to Show Cause must be vacated.

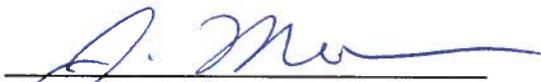
11. Finally, should the parties be unable to enter an Agreed Order on a civil penalty, and consequently this matter proceeds to hearing, Respondents respectfully request 30 days for them to file copies of the documents previously provided to Petitioner's counsel and the USEPA inspectors, and for Respondents' replacement counsel to file his Appearance.



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Allen Barry and Tim Barry, Respondents

By:   
James E. Meason  
Respondents' Attorney

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