

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF

KEVIN VAUGHAN

and

BRYCE ANDERSEN,

Respondents.

Proceedings under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

Docket No. CWA-07-2010-0105

**ANSWER OF RESPONDENTS KEVIN
VAUGHAN AND BRYCE ANDERSEN,
AND
REQUEST FOR HEARING**

ANSWER

Jurisdiction

1. Answering the allegation of paragraph 1, Respondents admit the nature of the action but deny any liability with respect therewith.

2. Answering the allegation of paragraph 2, Respondents admit that the Complaint serves as notice regarding the alleged violation but deny that a violation occurred.

Parties

3. Answering the allegations to paragraph 3, Respondents are without sufficient knowledge or information to believe the truth of falsity of the allegations and therefore deny the same.

4. Respondents admit the allegations of paragraph 4.

Statutory and Regulatory Framework

5. Answering the allegations of paragraph 5, Respondents state that the same are a legal conclusion and therefore require no further response.

6. Answering the allegations of paragraph 6, Respondents state that the same are a legal conclusion and therefore require no further response.

7. Answering the allegations of paragraph 7, Respondents state that the same are a legal conclusion and therefore require no further response.

8. Answering the allegations of paragraph 8, Respondents state that the same are a legal conclusion and therefore require no further response.

9. Answering the allegations of paragraph 9, Respondents state that the same are a legal conclusion and therefore require no further response.

Factual Background

10. Respondents admit the allegations of paragraph 10.

11. Answering the allegations of paragraph 11, Respondents admit that they have an interest in the property described therein but deny that it is "impacted," as the term is alleged, and further admit that the property is adjacent to the Missouri River.

12. Answering the allegations of paragraph 12, Respondents admit that they performed certain habitat enhancement activities on the property described but deny the characterization of the same as alleged in paragraph 12, as well as, the quantity of property that is alleged to have been impacted.

13. Respondents are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 13 and therefore deny the same.

14. Respondents are without sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of paragraph 14 and therefore deny the same.

15. Answering the allegations of paragraph 15, Respondents state that the same are a legal conclusion and no further answer is required.

16. Answering the allegations of paragraph 16, Respondents state that the same are a legal conclusion and therefore no further answer is required.

17. Answering the allegations of paragraph 17, Respondents state that the same are a legal conclusion and therefore no further answer is required.

18. Answering the allegations of paragraph 18, Respondents state that the same are a legal conclusion and therefore no further answer is required.

19. Answering the allegations of paragraph 19, Respondents state that the same are a legal conclusion and therefore no further answer is required.

Finding of Violation

20. Answering the allegations of paragraph 20, Respondents incorporate their answers to paragraphs 10 – 19 as if fully set forth herein.

21. Answering the allegations of paragraph 21, Respondents deny the same as they believe no permit was necessary as Respondent Vaughan was told the same by representatives of the Army Corps of Engineers.

22. Respondents deny the allegations of paragraph 22.

Relief

23. Respondents deny the allegations of paragraph 23.

24. Respondents deny the allegations of paragraph 24.

25. Respondents deny the allegations of paragraph 25.

26. Respondents deny the allegations of paragraph 26.

27. Answering the allegations of paragraph 27, Respondents state that the same appear to be a legal conclusion or an obligation of the EPA and therefore no further answer is required.

28. Respondents deny each and every allegation of the Complaint that is not specifically admitted in this answer.

29. Respondents state with respect to the remaining paragraphs in the Complaint, paragraphs 28 – 37, that those are paragraphs setting forth procedural requirements in responding to Complaint and therefore no further answer is required.

30. Respondents affirmatively assert that any habitat enhancement activities that were performed on the subject property were based upon instructions received from Mr. Jons of the Army of Corps Engineers, who advised Respondent Vaughan that no permit would be required for such activities.

31. Respondents have always and continue to exercise good husbandry of all of the lands on which they own or have an interest and have, at many times, provided the Army of Corps Engineers use of his property for its various projects at no charge.

32. Respondents affirmatively assert that the proposed penalty amount in the Complaint is egregious and contrary to principles of law and equity.

33. Respondents affirmatively assert that they have realized no economic benefit of the alleged activities, nor were Respondents planning to obtain any economic benefit from the alleged activities.

34. Respondents affirmatively state that they gained no illegal competitive advantage and any enhancements which occurred on property are for the sole purpose

to improve the habitat for water fowl all in compliance and in conjunction with matters that had been suggested by the Army Corps of Engineers.

35. Respondents affirmatively state that any activities performed would most likely fall under Nationwide Permit 27 which does not require a permit application fee.

36. Respondents affirmatively state that the gravity portion of the civil penalty proposed has many components, all of which weigh in Respondents' favor to various degrees and therefore there is no basis to seek an increase based on bad faith and, to the contrary, principles of law and equity demand reduction if not an elimination of the proposed penalty.

37. Respondents affirmatively state that at no time were they trying to intentionally avoid or circumvent the permit process which may or may not be applicable to this project.

38. Respondents affirmatively state that at all times material, they have completely cooperated with all parties with respect to this entire matter.

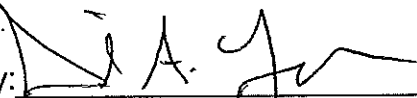
WHEREFORE, having fully answered the Complaint of the Environmental Protection Agency, Respondents request that the Complaint be dismissed with prejudice and not penalty be assessed.

Request for Hearing

Respondents, Kevin Vaughan and Bryce Andersen, respectfully request a hearing in this matter.

DATED this 21st day of July, 2010.

KEVIN VAUGHAN and BRYCE
ANDERSEN, Respondents,

By: 

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of July, 2010, the foregoing document was sent by Federal Express for overnight delivery, postage prepaid, to the following:

Kathy Robinson
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
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Chris Muehlberger
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