

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
11201 RENNER BOULEVARD  
LENEXA, KANSAS 66219

UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY REGION 7  
2015 APR -6 AM 9:33

IN THE MATTER OF	)	Docket No. CWA-07-2014-0060
	)	
DR. DANIEL J. McGOWAN,	)	
	)	ANSWER TO THE AMENDED
Respondent	)	COMPLAINT AND REQUEST
	)	FOR HEARING
Proceedings under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	

Respondent Dr. Daniel J. McGowan (“McGowan”), in answer to the United States Environmental Protection Agency (“EPA”) Amended Complaint and Notice of Opportunity for Hearing (“Complaint”) admits, denies and alleges as follows:

1. Paragraph 1 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.
2. Paragraph 2 of the Amended Complaint is a statement to which no admittance or denial is necessary.
3. Paragraph 3 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.
4. McGowan admits Paragraph 4 of the Amended Complaint.
5. Paragraph 5 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.
6. Paragraph 6 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.
7. Paragraph 7 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.

8. Paragraph 8 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.

9. Paragraph 9 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.

10. Paragraph 10 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.

11. Paragraph 11 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.

12. Paragraph 11 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.

13. Paragraph 13 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.

14. McGowan admits Paragraph 14 of the Amended Complaint.

15. McGowan admits Paragraph 15 of the Amended Complaint.

16. McGowan denies Paragraph 16 of the Amended Complaint.

17. McGowan admits the portion of Paragraph 17 of the Amended Complaint that the Corps' Omaha District issued a Cease and Desist Order but denies that the Cease and Desist Order had any legal basis.

18. McGowan denies Paragraph 18 of the Amended Complaint.

19. McGowan denies Paragraph 19 of the Amended Complaint.

20. McGowan denies Paragraph 20 of the Amended Complaint.

21. McGowan lacks sufficient information to either admit or deny Paragraph 21 of the Amended Complaint and all its subparts and therefore denies.

22. McGowan denies Paragraph 22 of the Amended Complaint.
23. McGowan denies Paragraph 23 of the Amended Complaint.
24. McGowan denies Paragraph 24 of the Amended Complaint.
25. McGowan denies Paragraph 25 of the Amended Complaint.
26. McGowan denies Paragraph 26 of the Amended Complaint.
27. McGowan denies Paragraph 27 of the Amended Complaint.
28. McGowan denies Paragraph 28 of the Amended Complaint.
29. Paragraph 29 of the Amended Complaint is a statement to which no admittance or denial is necessary.
30. McGowan denies Paragraph 30 of the Amended Complaint.
31. Paragraph 31 of the Amended Complaint is a statement of law to which no admittance or denial is necessary.
32. McGowan denies Paragraph 32 of the Amended Complaint.
33. McGowan denies Paragraph 33 of the Amended Complaint.
34. McGowan denies Paragraph 34 of the Amended Complaint.
35. Paragraph 35 of the Amended Complaint is a statement to which no admittance or denial is necessary.
36. McGowan denies Paragraph 36 of the Amended Complaint.
37. Pursuant to Paragraph 37 of the Amended Complaint, McGowan requests a hearing on the Amended Complaint.
38. Paragraph 38 of the Amended Complaint is a statement to which no admittance or denial is necessary.

39. Paragraph 39 of the Amended Complaint is a statement to which no admittance or denial is necessary.

40. Paragraph 40 of the Amended Complaint is a statement to which no admittance or denial is necessary.

41. Paragraph 41 of the Amended Complaint is a statement to which no admittance or denial is necessary.

42. Paragraph 42 of the Amended Complaint is a statement to which no admittance or denial is necessary.

43. Paragraph 43 of the Amended Complaint is a statement to which no admittance or denial is necessary.

44. Paragraph 44 of the Amended Complaint is a statement to which no admittance or denial is necessary.

45. Paragraph 45 of the Amended Complaint is a statement to which no admittance or denial is necessary.

46. Paragraph 46 of the Amended Complaint is a statement to which no admittance or denial is necessary.

47. McGowan denies each and every other allegation in the EPA's Amended Complaint except those which constitute admissions against the EPA's interest.

#### **AFFIRMATIVE DEFENSES**

For his Affirmative Defenses, McGowan affirmatively allege as follows:

1. McGowan affirmatively alleges that the McGowan dam structure is not a "point source" as the term is defined in Section 502(14) of the CWA, 33 U.S.C. 1362 (14).

2. McGowan affirmatively alleges that the sediment behind the McGowan dam structure is not a “pollutant” as the term is defined in Section 502(6) of the CWA, 33 U.S.C. 1362 (6).

3. McGowan affirmatively alleges that his actions did not cause a “discharge of fill material” or “discharge of dredged material” as the terms are defined in 40 C.F.R. § 232.2.

4. McGowan affirmatively alleges that the release of sediment behind the McGowan dam structure was necessary and prudent to avoid the potential loss of the structure.

5. McGowan affirmatively alleges that the proposed penalty in the sum of One Hundred Seventy-seven Thousand Five Hundred Dollars (\$177,500.00) is unreasonable and unwarranted under the facts to be proven at the hearing in this matter.

6. McGowan affirmatively alleges that the release of sediment behind the McGowan dam structure was subject to the dam maintenance exemption found at 33 U.S.C. § 1344(f)(1)(B) and is not recaptured by 33 U.S.C. § 1344(f)(2).

**REQUEST FOR HEARING**

McGowan requests a hearing on the Amended Complaint.

DR. DANIEL J. McGOWAN, Respondent

By His Attorneys,

MATTSON, RICKETTS, DAVIES,  
STEWART & CALKINS  
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Lincoln, NE 68508  
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By:



Stephen D. Mossman, #19859  
One of Said Attorneys

**CERTIFICATE OF FILING**

The undersigned hereby certifies that a true and correct copy of the foregoing was served on the 30<sup>th</sup> day of March, 2015 on the following:

(VIA U.S. MAIL)

Kathy Robinson  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219

(VIA EMAIL)

Chris Muehlberger  
U.S. Environmental Protection Agency, Region 7  
11201 Renner Boulevard  
Lenexa, Kansas 66219



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Attorney of Record