



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)
)
MR. ALLEN BARRY,) DOCKET NO. CWA-05-2010-0008
MR. TIM BARRY)
d/b/a ALLEN BARRY LIVESTOCK,)
)
RESPONDENTS¹)

ORDER SEEKING CLARIFICATION STATEMENT
AND DIRECTING SETTLEMENT CONFERENCE

As you previously have been notified, I have been designated by the November 5, 2010 Order of the Chief Administrative Law Judge to preside in the above captioned matter.² This proceeding arises under the authority of Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and is governed by the Consolidated Rules of Practice Governing the Administrative

¹ The United States Environmental Protection Agency, Region 5 ("Complainant") initiated this proceeding on March 17, 2010, by filing an Administrative Complaint ("Complaint") against Mr. Allen Barry, Mr. Tim Barry d/b/a Allen Barry Livestock. In the Complaint, Complainant refers to Allen Barry and Tim Barry, collectively, as "Respondent." Through counsel, Allen Barry and Tim Barry subsequently filed a Joint Answer to Complaint ("Answer") on October 1, 2010, in which they refer to themselves as "Respondents." In the Answer, Respondents admit certain allegations as to Allen Barry but deny the same as to Tim Barry. As such, the Respondents are not referred to as "Respondent," collectively.

² The Chief Administrative Law Judge issued this Order after neither Complainant nor Respondent responded to inquiries from this office regarding the Alternative Dispute Resolution ("ADR") process offered by this office. When a party fails to respond to the invitation to participate in the ADR process by the date set forth in the invitation letter, the party is deemed to decline to participate and the case is assigned for litigation.

Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Rules of Practice"), 40 C.F.R. §§ 22.1-22.32. The parties are advised to familiarize themselves with both the applicable statute(s) and the Rules of Practice.

In the Complaint, Complainant alleges that "Respondent" failed to comply with the National Pollutant Discharge Elimination System ("NPDES") permit issued to Allen Barry Livestock, in violation of the CWA and the implementing regulations.³ For the alleged violations, Complainant seeks a class II civil administrative penalty of \$75,000 pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B). In the Answer, Respondents deny the allegations but do not request a hearing.

The Complaint in this matter is confusing as to the named respondents. The Complaint charges that "Allen Barry and Tim Barry (herein 'Respondent') is doing business as Allan Barry Livestock. As such, Allen Barry Livestock is not a named respondent in the Complaint's allegations. Complainant should specify who the respondent(s) are and not refer to them collectively as Respondent.

Under Rule 22.15(b) of the Rules of Practice, 40 C.F.R. § 22.15(b), the answer must state whether a hearing is requested. However, subsection (c) of Section 22.15 further provides that if the respondent does not request a hearing, a hearing may be held by the Administrative Law Judge if issues appropriate for adjudication are raised in the answer. See *In re Green Thumb Nursery, Inc.*, FIFRA Appeal No. 95-4a, 6 E.A.D. 782, 786-94 (EAB, Mar. 6, 1997).

In view of Respondents' failure to request a hearing, Respondents are directed to clarify their position as to whether a hearing before an Administrative Law Judge is requested. Such clarification statement by Respondents shall be filed on or before **December 23, 2010**.

United States Environmental Protection Agency ("EPA") policy, found in the Rules of Practice at Section 22.18(b), 40 C.F.R. § 22.18(b), encourages settlement of a proceeding without the necessity of a formal hearing. The benefits of a negotiated settlement may far outweigh the uncertainty, time, and expense associated with a litigated proceeding.

³ The Complaint alleges that Allen Barry and Tim Barry are doing business as "Allan Barry Livestock."

The record does not demonstrate that the parties have engaged in settlement discussions in this case. The parties are directed to hold a settlement conference on this matter on or before **January 21, 2011**, to attempt to reach an amicable resolution. See Section 22.4(c)(8) of the Rules of Practice, 40 C.F.R. § 22.4(c)(8). Complainant shall file a status report regarding such conference and the status of settlement on or before **January 26, 2011**.

The original and one copy of all pleadings, statements, and documents (with any attachments) required or permitted to be filed by this Order (including a ratified Consent Agreement and Final Order) shall be filed with the Regional Hearing Clerk, and copies (with any attachments) shall be sent to the undersigned and all other parties. The parties are advised that e-mail correspondence with the Administrative Law Judge is not authorized. See Section 22.5(a) of the Rules of Practice, 40 C.F.R. § 22.5(a).

The statements and information required by this Order to be sent to the undersigned, as well as any other further pleadings, shall be addressed as follows:

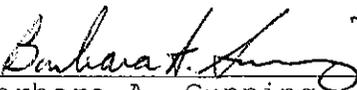
If sending by United States Postal Service (USPS):

EPA Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D.C. 20460-2001

If sending by a non-USPS courier, such as UPS or Federal Express:

EPA Office of Administrative Law Judges
1099 14th Street, NW
Suite 350, Franklin Court
Washington, D.C. 20005

Telephone contact may be made with my legal staff assistant, Mary Angeles, at (202) 564-6281. The facsimile number is (202) 565-0044.



Barbara A. Gunning
Administrative Law Judge

Dated: November 30, 2010
Washington, D.C.

**In the Matter of Mr. Allen Barry, Mr. Tim Barry d/b/a Allen Barry Livestock, Respondents.
Docket No. CWA-05-2010-0008**

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **Order Seeking Clarification Statement and Directing Settlement Conference**, dated November 30, 2010, was sent this day in the following manner to the addressees listed below.



Mary Angeles
Legal Staff Assistant

Original and One Copy by Pouch Mail to:

La Dawn Whitehead
Regional Hearing Clerk
U.S. EPA, Region V
77 West Jackson Boulevard, E-19J
Chicago, IL 60604-3590

Copy by Pouch Mail to:

Luis Oviedo. Esq.
Associate Regional Counsel
ORC, U.S. EPA, Region V
77 West Jackson Boulevard, C-14J
Chicago, IL 60604-3590

Copy by Regular Mail to:

James E. Meason, Esq.
Attorney at Law
113 W. Main Street
Rockton, IL 61072-2416

Dated: November 30, 2010
Washington, DC