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April 27, 2012

Ms. LaDawn Whitehead
Regional Hearing Clerk
US Environmental Protection Agency - Region V
77 West Jackson Blvd - 19th Floor
Chicago, IL 60604-3590

RECEIVED
APR 30 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Re: US EPA v Joseph L Bollig & Sons Inc
Docket No. CWA-05-2011-0008

Dear Ms. Whitehead:

Enclosed please find the original of Respondent's Initial Prehearing Exchange in the above matter for filing. One copy has been served on the ALJ by mail and one copy has been served on the attorney for the EPA by mail.

Very truly yours,

CURRAN, HOLLENBECK & ORTON, SC



BY: William T. Curran
(Reply to Mauston office)

WTC:dlr

Enclosures

cc: Hon. M. Lisa Buschmann, ALJ
Atty Thomas P Turner

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April 27, 2012

Honorable M. Lisa Buschmann
Office of Administrative Law Judges
US Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: US EPA v. Joseph L. Bollig & Sons, Inc
Docket No. CWA-05-2011-0008

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APR 30 2012
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Dear Judge Buschmann:

Enclosed please find one copy of the Respondent's Prehearing Exchange in the above matter. I am filing the original with the Regional Hearing Clerk and serving one copy on counsel for the EPA by mail.

Very truly yours,

CURRAN, HOLLENBECK & ORTON, SC

BY: William T. Curran
(Reply to Mauston office)

WTC:dlr
Enclosures

cc: Ms. L. Whitehead, Regional Hearing Clerk
Atty Thomas P Turner

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

DOCKET No. CWA-05-2011-0008

Joseph L. Bollig and Sons, Inc.,
New Lisbon, Wisconsin,

Honorable M. Lisa Buschmann
Administrative Law Judge

Respondent.

RECEIVED
APR 30 2012

RESPONDENT'S SPECIAL APPEARANCE
AND INITIAL PREHEARING EXCHANGE

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

The Respondent appears specially without waiving its challenge to the jurisdiction of the EPA or Region 5 in this matter and without waiving its rights to pursue direct action in Federal District Court under Sackett v. EPA, 132 S.Ct. 1367 (2012).

A. RESPONDENT'S PREHEARING EXCHANGE

I. LOCATION OF THE HEARING

Respondent believes that Mauston, Wisconsin would be the appropriate location for the hearing in this matter. Respondent, the parcel at issue, and all of the witnesses unrelated to EPA identified in the Prehearing Exchanges live in the Mauston area. The USACE in Plover and the WDNR in Wisconsin Rapids are more than an hour north of Mauston and, thus, even farther (2 - 3 hours) from Madison. It would be less of a hardship on these parties and easier to make a site inspection than a Madison location. Further, we agree with a time estimate of two days.

II.A The names of the expert and other witnesses intended to be called at hearing, with a brief narrative summary of their expected testimony.

Respondent may call any or all of the following individuals as expert or fact witnesses in the hearing in this matter:

1. Douglas Wells, as Chairman of the Mauston/New Lisbon Airport Commission, he will testify as to the airport site, its history, improvements, FAA and the Wisconsin Bureau of Aeronautics regarding violations and glide slope requirements on approach to Runway 32 regarding the woods lying south and west of that runway. Mr. Wells will speak to his 2006 notice to the WDNR, Army Corps of Engineers (ACOE) and Juneau County Zoning of their plan to change this woods into a meadow. He got no response from the DNR or the ACOE for over a year. The logging of this approximate 7 acre parcel began 2 years after he gave notice to the DNR and the ACOE in about February, 2008. A year later, in February, 2009, the work was done to bury the stumps and brush on the premises. In May, 2009 when it was called to the Airport's attention that a restoration plan and after the fact permit was required, MidStates Engineering firm was retained and the restoration plan was approved forthwith. The work was completed as originally planned. A 404 Permit was issued.

2. David Donnelly, Juneau County Zoning Administrator, will testify regarding Mr. Wells' contacting him in March, 2006 and his advice to Mr. Wells that the 7 acres was only partially wetlands and no permit was necessary. He will authenticate the official County Wetlands Map. He will further testify as to his interaction with Greg

Carlson, as he attempted to assist Bollig in providing any information the EPA requested. He will testify that Mr. Carlson was unwilling to help and that he has never met a public official as discourteous and unhelpful as Greg Carlson.

3. Bret Hillyer and Don Bollig, as the owners and operators of the Respondent, testifying as to their part in clearing the woods south and west of Runway 32 at the airport. Their experience with the topography in the Town of Lisbon. Their lack of any prior CWA violations and their history of cooperation with the DNR and the ACOE.

4. Ronald Brunner, former Airport Commission Chairman, and Floyd Babcock, former Airport Manager, will testify as to the history of the airport, the safety concerns caused by the woods south and west of Runway 32.

5. Gregory J. Cowan, the landowner between the Airport and the Lemonweir River, who will testify that the ditch the EPA alleges connects the Airport with the culvert under the railroad tracks has never been cleaned or maintained, it comes and goes at intervals through widespread wetlands. But for severe rain events, the ditch has no flow and is not distinguishable from the adjacent wetlands that hold flood waters on the side of the railroad tracks opposite the river side. It is not a continuous surface connection to the railroad culvert. It has no channel as defined by Bed and Bank, by merely appears to be part of the wetland. With intervening wetlands contributing, any flow from the Airport alleged to reach the railroad tracks is likely to have only a speculative or insubstantial effect on the chemical, physical and biological integrity of the navigable water, that is, the Lemonweir River.

6. Other abutting landowners who can confirm Mr. Cowan's testimony include Ed Sumiec, Joseph and June Nicksic and their sons, Mabel Ferdon.

7. Johnathan Field and Greg Lowe of the Juneau County Land and Resources Department can authenticate the maps establishing the wetlands and lack of ditch maintenance between the airport and the railroad culvert; similarly, between the railroad culvert and the US Highway 12 culvert.

8. Those employees of the engineering firm, MidStates and Associates, who did the wetlands delineation and worked cooperatively and promptly with Respondent and the WDNR and the ACOE to secure the 404 permit.

9. Respondent reserves the right to call any and all witnesses identified by the complainant.

10. Respondent reserves the right to call rebuttal expert witnesses.

II.B. Documents and exhibits intended to be introduced into evidence.

We will rely on the same documents provided by the EPA, presuming they are complete. In limiting our disclosure, we are relying upon their Complaint and prehearing exchange that the following are **not in dispute**:

A Although there is a dispute over the amount of wetlands disturbed (7 acres or 2 acres), the EPA, ACOE and WDNR all concede that no wetlands were filled in, lost or made less effective.

B EPA's statement that any effect on the environment in the subject parcel or waters of the United States was "small and temporary".

C The Airport assumed responsibility for securing the necessary permits and retaining the engineering firm, MidStates and Associates, to do their wetlands delineation and insisted the Airport in securing the WDNR and ACOE approval of the 404 Permit.

D The goal of this project was to comply with the FAA and Wisconsin Aeronautic Bureau Safety Requirements.

E If it is determined that there is not a sufficient connection between the Airport and the Lemonweir River, the small isolated area wetland is still regulated by the WDNR.

F Both WDNR and the ACOE were satisfied with the plan to bury the stumps on site and leave this as a low land meadow, without recommending any monetary penalty.

Attached are copies of:


1. Respondent's Exhibit RX1: The Juneau County Atlas and Platbook 1964 and 2011.
2. Respondent's Exhibit RX2: David Donnelly's Official County Wetlands Map.

Dated: April 27, 2012

Respectfully submitted,

CURRAN, HOLLENBECK & ORTON, SC

BY:



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