

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII

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	)	
	)	
WILLIAM GEPFORD,	)	COMPLAINT AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent.	)	
	)	Docket No. CWA-07-2006-0057
Proceedings Under Section 309(g) of the	)	
Clean Water Act, 33 U.S.C. § 1319(g)	)	
_____	)	

**WILLIAM GEPFORD'S ANSWER TO COMPLAINT  
AND NOTICE OF OPPORTUNITY FOR HEARING**

Respondent William Gepford (Mr. Gepford) herein responds to the allegations of the Complaint and Notice of Opportunity for Hearing. To the extent possible, Mr. Gepford is structuring this answer to match the paragraph structure of the Complaint and Notice of Opportunity for Hearing, for ease of reference.

Mr. Gepford requests a public hearing on all matters raised by the EPA's Complaint and Notice of Opportunity for Hearing and Mr. Gepford's Answer.

**Jurisdiction**

1. In answering Paragraphs 1 and 2 of the Complaint and Notice of Opportunity for Hearing, Mr. Gepford states that Paragraphs 1 and 2 contain extensive statements of law and legal conclusions. Mr. Gepford states that the statutes and regulations speak for themselves and denies EPA's characterization of such provisions. To the extent Paragraphs 1 and 2 contain factual allegations, Mr. Gepford denies each and every factual allegation contained in Paragraphs 1 and 2.

## **Parties**

2. In answering Paragraph 3 of the Complaint and Notice of Opportunity for Hearing, Mr. Gepford states that Paragraph 3 contains extensive statements of law and legal conclusions. Mr. Gepford states that the statutes and regulations speak for themselves and denies EPA's characterization of such provisions. To the extent Paragraph 3 contains factual allegations, Mr. Gepford denies each and every factual allegation contained in Paragraph 3.

3. Mr. Gepford admits the allegations of Paragraph 4.

## **Statutory and Regulatory Framework**

4. In answering Paragraphs 5, 6, 7, 8, and 9 of the Complaint and Notice of Opportunity for Hearing, Mr. Gepford states that Paragraphs 5, 6, 7, 8, and 9 contain extensive statements of law and legal conclusions. Mr. Gepford states that the statutes and regulations speak for themselves and denies EPA's characterization of such provisions. To the extent Paragraphs 5, 6, 7, 8, and 9 contain factual allegations, Mr. Gepford denies each and every factual allegation contained in Paragraphs 5, 6, 7, 8, and 9.

## **General Allegations**

5. Mr. Gepford states that Paragraph 10 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford states that the statutes and regulations speak for themselves and denies EPA's characterization of such provisions.

6. Mr. Gepford denies the allegations of Paragraph 11.

7. Mr. Gepford denies the allegations of Paragraph 12.

8. Mr. Gepford denies the allegations of Paragraph 13.

9. Mr. Gepford is without sufficient information to admit or deny the allegations of Paragraph 14.

10. Mr. Gepford states that Paragraph 15 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies any factual allegations contained in Paragraph 15; states that the statutes and regulations speak for themselves; and denies EPA's characterization of such provisions.

11. Mr. Gepford states that Paragraph 16 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies the allegations of Paragraph 16.

12. Mr. Gepford admits the allegations of Paragraph 17.

13. Mr. Gepford denies the allegations of Paragraph 18.

14. Mr. Gepford is without sufficient information to admit or deny the allegations of Paragraph 19.

15. Mr. Gepford states that Paragraph 20 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies the allegations of Paragraph 20.

16. Mr. Gepford states that Paragraph 21 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies the allegations of Paragraph 21.

17. Mr. Gepford is without sufficient information to admit or deny the allegations of Paragraph 22.

18. Mr. Gepford denies the allegations of Paragraph 23.

19. Mr. Gepford states that Paragraph 24 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies the allegations of Paragraph 24.

20. Mr. Gepford states that Paragraph 25 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies the allegations of Paragraph 25.

21. Mr. Gepford states that Paragraph 26 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies the allegations of Paragraph 26.

22. Mr. Gepford states that Paragraph 27 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies the allegations of Paragraph 27.

23. Mr. Gepford states that Paragraph 28 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies the allegations of Paragraph 28.

#### **Count I**

24. In response to Paragraph 29 Mr. Gepford incorporates his responses to paragraphs 10 through 28 as if fully set forth herein.

25. Mr. Gepford denies the allegations of Paragraph 30. Mr. Gepford further states that Paragraph 30 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies the allegations of Paragraph 30.

26. Mr. Gepford denies the allegations of Paragraph 31. Mr. Gepford further states that Paragraph 31 contains legal conclusions to which no response is required. To the extent a response is required, Mr. Gepford denies the allegations of Paragraph 31.

27. Mr. Gepford denies the allegations of Paragraph 32.

**Relief**

28. Mr. Gepford denies each and every factual allegation and conclusion of law contained in Paragraphs 33, 34, 35, 36, 37 and 38 of the Complaint and Notice of Opportunity for Hearing.

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

**Answer and Request for Hearing**

29. Mr. Gepford denies each and every factual allegation and conclusion of law contained in Paragraphs 39, 40, 41, 42, 43, and 44 of the Complaint and Notice of Opportunity for Hearing.

30. Mr. Gepford requests a public hearing on all matters raised by the Complaint and his Answer.

**Informal Settlement Conference**

31. Mr. Gepford denies each and every factual allegation and conclusion of law contained in Paragraphs 45, 46, 47, and 48 of the Complaint and Notice of Opportunity to Request a Hearing.

32. Mr. Gepford requests an informal settlement conference.

**AFFIRMATIVE DEFENSES**

1. EPA's claims may be barred, in whole or in part, by the applicable statute of limitations because the limitations period expired before December 1, 2004.

2. EPA's claims may be barred, in whole or in part, by the doctrine of laches, exclusive of the Tolling Period as defined by the Tolling Agreement between the United States Environmental Protection Agency, Region 7 and William Gepford.

3. EPA's claims are barred because the alleged damage has been repaired and/or mitigated by subsequent actions of Mr. Gepford that were approved by the NRCS. Therefore, EPA's claims are moot.

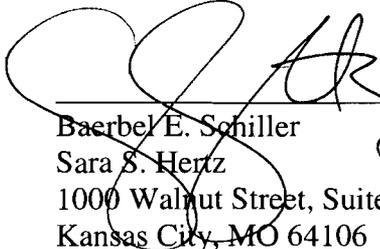
4. EPA's claims are barred because there was no hydrological connection between the property at issue and "waters of the United States" as defined by 40 CFR §232.2; and there was no damage to the alleged wetlands property.

**PRAYER FOR RELIEF**

Mr. Gepford requests a public hearing on all matters raised by EPA's Complaint and Notice of Opportunity for Hearing and Mr. Gepford's Answer.

Having answered all allegations of the Complaint and Notice of Opportunity for Hearing, Mr. Gepford prays both shall be dismissed, for his costs and other such relief as is deemed just and proper.

SPENCER FANE BRITT & BROWNE LLP



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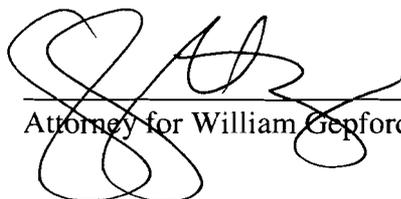
ATTORNEYS FOR WILLIAM GEPFORD

**CERTIFICATE OF SERVICE**

I certify that on the date indicated below, I delivered the original and one true copy of this Answer to Complaint and Notice of Opportunity for Hearing to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North 5th Street, Kansas City, KS 66101.

I further certify that on the date noted below I sent by certified mail, return receipt requested, a true and correct copy of the signed original Answer to Complaint and Notice of Opportunity to the following:

Steven L. Sanders  
Assistant Regional Counsel  
United States Environmental Protection Agency, Region 7  
901 North 5th Street  
Kansas City, KS 66101



\_\_\_\_\_  
Attorney for William Gepford

2-16-05  
Date