



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202

JAN 03 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED-70071490000237341325

Mr. Gordon Swain
Paco Swain Realty, L.L.C.
33916 Nature's Way
Walker, Louisiana 70785

Re: Administrative Complaint; Docket Number CWA-06-2012-2710

Dear Mr. Swain:

Enclosed is an Administrative Complaint (Complaint) issued for violation(s) of Section 301(a) of the Clean Water Act (Act), 33 U.S.C. § 1311(a), which prohibits the unauthorized discharge of any pollutant into waters of the United States. Section 309 of the Act, 33 U.S.C. § 1319, authorizes the Environmental Protection Agency (EPA) to take appropriate enforcement action to ensure compliance with the Act, regulations, and applicable laws.

The enclosed Complaint is issued to Respondent for the discharge of dredged and fill material into waters of the United States, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). The Complaint assesses a monetary penalty for the violations alleged.

On May 15, 2012, EPA sent a certified package (70071490000237341707) to you. According to the United States Postal Website, this certified package was not accepted. On June 18, 2012, EPA sent a certified package (70071490000237341240) to you. According to the United States Postal Website, this certified package was not accepted. We are resending this package to you to serve notice of this Complaint.

If you have any questions, I recommend that you contact Donna Mullins at (214) 665-7576 or Tucker Henson, Assistant Regional Counsel, at (214) 665-8148.

Sincerely yours,

Sharon Fancy Parrish
Chief
Wetlands Section

Enclosures

cc: w/ AO and Complaint
Regional Hearing Clerk
Bil Netherley, New Orleans District, COE
Melvin Mitchell, Louisiana DEQ

FILED
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
2012 MAY 13 01:09 PM
REGION 6
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:	§	Docket No. CWA-06-2012-2710
	§	
Paco Swain Realty, L.L.C. a Louisiana Corporation,	§	Proceeding to Assess a
	§	Civil Penalty Under Section 309(g)
	§	of the Clean Water Act
	§	
Respondent.	§	Administrative Complaint

I. STATUTORY AUTHORITY

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(g) of the Clean Water Act (“Act”), 33 U.S.C. § 1319(g). The Administrator delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who further delegated this authority to the Director of the Water Quality Protection Division of EPA Region 6 (“Complainant”). This Class II Administrative Complaint is issued in accordance with the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits,” 40 C.F.R. §§ 22.1–22.52.

Based upon the following Findings of Fact and Conclusions of Law, Complainant finds that Paco Swain Realty, L.L.C. (“Respondent”) violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Respondent is a limited liability company incorporated under the laws of the State of Louisiana, and as such, Respondent is a “person” as that term is defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 232.2.

2. At all times relevant to the violations alleged herein (“relevant time period”), Respondent owned real property located at the end of Nancy Drive, south of Highway 1024 (Cane Market Road) in Sections 6 and 7, Township 6 South, Range 4 East, in Walker, Livingston Parish, Louisiana (“subject property”). The subject property is known as the proposed Megan’s Way Subdivision.

3. On multiple dates between on or about April 2007 through May 2008, Respondent discharged, caused the discharge, directed the discharge and/or agreed with other persons or business entities, including, but not limited to, Mr. Wayne Averitt d/b/a Eagle Land Construction, L.L.C., to “discharge dredged material” and/or “discharge fill material,” as defined at 40 C.F.R. § 232.2, from point sources, including equipment (e.g. earth moving equipment), in, on and to an eight acre tract within the subject property which was adjacent to, hydrologically connected to, and/or had a significant nexus to a navigable-in-fact body of water (“subject wetlands”) and, therefore, is a water of the United States as that term is defined at 40 C.F.R. § 232.2. This discharge was associated with development of a residential subdivision and was done without authorization under a permit issued by the United States Army Corps of Engineers (“Corps”).

4. During the relevant time period, the subject wetlands referred to in paragraph 3 were “navigable waters” as defined at Section 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 232.2.

5. The discharged dredged and fill materials referred to in paragraph 3 are considered “pollutants” as that term is defined at Section 502(6) of the Act, 33 U.S.C. § 1362(6).

6. Each piece of equipment used for the discharges referred to in paragraph 3 acted as a

“point source” as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).

7. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, a permit issued under the Act.

8. Under Section 404 of the Act, 33 U.S.C. § 1344, the Secretary of the Army, acting through the Chief of Engineers for the Corps, is authorized to issue permits for the discharge of dredged or fill material into waters of the United States.

9. During the relevant time period, Respondent did not have a permit issued by the Corps that authorized the discharges alleged herein.

10. Each day of unauthorized discharge by Respondent is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

11. On June 15, 2007, the Corps conducted an on-site inspection at the subject property and discovered the filling of wetlands without a permit. The Corps and issued a verbal Cease and Desist Order (“C&D Order”) to a contractor at the site.

12. On August 22, 2007, the Corps issued a written C&D Order to Respondent and notified Respondent of violation(s) of Section 301 of the Act, 33 U.S.C. § 1311(a).

13. On April 8, 2008, the Corps conducted another on-site inspection at the subject property and found further filling of the wetlands without a permit. The Corps issued a second verbal C&D Order soon followed by a third verbal C&D Order on April 18, 2008.

14. On May 8, 2008, EPA and the Corps conducted another on-site inspection at the subject property and discovered further draining of wetlands since the April 8, 2008 inspection.

15. On May 20, 2008, the Corps issued a second written C&D Order to Respondent and

notified Respondent of violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

16. On December 2, 2009, at the request of Respondent, the Corps issued a jurisdictional determination for the subject property indicating that the subject wetlands are waters of the United States and require a permit under Section 404 of the Act, 33 U.S.C. § 1344, prior to deposition or redistribution of any dredged or fill material into the subject wetlands.

17. On September 30, 2010, EPA issued to Respondent Administrative Order (“AO”), Docket Number CWA-06-2010-2736. The AO ordered Respondent to (a) cease and desist any discharge of dredged or fill material into waters of the United States on the subject property, (b) stabilize all disturbed areas to prevent accelerated soil erosion and sedimentation, (c) apply for an after-the-fact permit with the Corps for the work performed on the subject property and, (d) if the Corps denied the after-the-fact permit, restore the subject wetlands to the natural hydrology and allow revegetation. As of the date of this Complaint, Respondent has not complied with the AO.

18. Under Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), the Administrator is authorized to assess a Class I or Class II civil penalty whenever, on the basis of any information available, the Administrator finds that a person has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

19. Under Section 309(g)(2)(B) Of the Act, 33 U.S.C. § 1319(g)(2)(B), as amended by 40 C.F.R. § 19.4, for the period from March 15, 2004 through January 12, 2009, Respondent is liable for a civil penalty in an amount not to exceed \$11,000.00 per day for each day during which a violation continues, up to a maximum of \$157,500.00. For the period after January 12, 2009, Respondent is liable for a civil penalty in an amount not to exceed \$16,000.00 per day for

each day during which a violation continues, up to a maximum of \$177,500.00.

20. EPA has notified the Louisiana Department of Environmental Quality of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the assessment of a civil penalty against Respondent.

21. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), EPA has notified the public of the filing of this Complaint and afforded the public reasonable opportunity to comment on the proposed penalty. At the expiration of the notice period, EPA will consider any comments filed by the public.

III. PROPOSED PENALTY

22. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(B), EPA Region 6 finds that Respondent committed the violations alleged above and proposes to assess a Class II civil penalty not to exceed the statutory maximum stated in paragraph 19 for each day during which a violation occurred or continued, up to a maximum of \$177,500.00 for the violations alleged in this Complaint.

23. In determining the amount of the civil penalty, EPA will consider the factors set forth in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), namely, the nature, circumstances, extent and gravity of the violation(s), and, with respect to Respondent's ability to pay a civil penalty, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation(s), and such other factors as justice may require.

IV. FAILURE TO FILE AN ANSWER

24. If Respondent wishes to admit, deny, or explain any material allegation set forth in

the above Findings of Fact and Conclusions of Law or contest the amount of the civil penalty proposed, Respondent must file an Answer to this Complaint within thirty (30) days after Respondent's receipt of the Complaint, regardless of whether Respondent requests a hearing on the allegations of the Complaint.

25. The requirements for an Answer are set forth at 40 C.F.R. § 22.15. Respondent's failure to file an Answer setting forth any such admission, denial, or explanation shall constitute an admission of all facts alleged, and waive Respondent's right to a hearing, pursuant to 40 C.F.R. § 22.15(d).

26. If Respondent fails to file an Answer within thirty days of service of the Complaint, Respondent may be found in default whereby a default order may be issued pursuant to 40 C.F.R. § 22.17. Any default shall constitute an admission of all facts alleged in the Complaint and a waiver of Respondent's right to contest such allegations.

27. Respondent must send its Answer, including any request for a hearing, and all other pleadings to be filed with the Regional Hearing Clerk to:

Lorena Vaughn (6RC-D)
Regional Hearing Clerk
U. S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Tucker Henson (6RC-EW)
U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

28. The Answer must be signed by Respondent's corporate representative or its attorney

or other representative, if any, authorized to sign on behalf of Respondent, and include the information required by 40 C. F. R. §§ 22.5 and 22.15. All other pleadings must be similarly signed and filed with the Regional Hearing Clerk.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

29. Respondent may request a hearing to contest any material allegation set forth in this Complaint or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2). The hearing procedures are set forth at 40 C.F.R. §§ 22.21–26.

30. If a hearing is requested, any person who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at the hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

VI. SETTLEMENT

31. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, a Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Donna Mullins at (214) 665-7576.

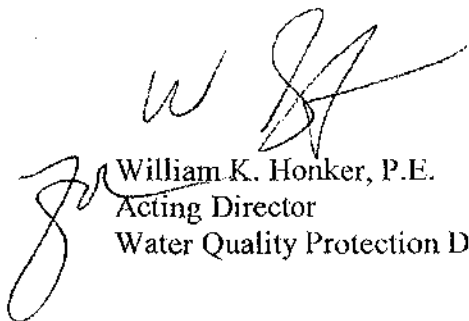
32. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer, pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order (“CAFO”) pursuant to 40 C.F.R. § 22.18(b). The issuance

of a CAFO would waive a Respondent's right to a hearing on any matter stipulated therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such CAFO and request a hearing on the issues raised in the Complaint. Such petition would be granted and hearing held only if the evidence presented by the petitioner's comments was material and not considered by EPA in the issuance of the CAFO.

33. Neither the assessment nor the payment of a penalty in resolution of this action will affect Respondent's continuing obligation to comply with all requirements of the Act, applicable regulations and permits, and any compliance order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including an order relating to the violations alleged herein.

MAY 15 2012

Issuance date


William K. Honker, P.E.
Acting Director
Water Quality Protection Division

CERTIFICATE OF SERVICE

I certify that on MAY 15 2012 the original and a true and correct copy of this Complaint were filed with the Regional Hearing Clerk, EPA Region 6, and that true and correct copies of the Complaint were deposited with the U. S. Postal Service addressed to the following persons.

Certified mail, return receipt requested:
Mr. Gordon Swain
Paco Swain Realty
9013 Florida Boulevard
Walker, Louisiana 70785