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BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:)
)
)
ROBERT M. LOOMIS AND)
NANCY M. LOOMIS)
Haines, Alaska)
)
Respondents.)

DOCKET NO. CWA-10-2011-0086

ANSWER

Respondents Robert M. Loomis and Nancy M. Loomis, through counsel, for their answer to the complaint of the U.S. Environmental Protection Agency (“EPA”), allege as follows:

I. AUTHORITIES

1.1 Paragraph 1.1 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 1.1.

1.2 Paragraph 1.2 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 1.2.

1.3 Paragraph 1.3 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 1.3.

II. STATUTORY AND REGULATORY BACKGROUND

2.1 Sections 301(a) and 502(12) of the Clean Water Act (the “Act”) speak for themselves. Therefore, paragraph 2.1 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 2.1.

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2.2 Section 502(6) of the Act speaks for itself. Therefore, paragraph 2.2 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 2.2.

2.3 Section 502(7) of the Act, 40 C.F.R. § 122.2, 40 C.F.R. § 232.2 and 33 C.F.R. § 328.3 speak for themselves. Therefore, paragraph 2.3 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 2.3.

2.4 Section 502(14) of the Act speaks for itself. Therefore, paragraph 2.4 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 2.4.

2.5 Section 502(5) of the Act speaks for itself. Therefore, paragraph 2.5 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 2.5.

2.6 Section 402(p) of the Act and 40 C.F.R. § 122.26(b)(14)(x) speak for themselves. Therefore, paragraph 2.6 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 2.6.

2.7 Section 402(p) of the Act, 40 C.F.R. § 122.26(a)(9) and 40 C.F.R. § 122.26(b)(15) speak for themselves. Therefore, paragraph 2.7 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 2.7.

2.8 Respondents admit the allegations in paragraph 2.8, but deny they are subject to the requirements of the NPDES General Permit for Storm Water Discharges from Construction Activities (“CGP”).

2.9 The CGP, at Part 2, speaks for itself. Therefore, paragraph 2.9 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 2.9. Respondents further deny that they are subject to the requirements of the CGP.

2.10. The CGP, at Appendix A, speaks for itself. Therefore, paragraph 2.10 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 2.10. Respondents further deny that they are subject to the requirements of the CGP.

2.11. Section 309(g)(1) of the Act speaks for itself. Therefore, paragraph 2.11 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 2.11.

III. ALLEGATIONS

3.1 Admitted.

3.2 Admitted.

3.3 Respondents admit that some of the 31.3 acres of real property they own contains wetlands within the meaning of 33 C.F.R. § 328.3, but deny that the entirety of their property contains wetlands.

3.4 Respondents deny that they solicited contractors to place fill material on their property, and deny that more than one contractor paid Respondents a disposal fee. Respondents affirmatively allege that in 2004, Southeast Roadbuilders, Inc. (SRI) contracted with Respondents to stockpile fill on Respondents' property.

3.5 Respondents admit that at certain times from June 2006 to July 2009, Respondents operated heavy earthmoving equipment. Respondents deny that said equipment was

used to discharge 13,110 cubic yards of sand, silt, rock, clay, gravel, asphalt, overburden and other material into .35 acres of jurisdictional wetlands and other waters of the United States.

3.6 Respondents deny that they committed discharges as alleged in paragraph 3.5, and therefore deny that they were required to apply for authorization to discharge under any new or existing permits issued pursuant to Section 404 of the Act. To the extent Respondents conducted activities which required a permit pursuant to Section 404 of the Act, said activities were covered by one or more nationwide permits.

3.7 Respondents admit that on April 1, 2010, EPA issued an Administrative Compliance Order (EPA Docket N. CWA-10-2010-0133). Respondents admit that, to the extent there is unauthorized fill in wetlands, it has not been removed.

3.8 Respondents deny that they undertook construction on or about June 2006. Respondents affirmatively allege that, to the extent they undertook construction activities, such activities began in 2005. Respondents admit that they undertook grading, excavation and clearing activities, but deny that said activities resulted in the disturbance of greater than one acre.

3.9 Denied.

3.10 Respondents deny that their construction activities ensued in June 2006, and affirmatively allege that to the extent they undertook construction activities, such activities began in 2005. Respondents deny that the disturbed portion of the site had highly erodible soils. Respondents deny that their construction site was greater than one acre, thus deny that they were obligated to exercise best management practices as set forth in the CGP. Respondents deny that

there were approximately 97 days from June 2006 to May 2010 on which there was storm water runoff from the construction area on the Site.

3.11 Denied.

3.12 Respondents admit that prior to April 30, 2010, they did not apply for a permit pursuant to Section 402 of the Act, but deny that discharges occurred, and further deny that they were required to apply for a permit pursuant to Section 402 of the Act.

3.13 Respondents deny that any discharges occurred, therefore deny that there is any receiving water for the alleged storm water discharges. Respondents admit that there is a wetland complex and an unnamed anadromous, perennial tributary which flows into the Chikot River in the vicinity of the Site.

3.14 Respondents deny that the Site has a large wetland complex. Respondents admit that the unnamed tributary, the Chikot River and the Chikot Inlet are “navigable waters” as defined in Section 502(7) of the Act and are “navigable waters of the United States” as defined in 40 C.F.R. § 122.2 and 33 C.F.R. § 328.3.

3.15 Respondents deny the allegations in Paragraph 3.5, and therefore deny the sand, silt, rock, clay, gravel, overburden, asphalt soil and other materials referenced in Paragraph 3.5 constitute “fill material” within the meaning of 40 C.F.R. § 232.2 and “pollutants” within the meaning of Section 502(6) of the Act and 40 C.F.R. § 232.2.

3.16 Respondents deny the allegations in Paragraph 3.5, and therefore deny the heavy equipment referenced in Paragraph 3.5 are “point sources” within the meaning of Section 502(14) of the Act.

3.17 Denied.

Count 1 – Unpermitted Storm Water Discharges

3.18 Respondents incorporate their responses to the allegations in Paragraphs 1.1 through 3.17.

3.19 Denied.

3.20 Denied.

Count 2 – Unpermitted Discharge of Dredged or Fill Material

3.21 Respondents incorporate their responses to the allegations in Paragraphs 1.1 through 3.20.

3.22 Denied.

3.23 Denied.

3.24 Denied.

IV. PROPOSED PENALTY

4.1 Paragraph 4.1 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 4.1.

4.2 Paragraph 4.2 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 4.2.

4.3 Respondents deny that the nature, circumstances, extent and gravity of violations are significant and deny that the unnamed perennial stream was impacted by the violations described in the Complaint. Respondents lack sufficient or scientific expertise to either admit or deny the remaining allegations in Paragraph 4.3.

4.4 Paragraph 4.4 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 4.4.

4.5 Paragraph 4.5 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 4.5.

4.6 Respondents admit that ADEC inspected the Site on May 12, 2009. Respondents deny that the CGP is applicable to Respondents' operations at their property, and therefore deny that ADEC accurately informed Respondents about the requirements of the CGP and permit requirements, and deny that they were aware of the terms and conditions of the CGP. Respondents admit that as of January 22, 2010, they had not applied for CGP coverage, but deny that they were required to do so by law. Respondents deny that the site was not stabilized as of January 22, 2010. Respondents admit that EPA sent a Notice of Violation to Respondents on or about January 22, 2009, but deny that they were not in compliance with the CGP. Respondents admit that on April 30, 2010, ADC issued permit coverage for the Site under tracking number AKR10DD19.

4.7 Respondents object to the allegations in Paragraph 4.7 because alleged acts or omissions occurring outside the five (5) year statute of limitations for the CWA cannot be used to assess a penalty against Respondents. Notwithstanding this objection, the allegations in the first sentence of paragraph 4.7 lack sufficient specificity for Respondents to either admit or deny in that it does not specify what "area beyond the existing pad may be considered wetlands." Therefore, Respondents neither admit nor deny the allegations in the first sentence of paragraph 4.7. Respondents deny that all of the area beyond the existing pad in 2004 were wetlands, thus

deny that a permit would be necessary to enlarge the footprint. Respondents admit that SRI indicated that Respondents should not place fill in wetlands, but deny that SRI made it clear that any and all material placed in the pad could not be used to enlarge the existing footprint until a permit for wetlands was obtained. Respondents admit that after 2004, Mr. Loomis continued to accept fill material from local contractors and expanded the footprint of the pad, but deny that the pad was expanded to the extent claimed in the Complaint, and deny that the alleged expansion occurred within the past five (5) years. Respondents admit that Mr. Loomis purpose was to expand the footprint to make building sites for himself or to sell to others in the future and increase the property value.

4.8 Respondents admit that on or about February 26, 2009, the Corps issued Mr. Loomis a Notice of Violation. Respondents deny they were engaged in unauthorized fill activities to the extent alleged in the Notice of Violation, and affirmatively allege that to the extent a permit was required, their activities were covered by one or more nationwide permits. Respondent deny that they continued to engage in unauthorized fill activities at the site thereafter. Respondents admit that the Corps issued a Cease and Desist Order on or about July 2, 2009.

4.9 Denied.

4.10 Respondents deny that they were required to obtain a permit for CGP storm water discharges, thus deny they enjoyed an economic benefit for failing to do so. To the extent Respondents discharged any fill into the waters of the United States, Respondents' activities were covered by one or more nationwide, thus Respondents deny that the economic benefit to

respondents includes the avoided costs of not obtaining and complying with the requirements of a Corps 404 permit and ADEC 401 Water Quality Certification. Respondents admit they contracted with SRI in 2004 to accept fill.

4.11 Paragraph 4.11 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 4.4.

V. OPPORTUNITY TO REQUEST A HEARING

5.1 Respondents admit that a copy of the Part 22 Rules was attached to the Complaint. Part 22 of the Rules and the Administrative Procedure Act speak for themselves, therefore the remaining allegations in paragraph 5.1 do not require a response from Respondents, who neither admit nor deny the remaining allegations in paragraph 5.1.

5.2 Part 22 of the Rules and the Administrative Procedure Act speak for themselves, therefore the allegations in paragraph 5.2 do not require a response from Respondents, who neither admit nor deny the allegations in paragraph 5.2.

VI. FAILURE TO FILE AN ANSWER

6.1 40 C.F.R. § 22.17 speaks for itself, therefore the allegations in paragraph 6.1 do not require a response from Respondents, who neither admit nor deny the allegations in paragraph 6.1.

6.2 40 C.F.R. § 22.15 speaks for itself, therefore the allegations in paragraph 6.2 do not require a response from Respondents, who neither admit nor deny the allegations in paragraph 6.2.

VII. INFORMAL SETTLEMENT CONFERENCE

7.1 Paragraph 7.1 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 7.1.

7.2 Paragraph 7.2 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 7.2.

7.3 Paragraph 7.3 does not require a response from Respondents, who neither admit nor deny the allegations in paragraph 7.3.

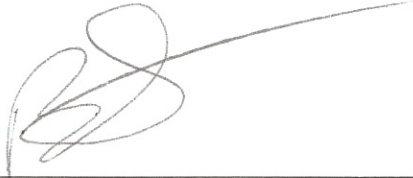
AFFIRMATIVE DEFENSES

1. EPA's claims are barred by the applicable statute of limitations.
2. EPA's claims are barred by the doctrines of waiver and laches.
3. Respondents were not required to obtain a permit for the operations on their property.
4. To the extent Respondents' operations required a permit, they were covered by one or more nationwide permits.

Dated this 19th day of July, 2011.

REEVES AMODIO LLC
Attorneys for Respondents

By: _____


Brian J. Stibitz
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CERTIFICATE OF SERVICE

I certify that the foregoing Answer was filed and sent to the following persons, in the manner specified, on the date below:

Original and one copy:

Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 10
1200 Sixth Avenue, Suite 900, Mail Stop ORC-158
Seattle, Washington 98101

A true and correct copy by U.S. Mail to:

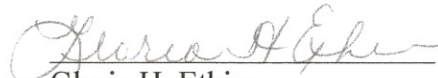
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