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Reply to Stillwater

August 30, 2016



VIA UPS #1Z FE6 853 25 9212 3701

Office of the Regional Hearing Clerk
Attn: La Dawn Whitehead
United States Environmental Protection Agency, Region 5
77 West Jackson Boulevard, Mailcode: #-19J
Chicago, IL 60604-3590

Re: *In the Matter of the City of Blaine, Blaine, MN*: Proceeding to Assess a Class II Civil Penalty
Under Section 309(g) of the Clean Water Act, 33 U.S.C. Sec. 1319(g)
Docket No. CWA-05-2016-0019
Our File No. 30159-30332

Dear Ms. Whitehead:

Enclosed for filing in connection with the referenced matter, please find the original and one copy of Respondent's Answer to Complaint and other assertions and notices. As set forth in the Answer, please be advised the City of Blaine requests a hearing in this matter.

Kindly provide me with a copy of the *filed* Answer.

Please contact me if you have any questions or concerns.

Sincerely,

Patrick J. Sweeney

PJS/rsr
Enclosures

c: The City of Blaine (w/encl. via email)
Jeffrey M. Trevino (w/encl. via email)
Kerryann Weaver (w/encl. via email)

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United States Environmental Protection Agency, Region 5
August 30, 2016
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US EPA Headquarters Hearing Clerk (1900L) (w/encl. via UPS)
Office of Administrative Law Judges
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

The City of Blaine,
Blaine, Minnesota,

Respondent.



Docket No. CWA-05-2016-0019

Proceeding to Assess a Class II Civil Penalty
Under Section 309(g) of the Clean Water Act,
33 U.S.C. Sec. 1319(g)

**RESPONDENT'S ANSWER TO COMPLAINT
AND OTHER ASSERTIONS AND NOTICES**

TO: THE OFFICE OF THE REGIONAL HEARING CLERK, LA DAWN WHITEHEAD,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION 5, 77
WEST JACKSON BOULEVARD, MAILCODE: #19J, CHICAGO, IL 60604-3590.

COMES NOW, the City of Blaine ("Respondent"), by and for its Answer to the
Complaint of United States Environmental Protection Agency ("EPA"), states and alleges as
follows:

1. Respondent states that no response is required for the allegations contained in
paragraph 1 of the EPA's Complaint but, to the extent that an answer is required, Respondent
denies the same and puts the EPA to its strictest burden of proof.

2. Respondent states that no response is required for the allegations contained in
paragraph 2 of the EPA's Complaint but, to the extent that an answer is required, Respondent
denies the same and puts the EPA to its strictest burden of proof.

Aquatore Park

3. Respondent admits the allegations contained in paragraph 3 of the EPA's
Complaint.

4. With respect to paragraph 4 of the EPA's Complaint, in or about July and August
of 2014, Respondent's contractors constructed a ball field at Aquatore Park. Respondent's

contractors used bulldozers and backhoes to create the elevation of the ball field. With respect to the remaining allegations in paragraph 4 of the EPA's Complaint, Respondent is without information or knowledge sufficient to either admit or deny said allegations, and accordingly denies the same and puts the EPA to its strictest burden of proof.

5. Respondent admits the allegations contained in paragraph 5 of the EPA's Complaint.

6. Respondent admits the allegations contained in paragraph 6 of the EPA's Complaint.

7. Respondent admits the allegations contained in paragraph 7 of the EPA's Complaint.

8. With respect to paragraph 8 of the EPA's Complaint, Respondent's contractors constructed a ball field at Aquatore Park. With respect to the remaining allegations in paragraph 8 of the EPA's Complaint, Respondent is without information or knowledge sufficient to either admit or deny said allegations, and accordingly denies the same and puts the EPA to its strictest burden of proof.

9. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 9 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

10. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 10 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

11. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 11 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

12. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 12 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

13. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 13 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

14. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 14 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

15. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 15 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

16. With respect to paragraph 16 of the EPA's Complaint, Respondent affirmatively states that County Ditch 17 is a man-made ditch constructed over 100 years ago for the purpose of conveying storm water, and said county ditch only contains storm water intermittently. Aquatore Park does not flow into County Ditch 17. With respect to the remaining allegations contained in paragraph 16, Respondent is without information or knowledge sufficient to either admit or deny said allegations, and accordingly denies the same and puts the EPA to its strictest burden of proof.

17. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 17 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

18. Respondent admits the allegations contained in paragraph 18 of the EPA's Complaint.

19. Respondent admits the allegations contained in paragraph 19 of the EPA's Complaint

20. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 20 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

21. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 21 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

22. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 22 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

23. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 23 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

24. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 24 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

25. With respect to paragraph 25 of the EPA's Complaint, on or about March 4, 2014, Respondent applied for a fill permit from the United States Corps of Army Engineers for the construction of the ball field at Aquatore Park. With respect to the remaining allegations contained in paragraph 25 of the EPA's Complaint, Respondent is without information or knowledge sufficient to either admit or deny said allegations, and accordingly denies the same and puts the EPA to its strictest burden of proof.

26. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 26 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

27. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 27 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

The Lexington Athletic Complex

28. Respondent admits the allegations contained in paragraph 28 of the EPA's Complaint

29. With respect to paragraph 29 of the EPA's Complaint, in or about July and August of 2014, Respondent's contractors constructed the Lexington Athletic Complex which consisted of multiple playing fields. Respondent's contractors used bulldozers and backhoes to complete the project. With respect to the remainder of the allegations contained in paragraph 29, Respondent is without information or knowledge sufficient to either admit or deny said allegations, and accordingly denies the same and puts the EPA to its strictest burden of proof.

30. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 30 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

31. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 31 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

32. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 32 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

33. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 33 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

34. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 34 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

35. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 35 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

36. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 36 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

37. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 37 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

38. With respect to paragraph 38 of the EPA's Complaint, Respondent affirmatively states that Anoka County Ditch 53-62 is a man-made ditch constructed over 100 years ago for

the purpose of conveying storm water, and said County Ditch only contains storm water intermittently. Lexington Athletic Complex does not flow into Anoka County Ditch 53-62. With respect to the remaining allegations in paragraph 38 of the EPA's Complaint, Respondent is without information or knowledge sufficient to either admit or deny said allegations, and accordingly denies the same and puts the EPA to its strictest burden of proof.

39. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 39 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

40. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 40 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

41. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 41 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

42. With respect to paragraph 42 of the EPA's Complaint, Anoka County Ditch 53-62 flows into Golden Lake. With respect to the remaining allegations contained in paragraph 42 of the EPA's Complaint, Respondent is without information or knowledge sufficient to either admit or deny said allegations, and accordingly denies the same and puts the EPA to its strictest burden of proof.

43. With respect to paragraph 43 of the EPA's Complaint, Rice Creek flows into Long Lake and Locke Lake. With respect to the remaining allegations contained in paragraph 43 of the EPA's Complaint, Respondent is without information or knowledge sufficient to either

admit or deny said allegations, and accordingly denies the same and puts the EPA to its strictest burden of proof.

44. Respondent admits the allegations contained in paragraph 44 of the EPA's Complaint.

45. Respondent admits the allegations contained in paragraph 45 of the EPA's Complaint.

46. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 46 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

47. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 47 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

48. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 48 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

49. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 49 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

50. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 50 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

51. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 51 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

52. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 52 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

53. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 53 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

54. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 54 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

55. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 55 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

56. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 56 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

57. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 57 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

58. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 58 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

59. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 59 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

60. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 60 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

61. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 61 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

62. With respect to paragraph 62 of the EPA's Complaint, on or about March 4, 2014, Respondent applied for a fill permit from the United States Corps of Army Engineers for the construction of the Lexington Athletic Complex. With respect to the remaining allegations in paragraph 62 of the EPA's Complaint, Respondent is without information or knowledge sufficient to either admit or deny said and accordingly denies the same and puts the EPA to its strictest burden of proof.

63. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 63 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

64. Respondent is without information or knowledge sufficient to either admit or deny the allegations contained in paragraph 64 of the EPA's Complaint, and accordingly denies the same and puts the EPA to its strictest burden of proof.

AFFIRMATIVE AND OTHER DEFENSES

65. Respondent is entitled to Judgment as a matter of law as the EPA lacks jurisdiction over Aquatore Park.

66. Any water existing at Aquatore Park is and has been hydrologically isolated from any waters of the United States.

67. Any water existing at Aquatore Park does not and has not had a continuous surface connection to the waters of the United States.

68. Any water from Aquatore Park, either alone or in connection with similarly situated properties, does not and has not significantly impacted the chemical, physical, and biological integrity of a traditionally navigable water body.

69. The water bodies listed in the EPA's Complaint, paragraphs 4, 8-17 and 20-24, do not carry a relatively permanent flow of water.

70. Aquatore Park was completed and remains in compliance with all governmental regulations, including those regulations imposed by the United States Army Corps of Engineers and the EPA.

71. Respondent is entitled to Judgment as a matter of law as the EPA lacks jurisdiction over the Lexington Athletic Complex.

72. Any water existing at the Lexington Athletic Complex is and has been hydrologically isolated from any waters of the United States.

73. Any water existing at the Lexington Athletic Complex does not and has not had a continuous surface connection to the waters of the United States.

74. Any water from the Lexington Athletic Complex, either alone or in connection with similarly situated properties, does not and has not significantly impacted the chemical, physical, and biological integrity of a traditionally navigable water body.

75. The water bodies listed in the EPA's Complaint, paragraphs 29, 38-43 and 46-61, do not carry a relatively permanent flow of water.

76. The Lexington Athletic Complex was completed and remains in compliance with all governmental regulations, including those regulations imposed by the United States Army Corps of Engineers and the EPA.

77. The actions taken by the United States Army Corps of Engineers and the EPA in this matter, have exceeded the Congressional authority provided for the enforcement of the United States Clean Water Act.

II. Notice of Proposed Civil Penalty

78. With respect to Part II of the EPA's Complaint entitled Notice of Proposed Civil Penalty, Respondent denies any liability to the EPA. Respondent further opposes the implementation of the civil penalty proposed by the EPA on several grounds, including but not limited to the following: Respondent applied for all necessary governmental permits for said projects; Respondent's contractors completed said projects properly and in a manner compliant with all federal and local regulations; and, the United States Army Corps of Engineers handling of Respondent's permit requests were inadequate and unreasonable.

III. Notice of Opportunity to Request a Hearing

79. With respect to Part III of the EPA's Complaint entitled Notice of Opportunity to Request a Hearing, Respondent hereby requests a hearing. Respondent hereby requests a hearing to contest, among other things:

- a. The EPA's alleged jurisdiction over these projects;

- b. The allegations made by the EPA in its Complaint;
- c. The appropriateness and amount of any penalty proposed by the EPA.

IV. Answer

80. With respect to Part IV of the EPA's Complaint entitled Answer, Respondent submits this document.

V. Settlement Conference

81. With respect to Part V of the EPA's Complaint entitled Settlement Conference, Respondent reserves its right to request a settlement conference.

VI. Notice to the State and Public

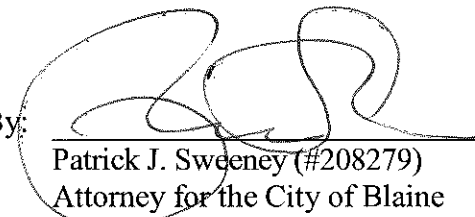
82. With respect to Part VI of the EPA's Complaint entitled Notice to the State and Public, Respondent states that no response is required for the allegations contained therein, but, to the extent that an answer is required, Respondent denies the same and puts the EPA to its strictest burden of proof.

VII. Continuing Obligation to Comply

83. With respect to Part VII of the EPA's Complaint entitled Continuing Obligation to Comply, Respondent is without information or knowledge sufficient to either admit or deny the allegations contained therein, and accordingly denies the same and puts the EPA to its strictest burden of proof.

ECKBERG, LAMMERS, PC

Dated: 8/30/16

By: 
Patrick J. Sweeney (#208279)
Attorney for the City of Blaine
1809 Northwestern Avenue
Stillwater, MN 55082
(651) 351-2123
Psweeney@eckberglammers.com