

4. During the relevant time periods, Section 404 of the Act, 33 U. S. C. § 1344, authorized the Secretary of the Army, acting through the Chief of Engineers for the U. S. Army Corps of Engineers, to issue permits for the discharge of dredged or fill material to waters of the United States.

5. On multiple occasions on or about March 3, 2006, Respondent and/or other persons and/or a business entity or entities acting at Respondent's request or direction and on its behalf discharged and caused the discharge of pollutants from point sources to waters of the United States without a permit issued under the Act in violation of Sections 301(a) and 309(g)(1)(A) of the Act, 33 U. S. C. §§ 1311(a) and 1319(g)(1)(A).

6. More particularly, during the construction of a drainage canal and the clearing of approximately 8.65 acres of forested, jurisdictional wetlands located in Section 19, Township 15 South, Range 17 East, Lafourche Parish, Louisiana, Respondent and/or said other parties discharged "dredged material" and "fill material," as defined by 40 C. F. R. § 232.2, by means of earth-moving and other equipment into said wetlands.

7. On or about October 11, 2007, Respondent and/or other persons and/or business entity or entities acting at the Respondent's request or direction and on its behalf discharged and caused the discharge of pollutants from point sources to the waters of the United States without a permit issued under the Act in violation of Section 301(a) and 309(g)(1)(A) of the Act, 33 U.S.C. §§ 1311(a) and 1319(g)(1)(A).

8. More particularly, during the mechanized land clearing of approximately 2 to 3 acres of forested jurisdictional wetlands in Sections 11 and 12, Township 16 South, Range 19 East, Lafourche Parish, Louisiana, Respondent and/or said other parties discharged "dredged material"

and “fill material”, as defined by 40 C.F.R. §, by means of earth moving and other equipment into said wetlands.

9. The dredged and fill material referred to in paragraphs 6 and 8 above were “pollutants” as defined by Section 502(6) of the Act, 33 U. S. C. § 1362(6).

10. Each piece of equipment referred to in paragraphs 6 and 8 above were a “point source” as defined by Section 502(14) of the Act, 33 U. S. C. § 1362(14).

11. The wetlands referred to in paragraphs 6 and 8 above were "waters of the United States" as defined by 40 C. F. R. § 232.2.

12. During the relevant time periods, Respondent did not have a permit authorizing the discharges alleged in paragraphs 6 and 8 above.

13. Each unauthorized discharge was a violation of Section 301(a) of the Act, 33 U. S. C. § 1311(a).

14. Pursuant to Section 309(g)(2)(B) of the Act, 33 U. S. C. § 1319(g)(2)(B), Respondent is liable for a civil penalty and is subject to injunctive relief.

III. NOTICE TO STATE

15. EPA has notified the Louisiana Department of Environmental Quality of the filing of this Amended Complaint and has afforded the state an opportunity to consult with EPA regarding the assessment of a civil penalty against Respondent.

IV. NOTICE TO PUBLIC

16. As required by 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 has afforded the public thirty days in which to comment on the Complaint and the proposed penalty. At the expiration of the notice period,

EPA will consider any comments submitted by the public.

V. PROPOSED PENALTY

17. Based on the foregoing Findings of Fact and Conclusions of Law and pursuant to Sections 309(g)(1)(A) and (g)(2)(B) of the Act, 33 U.S.C. §§ 1319(g)(1)(A) and (g)(2)(B), Complainant finds that Respondent has committed the violations alleged in paragraphs 6 and 8 above and proposes to assess a class II civil penalty of \$70,000.00.

18. In determining the amount of the 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 violations, Respondent's ability to pay a penalty, any history of such violations, the degree of culpability, economic benefit or savings, if any, resulting from the violations and such other factors as justice may require.

VI. FAILURE TO ANSWER

19. If Respondent wishes to admit, deny or explain any material allegation set forth in the above findings of fact or contest the amount of the penalty proposed, Respondent must file an answer to this Amended Complaint within thirty days after receipt of the Amended Complaint, regardless of whether Respondent requests a hearing on the allegations of the Amended Complaint.

20. The requirements for an answer are set forth at 40 C. F. R. § 22.15. Respondent's failure in an answer to admit, deny or explain any material, factual allegation in the Amended Complaint will constitute an admission of the allegation under 40 C. F. R. § 22.15(d).

21. If Respondent fails to file an answer within thirty days of service of the Amended Complaint, Respondent may be found in default and a default order may be issued pursuant to 40

C. F. R. § 22.17. Respondent's default will constitute an admission of all facts alleged in the Amended Complaint and a waiver of its right to contest such allegations.

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

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

23. The answer must be signed by Respondent's attorney or other representative and must include the information required by 40 C. F. R. § 22.15. All other pleadings must be similarly signed and filed with the Regional Hearing Clerk.

VII. NOTICE OF OPPORTUNITY TO REQUEST HEARING

24. Respondent may request a hearing to contest any material allegation set forth in this Amended Complaint or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g)(2)(B) of the Act, 33 U. S. C. § 1319(g)(2)(B), and 40 C. F. R. § 22.15(c). The hearing procedures are set forth at 40 C. F. R. §§ 22.21-22.26.

25. If a hearing is requested, persons who commented on the issuance of the Amended 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).

VIII. SETTLEMENT

26. If this action is settled without a hearing, it may be concluded by a quick resolution, pursuant to 40 C. F. R. § 22.18(a), or a Consent Agreement and Final Order, pursuant to 40 C. F. R. § 22.18(b). In a quick resolution, Respondent would pay the penalty proposed in the

Amended Complaint and a Final Order would be issued terminating the case. In a Consent Agreement and Final Order, Respondent would waive its right to a hearing on any matter stipulated to in the agreement or alleged in the Amended Complaint. Any person who commented on this Amended Complaint would be notified of the settlement and proposed final order and would be given thirty days to petition EPA to set aside any the Consent Agreement and Final Order and hold a hearing on the allegations of the Amended Complaint.

27. 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.

August 14, 2008

Issuance Date

Miguel I. Flores

MIF

Miguel I. Flores

Director

Water Quality Protection Division

CERTIFICATE OF SERVICE

I certify that on the 14th day of August, 2008, the Lafourche Parrish Amended Complaint was delivered to the following in the manner indicated below:

Hand Delivery

Regional Hearing Clerk (6RC-D)
U.S. EPA
1445 Ross Ave.
Dallas, TX 75202

First Class Mail

Christopher H. Riviere, Esq.
Riviere Law Firm
McCulla House
103 West Third Street
Thibodaux, Louisiana 70302-0670

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., N.W.
Washington D.C. 20460-2001



David Gillespie