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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BLVD.
LENEXA, KANSAS 66219
BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
MICHAEL ZAHNER)	ANSWER, AFFIRMATIVE DEFENSES,
)	AND REQUEST FOR HEARING
)	
and)	
)	Docket No. CWA-07-2022-0141
ZAHNER MANAGEMENT)	
COMPANY, LLC)	
)	
Respondents)	
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
)	

Respondents Michael Zahner and Zahner Management Company, LLC, in answer to the United States Environmental Protection Agency (“EPA”) Complaint and Notice of Opportunity for Hearing ("Complaint") admit, deny, and allege as follows:

1. Respondents deny Paragraph 1 of the Complaint as calling for a legal conclusion rather than fact.
2. Respondents deny Paragraph 2 of the Complaint as calling for a legal conclusion rather than fact.
3. Respondents deny Paragraph 3 of the Complaint as calling for a legal conclusion rather than fact.
4. Respondents admit Paragraph 4 of the Complaint.

5. Respondents deny Paragraph 5 of the Complaint as calling for a legal conclusion rather than fact.
6. Respondents deny Paragraph 6 of the Complaint as calling for a legal conclusion rather than fact.
7. Respondents deny Paragraph 7 of the Complaint as calling for a legal conclusion rather than fact.
8. Respondents deny Paragraph 8 of the Complaint as calling for a legal conclusion rather than fact.
9. Respondents deny Paragraph 9 of the Complaint as calling for a legal conclusion rather than fact.
10. Respondents deny Paragraph 10 of the Complaint as calling for a legal conclusion rather than fact.
11. Respondents deny Paragraph 11 of the Complaint as calling for a legal conclusion rather than fact.
12. Respondents deny Paragraph 12 of the Complaint as calling for a legal conclusion rather than fact.
13. Respondents admit in part and deny in part the allegations in the first Paragraph 13. The property at issue is and was at all relevant times owned by Zahner Management Company, LLC. Respondents deny the remaining allegations in the first Paragraph 13.
14. Respondents are unable to admit or deny the allegations in the second Paragraph 13.
15. Respondents admit in part and deny in part the allegations in Paragraph 14. Respondents admit that the U.S. Army Corps of Engineers (“Corps”) conducted an

- investigation at the property on August 22, 2018 but deny the remaining allegations in Paragraph 14.
16. Respondents deny the allegations in Paragraph 15.
 17. Respondents deny the allegations in Paragraph 16.
 18. Respondents admit the allegation in Paragraph 17 that EPA sent a Letter of Warning to Respondents on October 24, 2018, and that the letter speaks for itself.
 19. Respondents admit the allegations in Paragraph 18.
 20. Respondents deny the allegations in Paragraph 19 as calling for a legal conclusion rather than fact.
 21. Respondents deny the allegations in Paragraph 20.
 22. Respondents deny the allegations in Paragraph 21.
 23. Respondents admit in part and deny in part the allegations in Paragraph 22.
Respondents admit that the dates of work were in 2017 and 2018 but deny the remaining allegations.
 24. Respondents deny the allegations in Paragraph 23 as calling for a legal conclusion rather than fact.
 25. Respondents deny the allegations in Paragraph 24 as calling for a legal conclusion rather than fact.
 26. Respondents deny the allegations in Paragraph 25 as calling for a legal conclusion rather than fact.
 27. Respondents deny the allegations in Paragraph 26 as calling for a legal conclusion rather than fact.

28. Respondents' responses to the Complaint stated above are herein incorporated by reference.
29. Respondents deny the allegations in Paragraph 28 as calling for a legal conclusion rather than fact.
30. Respondents deny the allegations in Paragraph 29 as calling for a legal conclusion rather than fact.
31. Respondents deny the allegations in Paragraph 30 as calling for a legal conclusion rather than fact.
32. Respondents deny the allegations in Paragraph 31 as calling for a legal conclusion rather than fact.
33. Respondents deny the allegations in Paragraph 32 as calling for a legal conclusion rather than fact.
34. Respondents deny the allegations in Paragraph 33 as calling for a legal conclusion rather than fact.
35. Respondents deny the allegations in Paragraph 34 as calling for a legal conclusion rather than fact.
36. Respondents deny the allegations in Paragraph 35 as calling for a legal conclusion rather than fact.
37. Respondents request a hearing on the Complaint, as allowed by Paragraph 36 of the Complaint, to contest material facts and the appropriateness of EPA's proposed remedy.
38. Respondents deny any factual allegations contained in Paragraph 37.
39. Respondents deny any factual allegations contained in Paragraph 38.

40. Respondents deny any factual allegations contained in Paragraph 39.
41. Respondents deny any factual allegations contained in Paragraph 40.
42. Respondents deny any factual allegations contained in Paragraph 41.
43. Respondents deny any factual allegations contained in Paragraph 42.
44. Respondents deny any factual allegations contained in Paragraph 43.
45. Respondents deny any factual allegations contained in Paragraph 44.

AFFIRMATIVE DEFENSES

For their Affirmative Defenses, Respondents, Michael Zahner and Zahner Management Company, LLC, assert the following:

1. EPA's complaint fails to state a claim upon which relief can be granted because civil penalties cannot be imposed unless there is a violation of the Clean Water Act ("CWA"), and as set out herein, Respondents have not violated the CWA.
2. EPA's complaint fails to state a claim upon which relief can be granted because Respondents, individually and/or jointly are each, or alternatively, not entities who or which can be held liable under the CWA. Respondents have not violated the CWA.
3. EPA lacks authority to assess a penalty under 33 U.S.C. § 1319(g) because it cannot establish a violation of the CWA as a result of Respondents' actions.
4. Actions taken by Respondents are exempt from liability and enforcement under 33 U.S.C. § 1344(f)(1) (Section 404(f)(1) of the Clean Water Act) which states that the discharge of dredged or fill material from certain farming, silviculture, and ranching are not prohibited under Section 404 of the Act, including but not limited to activities related to soil and water conservation and the construction of farm ponds.

5. The proposed penalty in the sum of One Hundred Seventy-One Thousand Four Hundred and Eighty-One Dollars (\$171,481.00) is unreasonable and unwarranted under the facts to be proven at the hearing in this matter.
6. The proposed remediation credits sought by EPA which cost Thirty-Five Dollars (\$35.00) per credit and amount to a total cost of Four Hundred Ninety-Nine Thousand and Six Hundred and Ninety-Five Dollars (\$499,695) for 14,277 credits is unreasonable and unwarranted under the facts to be proven at the hearing in this matter.

REQUEST FOR HEARING

Respondents Michael Zahner and Zahner Management Company, LLC request a hearing on the Complaint.

Mr. Michael Zahner and Zahner Management
Company, LLC, Respondents

By Their Attorneys,

By: /s/ William Ford
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Certificate of Filing

The undersigned hereby certifies that a true and correct copy of the foregoing was served via email and U.S. Mail on the 4th day of November, 2022, for filing:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219
r7_hearing_clerk_filings@epa.gov

By: /s/ William Ford
William F. Ford
Attorney for Respondents

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served via email on the 4th day of November, 2022 on the following named party or its attorney:

Shane McCain
U.S. Environmental Protection Agency Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

/s/ William Ford
Attorney of Record