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September 13, 2017

Via Federal Express

Lorena Vaughn
Paralegal/Regional Hearing Clerk
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202

Re: Lafourche Parish Government, a Louisiana Municipality –
U.S. States Environmental Protection Agency, Region 6
Docket No. CWA-06-2017-2704
Docket No. CWA 06-2013-2715
Our File No. 16461900

Dear Ms. Vaughn:

Enclosed please find an Answer on behalf of the Lafourche Parish Government, which I ask that you file into the above captioned matter.

If you have questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to be "A. Prochaska", written over a horizontal line.

Alex P. Prochaska

APP/md
Enclosure
cc: Mr. Jay Przyborski w/encl. (via Federal Express)

{L0455060.1}

JONES WALKER LLP

ALABAMA ARIZONA DISTRICT OF COLUMBIA FLORIDA GEORGIA LOUISIANA MISSISSIPPI NEW YORK OHIO TEXAS

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REGIONAL HEARING CLERK
EPA REGION VI

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of:

§ Docket No. CWA-06-2017-2704

Lafourche Parish Government,
A Louisiana Municipality

§
§ Proceedings to Assess a Civil Penalty Under
§ Section 309(g) of the Clean Water Act

Respondent

§
§ Administrative Complaint

ANSWER

NOW BEFORE the EPA, comes respondent, Lafourche Parish Government, through undersigned counsel, who avers as follows:

1.

The allegations of Paragraph I.1 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution, respondent denies same.

2.

Respondent admits the allegations of Paragraph II.2 of the Administrative Complaint.

3.

The allegations of Paragraph II.3 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution, respondent denies same

4.

The allegations of Paragraph II.4 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution, respondent denies same

5.

The allegations of Paragraph II.5 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution, respondent denies same

6.

The allegations of Paragraph II.6 of the Administrative Complaint are denied as written. On information and belief, Respondent further disputes the factual and jurisdictional allegations therein, as set forth more fully in the affirmative defense below.

7.

The allegations of Paragraph II.7 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution, respondent denies same

8.

The allegations of Paragraph II.8 of the Administrative Complaint are denied for lack of information to justify a belief therein.

9.

The allegations of Paragraph II.9 of the Administrative Complaint are denied for lack of information to justify a belief therein.

10:

The allegations of Paragraph II.10 of the Administrative Complaint are denied as written. Further, Respondent denies the allegations that at “no time” did it lack governmental permission for a portion of the work in question.

11.

The allegations of Paragraph II.11 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution and due to the lack of information to justify a belief therein, respondent denies same.

12.

The allegations of Paragraph II.12 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution and due to the lack of information to justify a belief therein, respondent denies same.

13.

The allegations of Paragraph II.13 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution, respondent denies same.

14.

The allegations of Paragraph III.14 of the Administrative Complaint are denied as written. And are disputed as set forth in the affirmative defense below.

15.

The allegations of Paragraph III.15 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution and due to the lack of information to justify a belief therein, respondent denies same.

16.

The allegations of Paragraph IV.16 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution, respondent denies same. Respondent does not waive any affirmative defenses, as set forth below.

17.

The allegations of Paragraph IV.17 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution, respondent denies same.

Respondent does not admit to any allegations, other than as specifically stated above, and does not waive any affirmative defenses.

18.

The allegations of Paragraph IV.18 of the Administrative Complaint contain conclusions of law to which no answer is required, but in an abundance of caution, respondent denies same. Respondent has also not been defaulted by the EPA.

19.

The allegations of Paragraph IV.19 of the Administrative Complaint are admitted and will be complied with.

20.

The allegations of Paragraph IV.20 of the Administrative Complaint are admitted and will be complied with regarding pleadings.

21.

The allegations of Paragraph V.21 of the Administrative Complaint will be complied with. A hearing is hereby requested, although undersigned counsel understands, on information and belief that this case may be settled by an Administrative Order on Consent in the near future. Meanwhile, Respondent waives no affirmative defenses nor agrees to any disputed facts.

22.

The allegations of Paragraph V.22 of the Administrative Complaint are conclusions of law which require no answer, but in an abundance of caution, respondent denies same.

23.

The allegations of Paragraph VI.23 of the Administrative Complaint are conclusions of law requiring no answer, however, as aforesaid, a settlement by an Administrative Order on Consent may occur between EPA and respondent in this matter. Meanwhile, Respondent waives no affirmative defenses.

24.

The allegations of Paragraph VI.24 of the Administrative Complaint are conclusions of law requiring no answer, but in an abundance of caution, respondent denies same.

25.

The allegations of Paragraph VI.25 of the Administrative Complaint are conclusions of law requiring no answer, but in an abundance of caution, respondent denies same.

AND NOW, further answering, respondent alleges the following, pursuant to 40 C.F.R. 22.15, with respect to circumstances, arguments, defenses, disputed facts, and so forth:

26.

Respondent denies, pursuant to recent judicial decisions of the United States Supreme Court and the United States Fifth Circuit Court of Appeals, that this land in question constitutes “navigable waters” under the Clean Water Act.

27.

The Respondent denies the administrative agency has regulatory jurisdiction over this matter as this property in question as they do not contain wetlands, nor are hydrologically

connected to, or have a significant nexus to, a navigable-in-fact body of water. Further, the Administrative Complaint is vague for not naming the traditionally navigable water or providing the Agency's jurisdictional determination.

28.

Respondent denies that it discharged dredged or fill material.

29.

The administrative agency's definition of dredged material under the Clean Water Act is vague and unconstitutional and its enforcement constitutes a denial of respondent's due process.

30.

The administrative agency's definition(s) of fill material by the EPA and the Corps of Engineers have been in dispute for some time, are vague, and unconstitutional, and its enforcement denies respondent due process.

31.

The Respondent denies the calculation of acreage cited in Paragraph II.6 of the Administrative Complaint. Respondent did not and does not control any draining, clearing, or filling in of the impounded area by third parties.

32.

Respondent, in an abundance of caution and in the alternative, without refusing to comply at this time with the Administrative Order, the alleged activity giving rise to this action on this land ceased many years ago, EPA's request for restoration is not a viable or reasonable option. The Respondent is not in control of or is the landowner of the property at issue in this matter and

further development of the property by third parties makes EPA's requests for restoration in the Administrative Order, dated June 10, 2013 similarly unreasonable. Besides the factual allegations contained in this Administrative Complaint and the Administrative Order, which are denied, the requested restoration is impossible without approval from several landowners, and any restoration required by EPA can be satisfied by off-site mitigation. Further, restoration cannot be enforced by this administrative proceedings, absent consent.

33.

The administrative authority has no authority to seek a penalty in this matter as the Administrative Complaint was brought after the running of the applicable statute of limitations for in 28 U.S.C. 2462. As Paragraph II.6 provides most of the alleged activity at the center of this action occurred on March 2, 2010, however, the Administrative Complaint was not filed until October 26, 2016 more than five years later and beyond the time period in which the Administrative Agency could have brought their penalty action.

34.

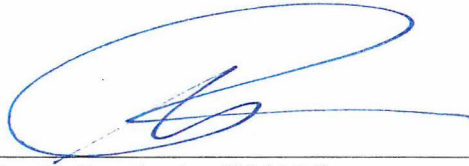
Respondent avers that the proposed penalty is excessive, non-compliant with the statutory factors, and denies that EPA fairly and reasonably considered Respondent's ability to pay with respect to the proposed civil penalty. EPA's penalty is virtually the maximum class II penalty under 40 CFR 19.4, table 1.

35.

Respondent further denies any other allegations in the Administrative Order or Administrative Complaint not specifically denied or responded to herein.

WHEREFORE, respondent prays that its answer be deemed good and sufficient, and that EPA's Administrative Complaint and Administrative Order be dismissed with prejudice.

Respectfully submitted,



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Attorneys for Respondent
Lafourche Parish Government

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing pleading has been served upon all counsel of record by hand delivery and/or by depositing same in the United States mail, postage prepaid and properly addressed, this 13th day of September, 2017.

