

Attachment A

**Letter from Industrial Economics to Tucker Henson, EPA
dated October 24, 2014**



INDUSTRIAL ECONOMICS, INCORPORATED

24 October 2014

Tucker Henson, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave. (6RC-EW)
Dallas, TX 75202

Dear Tucker:

At your request, as part of IEC's work under EPA Contract #GS-10F-0061N; Order #EP10H000898; Technical Directive #INT-15, concerning two Region 6 wetlands matters under one Respondent, Paco Swain Realty, L.L.C. ("Mr. Swain"), I am providing here support for my conclusion that Mr. Swain has not demonstrated an inability to pay penalties.

My conclusion here is based on the financial documents that Mr. Swain has provided to date, consisting of incomplete tax returns for the years 2005 through 2012, inclusive. That information is insufficient for me to perform a comprehensive and defensible ability-to-pay analysis for the following reasons:

- Numerous supporting forms and schedules for the tax returns provided are missing (see Attachment A and Attachment B for detail);
- The most recent tax return is for 2012, which is now more than a year out-of-date (the deadline for filing an extended 2013 return was October 15, 2014);
- The tax returns provided are all unsigned, lending questions regarding their credibility; and
- No information was provided concerning the nature or current value of Mr. Swain's living expenses, assets or liabilities (*e.g.*, bank accounts, investments, real estate holdings and any associated debts). Please see Attachment C, which needs to be completed and signed.

All of the missing and additional information should be readily available, and is the sort of data that I generally request and receive in similar matters involving ability-to-pay assessments, of which I have done many. If this information is provided to me in full, I should be able to complete the necessary analysis within a few weeks of receipt.

Please let me know if you have any questions or comments.

Sincerely,

Ann Czerwonka
Special Consultant

Industrial Economics, Incorporated
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Cambridge, MA 02140 USA
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ATTACHMENT A

MISSING ITEMS from FORM 1040 TAX RETURNS GORDON L. SWAIN JR. AND DEBORAH S. SWAIN

2013 Tax Return - Missing Forms

All.

2012 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule E	Supplemental Income and Loss	Form 1040, line 17
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 12
Statement	Other Income	Form 1040, line 21
Form 4562	Depreciation and Amortization	Included for other years
Form 8582	Passive Activity Loss	Included for other years

2011 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule C	Profit or Loss from Business (Sole Proprietorship)	Form 1040, line 12 does not equal Schedule C, line 31
Schedule D	Capital Gains and Loss	Form 1040, line 13
Schedule E	Supplemental Income and Loss	Form 1040, line 17
Schedule K-1	Gains from partnership, S corporations, etc.	Missing for other years
Form 4562	Depreciation and Amortization	Included for other years
Form 8582	Passive Activity Loss	Included for other years

2010 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule C	Profit or Loss from Business (Sole Proprietorship)	Form 1040, line 12 does not equal Schedule C, line 31
Schedule E	Supplemental Income and Loss	Form 1040, line 17
Schedule K-1	Gains from partnership, S corporations, etc.	Missing for other years
Form 4562	Depreciation and Amortization	Included for other years
Form 8582	Passive Activity Loss	Included for other years

ATTACHMENT A (continued)

**MISSING ITEMS from FORM 1040 TAX RETURNS
GORDON L. SWAIN JR. AND DEBORAH S. SWAIN**

2009 Tax Return - Missing Forms

Form	Description	Reference
Schedule A	Itemized Deductions	Form 1040, line 40 does not equal \$11,400 deduction for married filing jointly
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 12

2008 Tax Return - Missing Forms

Form	Description	Reference
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 12
Statement	Other Income	Form 1040, line 21
Form 4562	Depreciation and Amortization	Included for other years
Form 8582	Passive Activity Loss	Included for other years

2007 Tax Return - Missing Forms

Form	Description	Reference
Schedule D	Capital Gains and Loss	Form 1040, line 13
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule E, line 28 (h)
Form 4562	Depreciation and Amortization	Included for other years
Form 8582	Passive Activity Loss	Included for other years

2006 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 5

2005 Tax Return - Missing Forms

None.

ATTACHMENT B

2005 - 2012 TAX RETURN DETAIL

Form 1040 Tax Return Items for Gordon L. Swain, Jr. and Deborah S. Swain For the year ending Dec. 31,	2012	2011	2010	2009	2008	2007	2006	2005
Schedule/Statement Overview*								
Schedule A -- Itemized Deductions	--	--	Provided	Missing	Provided	Provided	Provided	--
Schedule B -- Interest and Ordinary Dividends	Missing	Missing	Missing	Missing	Provided	Provided	Missing	--
Schedule C/C-EZ -- Profit or Loss from Business (Sole Proprietorship)								
Paco Swain Realty, LLC	Provided	Provided	Provided	Provided	Provided	Provided	Provided	Provided
Meadow Lake Holdings, LLC	--	Missing	Missing	Provided	Provided	Provided	--	--
Chateau de Chene, LLC	--	Missing	Missing	Provided	Provided	Provided	--	--
Megan's Way, LLC	--	Missing	Missing	Provided	--	--	--	--
Paco Swain Promotions, LLC	--	Missing	Missing	Provided	--	--	--	--
Schedule D -- Capital Gains and Losses	Provided	Missing	--	Provided	--	Missing	Provided	--
Schedule E -- Supplemental Income and Loss								
Residential Rental - 10651 J Thibodeaux Lane	Missing	Missing	Missing	Provided	Provided	Provided	Provided	Provided
Louisiana Purchase Equestrian Estate, LLC	Missing	Missing	Missing	Provided	Provided	Provided	Provided	--
Schedule K-1 -- Gains from partnerships, S corporations, etc.	Missing	Missing	Missing	Missing	Missing	Missing	Missing	--
Schedule SE - Self-employment tax	--	--	--	--	--	Provided	Provided	Provided
Statement for Other Income	Missing	--	--	--	Missing	--	--	--
Form 4562 -- Depreciation and Amortization	Missing	Missing	Missing	Provided	Missing	Missing	Provided	Provided
Form 8582 -- Passive Activity Loss	Missing	Missing	Missing	Provided	Missing	Missing	Provided	Provided
* "--" Represents "Not Applicable"								

ATTACHMENT C

FINANCIAL DATA REQUEST FORM

INDIVIDUAL ABILITY TO PAY CLAIM

Financial Data Request Form

This form requests information regarding your financial status. The data will be used to evaluate your ability to pay for environmental clean-up or penalties. If there is not enough space for your answers, please use additional sheets of paper. Note that we may request further documentation of any of your responses. We welcome any other information you wish to provide supporting your case, particularly if you feel your situation is not adequately described through the information requested here.

Certification

Under penalties of perjury, I declare that this statement of assets, liabilities, and other information is true, correct, and complete to the best of my knowledge and belief. I further understand that I will be subject to prosecution by the Environmental Protection Agency to the fullest extent possible under the law should I provide any information that is not true, correct, and complete to the best of my knowledge.

Signature

Date

Name:
Spouse's Name:
Address:
County of Residence:

PART I. BACKGROUND INFORMATION

1. MEMBERS OF HOUSEHOLD (List the head of the household and all persons living with you)			
Name	Age	Relationship to Head of Household	Currently Employed?

2. EMPLOYMENT (List all jobs held by persons in household)			
Name	Employer	Length of Employment	Annual Salary

3. INCOME (List all income earned by persons in household. If members of the household other than the applicant and spouse earn income, please itemize on separate page.)

Source	Gross (Pre-Tax)		Period of Payment (check one)			
	Applicant	Spouse	Weekly	Monthly	Quarterly	Yearly
Wages/Salaries						
Sales Commissions						
Investment Income (interest, dividends, capital gains, etc.)						
Net Business Income						
Rental Income						
Retirement Income (Pension, Social Security, etc.)						
Child Support						
Alimony						
Other Income (please itemize)						

PART II. CURRENT LIVING EXPENSES

Please list personal living expenses which were typical during the last year and indicate if any of these values are likely to change significantly in the current year. Please do not include business expenses. If you are the owner of an operating business, please attach any available financial statements.

Expense	Amount	Period of Payment (check one)				For Agency Use Only
		Weekly	Monthly	Quarterly	Yearly	
A. Living Expenses						
1. Rent						
2. Home maintenance						
3. Auto fuel maint./other transp.						
4. Utilities						
a. Fuel (gas,oil,wood,propane)						
b. Electric						
c. Water/sewer						
d. Telephone						
5. Food						
6. Clothing, personal care						
7. Medical costs						
B. Debt Payments						
1. Mortgage payments						
2. Car payments						
3. Credit card payments						
4. Educational loan payments						
C. Insurance						
1. Household insurance						
2. Life insurance						
3. Automobile insurance						
4. Medical insurance						
D. Taxes						
1. Property taxes						
2. Federal income taxes						
3. State income taxes						
4. FICA						
E. Other Expenses						
1. Childcare						
2. Current School tuition/expenses						
3. Legal or professional services						
4. Other (itemize on separate page)						
Total Current Expenses						

PART III. NET WORTH

Please provide the following information to the best of your ability. Data should be as current as possible. Estimates are acceptable; if you wish note such items with an "E". If you are the sole proprietor of a business, please list business assets and liabilities to the extent that the information sought is not already provided in your tax returns, in addition to personal assets and liabilities. Please mark these entries with a "B" to identify them as business assets and liabilities.

1. BANK ACCOUNTS (Checking, NOW, Savings, Money Market, CDs etc.)		
Name of Bank or Credit Union	Type of Account	Current Balance
For Agency Use Only - Total Current Balance in Bank Accounts		

2. INVESTMENTS (Stock, Bonds, Mutual Funds, Options, Futures, Real Estate Investment Trusts (REIT), etc.)		
Investment	Number of Shares or Units	Current Market Value
For Agency Use Only - Total Current Market Value of Investments		

3. RETIREMENT FUNDS AND ACCOUNTS (IRA, 401(k), Keogh, vested interest in company retirement fund, etc.)	
Description of Account	Estimated Market Value
For Agency Use Only - Total Estimated Market Value of Retirement Funds and Accounts	

4. LIFE INSURANCE POLICIES (Whole Life, Universal Life, etc.)			
Policy Holder	Issuing Company	Policy Value	Cash Value
For Agency Use Only - Total Value of Life Insurance Policies			

5a. VEHICLES USED FOR COMMUTING PURPOSES (Cars, Trucks, Motorcycles, etc. Only list up to two vehicles used for commuting purposes.)					
Model/Year	Estimated Market Value	Loan (if any) Owed to:	Balance Due:	Start Date	End Date
For Agency Use Only - Total Estimated Market Value of Vehicles					

5b. OTHER VEHICLES (Cars, Trucks, Motorcycles, Recreational Vehicles, Motor Homes, Boats, Airplanes etc.) Attach separate sheets, if necessary.					
Model/Year	Estimated Market Value	Loan (if any) Owed to:	Balance Due:	Start Date	End Date
For Agency Use Only - Total Estimated Market Value of Vehicles					

6. PERSONAL PROPERTY (Household Goods and Furniture, Jewelry, Art, Antiques, Collections, Precious Metals, etc. Only list items with a value greater than \$500.00)
--

Type of Property	Estimated Market Value	Loan (if any) Owed to:	Balance Due:	Start Date	End Date
For Agency Use Only - Total Estimated Market Value of Personal Property					

7a. REAL ESTATE — PRIMARY RESIDENCE (Home — List only one such residence.)					
Location & Description of Property	Estimated Market Value	Mortgage (if any) Owed to:	Balance Due:	Start Date	End Date
For Agency Use Only - Total Estimated Market Value of Real Estate					

7b. OTHER REAL ESTATE (Land, Buildings, Land with Buildings)					
Location & Description of Property	Estimated Market Value	Mortgage (if any) Owed to:	Balance Due:	Start Date	End Date
For Agency Use Only - Total Estimated Market Value of Real Estate					

8. OTHER ASSETS					
Type of Asset	Estimated Market Value	Loan (if any) Owed to:	Balance Due:	Start Date	End Date
For Agency Use Only - Total Other Assets					

9. CREDIT CARDS AND LINES OF CREDIT		
Credit Card/Line of Credit (Type)	Owed To	Balance Due
For Agency Use Only - Total Balance Due on Credit Cards and Lines of Credit		

10. OTHER DEBT (Amounts due to individuals, Fixed obligations, Taxes Owed, Overdue Alimony or Child Support, etc.)				
Type of Debt	Owed To	Balance Due	Start Date	End Date
For Agency Use Only - Total Balance Due on Other Debt				

PART IV. ADDITIONAL INFORMATION

Please respond to the following questions. For any question that you answer "Yes," please provide additional information on separate pages or at the bottom of this page.

QUESTION		YES	NO
1.	Do you have any reason to believe that your financial situation will change during the next year?		
2.	Are you currently selling or purchasing any real estate?		
3.	Is anyone (or any entity) holding real or personal property on your behalf (e.g. a trust)?		
4.	Are you a party in any pending lawsuit?		
5.	Have any of your belongings been repossessed in the last three years?		
6.	Are you a Trustee, Executor, or Administrator?		
7.	Are you a participant or beneficiary of an estate or profit sharing plan?		
8.	Have you declared bankruptcy in the last seven years?		
9.	Do you receive any type of federal aid or public assistance?		

Attachment B

**Letter from Industrial Economics to Tucker Henson, EPA
dated November 10, 2014**



INDUSTRIAL ECONOMICS, INCORPORATED

10 November 2014

Tucker Henson, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave. (6RC-EW)
Dallas, TX 75202

Dear Tucker:

At your request, as part of IEC's work under EPA Contract #GS-10F-0061N; Order #EP10H000898; Technical Directive #INT-15, concerning two Region 6 wetlands matters under one Respondent, Paco Swain Realty, L.L.C. ("Mr. Swain"), I am providing here support for my conclusion that Mr. Swain has not demonstrated an inability to pay penalties.

My conclusion here is based on the financial documents that Mr. Swain has provided to date, consisting of incomplete tax returns for the years 2005 through 2013, inclusive. That information is insufficient for me to perform a comprehensive and defensible ability-to-pay analysis because numerous supporting forms and schedules for the tax returns provided are missing (see Attachment A and Attachment B for detail)

Assuming that the original tax returns as filed were complete and filed properly, all of the missing information should be readily available. If this information is provided to me in full, I should be able to complete the necessary analysis within a few weeks of receipt.

Please let me know if you have any questions or comments.

Sincerely,

Ann Czerwonka
Special Consultant

Attachments

Industrial Economics, Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140 USA
617.354.0074 | 617.354.0463 fax
www.indecon.com

ATTACHMENT A

MISSING ITEMS from FORM 1040 TAX RETURNS GORDON L. SWAIN JR. AND DEBORAH S. SWAIN

2013 Tax Return - Missing Forms

Form	Description	Reference
Schedule E	Supplemental Income and Loss	Form 1040, line 17
Schedule K-1	Gains from partnership, S corporations, etc.	Missing for other years; contingent upon missing Schedule E
Statement	Other Income	Form 1040, line 21
Form 4562	Depreciation and Amortization	Included for other years; contingent upon missing Schedule E
Form 8582	Passive Activity Loss	Included for other years; contingent upon missing Schedule E

- 2013 Form 1040 Line 17: “Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E” reports a loss of \$58,448, but there is no Schedule E attached to the return.
- Without an attachment for Schedule E, we cannot determine whether an attachment for Schedule K-1 is missing.
- 2013 Form 1040 Line 21: “Net Operating Loss – SEE STMT” reports a loss of \$206,253, but there is no Statement attached to the return.
- Without an attachment for Schedule E, we cannot determine whether Schedule E Line 20 references “depreciation expense or depletion” figures that would need to be reported on “Depreciation and Amortization” Form 4562.
- Without an attachment for Schedule E, we cannot determine whether Schedule E Line 23 references “deductible rental real estate” losses that would need to be reported on “Passive Activity Loss Limitations” Form 8582.

ATTACHMENT A (continued)

**MISSING ITEMS from FORM 1040 TAX RETURNS
GORDON L. SWAIN JR. AND DEBORAH S. SWAIN**

2012 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule E	Supplemental Income and Loss	Form 1040, line 17
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 12
Statement	Other Income	Form 1040, line 21
Form 4562	Depreciation and Amortization	Included for other years; contingent upon missing Schedule E
Form 8582	Passive Activity Loss	Included for other years; contingent upon missing Schedule E
Form 8829	Expenses for Business Use of Your Home	Schedule C, line 30

- 2012 Form 1040 Line 8a: “Taxable interest. Attach Schedule B if required” reports a gain of \$8, but there is no Schedule B attached to the return.
- 2012 Form 1040 Line 17: “Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E” reports a loss of \$67,581, but there is no Schedule E attached to the return.
- 2012 Form 1040 Schedule D Line 12: “Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1” reports a gain of \$17,850, but there is no Schedule K-1 attached to the return.
- 2012 Form 1040 Line 21: “Net Operating Loss – SEE STMT” reports a loss of \$140,001, but there is no Statement attached to the return.
- Without an attachment for Schedule E, we cannot determine whether Schedule E Line 20 references “depreciation expense or depletion” figures that would need to be reported on “Depreciation and Amortization” Form 4562.
- Without an attachment for Schedule E, we cannot determine whether Schedule E Line 23 references “deductible rental real estate” losses that would need to be reported on “Passive Activity Loss Limitations” Form 8582.
- 2012 Form 1040 Schedule C Line 30: “Expenses for business use of your home. Attach Form 8829” reports an expense of \$620, but there is no Form 8829 attached to the return.

ATTACHMENT A (continued)

**MISSING ITEMS from FORM 1040 TAX RETURNS
GORDON L. SWAIN JR. AND DEBORAH S. SWAIN**

2011 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule C	Profit or Loss from Business (Sole Proprietorship)	Form 1040, line 12 does not equal Schedule C, line 31
Schedule D	Capital Gains and Loss	Form 1040, line 13
Schedule E	Supplemental Income and Loss	Form 1040, line 17
Schedule K-1	Gains from partnership, S corporations, etc.	Missing for other years; contingent upon missing Schedule D and Schedule E
Form 4562	Depreciation and Amortization	Included for other years; contingent upon missing Schedule E
Form 8582	Passive Activity Loss	Included for other years; contingent upon missing Schedule E

- 2011 Form 1040 Line 8a: “Taxable interest. Attach Schedule B if required” reports a gain of \$25, but there is no Schedule B attached to the return.
- 2011 Form 1040 Line 12: “Business income or (loss). Attach Schedule C or C-EZ” reports a loss of \$46,640, but this does not match the \$15,968 loss reported on the attached Schedule C for “Paco Swain Realty LLC.”
- 2011 Form 1040 Line 13: “Capital gain or (loss). Att Sch D if reqd” reports a gain of \$3,526, but there is no Schedule D attached to the return. Further, the box that would be checked if Schedule D were not required is left unchecked.
- 2011 Form 1040 Line 17: “Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E” reports a loss of \$93,361, but there is no Schedule E attached to the return.
- Without attachments for Schedule D and Schedule E, we cannot determine whether an attachment for Schedule K-1 is missing.
- Without an attachment for Schedule E, we cannot determine whether Schedule E Line 20 references “depreciation expense or depletion” figures that would need to be reported on “Depreciation and Amortization” Form 4562.
- Without an attachment for Schedule E, we cannot determine whether Schedule E Line 23 references “deductible rental real estate” losses that would need to be reported on “Passive Activity Loss Limitations” Form 8582.

ATTACHMENT A (continued)

**MISSING ITEMS from FORM 1040 TAX RETURNS
GORDON L. SWAIN JR. AND DEBORAH S. SWAIN**

2010 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule C	Profit or Loss from Business (Sole Proprietorship)	Form 1040, line 12 does not equal Schedule C, line 31
Schedule E	Supplemental Income and Loss	Form 1040, line 17
Schedule K-1	Gains from partnership, S corporations, etc.	Missing for other years; contingent upon missing Schedule E
Form 4562	Depreciation and Amortization	Schedule C, line 13
Form 8582	Passive Activity Loss	Included for other years; contingent upon missing Schedule E

- 2010 Form 1040 Line 8a: “Taxable interest. Attach Schedule B if required” reports a gain of \$1,114, but there is no Schedule B attached to the return.
- 2010 Form 1040 Line 12: “Business income or (loss). Attach Schedule C or C-EZ” reports a loss of \$51,949, but this does not match the \$10,057 loss reported on the attached Schedule C for “Paco Swain Realty LLC.”
- 2010 Form 1040 Line 17: “Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E” reports a loss of \$42,234, but there is no Schedule E attached to the return.
- Without an attachment for Schedule E, we cannot determine whether an attachment for Schedule K-1 is missing.
- 2010 Form 1040 Schedule C Line 13 claims a “Depreciation and section 179 expense deduction” of \$1,080, but there is no “Depreciation and Amortization” Form 4562 attached to the return.
- Without an attachment for Schedule E, we cannot determine whether Schedule E Line 23 references “deductible rental real estate” losses that would need to be reported on “Passive Activity Loss Limitations” Form 8582.

ATTACHMENT A (continued)

MISSING ITEMS from FORM 1040 TAX RETURNS GORDON L. SWAIN JR. AND DEBORAH S. SWAIN

2009 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 12

- 2009 Form 1040 Line 8a: "Taxable interest. Attach Schedule B if required" reports a gain of \$29, but there is no Schedule B attached to the return.
- 2009 Form 1040 Schedule D Line 12: "Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1" reports a gain of \$4,420, but there is no Schedule K-1 attached to the return.

2008 Tax Return - Missing Forms

Form	Description	Reference
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 12
Statement	Other Income	Form 1040, line 21
Form 4562	Depreciation and Amortization	Schedule C, line 13 Schedule E, line 20
Form 8582	Passive Activity Loss	Schedule E, line 23

- 2008 Form 1040 Schedule D Line 12: "Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1" reports a gain of \$4,171, but there is no Schedule K-1 attached to the return.
- 2008 Form 1040 Line 21: "SEE STATEMENT L21" reports a gain of \$2,712, but there is no Statement attached to the return.
- 2008 Form 1040 Schedule C Line 13 claims a "Depreciation and section 179 expense deduction" of \$2,356, but there is no "Depreciation and Amortization" Form 4562 attached to the return.
- 2008 Form 1040 Schedule E Line 20 claims a "Depreciation expense or depletion" of \$1,109, but there is no "Depreciation and Amortization" Form 4562 attached to the return.
- 2008 Form 1040 Schedule E Line 23: "Deductible rental real estate loss" reports a loss of \$159, but there is no "Passive Activity Loss Limitations" Form 8582 attached to the return.

ATTACHMENT A (continued)

**MISSING ITEMS from FORM 1040 TAX RETURNS
GORDON L. SWAIN JR. AND DEBORAH S. SWAIN**

2007 Tax Return - Missing Forms

Form	Description	Reference
Schedule D	Capital Gains and Loss	Form 1040, line 13
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule E, line 28 (h)
Form 4562	Depreciation and Amortization	Schedule C, line 13 Schedule E, line 20
Form 8582	Passive Activity Loss	Schedule E, line 23

- 2007 Form 1040 Line 13: "Capital gain or (loss). Att Sch D if reqd" reports a gain of \$201, but there is not a full Schedule D attached to the return. Further, the box that would be checked if Schedule D were not required is left unchecked.
- 2007 Form 1040 Schedule E Line 28(h): "Nonpassive loss from Schedule K-1" reports a loss of \$78,223, but there is no Schedule K-1 attached to the return.
- 2007 Form 1040 Schedule C Line 13 claims a "Depreciation and section 179 expense deduction" of \$2,356, but there is no "Depreciation and Amortization" Form 4562 attached to the return.
- 2007 Form 1040 Schedule E Line 20 claims a "Depreciation expense or depletion" of \$1,109, but there is no "Depreciation and Amortization" Form 4562 attached to the return.
- 2007 Form 1040 Schedule E Line 23: "Deductible rental real estate loss" reports a loss of \$309, but there is no "Passive Activity Loss Limitations" Form 8582 attached to the return.

2006 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 5

- 2006 Form 1040 Line 8a: "Taxable interest. Attach Schedule B if required" reports a gain of \$1,150, but there is no Schedule B attached to the return.
- 2006 Form 1040 Schedule D Line 5: "Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1" reports a gain of \$2,121, but there is no Schedule K-1 attached to the return.

2005 Tax Return - Missing Forms

None.

ATTACHMENT B

2005 - 2013 TAX RETURN DETAIL

Form 1040 Tax Return Items for Gordon L. Swain, Jr. and Deborah S. Swain									
For the year ending Dec. 31,	2013	2012	2011	2010	2009	2008	2007	2006	2005
Schedule/Statement Overview (Note 1)									
Schedule A -- Itemized Deductions	--	--	--	Provided	--	Provided	Provided	Provided	--
Schedule B -- Interest and Ordinary Dividends	--	Missing	Missing	Missing	Missing	Provided	Provided	Missing	--
Schedule C/C-EZ -- Profit or Loss from Business (Sole Proprietorship)									
Paco Swain Realty, LLC	Provided	Provided	Provided	Provided	Provided	Provided	Provided	Provided	Provided
Meadow Lake Holdings, LLC	--	--	Missing	Missing	Provided	Provided	Provided	--	--
Chateau de Chene, LLC	--	--	Missing	Missing	Provided	Provided	Provided	--	--
Megan's Way, LLC	--	--	Missing	Missing	Provided	--	--	--	--
Paco Swain Promotions, LLC	--	--	Missing	Missing	Provided	--	--	--	--
Schedule D -- Capital Gains and Losses	--	Provided	Missing	--	Provided	Provided	Missing	Provided	--
Schedule E -- Supplemental Income and Loss	Missing	Missing	Missing	Missing	Provided	Provided	Provided	Provided	Provided
Schedule K-1 -- Gains from partnerships, S corporations, etc. (Note 2)	Missing	Missing	Missing	Missing	Missing	Missing	Missing	Missing	--
Schedule SE - Self-employment tax	--	--	--	--	--	--	Provided	Provided	Provided
Statement for Other Income	Missing	Missing	--	--	--	Missing	--	--	--
Form 4562 -- Depreciation and Amortization (Note 3)	Missing	Missing	Missing	Missing	Provided	Missing	Missing	Provided	Provided
Form 8582 -- Passive Activity Loss Limitations (Note 4)	Missing	Missing	Missing	Missing	Provided	Missing	Missing	Provided	Provided
Form 8829 -- Expenses for Business Use of Your Home (Note 5)	Provided	Missing	--	--	--	--	--	--	--
Notes:									
1) "--" Represents "Not Applicable"									
2) Referenced in Schedule D and Schedule E									
3) Referenced in Schedule C line 13 and Schedule E line 20; classified as Missing if Schedule C and/or Schedule E are missing									
4) Referenced in Schedule E line 23; classified as Missing if Schedule E is missing									
5) Referenced in Schedule C line 30									

Attachment C
Updated Attachments

ATTACHMENT A

MISSING ITEMS from FORM 1040 TAX RETURNS GORDON L. SWAIN JR. AND DEBORAH S. SWAIN

2013 Tax Return - Missing Forms

(To be reviewed)

2012 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule E	Supplemental Income and Loss	Form 1040, line 17
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 12
Statement	Other Income	Form 1040, line 21
Form 4562	Depreciation and Amortization	Included for other years; contingent upon missing Schedule E
Form 8582	Passive Activity Loss	Included for other years; contingent upon missing Schedule E

- 2012 Form 1040 Line 8a: “Taxable interest. Attach Schedule B if required” reports a gain of \$8, but there is no Schedule B attached to the return.
- 2012 Form 1040 Line 17: “Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E” reports a loss of \$67,581, but there is no Schedule E attached to the return.
- 2012 Form 1040 Schedule D Line 12: “Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1” reports a gain of \$17,850, but there is no Schedule K-1 attached to the return.
- 2012 Form 1040 Line 21: “Net Operating Loss - See Stmt” reports a loss of \$140,001, but there is no Statement attached to the return.
- Without an attachment for Schedule E, it is difficult to evaluate whether Schedule E Line 20 references “depreciation expense or depletion” figures that would need to be reported on “Depreciation and Amortization” Form 4562.
- Without an attachment for Schedule E, it is difficult to evaluate whether Schedule E Line 23 references “deductible rental real estate” losses that would need to be reported on “Passive Activity Loss Limitations” Form 8582.

ATTACHMENT A (continued)

**MISSING ITEMS from FORM 1040 TAX RETURNS
GORDON L. SWAIN JR. AND DEBORAH S. SWAIN**

2011 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule C	Profit or Loss from Business (Sole Proprietorship)	Form 1040, line 12 does not equal Schedule C, line 31
Schedule D	Capital Gains and Loss	Form 1040, line 13
Schedule E	Supplemental Income and Loss	Form 1040, line 17
Schedule K-1	Gains from partnership, S corporations, etc.	Missing for other years; contingent upon missing Schedule D and Schedule E
Form 4562	Depreciation and Amortization	Included for other years; contingent upon missing Schedule E
Form 8582	Passive Activity Loss	Included for other years; contingent upon missing Schedule E

- 2011 Form 1040 Line 8a: “Taxable interest. Attach Schedule B if required” reports a gain of \$25, but there is no Schedule B attached to the return.
- 2011 Form 1040 Line 12: “Business income or (loss). Attach Schedule C or C-EZ” reports a loss of \$46,640, but this does not match the \$15,968 loss reported on the attached Schedule C for “Paco Swain Realty LLC.”
- 2011 Form 1040 Line 13: “Capital gain or (loss). Att Sch D if reqd” reports a gain of \$3,526, but there is no Schedule D attached to the return. Further, the box that would be checked if Schedule D were not required is left unchecked.
- 2011 Form 1040 Line 17: “Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E” reports a loss of \$93,361, but there is no Schedule E attached to the return.
- Without attachments for Schedule D and Schedule E, it is difficult to evaluate whether an attachment for Schedule K-1 is missing.
- Without an attachment for Schedule E, it is difficult to evaluate whether Schedule E Line 20 references “depreciation expense or depletion” figures that would need to be reported on “Depreciation and Amortization” Form 4562.
- Without an attachment for Schedule E, it is difficult to evaluate whether Schedule E Line 23 references “deductible rental real estate” losses that would need to be reported on “Passive Activity Loss Limitations” Form 8582.

ATTACHMENT A (continued)

**MISSING ITEMS from FORM 1040 TAX RETURNS
GORDON L. SWAIN JR. AND DEBORAH S. SWAIN**

2010 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule C	Profit or Loss from Business (Sole Proprietorship)	Form 1040, line 12 does not equal Schedule C, line 31
Schedule E	Supplemental Income and Loss	Form 1040, line 17
Schedule K-1	Gains from partnership, S corporations, etc.	Missing for other years; contingent upon missing Schedule E
Form 4562	Depreciation and Amortization	Schedule C, line 13
Form 8582	Passive Activity Loss	Included for other years; contingent upon missing Schedule E

- 2010 Form 1040 Line 8a: “Taxable interest. Attach Schedule B if required” reports a gain of \$1,114, but there is no Schedule B attached to the return.
- 2010 Form 1040 Line 12: “Business income or (loss). Attach Schedule C or C-EZ” reports a loss of \$51,949, but this does not match the \$10,057 loss reported on the attached Schedule C for “Paco Swain Realty LLC.”
- 2010 Form 1040 Line 17: “Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E” reports a loss of \$42,234, but there is no Schedule E attached to the return.
- Without an attachment for Schedule E, it is difficult to evaluate whether an attachment for Schedule K-1 is missing.
- 2010 Form 1040 Schedule C Line 13 claims a “Depreciation and section 179 expense deduction” of \$1,080, but there is no “Depreciation and Amortization” Form 4562 attached to the return.
- Without an attachment for Schedule E, it is difficult to evaluate whether Schedule E Line 23 references “deductible rental real estate” losses that would need to be reported on “Passive Activity Loss Limitations” Form 8582.

ATTACHMENT A (continued)

MISSING ITEMS from FORM 1040 TAX RETURNS GORDON L. SWAIN JR. AND DEBORAH S. SWAIN

2009 Tax Return - Missing Forms

Form	Description	Reference
Schedule A	Itemized Deductions	Form 1040, line 40 does not equal \$11,400 deduction for married filing jointly
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 12

- 2009 Form 1040 Line 8a: “Taxable interest. Attach Schedule B if required” reports a gain of \$29, but there is no Schedule B attached to the return.
- 2009 Form 1040 Schedule D Line 12: “Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1” reports a gain of \$4,420, but there is no Schedule K-1 attached to the return.

2008 Tax Return - Missing Forms

Form	Description	Reference
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 12
Statement	Other Income	Form 1040, line 21
Form 4562	Depreciation and Amortization	Schedule C, line 13 Schedule E, line 20
Form 8582	Passive Activity Loss	Schedule E, line 23

- 2008 Form 1040 Schedule D Line 12: “Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1” reports a gain of \$4,171, but there is no Schedule K-1 attached to the return.
- 2008 Form 1040 Line 21: “See Statement L21” reports a gain of \$2,712, but there is no Statement attached to the return.
- 2008 Form 1040 Schedule C Line 13 claims a “Depreciation and section 179 expense deduction” of \$2,356, but there is no “Depreciation and Amortization” Form 4562 attached to the return.
- 2008 Form 1040 Schedule E Line 20 claims a “Depreciation expense or depletion” of \$1,109, but there is no “Depreciation and Amortization” Form 4562 attached to the return.
- 2008 Form 1040 Schedule E Line 23: “Deductible rental real estate loss” reports a loss of \$159, but there is no “Passive Activity Loss Limitations” Form 8582 attached to the return.

ATTACHMENT A (continued)

MISSING ITEMS from FORM 1040 TAX RETURNS GORDON L. SWAIN JR. AND DEBORAH S. SWAIN

2007 Tax Return - Missing Forms

Form	Description	Reference
Schedule D	Capital Gains and Loss	Form 1040, line 13
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule E, line 28 (h)
Form 4562	Depreciation and Amortization	Schedule C, line 13 Schedule E, line 20
Form 8582	Passive Activity Loss	Schedule E, line 23

- 2007 Form 1040 Line 13: “Capital gain or (loss). Att Sch D if reqd” reports a gain of \$201, but there is no Schedule D attached to the return. Further, the box that would be checked if Schedule D were not required is left unchecked.
- 2007 Form 1040 Schedule E Line 28(h): “Nonpassive loss from Schedule K-1” reports a loss of \$78,223, but there is no Schedule K-1 attached to the return.
- 2007 Form 1040 Schedule C Line 13 claims a “Depreciation and section 179 expense deduction” of \$2,356, but there is no “Depreciation and Amortization” Form 4562 attached to the return.
- 2007 Form 1040 Schedule E Line 20 claims a “Depreciation expense or depletion” of \$1,109, but there is no “Depreciation and Amortization” Form 4562 attached to the return.
- 2007 Form 1040 Schedule E Line 23: “Deductible rental real estate loss” reports a loss of \$309, but there is no “Passive Activity Loss Limitations” Form 8582 attached to the return.

2006 Tax Return - Missing Forms

Form	Description	Reference
Schedule B	Interest and Ordinary Dividends	Form 1040, line 8a
Schedule K-1	Gains from partnership, S corporations, etc.	Schedule D, line 5

- 2006 Form 1040 Line 8a: “Taxable interest. Attach Schedule B if required” reports a gain of \$1,150, but there is no Schedule B attached to the return.
- 2006 Form 1040 Schedule D Line 5: “Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1” reports a gain of \$2,121, but there is no Schedule K-1 attached to the return.

2005 Tax Return - Missing Forms

None.

ATTACHMENT B

2005 - 2012 TAX RETURN DETAIL

Form 1040 Tax Return Items for Gordon L. Swain, Jr. and Deborah S. Swain								
For the year ending Dec. 31,	2012	2011	2010	2009	2008	2007	2006	2005

Schedule/Statement Overview (Note 1)								
Schedule A -- Itemized Deductions	--	--	Provided	--	Provided	Provided	Provided	--
Schedule B -- Interest and Ordinary Dividends	Missing	Missing	Missing	Missing	Provided	Provided	Missing	--
Schedule C/C-EZ -- Profit or Loss from Business (Sole Proprietorship)								
Paco Swain Realty, LLC	Provided	Provided	Provided	Provided	Provided	Provided	Provided	Provided
Meadow Lake Holdings, LLC	--	Missing	Missing	Provided	Provided	Provided	--	--
Chateau de Chene, LLC	--	Missing	Missing	Provided	Provided	Provided	--	--
Megan's Way, LLC	--	Missing	Missing	Provided	--	--	--	--
Paco Swain Promotions, LLC	--	Missing	Missing	Provided	--	--	--	--
Schedule D -- Capital Gains and Losses	Provided	Missing	--	Provided	Provided	Missing	Provided	--
Schedule E -- Supplemental Income and Loss								
Residential Rental - 10651 J Thibodeaux Lane	Missing	Missing	Missing	Provided	Provided	Provided	Provided	Provided
Louisiana Purchase Equestrian Estate, LLC	Missing	Missing	Missing	Provided	Provided	Provided	Provided	--
Schedule K-1 -- Gains from partnerships, S corporations, etc. (Note 2)	Missing	Missing	Missing	Missing	Missing	Missing	Missing	--
Schedule SE - Self-employment tax	--	--	--	--	--	Provided	Provided	Provided
Statement for Other Income	Missing	--	--	--	Missing	--	--	--
Form 4562 -- Depreciation and Amortization (Note 3)	Missing	Missing	Missing	Provided	Missing	Missing	Provided	Provided
Form 8582 -- Passive Activity Loss Limitations (Note 4)	Missing	Missing	Missing	Provided	Missing	Missing	Provided	Provided

Notes:

- 1) "--" Represents "Not Applicable"
- 2) Referenced in Schedule D and Schedule E
- 3) Referenced in Schedule C line 13 and Schedule E line 20
- 4) Referenced in Schedule E line 23

Attachment D

**Email from Bob Morgan, Attorney for Respondent, to Tucker Henson, EPA
dated October 24, 2014**

Redacted to Remove Information Regarding Settlement or Litigation Discussions

Henson, Tucker

From: Bob Morgan <morganlaw@bellsouth.net>
Sent: Friday, October 24, 2014 5:41 PM
To: Henson, Tucker
Cc: Mullins, Donna
Subject: Re: Technical Direction #INT-15, R6's Paco Swain/Wetlands Matters, Contract GS-10F-0061N, Order EP10H000898
Attachments: 2013 Swain Tax Return.pdf
Follow Up Flag: Follow up
Flag Status: Completed

Thank you, Tucker.

Attached is the 2013 Return, which I had meant to send you before but evidently forgot to. We will have Mr. Swain fill out the form and return to you as soon as practicable. As you might recall, I had requested such a form before you referred the submission to IEC for analysis. Please strike this item from your motion to produce.

However, I must take issue with some of the consultant's conclusions, particularly as they relate to missing schedules. I have not looked at the returns for prior years, but from a perusal of the 2013 return, I suspect that most of the missing schedules were not included in the returns at all, as there is no need for a schedule that matches a blank line on the 1040. For instance, the current return has no Schedule B or D, or Form 4562 or 8562; nor does it include any data that require those information from those forms. All this is not to say that no forms are missing, although I am quite confident that the returns of which we provided copies were complete as they were filed.

Perhaps the analyst might have been able to more intelligently evaluate the issue had the matrix have been filled out; she might have no way of knowing that meadow Lake Holdings, Chateau de Chene and Megan's Way were defunct since 2010. But some of the comments are inexplicable, *i.e.*, the lack of signature on returns that were submitted by a licensed preparer with electronic signature (the returns should be evaluated as submitted, with a disclaimer if there is any doubt as to authenticity).

Aside from the Financial Data Request Form which we will have completed, we shall endeavor to find any inadvertently omitted schedules and clarify any disagreements between schedules and their corresponding lines on the form 1040. However, it is unlikely that we will attempt to prevail on Mr. Swain to conjure up imaginary schedules for items on which he had nothing to report. If Ms. Czerwonka does not understand this concept, I would be happy to explain it to her, or perhaps she might enlighten me as to the reason for such an exercise.

We hope you reconsider your intention to file a motion demanding "signed and complete" returns, until you have inspected the returns to determine their completeness, and also whether or not they were filed with electronic signature. Should you demand, for example, that a Schedule B must be submitted for years for which no Interest and Ordinary Income is reported, we would have to file opposition with supporting memorandum, rather than submit amended returns with no substantial changes (obviously they would have to be accepted by IRS before they are considered valid). It might be easier to have Paco simply sign a Form 4506 to have his returns sent directly to you or IEC, thereby eliminating all doubt as to their authenticity. If you will agree to that method, I will have him execute the form for every year in question.

Please let me know if there is anything further you need of us in the meantime.

Your courtesies are appreciated.

Bob Morgan
[REDACTED]

On Friday, October 24, 2014 2:05 PM, "Henson, Tucker" <Henson.Tucker@epa.gov> wrote:

Bob,

As you are aware, I was able to procure some funding for a financial analysis in relation to Mr. Swain's inability to pay claim. The consultant reviewed the information previously provided by Mr. Swain, and she found it to be insufficient to conduct a complete analysis. Specifically, she notes that the returns provided are incomplete and unsigned; the 2013 return has not yet been provided; and she is unable to determine Mr. Swain's expenses, assets and liabilities. She included all of this information in the attached letter along with a form that Industrial Economics typically uses to conduct its analysis.

I intend to draft a motion on Monday to file with the court requesting:

- Signed and complete tax returns to replace the previously received returns;
- 2013 tax return; and
- Completion of the attached form.

[REDACTED]
[REDACTED] Please let me know if you would object to providing these details and your position on the potential motions.

[REDACTED]
[REDACTED]
I am going to be out of the office on official travel next week but periodically available via email or my cell phone [REDACTED]

Tucker Henson
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 6
1445 Ross Ave. (6RC-EW)
Dallas, TX 75202
Tel: (214) 665-8148
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