

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

In the Matter of	§	Docket No. CWA 06-2018-2710
	§	
Lafourche Parish Government,	§	
	§	
a Louisiana Municipality	§	
	§	
	§	Proceeding Under § 309(a) of
	§	the Clean Water Act
Respondent	§	

ADMINISTRATIVE ORDER ON CONSENT

I. AUTHORITY

1. The following findings of violations are made and Order issued under the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region 6 who further delegated such authority to the Director of the Water Quality Protection Division, EPA Region 6.

II. FINDINGS OF VIOLATIONS

2. EPA makes the following findings of violations in support of its authority to issue this Order on Consent.

3. Respondent is a municipality chartered under the laws of the State of Louisiana, and as such, Respondent is a "person," as that term is defined at Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

4. At all times relevant to the violations alleged herein (“relevant time period”) Respondent

was engaged in the construction of a large earthen dam approximately 6 feet high, 14 feet wide, and 5280 feet long which impacted approximately 31.1 acres of jurisdictional wetlands at a point approximately 200 feet east of and parallel to Choctaw Road from about 963 Choctaw Road to 1343 Choctaw Road, in Section 8 & 17, Township 14 South, Range 17 East, Thibodaux, Lafourche Parish, Louisiana (“site”).

5. Beginning in December 2009 and continuing for multiple dates thereafter, Respondent discharged, directed the discharge, and/or agreed with other persons or business entities to discharge “dredged material” and/or “fill material,” as defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2, from point sources, including heavy equipment, to waters of the United States, namely jurisdictional wetlands within the site, without a permit issued under the Act in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

6. In June or July of 2012, Respondent submitted to U. S. Army Corps of Engineers (“COE”) materials dated June 25, 2012, to support an after-the-fact permit application for the earthen dam construction described in paragraph 4.

7. Each piece of heavy equipment used during excavation or construction activities which resulted in a discharge acted as a “point source” as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

8. The dredged and fill material referred to in paragraph 5 was a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

9. During the relevant time period, the approximately 31.1 acres of wetlands referred to in paragraph 5 were adjacent to, hydrologically connected to, or had a significant nexus to “navigable waters” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2, and

as such, the approximate 31.1 acres of jurisdictional wetlands are “waters of the United States” as defined by 40 C.F.R. § 232.2.

10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that it is unlawful for any person to discharge a pollutant from a point source to waters of the United States, except with the authorization of and in compliance with a permit issued under the Act.

11. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the COE to issue permits for the discharge of dredged or fill material to waters of the United States.

12. At no time during the relevant time period did Respondent have a permit issued by the COE that authorized the discharges alleged in paragraph 5.

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

III. CONSENT AGREEMENT

14. EPA and Respondent agree that settlement of this matter will save time and resources and is in the public interest and that issuance of this Order on Consent is the most appropriate means of resolving this matter with respect to Respondent’s restoration of certain wetlands as described below. Respondent concurs in the issuance of this Order on Consent and agrees to comply with the Order. Respondent neither admits nor denies the findings of violations set forth herein.

IV. COMPLIANCE ORDER

15. Based on the foregoing Findings of Violations and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA ORDERS and Respondent agrees to the following:

- a. Respondent agrees to immediately cease any unauthorized discharges of dredged and/or fill material to waters of the United States on the site.

- b. Respondent will within 60 days following the effective date of this Order submit to the Corps a permit application for the site.
- c. Within 60 days following publication of public notice on its permit application, Respondent shall submit to the Corps for review a draft mitigation plan for review. EPA acknowledges the Respondent submitted one draft mitigation plan to the Corps for review that was discussed on March 1, 2018 and a subsequent revised mitigation plan report on April 13, 2018
- d. The next draft mitigation plan submitted to the Corps for review by Respondent within the above time frame will be designed to offset the following losses: compensatory mitigation for approximately 11.4 acres of permanent wetland losses in the north side of the project and restoration and/or compensatory mitigation for approximately 19.7 acres of temporary wetland losses in the south side of the project. (see proposed Site Restoration and Impacts Drawing attached as Exhibit 1). The mitigation required to offset the losses described in this paragraph will be memorialized in the final permit issued by the Corps.
- e. Respondent shall comply with the Clean Water Act section 404 permit for the site issued by the Corps, including approved requirements for compensatory mitigation and/or restoration.
- f. Respondent shall comply with the regulations at 33 CFR 323, 40 CFR 230, and any and all other laws and regulations governing Clean Water Act section 404 permits.

V. DELAY OF PERFORMANCE/FORCE MAJEURE

16. "Force Majeure," for purposes of this Consent Order, is any event entirely beyond the control of Respondent, or any entity controlled by Respondent, that delays or prevents performance of any obligation under this Consent Order notwithstanding Respondent's best efforts to avoid delay. The best efforts requirement includes using best efforts to anticipate any such event and minimize the delay caused by any such event to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any work to be performed under the Consent Order, Respondent's financial or business difficulties, and normal inclement weather. Examples of a Force Majeure include but are not limited to acts of God or war, labor unrest, and/or civil disturbance, and/or which prevents compliance with this Order on Consent.

17. If any event should occur or has occurred that may delay the performance of any obligation under the Consent Order, whether or not caused by a force majeure, Respondent shall notify by telephone and email Raul Gutierrez, Gutierrez.Raul@epa.gov, and Maria Martinez, Martinez.Maria@epa.gov, within two business days of when Respondents knew, or reasonably should have known, that the event might cause a delay. Within fifteen (15) days thereafter, Respondent shall provide in writing the reasons for the delay, the anticipated duration of the delay, the measure taken or to be taken to prevent or minimize the delay, and a timetable by which those measure will be implemented. Respondent shall exercise best efforts to avoid or minimize any delay and any effects of a delay. Failure to comply with the notice requirement of this paragraph shall preclude Respondent from asserting any claim of force majeure.

18. If EPA agrees that an actual or anticipated delay is attributable to force majeure, the time for performance of the obligations shall be extended by written agreement of the parties. An extension of the time for performing an obligation directly affected by the force majeure event shall not, of itself, extend the time for performing a subsequent obligation.

19. Respondent shall have the burden of demonstrating, by a preponderance of the evidence, that the actual or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay was or will be warranted under the circumstances, that Respondent did or will exercise or is using best efforts to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of this section.

VI. GENERAL PROVISIONS

20. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent may have with respect to any issue or fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under Sections 701 through 708 of the Administrative Procedure

Act, 5 U.S.C. §§ 701-708. However, Respondent reserves its rights on regulatory permits to appeal and reviews under 33 CFR §331 and the Administrative Procedures Act.

21. Respondent acknowledges the jurisdiction of EPA to issue the Section 309(a)(3) Order on Consent for purposes of this Order only.

22. Issuance of this Order on Consent shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines or any other relief appropriate under the Act for the violations cited herein or other violations that become known to EPA.

23. This Order is issued contemporaneously with a Consent Agreement and Final Order, Docket No. CWA-06-2017-2704, to conclude the administrative proceeding assessing a Class II civil penalty under section 309(g) of the Act, 33 U.S.C. § 1319(g), for the violations cited herein.

24. Failure to comply with the terms of this Section 309(a) Compliance Order may result in liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should the EPA commence an action seeking penalties for violations of this Compliance Order, a United States District Court may impose civil penalties if, after notice and opportunity for a hearing, the court determines that you have violated the Act and failed to comply with the terms of the Order. The court has the authority to impose separate civil penalties for violation of the Act as well as for violation of this Order.

25. Compliance with the terms and conditions of this Order on Consent does not relieve Respondent of the obligation to comply with any applicable federal, state or local law or regulation.

26. The effective date of this Order is the date it is signed by both Respondent and EPA.

In recognition and acceptance of the foregoing:


Lafourche Parish Government

5-8-18
Date



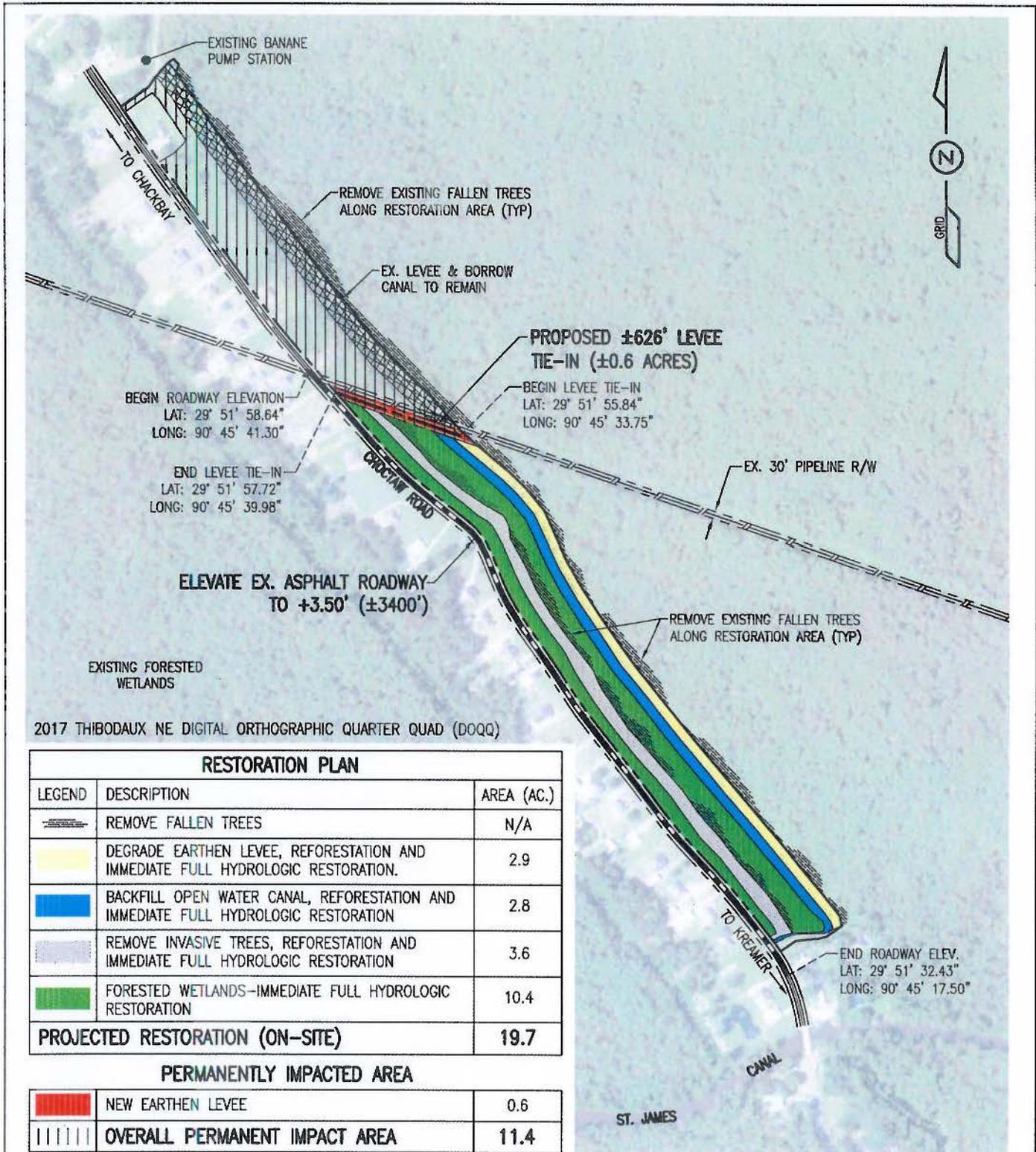
David F. Garcia, P.E.
Acting Director
Water Division, EPA Region 6

4/25/18
Date

Docket No. CWA 06-2018-2710

Exhibit 1: Site Restoration and Impacts Drawing

E:\16-DIR\09021601 LPG - Choctaw Levee Permit\ACAD\CURRENT\PLAN-01-RESTORATION SITE PLAN.dwg, Layout1, 4/3/2018 1:20:14 PM, leeg



2017 THIBODAUX NE DIGITAL ORTHOGRAPHIC QUARTER QUAD (DOQQ)

RESTORATION PLAN		
LEGEND	DESCRIPTION	AREA (AC.)
	REMOVE FALLEN TREES	N/A
	DEGRADE EARTHEN LEVEE, REFORESTATION AND IMMEDIATE FULL HYDROLOGIC RESTORATION.	2.9
	BACKFILL OPEN WATER CANAL, REFORESTATION AND IMMEDIATE FULL HYDROLOGIC RESTORATION	2.8
	REMOVE INVASIVE TREES, REFORESTATION AND IMMEDIATE FULL HYDROLOGIC RESTORATION	3.6
	FORESTED WETLANDS-IMMEDIATE FULL HYDROLOGIC RESTORATION	10.4
PROJECTED RESTORATION (ON-SITE)		19.7

PERMANENTLY IMPACTED AREA

	NEW EARTHEN LEVEE	0.6
	OVERALL PERMANENT IMPACT AREA	11.4

RESTORATION SITE PLAN

J.N. 0902-1601



PICCIOLA & ASSOCIATES, INC.
 CIVIL ENGINEERS
 LAND SURVEYORS
 NAVAL ARCHITECTS
 MARINE ENGINEERS
P.O. BOX 687
 CUT OFF, LOUISIANA 70345
 (985) 632-5786

REVISION:
 -
 DATE:
 04/03/2018

LAFORCHE PARISH GOVERNMENT

EARTHEN LEVEE, ROADWAY ELEVATION AND WETLAND RESTORATION PLAN
 BANANE PUMP STATION TO ST. JAMES CANAL

SHEET NO.
1
 OF
1

DESIGNED BY: J.C.P.
 DRAWN BY: L.J.G.
 CHECKED BY: J.C.P.

SCALE:
 1"=600'

RESTORATION SITE PLAN
 CHACKBAY, LA

LAFORCHE PARISH