



TULANE ENVIRONMENTAL LAW CLINIC

November 27, 2007

Via Certified Mail No. 7005 0390 0003 2163 2601
Mr. Jerome Zeringue
Executive Director
Terrebonne Levee and Conservation District
220-A Clendenning Rd.
Houma, LA 70363

Re: Notice of intent to file citizen suit for failure to obtain a permit for Reach J-1 of the Morganza to the Gulf of Mexico Hurricane Protection Project pursuant to Section 505 of the Clean Water Act, 33 U.S.C §1365 and 40 C.F.R. §§ 135.1 – 135.13.

Dear Mr. Zeringue:

This letter is to inform you that Save our Wetlands, Inc. intends to sue the Terrebonne Levee and Conservation District (“the District”) under Section 505 of the Clean Water Act, 33 U.S.C §1365, and 40 C.F.R. §§ 135.1 – 135.13 for violations of the Clean Water Act, 33 U.S.C. §§ 1251 – 1376.

In 1972, Congress passed the Clean Water Act to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). Wetlands are important because they provide necessary habitat for various species of plants, fish, and wildlife; they serve as ground water recharge areas; they provide storage areas for storm and flood waters; they serve as natural water filtration areas; they provide protection from wave action, erosion, and storm damage; and they support various recreational opportunities. In addition, the coastal marshes of southern Louisiana provide important winter habitat for migratory birds as part of the southern end of the Mississippi Flyway.

Section 505(a)(1) of the Clean Water Act provides that “any citizen may commence a civil action on his own behalf...against any person,” including any government agency, “who is alleged to be in violation of (A) an effluent standard or limitation under this Act or (B) an order issued by...a State with respect to such standard or limitation.” 33 U.S.C. § 1365(a). The Clean Water Act requires Save Our Wetlands to wait at least sixty days after filing this notice before it files an enforcement action in federal court. 33 U.S.C. § 1365(b)(1)(A). This waiting period gives the parties a reasonable time to resolve the matter cooperatively, without litigation.

Save Our Wetlands alleges that the District is in violation of the Clean Water Act. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), provides, in pertinent part, that

Tulane Environmental Law Clinic

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"except as in compliance with ... § 1344 of this title, the discharge of any pollutant by any person shall be unlawful." The definition of pollutant in 33 U.S.C. § 1362(6) includes "dredged spoil." Section 404(a) of the Clean Water Act, 33 U.S.C. § 1344(a), establishes a permitting program for the discharge of dredged or fill material. In addition, 33 C.F.R. § 323.3(a) requires the Army Corps of Engineers to issue section 404 permits "for the discharge of dredged or fill material into waters of the United States." Furthermore, section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), provides in pertinent part: "Any person who violates section 1311 ... of this title ... shall be subject to a civil penalty," which 40 C.F.R. § 19.4 caps at \$32,500 per day for each violation.

The District is planning, designing, and constructing Reach J-1 of the Mississippi River and Tributaries—Morganza, Louisiana to the Gulf of Mexico Hurricane Protection Project. Reach J-1 is currently under construction. All of the project area is low-lying coastal marsh. The construction site sits on the eastern edge of the Bayou Pointe-aux-Chenes wetlands. The project involves dredge and fill operations in wetlands, including the excavation of borrow materials from a 100-acre site adjacent to Bayou la Cache near Montegut, Louisiana.

The District has proceeded with the construction of Reach J-1 without obtaining from the Secretary of the Army or the Chief of Engineers a permit for the discharge of dredged or fill material at this site. The discharge of dredged or fill material into the waters of Terrebonne Parish without a permit constitutes a violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and renders defendant liable for a civil penalty of up to \$32,500 per day. These violations began before November 1, 2006 and are ongoing, and the District is responsible for these violations. This letter gives the District notice of Save Our Wetlands' intent to sue if these violations cannot be remedied through settlement negotiations.

The Person Giving Notice

The Tulane Environmental Law Clinic is legal counsel representing the person giving notice, Save Our Wetlands. Save Our Wetlands is an incorporated, non-profit, community organization dedicated to the preservation and protection of the wetlands in and around New Orleans, Louisiana. The District's violations of the Clean Water Act diminish the use of the wetlands in Terrebonne Parish by members of Save Our Wetlands. The organization intends to sue on behalf of itself and its members. The name, address and telephone number of Save Our Wetlands, Inc. is as follows:

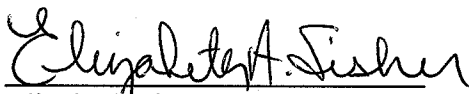
Save Our Wetlands, Inc.
Post Office Box 73447
Metairie, LA 70033
(504) 837-1212

Mr. Jerome Zeringue

November 30, 2007

Page 3 of 3

Prepared by



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cc:

Via Certified Mail

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Mr. Mike D. McDaniel

Secretary

Louisiana Department of Environmental Quality

P.O. Box 4301

Baton Rouge, LA 70821-4301

Via Certified Mail

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Mr. Richard Greene

Regional Administrator - EPA Region 6

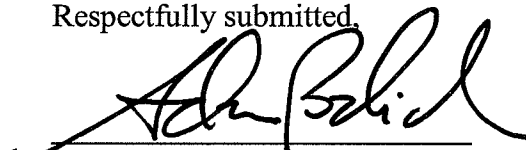
Environmental Protection Agency

Fountain Place 12th Floor, Suite 1200

1445 Ross Avenue

Dallas, TX 75202-2733

Respectfully submitted,



Adam Babich, (LA Bar # 27177)

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Mr. Stephen L. Johnson

Administrator

U.S. EPA

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