



**GASKEY  
CONSTRUCTION  
CORPORATION**  
GENERAL CONTRACTOR

**HOUSTON:**  
P.O. BOX 247  
BELLAIRE, TEXAS 77402-0247  
(713) 349-0080  
(713) 349-0090 FAX

**DALLAS/FT. WORTH:**  
6309 N. O'CONNOR #205  
IRVING, TEXAS 75039-3509  
(972) 831-8678  
(972) 831-8307 FAX

4-12-06

RECEIVED  
U.S. E.P.A.  
2006 APR 21 AM 11: 58  
ENVIR. APPEALS BOARD

EPA, United States  
Environmental Protection Agency  
Washington, D.C. 20460  
Environmental Appeals Board Panel  
Environmental Appeals  
Honorable Judges Edward E. Reich, Katie A. Stein and Anna L. Wolgast; Katie A. Stien,  
Presiding  
MC-1103B

Certified Mail #EQ 095366724 US

In re: Gaskey Construction Corp., Docket No. CWA-06-2004-2335; CWA Appeal No. 06-02

Honorable Judges Reich, Stein and Wolgast;

It is with great respect and apology that I respectfully request, on behalf of Gaskey Construction Corp. ("Gaskey"), assisted by the undersigned, Carl G. Mueller, Jr., acting from time to time, in an Of Counsel capacity for Gaskey, that Gaskey be allowed to respond at this late date to the Environmental Protection Agency's ("EPA") proceedings in the captioned matter ("Claim Against Gaskey").

Unfortunately my first involvement herein was when the enclosed "Order Electing To Review Sua Sponte And Remanding To Regional Judicial Officer ("Order of Remand") came to my attention. I was appalled that previous matters related to the EPA's Claim Against Gaskey were not brought to my attention. The explanation given to me was that certain parties working for Gaskey on the jobsite believed that the Bank owning the construction site was attending to all matters before the EPA.

Hopefully, I may be allowed to briefly set forth my understanding of the circumstances (as related to me by Gaskey's employees on the jobsite and in Gaskey's

office) resulting in the EPA's "Initial Decision and Default Order" ("Decision and Order") as follows:

1. Gaskey is a small third generation construction contractor generally operating in and around Houston, Texas.
2. Gaskey bid and was awarded a contract, as general contractor, to build a small branch bank, Chase Bank ("CHASE BANK") on approximately 0.75 acres of land "(Construction Site Land") on approximately 1.19 acres of land purchased by Chase Bank. The Construction Site Land was within the jurisdiction of Brazoria County, Texas.
3. Chase Bank purchased the Bank's Land from the Owner ("Initial Owner") of approximately 11 undeveloped acres of land, ("Initial Tract") out of which Chase Bank's Land was carved.
4. Gaskey had no reason to believe that neither the Initial Owner nor Chase Bank had properly replated the Initial Tract in order to properly sell off Chase Bank's Land.
5. The duty to replat the Initial Tract in order to sell off Chase Bank's Land out of the Initial Tract of the Initial Owner rested solely on the Initial Owner and Chase Bank, or either of them, not on Gaskey.
6. At all times while the issues between Gaskey and the EPA were developing, Gaskey was repeatedly told that "Chase Bank" and its lawyers were diligently attending to any replating issues relating to the Initial Tract and Chase Bank's Land. Chase Bank declared to Gaskey "not to worry about any replating or the issues with the EPA – as the Chase Bank's Land was exempt". The Engineer and Architect for Chase Bank agreed. Further, no SWPP (Storm, Water Pollution, Preservation plan) was included in any of the Plan Sheets furnished by them to Gaskey.
7. Gaskey was further informed by Chase Bank, the Engineer and Architect that the EPA's jurisdiction did not extend to Chase Bank's project on the Construction Site Land out of the Bank's Total Land.
8. Accordingly, Gaskey did not understand that a Section 301 Permit was needed, and Gaskey further believes that no pollutants were ever discharged by Gaskey from Chase Bank's Construction Site Land with respect to the construction.
9. If, upon review of all of the circumstances, the EPA believes that an extremely large penalty if any against Gaskey is warranted, where Gaskey was apparently acting in good faith under all of the relevant facts (which facts, however, were never considered by the EPA because Gaskey's belief that Gaskey's pro se letters to the EPA "RESPONDING TO" THE EPA'S COMPLAINT were a proper "RESPONSE" thereto under Federal Law were totally Disregarded and Ignored as NO RESPONSE, and were perhaps considered as recalcitrancy by Gaskey there would appear to be an unfortunate miscarriage of justice.

The evils attributed to Gaskey appear to be: (a) Gaskey's reliance upon the representations of Chase Bank and it's Architect and Engineer; (b) a complete misunderstanding by all parties regarding the appropriate size to be attributed

to the Construction Site Tract with respect to the application of Federal Law; (c) "proper pleading" in an EPA proceeding by a pro se respondent ;, (d) Gaskey's inability "pro se" to understand what a proper "RESPONSE" is to a "COMPLAINT" of the EPA All of such "evils" appear to have resulted in a decision of the RJO to punish Gaskey for some perceived, unintended recalcitrant action on the part of Gaskey.

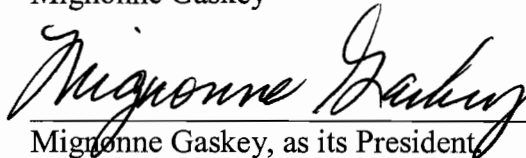
10. Perhaps Gaskey's misunderstanding and confusion tended to exhibit resistance or opposition to regulation or authority as a party difficult to handle or manage so as to reflect an attitude of recalcitrance, and if so; it was a grievous fault perhaps attributable to the aforesaid evils. Of course, such was never intended by Gaskey; however, Gaskey pleads that the RJO and the Court will favorably consider this apology, through Gaskey's officers and employees. For several generations Gaskey has attempted to comply with all applicable governmental regulations and authority in a proper and willing manner.
11. Is Gaskey correct in understanding that the Region proposed a \$10,000.00 gravity based penalty by determining that a \$2,000.00 penalty for failure to have one permit should be increased by five times: 5 month job = 5 x \$2,000.00 = \$10,000.00 penalty?
12. It appears that the Environmental Appeals Board correctly questions the RJO's bent to excessively punish Gaskey for no stated reason except perhaps for some perceived recalcitrant attitude by Gaskey; which the foregoing shows was not the case.

Gaskey will respectfully appreciate your consideration of the foregoing and enclosed Addendum in determining Gaskey's punishment, if any.

Thank you,

Gaskey Construction Corp.

As its President,  
Mignonne Gaskey



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Mignonne Gaskey, as its President

-Pro se-

11422 Craighead

Houston, Texas 77025

Ph: 713-349-0080

Fax: 713-349-0090

gaskey@gaskeyconstruction.com

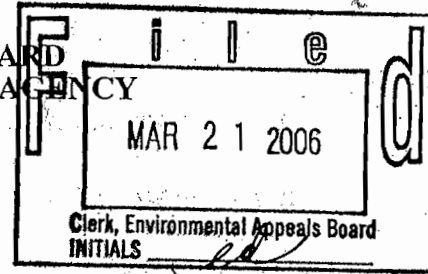
Of Counsel:

  
Carl G. Mueller Jr.

Carl G. Mueller, Jr.  
State Bar No 146600  
Of Council for Defendant and Cross-Plaintiff  
Gaskey Construction Corporation  
#3 River Hollow  
Houston, Texas 77027  
Ph: 713-622-4183  
Fax: 713-622-4183  
Email: jymjoanne@aol.com

- Encls: 1. Order Electing to Review Sua Sponte and Remanding to Regional Judicial Officer.
2. Addendum.
  3. Response of Gaskey Construction Corp., dated October 19, 2004.
  4. Letters.

BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



In re:

Gaskey Construction Corp.

Docket No. CWA-06-2004-2335

CWA Appeal No. 06-02

**ORDER ELECTING TO REVIEW SUA SPONTE  
AND REMANDING TO REGIONAL JUDICIAL OFFICER**

On February 6, 2006, the Regional Judicial Officer for U.S. EPA Region 6, Michael C. Barra ("RJO"), issued an "Initial Decision and Default Order" in this matter against Gaskey Construction Corporation ("Gaskey"). See Initial Decision and Default Order (Feb. 6, 2006) ("Default Order"). The Default Order finds Gaskey in default because he failed to file an answer to an administrative complaint filed by U.S. EPA, Region 6 (the "Region") alleging that Gaskey discharged pollutants from its construction site into waters of the United States without a permit in violation of section 301 of the Clean Water Act. 33 U.S.C. § 1311. For this violation, the Default Order assesses an administrative penalty of \$10,155. Because Gaskey failed to file a timely answer to the complaint, we agree with the RJO that a default judgment is appropriate in this matter; nonetheless, we grant review and remand this matter to the RJO for clarification on the penalty assessment.<sup>1</sup>

In assessing the penalty, the RJO appears to have relied, for the most part, on the Region's penalty calculation. In particular, the RJO cites to a summary prepared by Everett H. Spencer, a Region 6 enforcement officer, explaining the reasoning behind the penalty. This summary is set forth

<sup>1</sup> Although the Board ordinarily requests briefing when granting review, where, as here, the perceived error or lack of clarity derives from an RJO's default order itself and the Board does not consider that additional briefing will be of assistance absent a clarification from the RJO, a direct remand without further briefing is appropriate.

in an affidavit attached to the Region's July 1, 2005 memorandum in support of its motion for default in this matter. See Attachment G to Memorandum of Law in Support of Complainant's Motion for Default Order as to Liability and Penalty (July 1, 2005) (hereinafter "Affidavit"). According to the Affidavit, Mr. Spencer "calculated a penalty of \$10,155 for five counts of violations which consists of five months of failure to have \* \* \* permit coverage." Affidavit at 8. According to the Affidavit, this includes "\$155 in economic benefit and \$10,000 for the gravity of the violations." *Id.* (emphasis added). In his default order, however, the RJO states that he "find[s] no basis for Mr. Spencer's considering that this case involves five violations because [Gaskey] operated without the required permit for five months." Default Order at 16. Nevertheless, the RJO, without explanation, adopts the Region's proposed \$10,000 gravity-based penalty. Absent further explanation, the Board can not determine whether the RJO appropriately assessed the penalty in this case. We note further that the RJO states that the "economic benefit in this case was not significant." *Id.* Nevertheless, the Default Order, again without explanation, adopts the Region's \$155 economic benefit calculation. Finally, the RJO states that although the Region's penalty calculation did not make any adjustments to the penalty for other factors as justice may require,<sup>2</sup> "I did consider [Gaskey's] general recalcitrance in its dealings with EPA concerning the violation under this factor." *Id.* The Board is unable to determine from this statement exactly what "recalcitrance" the RJO is referring to or what effect this "recalcitrance" had on the penalty assessment. In addition, to the extent that the RJO adjusted the penalty for "other factors as justice may require," the Board is unable to determine whether such an

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<sup>2</sup> Clean Water Act section 309(g), 33 U.S.C. § 1319(g), provides that the EPA may assess civil penalties for violations of CWA section 301. The statute provides that the amount of the penalty must be based on "the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." 33 U.S.C. § 1319(g)(3).

adjustment was consistent with Board precedent. *See, e.g., In re Phoenix Constr. Servs., Inc.*, 11 E.A.D. 379, 414-15 (EAB 2004).

Under these circumstances, the Board remands the penalty portion of the Default Order. On remand, the RJO must either provide further explanation and analysis regarding his rationale for the \$10,155 penalty assessment or adjust the penalty in light of this decision and fully explain the rationale for such an adjustment.

So ordered.<sup>3</sup>

Dated: *March 21, 2006*

ENVIRONMENTAL APPEALS BOARD

By: *Kathie A. Stein*

Kathie A. Stein  
Environmental Appeals Judge

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<sup>3</sup> The panel deciding this matter is comprised of Environmental Appeals Judges Edward E. Reich, Kathie A. Stein, and Anna L. Wolgast.

## CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Electing Review Sua Sponte And Remanding to Regional Judicial Officer in the matter of Gaskey Construction Corp., CWA Appeal No. 06-02, were sent to the following persons in the manner indicated:

First Class Mail

Return Receipt Requested:

Mr. Bill Gaskey, President  
Gaskey Construction Corp.  
11422 Craighead Dr.  
Houston, Texas 77025

Pouch Mail:


Lorena S. Vaughn  
Regional Hearing Clerk (6RC)  
U.S. EPA, Region 6  
1445 Ross Ave.  
Dallas, Texas 75202-2733

Yerusha Beaver  
Assistant Regional Counsel (6RC-EW)  
U.S. EPA, Region 6  
1445 Ross Ave.  
Dallas, Texas 75202-2733

Michael C. Barra  
Regional Judicial Officer (6RC-D)  
U.S. EPA, Region 6  
1445 Ross Ave.  
Dallas, Texas 75202-2733

Dated:

MAR 22 2006

  
Annette Duncan  
Secretary

24



**ADDENDUM TO PLEA  
OF GASKEY CONSTRUCTION CORPORATION  
BEFORE E.P.A.**

Clean Water Act section 309(g), 33 U.S.C. {} 1319(g) provides that the EPA may assess civil penalties for violations of CWA section 301. The statute provides that the amount of the penalty must be based on "the nature, circumstances, extent and gravity of the violation, or violations, and, with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such other matters as justice may require." 33 U.S.C. {} 1319(g)(3).

Matters to be considered regarding amount of penalty to be assessed against Gaskey Construction Corp. ("Gaskey")

1. "... The nature, circumstances, extent and gravity of the violation, or violations...":
  - . Gaskey was led to believe that the permit coverage was not required with respect to the construction site.
  - . The Chase Bank, owner of the construction site told Gaskey that it was taking care of all matters, if any, regarding the construction site.
  - . Neither the Architect (Wingfield/Sears Group, Inc.) nor the Civil Engineers (Jones & Carter) responsible for the construction plans and specifications included any Storm Water Pollution Prevention Plans("S.W.P.P.") in any of respective documents delivered to Gaskey. This is standard operating procedure on any job where such is required.
  - . There was only one "violation" if any, regarding the "violator" Gaskey, as related above, this was not intended by Gaskey in view of the circumstances.
  - . Gaskey's ability to pay is related to the status of a small struggling contractor in a very competitive market.
  - . There is no "prior history of such violations."
  - . Any degree of culpability if any, of Gaskey appears to be nil.
  - . There can be no "economic benefit or savings (if any) resulting from the violation," where no violation, if any, was intended by Gaskey.
  - . It appears that justice would require that no violation or penalty be attributed to Gaskey.



**GASKEY  
CONSTRUCTION  
CORPORATION**  
GENERAL CONTRACTOR

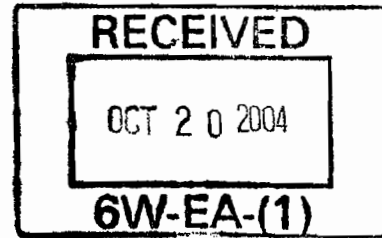
**HOUSTON:**  
P.O. BOX 247  
BELLAIRE, TEXAS 77402-0247  
(713) 349-0080  
(713) 349-0090 FAX

**DALLAS/FT. WORTH:**  
6309 N. O'CONNOR #205  
IRVING, TEXAS 75039-3509  
(972) 831-8678  
(972) 831-8307 FAX

DM

10-19-04

United States Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
Attn: Mr. Everett H. Spencer 6EN-WT



Re: NPDES #TXU010332  
Chase Bank  
10611 Broadway  
Pearland, Texas 77584

Mr. Spencer,

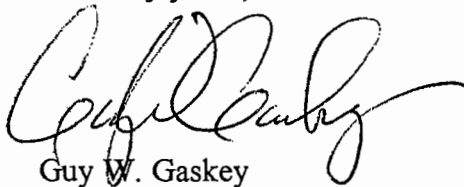
In response to the letter received September 21, 2004, Gaskey Construction Corporation does not understand how this "Administrative Complaint" could be filed. This project was under five [5] acres total land area (Paragraph 9). The property in question was owned by J.P. Morgan Chase Bank. Their architect The Wingfield Sears Group and civil engineer, Jones & Carter Inc. did not include in any of the bid or construction documents, drawings or instructions for a pollution prevention plan. Gaskey Construction relies on the Owner and its representatives to inform us of the need for a pollution prevention plan. The project was under [5] acres and the lack of a pollution control plan did not seem out of place.

A previous plan for the surrounding property would be information that the Owner or his representative would have known about, but was not part of any documentation to our contract or construction documents.

During construction of this project no other construction was on going or had been started north of FM518 east of State Hwy 288 or west of County Rd. 94. No signs for future development or other construction took place during the construction of this Chase Bank.

Gaskey Construction Corp. feels that the "Administrative Complaint" is unwarranted and without merit.

Sincerely yours,



Guy W. Gaskey  
President  
Gaskey Construction Corp.

Cc: J. P. Morgan Chase Bank  
712 Main St. 25<sup>th</sup> Floor  
Houston, Texas 77252

Wingfield / Sears Group, Inc.  
2900 Wesleyan  
Houston, Texas 77027-5109

Jones & Carter     MIKE HARNEY  
6335 Gulfon #100     713-777-5337  
Houston, Texas 77081

**LETTERS INDICATING THE TRUTH  
OF GASKEY CONSTRUCTION POSITION**

**CLASS A**  
**BRAZORIA COUNTY BUILDING PERMIT**

THE STATE OF TEXAS  
COUNTY OF BRAZORIA

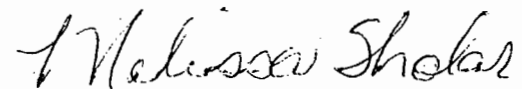
PERMIT 25496

1. This permit is issued on JUNE 24, 2003 and is effective immediately.
2. This permit is issued to J.P. MORGAN CHASE/ GASKEY CONSTRUCTION CORP. and is not transferable.
3. This permit authorizes the permittee to construct or improve structures or improvements on the following described property:

**HT&BRR SURVEY – ABSTRACT 675 – PART OF LOT 3 – BLOCK 24**

**1.19 ACRES – 10611 BROADWAY**

4. The permittee applied to Brazoria County for a building and/or development permit on the above-described location. The application has reviewed and it has been determined that the construction improvements *are not in the designated 100 year floodplain* and the permittee may therefore proceed with the work without inspection by the Floodplain Administrator.
5. This property may not lie within the 100-year floodplain, but the County *recommends that permittee build at least 18 inches above natural ground* in case of local drainage problems.
6. A **Notice of Permit** has been issued with this permit which should be posted in a location where it will be protected from weather and secure from vandalism, and it will remain posted until the work is complete.
7. Any structure that is used for commercial or a public facility must adhere to the International Fire Codes. Contact the Emergency Management Coordinator of Brazoria County for inspections required.



Floodplain Administrator  
Brazoria County, Texas



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS, TX 75202-2733

**SEP 21 2004**

REPLY TO: 6EN-WC

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7003 0500 0003 0867 3075)

Mr. Bill Gaskey, President  
Gaskey Construction Corporation  
P.O. Box 247  
Bellaire, TX 77402

Re: Notice of Proposed Assessment of a Class I Civil Penalty Docket No. CWA-06-2004-2335  
NPDES No. TXU010332

Dear Mr. Gaskey:

Enclosed is a document entitled "Administrative Complaint" (hereinafter the "Complaint"). We have filed this Complaint against Gaskey Construction Corporation, under the authority of Section 309(g) of the Clean Water Act (hereinafter the "Act"), 33 U.S.C. § 1319(g). In the Complaint, the United States Environmental Protection Agency (EPA) alleges that Gaskey Construction Corporation, has violated various provisions of the Clean Water Act, its implementing regulations, and the terms of the National Pollutant Discharge Elimination System (NPDES) permit issued under the authority of the Act. The violations that the EPA is alleging are specifically set out in Section II of the Complaint.

By law, you have a right to request a hearing regarding the violations alleged in the Complaint and the proposed administrative civil penalty. Please pay particular attention to the Complaint Section V entitled "Notice of Opportunity to Request a Hearing." Note that should you fail to request a hearing within thirty (30) days of your receipt of the Complaint, you will waive your right to such a hearing and the proposed civil penalty of up to \$27,500 may be assessed against you without further proceedings. You have the right to be represented by an attorney or to represent yourself at any stage of these proceedings.

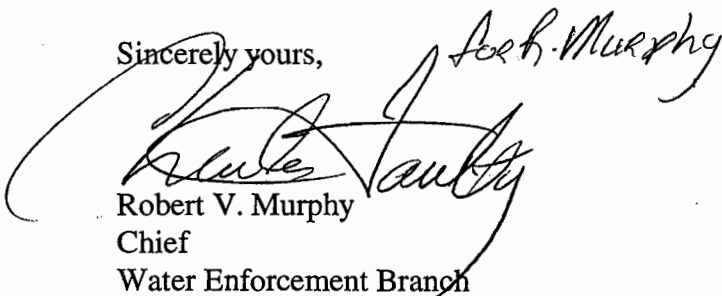
Whether or not you request a hearing, we invite you to confer informally with the EPA concerning the alleged violations and the amount of the proposed penalty. You may represent yourself or be represented by an attorney at any conference, whether in person or by telephone. The EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of settlement as a result of an informal conference. If such a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement and Final Order signed by you and by the Regional Administrator of EPA, Region 6. The issuance of such a Consent Agreement and Final Order shall constitute a waiver by you of your right to a hearing on, and to a Judicial appeal of, the agreed civil penalty. Enclosed for your convenience is a copy of the "Consent Agreement and Final Order."

A request for an informal conference does not extend the thirty (30) days by which you must request or waive a hearing on the proposed penalty assessment; the two procedures can be pursued simultaneously. If you have any questions, or wish to discuss the possibility of a settlement of this matter, please contact Ms. Linda Smith (6EN-WT), U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, or telephone (214) 665-6641.

Please also find enclosed an information sheet regarding the Small Business Regulatory Enforcement Fairness Act (SBREFA) and a "Notice of Registrants Duty to Disclose" relating to the disclosure of environmental legal proceedings to the Securities and Exchange Commission (SEC).

We urge your prompt attention to this matter.

Sincerely yours,

  
Robert V. Murphy  
Chief  
Water Enforcement Branch

Enclosures (4):  
1) Complaint  
2) CAFO  
3) SBREFA  
4) SEC

cc: w/complaint - Regional Hearing Clerk

Mr. John Sadlier, Manager  
Enforcement Section III, MC149  
Texas Commission on  
Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6

FILED  
04 SEP 21 PM 2:58  
HEARING CLERK  
EPA REGION VI

In the Matter of

GASKEY CONSTRUCTION  
CORPORATION,  
a Texas corporation,

Respondent.

NPDES Facility No. TXU010332

§ Docket No. CWA-06-2004-2335  
§  
§  
§ Proceeding to Assess a  
§ Civil Penalty Under § 309(g)  
§ of the Clean Water Act  
§  
§  
§ ADMINISTRATIVE COMPLAINT  
§

I. Statutory Authority

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(g) of the Clean Water Act (herein "the Act"), 33 U.S.C. § 1319(g). The Administrator of EPA has delegated the authority to issue this Complaint to the Regional Administrator of EPA Region 6, who has further delegated this authority to the Director of the Compliance Assurance and Enforcement Division of EPA Region 6, who further delegated this authority to the Chief of the Water Enforcement Branch (herein "Complainant"). This Class I Administrative Complaint is issued in accordance with, and this action will be conducted under, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits," including Rules related to Administrative Proceedings not Governed by Section 554 of the Administrative Procedure Act, 40 C.F.R. §§ 22.50 - 22.52.

Based on the following Findings, Complainant finds that the Respondent has violated the Act and the regulations promulgated under the Act and should be ordered to pay a civil penalty.



II. Findings of Fact and Conclusions of Law

1. Gaskey Construction Corporation (herein "Respondent") is a corporation, which was incorporated under the laws of the State of Texas, 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.

2. At all times relevant, Respondent owned or operated the Chase Bank construction project, located at 10611 Broadway (FM 518), Pearland, Brazoria County, Texas 77584 (herein "the facility"), and was therefore "an owner or operator" within the meaning of 40 C.F.R. § 122.2.

3. At all relevant times, the Chase Bank construction project was a "point source" of a "discharge" of "pollutants" with its storm water discharges to the receiving waters of Clear Lake, which are "waters of the United States" within the meaning of Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

4. Because Respondent owned or operated a facility that is a point source of discharges of pollutants to waters of the United States, Respondent and the facility were subject to the Act and the National Pollutant Discharge Elimination System (NPDES) program.

5. Under Section 301 of the Act, 33 U.S.C. § 1311, it is unlawful for any person to discharge any pollutant from a point source to waters of the United States, except with the authorization of, and in compliance with, an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

6. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States. Any such discharge is subject to the specific terms and conditions prescribed in the applicable permit.

7. Pursuant to Section 402(a) of the Act, EPA issued the General Permit for Storm Water Discharges Associated with Industrial Activity (herein "the permit"). The general permit authorized "storm water discharges associated with industrial activity" to "waters of the United States" (including discharges to or through municipal separate storm sewer systems), but only in accordance with the conditions of the permit.

8. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities subject to "storm water discharges associated with industrial activity" are "point sources" subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

9. Under 40 C.F.R. § 122.26(b), the following category of facilities is among those considered to be engaging in "industrial activity" for purposes of Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26:

... (x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five [5] acres of total land area which are not part of a larger common plan of development or sale.

10. At all relevant times, Respondent was involved in construction activities including clearing, grading, and excavation disturbing five (5) or more acres of total land area.

11. At all relevant times, the facility was a "point source," as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14), and 40 C.F.R. § 122.2.

12. At all relevant times, Respondent was an "owner" or "operator" of a facility engaged in industrial activity that was a point source subject to discharges of pollutants to waters of the United States, within the meaning of 40 C.F.R. Part 122 and the permit, and Respondent was, therefore, required to obtain NPDES permit coverage at the effective date of the applicable permit and regulations, or upon commencing the subject activities thereafter.

13. Respondent began the relevant activities defined as industrial activity on March 1, 2003, which continued throughout the time period relevant to this action.

14. According to the EPA database that records all applications for storm water general permit coverage, Respondent did not make timely application for permit coverage for its activities at the facility, and was not covered by a NPDES permit at the relevant times for the relevant activities.

15. On October 15, 2003, the facility was inspected by EPA Storm Water Inspectors, and the Inspection Report was received in the Enforcement Division January 5, 2004. As a result of the inspection, the following findings were made and violations identified:

- a. The Respondent failed to obtain NPDES permit coverage for its storm water discharges and was not authorized to discharge pollutants to waters of the United States, in violation of Section 301 of the Act.
- b. The Respondent failed to develop and implement a storm water pollution prevention plan (SWPPP), as required by the NPDES permit.

16. On March 31, 2004, EPA issued Respondent Administrative Order Docket Number CWA-06-2004-2020 under the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a). That Administrative Order required the Respondent to come into compliance with its applicable permit, to provide an informational response on NPDES storm water construction compliance, and to meet with EPA in a Show Cause meeting.

17. A Show Cause teleconference was held April 7, 2004, to discuss the above violations and a penalty settlement.

18. Each day that Respondent engaged in the construction activities and operated the facility without a NPDES permit, as described above, is a violation of Section 301 of the Act, 33 U.S.C. § 1311.

19. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a civil penalty in an amount not to exceed \$11,000 per day for each day during which a violation continues, up to a maximum of \$27,500.

20. EPA has notified the Texas Commission on Environmental Quality of the issuance of this Complaint and has afforded the State an opportunity to consult with EPA regarding the

assessment of an administrative penalty against Respondent as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

21. EPA has notified the public of the filing of this Complaint and has afforded the public thirty (30) days to comment on the Complaint and on the proposed penalty as required by Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A). At the expiration of the notice period, EPA will consider any comments filed by the public.

### III. Proposed Penalty

22. Based on the foregoing Findings, and pursuant to the authority of Sections 309(g)(1) and (g)(2)(A) of the Act, 33 U.S.C. §§ 1319(g)(1) and (g)(2)(A), EPA Region 6 hereby proposes to assess against Respondent a penalty up to \$27,500.

23. The proposed penalty amount will be determined based on the statutory factors specified in Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), which includes such factors as the nature, circumstances, extent and gravity of the violation(s), economic benefits, if any, prior history of such violations, if any, degree of culpability, and such matters as justice may require.

24. Complainant has specified that the administrative procedures specified in 40 C.F.R. Part 22, subpart I, shall apply to this case, and the administrative proceedings shall not be governed by Section 554 of the Administrative Procedure Act.

### IV. Failure to File an Answer

25. If Respondent wishes to deny or explain any material allegation listed in the above Findings or to contest the amount of the penalty proposed, RESPONDENT MUST FILE AN

ANSWER TO THIS COMPLAINT WITHIN THIRTY (30) DAYS AFTER SERVICE OF THIS COMPLAINT, whether or not Respondent requests a hearing as discussed below.

26. The requirements for such an Answer are set forth at 40 C.F.R. § 22.15 (copy attached). Failure to file an Answer to this Complaint within thirty (30) days of service of the Complaint shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to hearing. Failure to deny or contest any individual material allegation contained in the Complaint will constitute an admission as to that finding or conclusion under 40 C.F.R. § 22.15(d).

27. IF RESPONDENT DOES NOT FILE AN ANSWER TO THIS COMPLAINT WITHIN THIRTY (30) DAYS AFTER SERVICE OF THIS COMPLAINT, A DEFAULT ORDER MAY BE ISSUED AGAINST RESPONDENT PURSUANT TO 40 C.F.R. § 22.17. A Default Order, if issued, would constitute a finding of liability, and could make the full amount of the penalty proposed in this Complaint due and payable by the Respondent without further proceedings sixty (60) days after a final order issued upon default.

28. Respondent must send the Answer to this Complaint, including any request for hearing, and all other pleadings to:

Regional Hearing Clerk (6RC-D)  
U.S. EPA Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, TX 75202-2733

Respondent shall also send a copy of its Answer to this Complaint to the following EPA attorney assigned to this case:

Ms. Yerusha Beaver (6RC-EW)  
U.S. EPA  
Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

29. The Answer must be signed by Respondent, the Respondent's counsel, or other representative on behalf of Respondent and must contain all information required by 40 C.F.R. § 22.05 and § 22.15, including the name, address, and telephone number of the Respondent and the Respondent's counsel. All other pleadings must be similarly signed and filed.

V. Notice of Opportunity to Request a Hearing

30. Respondent may request a hearing to contest any material allegation contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty, pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g). The procedures for hearings are set out at 40 C.F.R. Part 22 (copy attached), including 40 C.F.R. § 22.50 through § 22.52.

31. Any request for hearing should be included in the Respondent's Answer to this Complaint; however, as discussed above, Respondent must file an Answer meeting the requirements of 40 C.F.R. § 22.15 in order to preserve the right to a hearing or to pursue other relief.

32. Should a hearing be requested, members of the public who commented on the issuance of the Complaint during the public comment period will have a right to be heard and to present evidence at such hearing under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B).

#### VI. Settlement

33. EPA encourages all parties against whom civil penalties are proposed to pursue the possibility of settlement through informal meetings with EPA. Regardless of whether a formal hearing is requested, Respondent may confer informally with EPA about the alleged violations or the amount of the proposed penalty. Respondent may wish to appear at any informal conference or formal hearing personally, by counsel or other representative, or both. To request an informal conference on the matters described in this Complaint, please contact Mr. Everett Spencer at (214) 665-8060, or Ms. Linda Smith at (214) 665-6641.

34. If this action is settled without a formal hearing and issuance of an opinion by the Presiding Officer pursuant to 40 C.F.R. § 22.27, this action will be concluded by issuance of a Consent Agreement and Final Order pursuant to 40 C.F.R. § 22.18(b). The issuance of a Consent Agreement and Final Order would waive the Respondent's right to a hearing on any matter stipulated to therein or alleged in the Complaint. Any person who commented on this Complaint would be notified and given an additional thirty (30) days to petition EPA to set aside any such Consent Agreement and Final Order and to hold a hearing on the issues raised in the

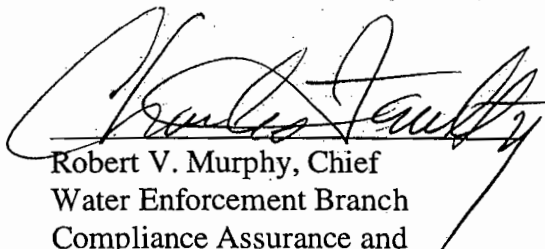


Complaint. Such a petition would be granted and a hearing held only if the evidence presented by the petitioner's comment was material and was not considered by EPA in the issuance of the Consent Agreement and Final Order.

35. Neither assessment nor payment of a penalty in resolution of this action will affect the Respondent's continuing obligation to comply with all requirements of the Act, the applicable regulations and permits, and any separate Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a), including one relating to the violations alleged herein.

Date

9/17/04

  
Robert V. Murphy, Chief  
Water Enforcement Branch  
Compliance Assurance and  
Enforcement Division

*Lee R. Maerby*

CERTIFICATE OF SERVICE

I certify that the foregoing Class I Administrative Complaint was sent to the following persons, in the manner specified, on the date below:

Original hand-delivered:

Regional Hearing Clerk (6RC-D)  
U.S. EPA  
Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

Copy by certified mail, return receipt requested:

Mr. Bill Gaskey, President  
Gaskey Construction Corporation  
P.O. Box 247  
Bellaire, TX 77402

Copy hand-delivered:

Ms. Yerusha Beaver (6RC-EW)  
U.S. EPA  
Region 6  
1445 Ross Avenue  
Dallas, TX 75202-2733

Dated: SEP 21 2004

A. Smith



**GASKEY  
CONSTRUCTION  
CORPORATION**  
GENERAL CONTRACTOR

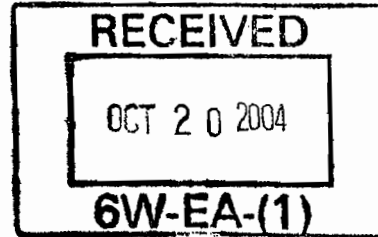
**HOUSTON:**  
P.O. BOX 247  
BELLAIRE, TEXAS 77402-0247  
(713) 349-0080  
(713) 349-0090 FAX

**DALLAS/FT. WORTH:**  
6309 N. O'CONNOR #205  
IRVING, TEXAS 75039-3509  
(972) 831-8678  
(972) 831-8307 FAX

DMA

10-19-04

United States Environmental Protection Agency  
Region 6  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
Attn: Mr. Everett H. Spencer 6EN-WT



Re: NPDES #TXU010332  
Chase Bank  
10611 Broadway  
Pearland, Texas 77584

Mr. Spencer,

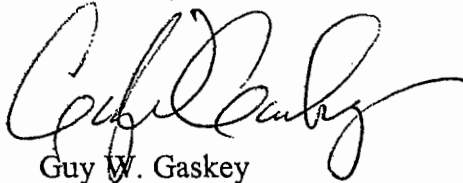
In response to the letter received September 21, 2004, Gaskey Construction Corporation does not understand how this "Administrative Complaint" could be filed. This project was under five [5] acres total land area (Paragraph 9). The property in question was owned by J.P. Morgan Chase Bank. Their architect The Wingfield Sears Group and civil engineer, Jones & Carter Inc. did not include in any of the bid or construction documents, drawings or instructions for a pollution prevention plan. Gaskey Construction relies on the Owner and its representatives to inform us of the need for a pollution prevention plan. The project was under [5] acres and the lack of a pollution control plan did not seem out of place.

A previous plan for the surrounding property would be information that the Owner or his representative would have known about, but was not part of any documentation to our contract or construction documents.

During construction of this project no other construction was on going or had been started north of FM518 east of State Hwy 288 or west of County Rd. 94. No signs for future development or other construction took place during the construction of this Chase Bank.

Gaskey Construction Corp. feels that the "Administrative Complaint" is unwarranted and without merit.

Sincerely yours,



Guy W. Gaskey  
President  
Gaskey Construction Corp.

Cc: J. P. Morgan Chase Bank  
712 Main St. 25<sup>th</sup> Floor  
Houston, Texas 77252

Wingfield / Sears Group, Inc.  
2900 Wesleyan  
Houston, Texas 77027-5109

Jones & Carter     MIKE HARNEY  
6335 Gulfton #100     713-775337  
Houston, Texas 77081

FILED  
OCT 28 PM 3:46  
REGIONAL HEARING CLERK  
EPA REGION VI

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

---

<b>In the Matter of</b>	)	
	)	
<b>Gaskey Construction Corporation, a Texas corporation,</b>	)	<b>STATUS REPORT</b>
	)	
<b>Respondent</b>	)	<b>DOCKET NO. CWA-06-2004-2335</b>
	)	
<b>NPDES No. TXU010332</b>	)	

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**STATUS REPORT**

Complainant, the Chief of the Water Enforcement Branch of the United States Environmental Protection Agency (EPA), Region 6, by and through its attorney, files this status report regarding the above captioned matter.

(1) Complainant filed the Administrative Complaint ("Complaint") against Respondent on September 21, 2004.

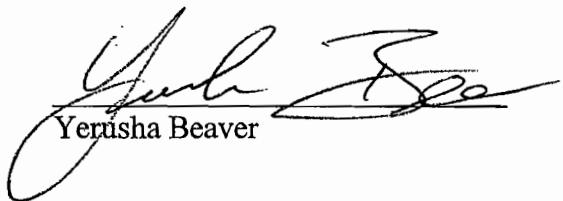
(2) Complainant believed that Respondent had agreed to a settlement in principle regarding the violations alleged in the Complaint during pre-filing settlement discussions on April 7, 2004; and a Consent Agreement and Final Order (CAFO) was drafted memorializing said settlement. The CAFO was forwarded to Respondent for execution on October 18, 2004.

(3) On October 20, 2004, Complainant received a letter in response to the Complaint from Respondent (attached hereto for reference) stating that Respondent "feels that the 'Administrative Complaint' is unwarranted and without merit." Complainant is without knowledge whether said response letter was filed with the Regional Hearing Clerk.

(4) In the event that Respondent executes the CAFO, irrespective of the response letter, and returns it to Complainant by November 30, 2004, Complainant anticipates filing the CAFO

with the Regional Hearing Clerk on or before January 15, 2005, after the CAFO is routed for concurrence for execution by the appropriate EPA officials.

Respectfully Submitted,

  
Yerrisha Beaver

10/28/04  
Date

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Status Report was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and that a true and correct copy of such Status Report was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this 28<sup>th</sup> day of October 2004, addressed as follows:

Mr. Bill Gaskey, President  
Gaskey Construction Corporation  
P.O. Box 247  
Bellaire, TX 77402



NOV 24 2004

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

04 NOV 19 11:12  
REGIONAL HEARING CLERK  
EPA REGION VI

In the Matter of: )  
)  
Gaskey Construction Corporation, ) Docket No. CWA-06-2004-2335  
)  
Respondent. )  
)

**NOTICE OF ASSIGNMENT AND INITIAL SCHEDULING ORDER**

This action, initiated by the Complainant, the Chief of the Water Enforcement Branch, Compliance Assurance and Enforcement Division, United States Environmental Protection Agency Region 6 ("EPA"), seeks to assess a Class I administrative penalty under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). Class I penalty actions are governed by procedures set forth in the revised rules for non-Administrative Procedures Act (non-APA) cases. See 40 C.F.R. Part 22, Subpart I. I have been assigned to act as Presiding Officer in this case.

Complainant filed the Administrative Complaint ("Complaint") in this action on September 21, 2004. A United States Postal Service return receipt filed with the Regional Hearing Clerk indicates that the Complaint was served on the Respondent, Gaskey Construction Corporation, on September 24, 2004, making the due date for Respondent's answer October 25, 2004. On October 28, 2004, Complainant filed a Status Report which reports that Complainant believes the parties have reached a settlement in principle and that Complainant sent a draft consent agreement and final order ("CAFO") to Respondent on October 18, 2004. Complainant estimates that the CAFO can be filed on or before January 15, 2005, if Respondent has signed and returned the CAFO by November 30, 2004.

Complainant's Status Report also provided a copy of a letter Respondent sent to EPA in response to the Complaint. A date stamp on the letter indicates that it was received by EPA on October 20, 2004, prior to the deadline for Respondent to file an answer to the Complaint. In the letter the Respondent makes statements about the circumstances of the alleged violations and states that it believes the Complaint is unwarranted and without merit. Respondent did not file the letter with the Regional Hearing Clerk, nor does Respondent's letter appear to meet the requirements for the contents of an answer set out in 40 C.F.R. § 22.15(b). It is not clear if the Respondent is under a mistaken impression that its letter satisfies the requirement that Respondent file an answer to the Complaint.


After giving due consideration to the entire record in this case and taking into account the Presiding Officer's responsibility to avoid delay in these proceedings, it is **ORDERED** that the



parties shall comply with following measures for the orderly and efficient conduct of these proceedings:

1. Upon its own initiative pursuant to 40 C.F.R. § 22.7(b), the Presiding Officer is extending the time for the Respondent to file its answer to the Complaint in this matter until **December 20, 2004**. On or before December 20, 2004, the Respondent shall file its answer to the Complaint consistent with the requirements of 40 C.F.R. § 22.15. Failure to file an answer or to obtain a further extension of time on or before December 20, 2004, may result in Respondent being found in default pursuant to 40 C.F.R. § 22.17.
2. On or before **December 6, 2004**, the parties shall file a report on the status of settlement negotiations in this matter (without disclosing the substance of settlement negotiations), including, at a minimum, the status of the draft CAFO referred to in Complainant's Status Report filed October 28, 2004, a summary of other contacts between the parties regarding this case, an assessment of whether settlement of this matter continues to be likely or if negotiations have reached an impasse, a statement of whether a settlement in principle has been reached, and, if applicable, a projected date for the filing of a CAFO. **If the parties cannot agree on a joint status report, they shall file separate reports.**
3. The parties shall continue to file reports on the status of settlement negotiations as described in paragraph 2 above **each month on or before the 5<sup>th</sup> day of the month** until otherwise ordered.

SO ORDERED, this 19<sup>th</sup> day of November 2004.

  
\_\_\_\_\_  
MICHAEL C. BARRA  
REGIONAL JUDICIAL OFFICER

**CERTIFICATE OF SERVICE**

I, Lorena S. Vaughn, the Regional Hearing Clerk for Region 6 of the Environmental Protection Agency, hereby certify that a true and correct copy of the **Notice of Assignment and Initial Scheduling Order** in Docket No. CWA 06-2004-2335, was served upon the parties or their counsel of record on the date and in the manner set forth below:

Bill Gaskey, President  
Gaskey Construction Corporation  
P.O. Box 247  
Bellaire, Texas 77402

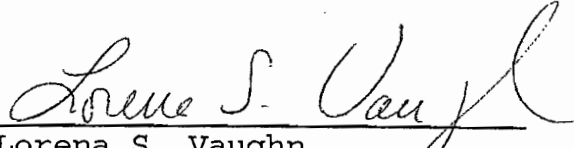
U.S. FIRST CLASS MAIL  
RETURN RECEIPT REQUEST

Yerusha Beaver  
U.S. Environmental Protection Agency  
1445 Ross Avenue  
Dallas, Texas 75202

HAND-DELIVERED

DATE: \_\_\_\_\_

11/19/04

  
\_\_\_\_\_  
Lorena S. Vaughn  
Regional Hearing Clerk

**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS**

---

<b>In the Matter of</b>	)	
	)	
<b>Gaskey Construction Corporation, a Texas corporation,</b>	)	<b>JOINT STATUS REPORT</b>
	)	
<b>Respondent</b>	)	<b>DOCKET NO. CWA-06-2004-2335</b>
	)	
<b>NPDES No. TXU010332</b>	)	

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**JOINT STATUS REPORT**

Complainant, the Chief of the Water Enforcement Branch of the United States Environmental Protection Agency (EPA), Region 6, by and through its attorney, and together with Respondent, file this joint status report regarding the above captioned matter pursuant to the Notice of Assignment and Initial Scheduling Order issued on November 19, 2004.

(1) Complainant and Respondent have engaged in two telephonic conferences since the issuance of the Initial Scheduling Order. The telephonic conferences were held on November 22, 2004 and December 3, 2004.

(2) Complainant remains open to continued settlement negotiations with Respondent; however, at this time, settlement of this matter does not appear imminent.

(3) Further, Complainant and Respondent do not have a settlement in principle, although Complainant remains willing to settle this matter per the terms of the draft CAFO referred to in Complainant's Status Report filed October 28, 2004.

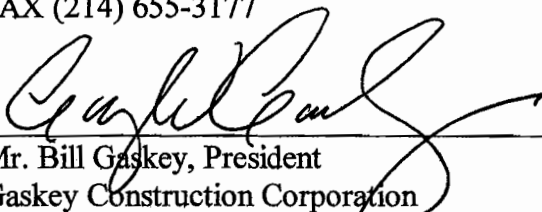
(4) Respondent will file its answer to the Complaint and request for hearing consistent with 40 C.F.R. § 22.15 on or before December 20, 2004.

Dated this \_\_\_\_\_ day of December 2004.

Respectfully submitted,

---

Ms. Yerusha Beaver  
Assistant Regional Counsel  
U.S. EPA - Region 6  
1445 Ross Avenue  
Dallas, Texas 75202-2733  
(214) 655-6797  
FAX (214) 655-3177



---

Mr. Bill Gaskey, President  
Gaskey Construction Corporation  
P.O. Box 247  
Bellaire, TX 77402  
(713) 349-0080  
FAX (713) 349-0090

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Joint Status Report was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and that a true and correct copy of such Joint Status Report was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this \_\_\_\_\_ day of \_\_\_\_\_ 2004, addressed as follows:

Mr. Bill Gaskey, President  
Gaskey Construction Corporation  
P.O. Box 247  
Bellaire, TX 77402

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FILED  
JAN -4 PM 1:11  
REGIONAL HEARING CLERK  
EPA REGION VI

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 6  
DALLAS, TEXAS

---

In the Matter of )

Gaskey Construction Corporation, )  
a Texas corporation, )

Respondent )

NPDES No. TXU010332 )

---

STATUS REPORT

DOCKET NO. CWA-06-2004-2335

STATUS REPORT

Complainant, the Chief of the Water Enforcement Branch of the United States Environmental Protection Agency (EPA), Region 6, by and through its attorney, files this status report regarding the above captioned matter pursuant to the Notice of Assignment and Initial Scheduling Order issued on November 19, 2004.

(1) As of January 3, 2005, Respondent had not filed an answer to the Complaint. The Initial Scheduling Order extended the time for Respondent to file its answer until December 20, 2004.

(2) Complainant has received no communication from Respondent since the filing of the joint status report on December 3, 2004 in which Respondent committed to file its answer to the Complaint and request for hearing consistent with 40 C.F.R. § 22.15 on or before December 20, 2004.

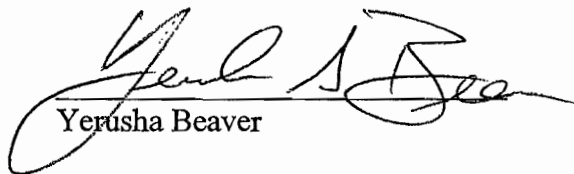
(3) On January 3, 2005, Complainant's attorney and enforcement officer called the office of Mr. Bill Gaskey, President of Gaskey Construction Corporation, and left a message with the telephone operator after being told that Mr. Gaskey was not responding to her page.

(4) On January 4, 2005, Complainant's attorney again called the office of Mr. Gaskey, for purposes of coordinating a joint status report, and left a second message with the telephone operator after being told that Mr. Gaskey was not available to take the call.

(5) As of the time of the filing of this status report, Complainant has received no response to the messages left for Mr. Gaskey referenced in paragraphs 3 and 4, above.

(5) Complainant believes settlement of this matter is no longer imminent and negotiations have reached an impasse at present. Complainant, therefore, anticipates filing a motion for default judgment with the Regional Hearing Clerk on or before February 5, 2005, unless Respondent makes good faith efforts to settle this matter upon receipt of a copy of this status report.

Respectfully Submitted,

  
Yerusha Beaver

01/04/05  
Date

CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Status Report was filed with the Regional Hearing Clerk, EPA Region 6, Dallas, Texas, and that a true and correct copy of such Status Report was placed in the United States mail, postage prepaid, certified mail, return receipt requested, on this 4<sup>th</sup> day of January 2005, addressed as follows:

Mr. Bill Gaskey, President  
Gaskey Construction Corporation  
P.O. Box 247  
Bellaire, TX 77402

A handwritten signature in cursive script, appearing to read "Paul Jones", is written over a horizontal line.



**GASKEY CONSTRUCTION CORP**

**P O BOX 247**

**BELLAIRE, TX 77402-0247**

**PHONE (713) 349-0080 FAX (713) 349-0090**

**FAX MEMO**

**DATE: 01-06-05**

**TO: JP Morgan Chase Bank**

**ATTN: Doug Dehart**

**Fax: 713-216-2245**

**SENDER: Bill Gaskey**

**RE: Silverlake Branch**

**MESSAGE:**

This all started near the end of the project with a casual visit from the EPA to the jobsite. At the time nothing was said about violations because we were under the impression they were not a party to this project because it was less than 5 acres.

However, many months latter we received the complaint from the EPA. After going back and forth and receiving no help from the project civil engineer we are now at this point.

Enclosed are the pertinent documents between Gaskey and the EPA.

1. Original Administrative Complaint.
2. Gaskey's reply to the complaint
3. Status Report 10-18-04
4. Notice of Assignment and Initial Scheduling Order
5. Joint Status Report 12-03-04
6. Status Report 01-04-05 (last chance to do something)



**GASKEY  
CONSTRUCTION  
CORPORATION**  
GENERAL CONTRACTOR

**HOUSTON:**  
P.O. BOX 247  
BELLAIRE, TEXAS 77402-0247  
(713) 349-0080  
(713) 349-0090 FAX

**DALLAS/FT. WORTH:**  
6309 N. O'CONNOR #205  
IRVING, TEXAS 75039-3509  
(972) 831-8678  
(972) 831-8307 FAX

August 1, 2005

Mr. Douglas L. Dehart  
JP Morgan Chase Bank  
Corporate Real Estate  
712 Main 25th Floor  
PO Box 2558  
Houston, TX 77252-8089

RE: EPA Default Order – Gaskey Construction Silver Lake Branch.k

Dear Mr. Dehart,

As per our conversation of last week Gaskey Construction Corp. needs information, on the property at the Silver Lake Branch, from Chase Bank or the Civil Engineer that Chase Bank replated this property, separate from any adjoining property, upon or after purchase or prior to contract documents being released for bid or prior to a contract for construction being awarded to Gaskey Construction Corp.

Earlier this year Gaskey Construction met with the Architect and Civil Engineer on this matter and was told by the civil engineer that the EPA had no case on this project due to it being in Brazoria County and would address the issue. All of this information was forwarded to your office. Gaskey Construction was not responsible for the replating of this property or the Civil Engineering required but, is being held responsible by the EPA for any fines due to lack of this information.

Sincerely,

Joe Gaskey  
Gaskey Construction Corp.

TRANSMISSION VERIFICATION REPORT

TIME : 01/06/2005 06:35  
NAME : GASKEY CONST CORP  
FAX : 7133499572  
TEL : 7133490080

DATE, TIME	01/06 06:29
FAX NO./NAME	7132162245
DURATION	00:06:15
PAGE(S)	28
RESULT	OK
MODE	STANDARD ECM

**GASKEY CONSTRUCTION CORP  
P O BOX 247  
BELLAIRE, TX 77402-0247**

**PHONE (713) 349-0080 FAX (713) 349-0090**

**FAX MEMO**

**DATE: 01-06-05**

**TO: JP Morgan Chase Bank**

**ATTN: Doug Dehart**

**Fax: 713-216-2245**

**SENDER: Bill Gaskey**

**RE: Silverlake Branch**

**MESSAGE:**

This all started near the end of the project with a casual visit from the EPA to the jobsite. At the time nothing was said about violations because we were under the impression they were not a party to this project because it was less than 5 acres.