

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
Philadelphia, Pennsylvania 19103**

In The Matter of:

Gary Layne and
Chameleon LLC,

Respondents

Property Located At:

10426 Ashcake Road
Ashland, Virginia 23005
37.742808°N, -77.457476°W

Proceeding Under Section 309(a) of the Clean
Water Act, 33 U.S.C. § 1319(a)

ORDER FOR COMPLIANCE
Docket. No. CWA-03- 2022-0022DW

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance (“Order”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) (“CWA” or “Act”). The Administrator has delegated this authority to the Regional Administrator of EPA, Region III, who in turn has re-delegated it to the Director of the Enforcement & Compliance Assurance Division.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

2. Gary Layne and Chameleon LLC, a limited liability corporation incorporated in the Commonwealth of Virginia, (collectively “Respondents”) are each a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Gary Layne is the Managing Member of Chameleon LLC.
3. Each of the Respondents is an owner and operator of the property located at coordinates 37.742808°N, -77.457476°W, parcel identification number 7789-45-3668, and located at 10426 Ashcake Road, Ashland, Hanover County, Virginia (“the Site”), depicted in Exhibit A.
4. The Site contains wetlands that abut an unnamed tributary of Lickinghole Creek and wetlands that abut unnamed tributaries to Campbell Creek. Lickinghole Creek flows to Stony Run. Stony Run is a direct tributary of the Chickahominy River, a Traditional

Navigable Water (“TNW”). The unnamed tributaries to Campbell Creek flow to Campbell Creek. Campbell Creek flows to Machumps Creek. Machumps Creek is a direct tributary of the Pamunkey River, a TNW. These wetlands abut tributaries, which contribute perennial or intermittent flow to a downstream water in a typical year and are therefore “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

5. Since approximately 2019, Respondents, or persons acting on behalf of Respondents, have, on an ongoing basis, operated equipment which discharged dredged and/or fill material to waters of the United States at the Site, without authorization from the U.S. Army Corps of Engineers (“Corps”). Respondents’ unauthorized discharge of fill material at the Site associated with the construction and earth-moving activities impacted up to approximately 21 acres of abutting wetlands. EPA conducted an inspection observing approximately 21 acres of impacted wetlands at the Site. These impacted wetlands are shown in Exhibit B.
6. The term “fill material,” within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces portions of “waters of the United States” with dry land or which changes the bottom elevation of a water body for any purpose. The term “discharge of fill material,” includes “placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States.”
7. The equipment referenced in Paragraph 5, above, from which the dredged and/or fill material was discharged to “waters of the United States,” constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
8. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits any person from discharging dredged and/or fill material from a point source to “waters of the United States” except in compliance with a permit issued by the Corps under Section 404 of the CWA, 33 U.S.C. § 1344.
9. At no time during the discharge of dredged and/or fill material into waters of the United States at the Site did the Respondents have a permit from the Corps as required by Section 404 of the CWA, 33 U.S.C. § 1344.
10. Respondents have violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging dredged and/or fill material to the “waters of the United States” without authorization.

III. ORDER FOR COMPLIANCE

Therefore, the Respondents are hereby ORDERED, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to do the following:

11. Cease and desist all discharges to waters of the United States at the Site, including filling, clearing, and grading except in compliance with a permit issued pursuant to Section 404 or 402 of the CWA or in accordance with the plans submitted and approved pursuant to this Order.
12. Within thirty (30) calendar days of the effective date of this Order, Respondents shall perform and submit a surface waters delineation which approximates pre-disturbance conditions associated with the discharges described in Paragraph 5 and provide a report of the delineation (“Delineation Report”) to EPA for review and approval. The Delineation Report shall identify any areas at the Site which, prior to construction, were surface waters regulated waterbodies (i.e, streams, channels and/or wetlands), the extent of into which unauthorized discharges of fill material occurred as noted in Paragraph 5 above, and will show the extent of those waters that have been impacted, as well as any additional information with regard to those surface waters or impacts that the Respondents deem are relevant for consideration. The Respondents shall utilize a methodology for identifying the geographical extent and impact status of those aquatic resources consistent with methods accepted by EPA and the U.S. Army Corps of Engineers including, but not limited to, the 1987 Wetlands Delineation Manual, and the 2010 Gulf and Atlantic Coastal Plain Atlantic Regional Supplemental Manual. Respondents shall submit the Delineation Report with a certification as set forth in Paragraph 23, including the language set forth in Paragraph 24.
13. EPA will review Respondents’ Delineation Report and either: a) approve the Delineation Report, or b) approve Delineation Report in part, and request modifications to address and correct any noted deficiencies, or c) disapprove of the Delineation Report, in writing.
14. Upon Respondents’ receipt of EPA’s request for modifications or EPA’s disapproval of any submission required by Paragraph 12, above, Respondents’ shall address and correct all noted deficiencies within thirty (30) days and resubmit the Delineation Report to EPA for approval.
15. Within sixty (60) calendar days of EPA’s approval of the Delineation Report, Respondents shall submit a detailed Site restoration plan and schedule for implementation (“Restoration Plan”) to EPA for review and approval, which addresses the conditions described in Paragraph 5, above. The Restoration Plan shall be designed to restore waters of the United States on the Site to approximate pre-disturbance original conditions consistent with the definition of restoration found in 40 C.F.R § 230.92 or other grade and conditions as approved by EPA. Where Respondents, in consultation with their consultant, determine that restoration in full to approximate pre-disturbance original condition is not practicable, Respondents shall provide a written justification certified consistent with Paragraph 24 by a corporate official authorized to sign on behalf of Respondents why such restoration in full cannot practicably be achieved to EPA for approval. Where it is not practicable to achieve such restoration in full, the Restoration Plan must describe all steps taken to minimize the amount of fill left in place and to achieve restoration to the maximum extent practicable and include compensatory mitigation to adequately account for those aquatic resources that are not proposed to be restored. Where Respondents propose to leave fill in place, Respondents shall seek appropriate authorization from the Corps and comply with

any permit issued by the Corps. Respondents shall submit to EPA copies of all communications with the Corps to obtain appropriate authorization.

16. After review of the Restoration Plan and consultation with VADEQ, EPA will:
 - a) approve the Plan, in whole or in part;
 - b) approve the Plan upon specified conditions;
 - c) modify the Plan to correct any deficiencies;
 - d) disapprove the Plan, in whole or in part, or
 - e) any combination of the above.
17. If EPA disapproves all or part of the Restoration Plan, Respondents shall, within forty-five (45) calendar days of receipt of EPA's disapproval, correct the deficiencies and resubmit the Plan for approval. If the Plan is not approved as provided in this Order, EPA retains the right to order restoration in accordance with a plan to be developed by EPA.
18. Following EPA's approval of the Restoration Plan (either with or without conditions or modifications by EPA), Respondents shall implement the Plan as approved or modified by EPA, as provided below. The implementation of the restoration activities as described in the Restoration Plan (i.e. restoration work) shall be completed in accordance with the schedule submitted in the Restoration Plan and approved by EPA.
19. No later than twenty (20) calendar days after completion of the restoration activities, Respondents shall submit a certification to EPA as set forth in Paragraph 23, including the language set forth in Paragraph 24, certifying that the work described in the approved Restoration Plan has been completed.
20. Respondents shall monitor the restored area at the Site for a period of no less than ten (10) years to ensure the objective of restoring impacted aquatic resources consistent with 33 C.F.R. § 332.6. Respondents shall conduct monitoring events at the Site twice per year for the first three years, once in spring and once in fall, and starting in year four monitoring will continue yearly (with one monitoring event during the growing season). Respondents shall electronically submit to EPA a monitoring report at the address listed in Paragraph 23, including the language set forth in Paragraph in 24, by December 31st of the monitoring year.
21. EPA will review each monitoring report to determine whether the restoration efforts undertaken by Respondents pursuant to Paragraph 15 are proceeding or have been successful. Responsibility to complete the required restoration as set forth in the approved Restoration Plan will not be considered fulfilled until Respondents have demonstrated project success and have received written verification of that success from EPA. Once all conditions in the approved Restoration Plan have been met and written verification has been provided, EPA will terminate the Order.
22. Respondents' failure to complete the work in a manner consistent with this Order and the approved Restoration Plan shall be deemed a violation of this Order.

23. All correspondence related to this Order shall be sent electronically to:

Katelyn Almeter
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency, Region III
almeter.katelyn@epa.gov

IV. GENERAL PROVISIONS

24. The following certification must accompany each submission by Respondents pursuant to this Order and must be signed by a Representative of Respondents authorized to sign on behalf of Respondents:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed:

Title:

Date:

25. Respondents' compliance with the terms of this Order shall not relieve Respondents of its obligation to comply with all applicable provisions of the CWA or any other Federal, State or local law or regulation. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the CWA. EPA reserves the right to seek any remedy available under the law that it deems appropriate to the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities.
26. Violation of the terms of this Order may result in further EPA enforcement action including, but not limited to, imposition of administrative penalties, pursuant to 33 U.S.C. § 1319(g) as modified by the Debt Collection Procedures Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and/or initiation of judicial proceedings that allow for civil penalties of up to \$53,484 per day for each day of violation that occurs, and/or for the criminal sanctions of imprisonment and fines of up to \$25,000 per day, 33 U.S.C. § 1319(c).

27. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
28. This Order shall apply to and be binding upon the EPA, the Respondents and their officers, directors, employees, contractors, successors, agents and assigns of Respondents. By his signature below, the person who signs this Order on behalf of Respondents is acknowledging that he is fully authorized by the Respondents to execute this Order and to legally bind Respondents to the terms and conditions of this Order.
29. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the activities in Section III (Order for Compliance), Paragraphs 11 - 24 is restitution, remediation, or required to come into compliance with the law.

IV. OPPORTUNITY TO CONFER

30. Respondents are invited to confer with the Agency about the findings and conclusions reflected in this Order including the terms and conditions contained herein. Respondents' request for a conference must be confirmed in writing via e-mail within ten (10) days of receipt of this Order. Any conference between Respondents and EPA must occur no later than 20 days after receipt of this Order. If the requested conference is held, this Order shall become effective ten (10) days after the conference is held. If Respondents do not request a meeting within ten (10) days of receipt of this Order, Respondents waive its right to a conference, and this Order shall become effective ten (10) days from its receipt. Any request for a conference, or other inquiries concerning this Order, should be made in writing to: Katelyn Almeter at almeter.katelyn@epa.gov. Respondents' attorney may contact Natalie Katz, Senior Assistant Regional Counsel, at katz.natalie@epa.gov.

V. JUDICIAL REVIEW

31. Respondent may seek federal judicial review of this Compliance Order, issued under Section 309 of the CWA, 33 U.S.C. § 1319, pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Section 706, which is set forth at <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5-section706&num=0&edition=prelim>, states the scope of such review.

VII. EFFECTIVE DATE

32. The effective date of this Order shall be ten (10) days from the date of receipt of this Order, or, if a conference is requested per Section IV above, this Order shall become effective ten (10) days after the conference is held.

VI. NOTICE OF INTENT TO COMPLY

33. Within ten (10) days of the effective date of this Order, Respondent shall submit to EPA via e-mail a Notice of Intent to Comply with the Order. The Notice shall be submitted to:

Katelyn Almeter
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region III
almeter.katelyn@epa.gov

SO ORDERED:

ON BEHALF OF THE COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION
AGENCY:

Date: _____

Karen Melvin, Director
Enforcement and Compliance Assurance Division
U.S. EPA, Region III