

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

Frazier T. Boyd, III
3009 River Road West
Goochland, VA 23063

Respondent.

Property Located At:
Shannon Hill Road and Ambler Road
Louisa County
Louisa, Virginia 23093
County Parcel IDs: 70-57, 70-56,
71-91, and 80-52
37.920091°N, 77.951946°W

Proceeding Under Section 309(a) of the Clean
Water Act, 33 U.S.C. §§ 1318(a), 1319(a)

Docket. No. CWA-03-2020-0109DW

**ADMINISTRATIVE ORDER FOR
COMPLIANCE ON CONSENT**

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance on Consent (“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 and Compliance Assurance Division (ECAD).

**II. EPA’s FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS
AND CONCLUSIONS OF LAW**

2. Respondent, Frazier T. Boyd, III, is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. Respondent is the owner and operator of the property located east of the intersection of Shannon Hill Road and Ambler Road, Louisa County, Virginia, 37.920091°N, 77.951946°W, County Parcel IDs: 70-57, 70-56, 71-91, and 80-52. (hereinafter “Site”), as further identified on the map attached as Exhibit “A.”

4. The Site contains unnamed tributaries and wetlands that are abutting and have a direct surface water connection to unnamed tributaries of the South Anna River. The South Anna River is a tributary of the Pamunkey River, which is Navigable-in-Fact for its entirety. Therefore, the wetlands on the Site abutting the unnamed tributaries, the unnamed tributaries, and the South Anna River are all “waters of the United States” within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7); 40 C.F.R. § 232.2; 40 C.F.R. § 122.2.
5. Commencing on or about April 2018, Respondent, or persons acting on behalf of Respondent, operated equipment which discharged dredged and/or fill material to waters of the United States at the Site, as described in Paragraph 4, above, without authorization from the U.S. Army Corps of Engineers (“Corps”). EPA alleges, based on field work and review of aerial imagery, that Respondent’s unauthorized discharge of fill material at the Site as a result of clearing and grubbing activities has resulted in impacts to forested wetlands and streams. Prior to performing this work to convert portions of the Site to uplands, Respondent had operated the Site as a silviculture operation.
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 Act, 33 U.S.C. § 1362(14).
8. Section 301(a) of the Act, 33 U.S.C. §131 l(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 Act, 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 Respondent have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.
10. Respondent, by discharging dredged and/or fill material to the “waters of the United States” without authorization, has violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. ORDER FOR COMPLIANCE

Therefore, the Director of ECAD hereby ORDERS Respondent, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to do the following:

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11. Cease and desist all discharges to waters of the United States at the Site without a permit, including, but not limited to, those caused by filling, clearing, and grading.
12. Within ninety (90) days of the effective date of this Order, Respondent shall perform and submit a wetland and stream delineation of pre-disturbance conditions (“Delineation”) associated with the discharges described in Paragraph 5 and provide a report of the same (“Delineation Report”) to EPA for approval. The Delineation and Delineation Report shall identify any and all areas at the Site which, prior to construction, were streams and/or wetlands into which unauthorized discharges of fill material occurred as noted in Paragraph 5, above, and will show the extent of those waters that have or potentially have been impacted as described in Paragraph 5, above. The Respondent shall utilize a methodology for identifying those wetlands and streams noted in Paragraph 5 in disturbed and associated undisturbed areas consistent with methods accepted by EPA and the U.S. Army Corps of Engineers including, but not limited to, the 1987 Manual for the Delineation of Wetlands and the Regional Supplement for the Eastern Mountains and Piedmont Region version 2.0.
13. EPA will review Respondent’s Delineation and Delineation Report and either: a) approve the Delineation and/or the Delineation Report, or b) approve the Delineation and the Delineation Report in part, and request modifications to address and correct any noted deficiencies, or c) disapprove of the Delineation and/or the Delineation Report, in writing.
14. Upon Respondent’s receipt of EPA’s request for modifications or EPA’s disapproval of any submission required by Paragraph 12, above, Respondent shall address and correct all noted deficiencies within thirty (30) days and resubmit the Delineation and/or the Delineation Report to EPA for approval if correction of the deficiencies does not require additional field work. If correction of the deficiencies requires additional field work, Respondent shall conduct such field work within thirty (30) days, or such longer period as approved by EPA, and then address and correct all noted deficiencies and resubmit the Delineation and/or the Delineation Report within thirty (30) days of completing the additional field work.
15. Within one hundred and twenty (120) days of EPA’s approval of the Delineation and Delineation Report, Respondent shall submit a detailed Site restoration plan (“Restoration Plan”) to EPA for approval. The Restoration Plan shall provide: a) the actions and a schedule for the actions that shall be taken to remove the material from the regulated waters, stabilize those portions of the Site that have been impacted, and return the impacted portions of the Site to pre-disturbance grade and conditions or other grade and conditions as approved by EPA; b) wetland and/or stream restoration credits for impacts in areas agreed to by EPA at an agreed upon compensation ratio; or c) some combination of options a. and b.
16. EPA will review Respondent’s Restoration Plan and either: a) approve the Restoration Plan, b) approve the Restoration Plan in part, and request modifications to address and correct any noted deficiencies; c) modify the Restoration Plan to cure any deficiencies; or d) disapprove the Restoration Plan, in writing.

17. Within thirty (30) days of Respondent's receipt of any EPA request for modifications, or disapproval, of the Restoration Plan required by Paragraph 16, above, Respondent shall address and correct all noted deficiencies and resubmit the Restoration Plan for EPA approval. EPA retains the right, if Restoration Plan is not approved as provided in this Order, to order compliance in accordance with a Restoration Plan developed by EPA.
18. Upon receipt of EPA's written approval of the Restoration Plan, Respondent shall implement such plan in accordance with its terms. Respondent shall initiate all restoration work within ninety (90) days of its receipt of the EPA's approval of the Restoration Plan, if time of year for seeding and planting permits. Otherwise, restoration work shall begin the following season of the year that allows for seeding and planting, but no later than May 1st of that year. Restoration work, once commenced, will be completed within the schedule stipulated in the Restoration Plan.
19. Respondent shall not discharge any dredged or fill material into any waters of the United States except in compliance with a CWA Section 404 permit or in accordance with the plans submitted and approved pursuant to this Order.
20. All correspondence related to this Order shall be sent both electronically and by mail to:

Katelyn Almeter (3ED31)
Enforcement and Compliance Assurance Division
United States Environmental Protection Agency, Region III
1650 Arch Street (Mailcode: 3ED31)
Philadelphia, PA 19103-2029
Almeter.katelyn@epa.gov
215-814-2797

IV. GENERAL PROVISIONS

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

"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."
22. Respondent's compliance with the terms of this Order shall not relieve Respondent 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.

23. 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).
24. Respondent neither admits nor denies the findings of fact contained in this Order. The execution of this Order by Respondent, and the actions taken by Respondent to comply with and implement this Order, shall not be deemed an admission of liability.
25. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Consent Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
26. Except as accounted for in Paragraph 17, if Respondent becomes aware, or reasonably should have become aware, of any event that causes or may cause a delay in Respondent's compliance with any of the deadlines set forth in this Order, Respondent shall notify EPA in writing within five (5) calendar days of such occurrence, describing in detail the specific cause or causes of the delay and the measures taken to minimize the delay. If the anticipated length of the delay, the measures to be taken to minimize the delay, and the timetable for the implementation of such measures are known, Respondent's notice shall contain such information. If such information is not then known, Respondent's notice shall include a schedule of the date(s) by which Respondent expects to have such information and be able to provide it to EPA. Such notification shall be deemed submitted after notification is electronically transmitted and EPA has acknowledged receipt of the electronic transmission. Respondent shall implement all reasonable measures to avoid or minimize any such delay. Failure to notify EPA within the time period set forth shall constitute a waiver of any claim that circumstances beyond Respondent's control have prevented compliance with this Order. Notification, by itself, shall not excuse the delay.
27. If the EPA agrees that the delay in compliance with this Consent Agreement has been or will be caused by circumstances beyond Respondent's control and that Respondent could not have prevented such delay by the exercise of due diligence, the time for performance of such requirement will be extended for a period not exceeding the delay actually caused by such circumstances. Increased costs or expenses associated with the implementation of actions called for in this Order, or a change in Respondent's economic circumstances, shall not be a basis for changes in this Order or for extensions of time under this Section

V. DISPUTE RESOLUTION

28. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Administrative Order on Consent.
29. If Respondent disagrees, in whole or in part, with any decision by EPA regarding work performed or to be performed at this Site under this Administrative Order on Consent, Respondent shall notify EPA through the Chief of the Water Enforcement Branch, ECAD, EPA Region III (Branch Chief), and the parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion relating to this Administrative Order on Consent within 14 business days of notification to the EPA Branch Chief.
30. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraphs within the 14-day period, Respondent may pursue the matter by submitting its objection to the Division Director of ECAD, EPA Region III (Division Director), in writing within 10 calendar days. Respondent's written objections must set forth the specific points of the dispute, the basis for Respondent's position and any matters which it considers necessary for EPA's determination.
31. EPA and Respondent shall have thirty (30) days from receipt of Respondent's written objections to attempt to resolve the dispute through formal discussions.
32. If EPA and Respondent cannot resolve the dispute through formal discussions, EPA, through the Division Director, will provide to Respondent in writing EPA's decision on the pending dispute, and that decision will be binding upon the Respondent.

VI. EFFECTIVE DATE

The effective date of this Order shall be the date of receipt of the executed document.

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ON BEHALF OF RESPONDENT, FRAZIER T. BOYD, III

Date: 9/22/2020



Frazier T. Boyd, III

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

Date: 9/28/20

KAREN
MELVIN

Digitally signed by
KAREN MELVIN
Date: 2020.09.28
16:16:53 -04'00'

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

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Administrative Order for Compliance on Consent, the original of which has been filed with the Regional Hearing Clerk, U.S. EPA Region III, has been sent via UPS with confirmation of receipt to the following:

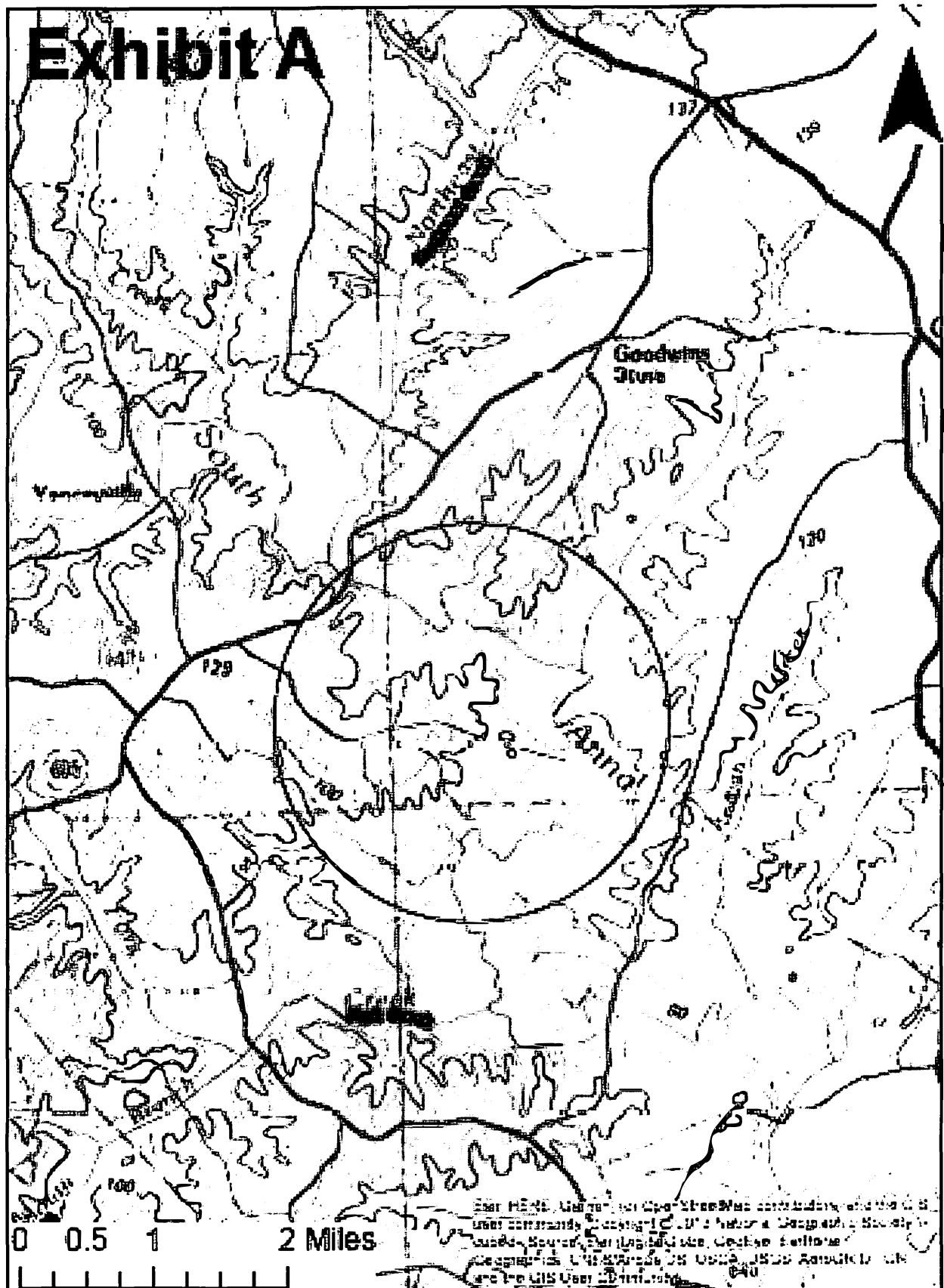
Frazier T. Boyd, III
3009 River Road West
Goochland, VA 23063

and

Channing J. Martin, Esquire
Williams Mullen
Williams Mullen Center
200 South 10th St., Suite 1600
P.O. Box 1320
Richmond, VA 23219

Pamela J. Lazos
U.S. EPA, Region III

Date: _____



CERTIFICATE OF SERVICE

GLORIA

Digitally signed by
GLORIA DIBATTISTA
Date: 2020.09.29 14:32:31
-04'00'

I certify that on DIBATTISTA, the original and one (1) copy of the foregoing *Administrative Order For Compliance on Consent*, Docket No. CWA-03-2020-0109DW (Shannon Hill Rd.), were filed with the EPA Region III Regional Hearing Clerk. I further certify that on this date, I served a true and correct copy of the foregoing to the following persons, in the manner specified below, at the following addresses:

Copy served via **UPS, Signature Required, Postage Prepaid**, to:

Frazier T. Boyd, III and
Boyd Farm, I.I.C
3009 River Road West
Goochland, VA 23063

with an electronic copy to:

Pamela J. Lazos, Senior Assistant Regional Counsel
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Dated: 9/29/2020



U.S. Environmental Protection Agency, Region III