

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
2012 MAR 19 PM 1:22
REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

Ameriport, LLC
a Texas Limited Liability Company
Respondent

§ Docket No. CWA 06-2011-2724
§ Proceeding Under Section 309(a)
§ of the Clean Water Act

ADMINISTRATIVE ORDER

I. AUTHORITY

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

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. Ameriport, LLC (Respondent), is a Texas Limited Liability Company and therefore considered a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

3. At all times relevant to the violations alleged herein, Respondent owned real property, a tract of approximately 455 acres, located south of FM 565 and east of FM 1405, in the Mont Belvieu quadrangle, UTM Coordinate Zone 15, Easting 317225m, Northing 3299965m, in the area of Saw Pit Gully and adjacent wetlands, near Baytown,

Chambers County, Texas (subject property). The subject property was a subsection of a larger property referenced in a Lease Agreement (“Agricultural Lease”) between Ameriport, LLC and Johnnie Glenn Jennings, Jr. and referenced in a Warranty Deed (County References: 1053, 709) as recorded in the land records of Chambers County, Texas.

4. On or about June 30, 2008, Respondent purchased approximately 723.06 acres of land out of the R.A. Porter Survey, Abstract No. 205 and G.L. Short Survey, Abstract No. 228 in Chambers County from Mr. Johnnie Glenn Jennings, Jr. On or about June 30, 2008, the Respondent and Mr. Jennings entered into a contractual agreement (“Agricultural Lease”) “for farming purposes.”

5. On multiple dates between October 1 and November 30, 2008, Respondent discharged, caused the discharge, directed the discharge, and/or agreed with other persons or business entities, including Mr. Jennings, to “discharge dredged material” and/or “discharge fill material,” as defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2 from point sources, including heavy equipment, in, on and to approximately 3.7 acres of jurisdictional wetlands within the subject property in connection with the development of a commercial logistics facility. The approximate acres of wetlands impacted by Respondent’s activities are identified on the attached aerial photograph (Exhibit One) as the red and green shaded areas and on the attached map (Exhibit Two) as W2, W3, W4, and W5. The areas noted in Exhibit Two are in the Texas State Department of Transportation (TxDOT) right-of-way (ROW) and were cleared and filled by the Respondent without the knowledge of TxDOT. The impacted wetlands are

adjacent to, hydrologically connected to, or had a significant nexus to, a navigable-in-fact body of water.

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

7. The dredged and fill material discharged was a "pollutant" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

8. At all times relevant to the violations alleged herein, the 3.7 acres of wetlands referred to in paragraph 5, *supra*, were "navigable waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2.

9. At all times relevant to the violations alleged herein, Section 301(a) of the Act, 33 U.S.C. § 1311(a), provides that it is unlawful for any person to discharge a pollutant from a point source to waters of the U.S., except with authorization of and in compliance with a permit issued under the Act.

10. At all times relevant to the violations alleged herein, Section 404 of the Act, 33 U.S.C. § 1344, authorized the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers, to issue permits for the discharge of dredged or fill material into navigable waters of the U.S.

11. At no time relevant to the discharges alleged in paragraph 5, *supra*, did Respondent have a permit issued by the Corps of Engineers that authorized the discharges alleged in paragraph 5.

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

13. Based on these Findings of Fact and Conclusions of Law, EPA finds that Respondent committed the violations alleged herein.

III. ORDER

14. Based on the foregoing Findings of Fact and Conclusions of Law, and pursuant to the authority vested in Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA ORDERS Respondent to immediately cease any discharge of dredged and/or fill material to waters of the United States and to:

a. within thirty (30) days of receipt of this Order, submit a plan to the EPA for the restoration of the affected acres of impacted wetlands in the TxDOT ROW shown in Exhibit Two. The plan should be submitted to Barbara J. Aldridge, EPA Region 6, 6WQ-EC, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Respondent shall commence implementation of the plan within ten (10) days following notice of EPA's approval of the plan. If Respondent fails to submit an acceptable plan or fails to successfully implement a plan upon approval, a restoration plan will be developed by EPA which Respondent will implement within thirty (30) days.

b. remove the fill material described in paragraph 5, *supra*, and shown in Exhibit One, and restore the impacted wetlands shown in Exhibit One to pre-construction conditions within thirty (30) days of Respondent's receipt of this Order. Respondent shall contact Barbara J. Aldridge, EPA Region 6, at (214) 665-2712 upon commencement of the removal of the material and completion of restoration activities; **OR**

b. if Respondent elects to retain the fill material as referenced in Exhibit One in place, Respondent must submit a mitigation plan to EPA for the loss of and/or damage to those acres of directly impacted wetlands within thirty (30) days of Respondent's

receipt of this Order. The plan should be submitted to Barbara J. Aldridge, EPA Region 6 (6WQ-EC), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733; and

c. within thirty (30) days of Respondent's receipt of this Order, Respondent shall submit an application to the U.S. Army Corps of Engineers (COE) for an after-the-fact (ATF) permit under Section 404 of the Act for the unauthorized discharges alleged herein, pertinent to the areas in Exhibit One. If Respondent fails to obtain an ATF permit for any reason, Respondent shall restore the impacted wetlands shown in Exhibit One within forty-five (45) days following the COE's notice to EPA that Respondent failed to submit a permit application within thirty (30) days of Respondent's receipt of this Order, or that Respondent's permit application has been denied or returned to Respondent by the COE without final action.

IV. GENERAL PROVISIONS

15. Issuance of this Order shall not be deemed an election by EPA to forego any administrative action or judicial civil or criminal action to seek penalties, fines, or other relief under the Act for the violations alleged herein, or other violations that become known to EPA. The EPA reserves the right to seek any remedy available under the law that it deems appropriate.


16. If EPA issues an administrative complaint, or a civil judicial action is initiated by the U.S. Department of Justice, Respondent may be ordered to pay a monetary penalty. If a criminal judicial action is initiated by the U.S. Department of Justice, Respondent may be subject to a monetary fine and/or imprisonment.

17. Failure to comply with this Order can result in civil penalties of up to \$37,500 per day of violation.

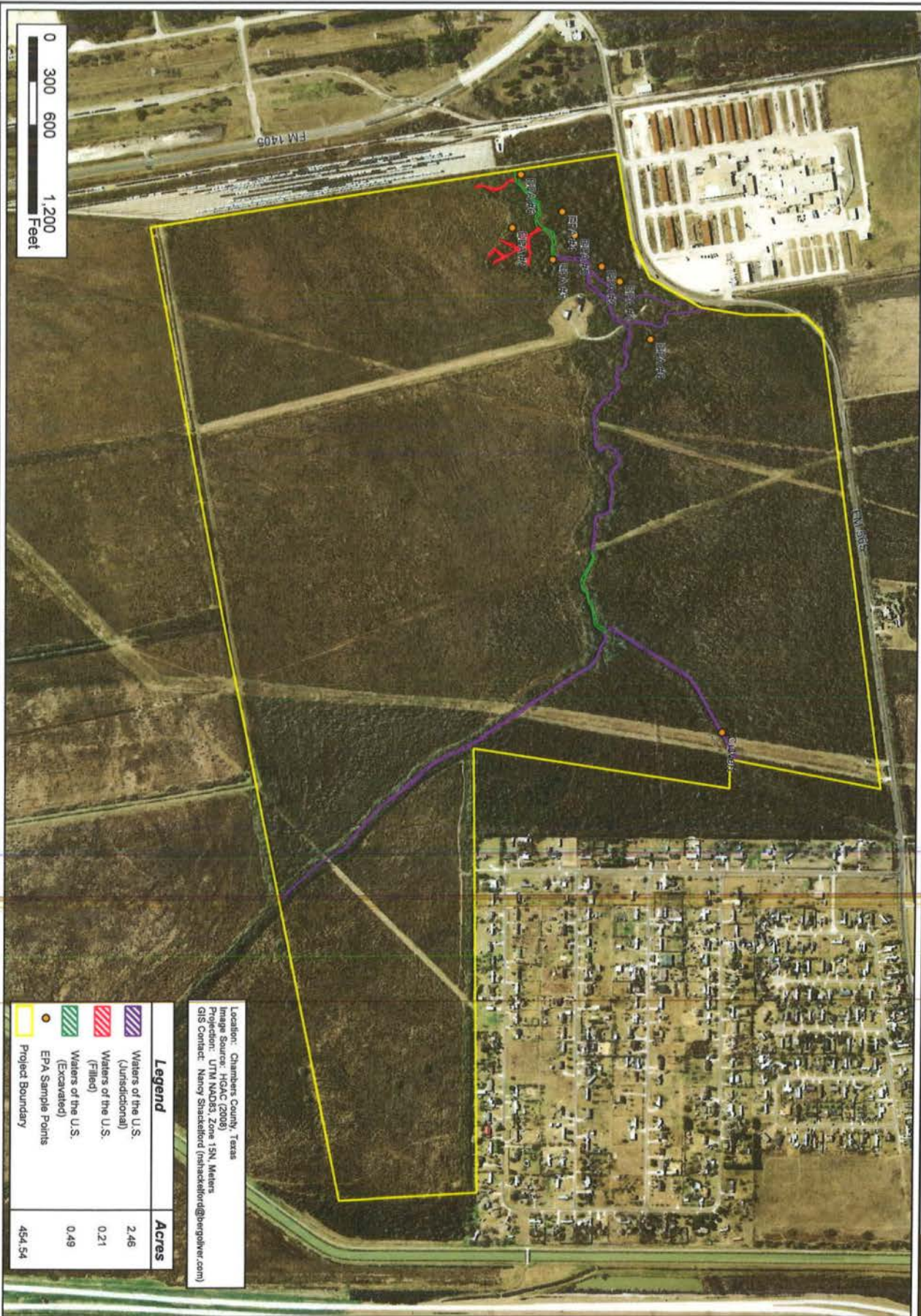
18. Compliance with the terms and conditions of this Order does not relieve Respondent of its obligation to comply with all applicable local, state, and federal laws.

19. The effective date of this Order is the date of issue, below.

Issued: 3/14/12



William K. Honker, P.E.
Acting Director
Water Quality Protection Division



Legend		Acres
	Waters of the U.S. (Jurisdictional)	2.45
	Waters of the U.S. (Filled)	0.21
	Waters of the U.S. (Excavated)	0.49
	EPA Sample Points	
	Project Boundary	454.54

Location: Chambers County, Texas
 Image Source: HGAC (2008)
 Projection: UTM NAD83, Zone 15N, Meters
 GIS Contact: Nancy Shackelford (nshackelford@bergoliver.com)

EPA SITE VISIT MAP 9-26-11

SITE LOCATION MAP

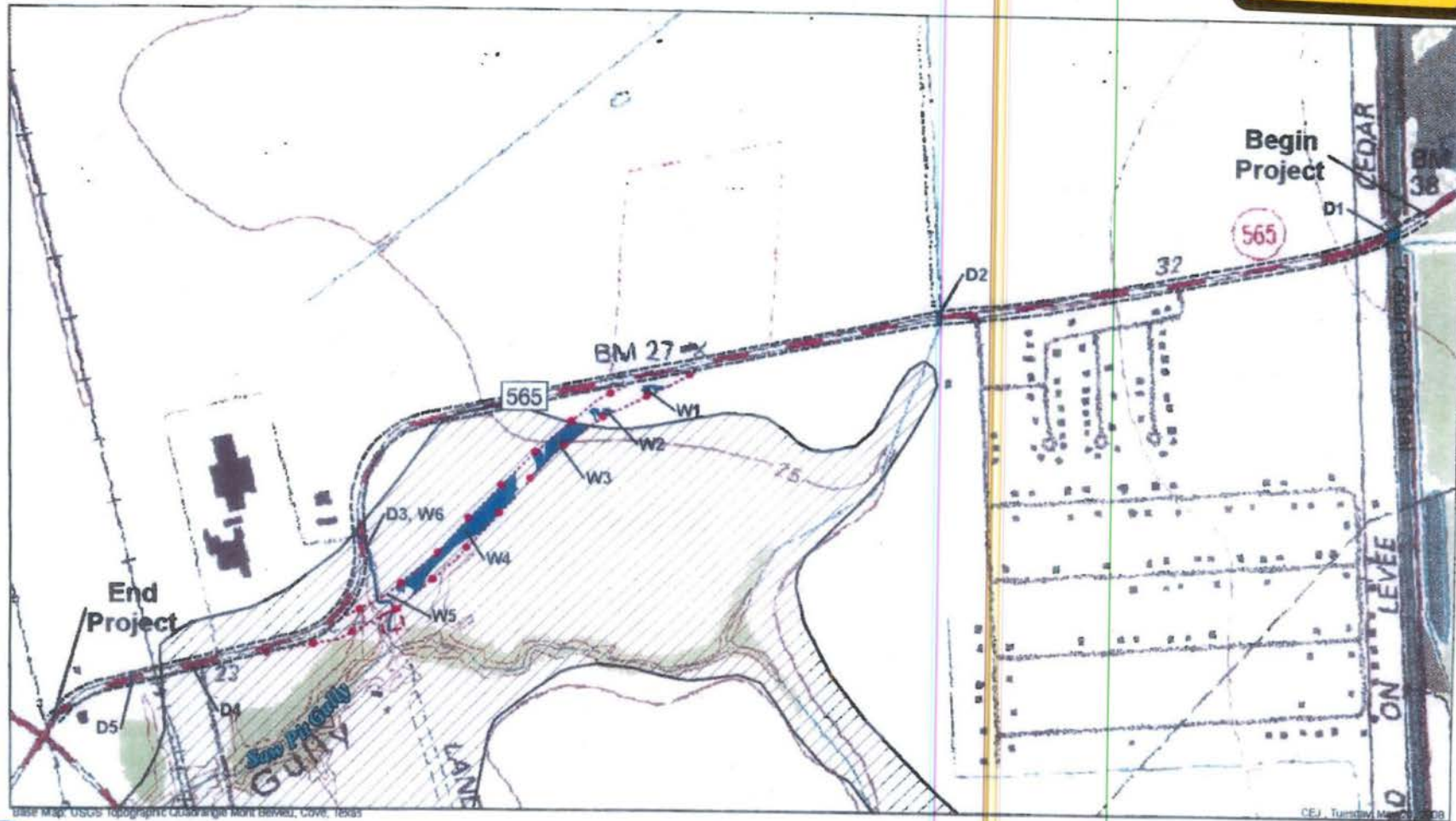
Project #: 7254
 For: Ameriport, LLC
 Location: FM 565 and FM 1405
 Chambers County, Texas

REVISIONS
5/15/2009 by NAS

BERG•OLIVER ASSOCIATES, INC.
 ENVIRONMENTAL SCIENCE, ENGINEERING
 & LAND USE CONSULTANTS
 14701 ST. MARY'S AVE, SUITE 400
 HOUSTON, TEXAS 77079 PHON 281-281-1111 FAX 281-281-1112
 281-281-1112 http://www.bergoliver.com



WETLAND DELINEATION REPORT - FM 565 FROM 0.3 MILE WEST OF FM 2354 TO 0.018 MILE EAST OF FM 1405



base map: USGS topographic quadrangle Mont Belvieu, Cove, Texas

CEJ, Tustin, March 2009

- Legend**
- - - Existing FM 565 Right-of-way
 - New-Location Right-of-way
 - - - Drainage Easement
 - National Wetlands Inventory Feature
 - ▨ 100-Year Floodplain
 - Water Features in Project Area
 - - - Drainage (D1 - D5)
 - Wetland (W1 - W6)

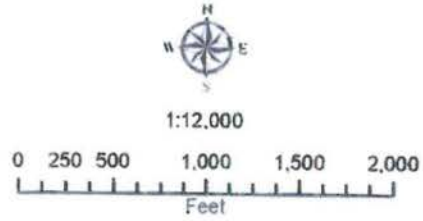


Figure 3
Floodplains and
National Wetlands Inventory Features
 FM 565 from 0.3 Mile West of FM 2354
 to 0.018 Mile East of FM 1405
 Chambers County

APR 17 2009

APPENDICES
 COPY

CERTIFICATE OF SERVICE

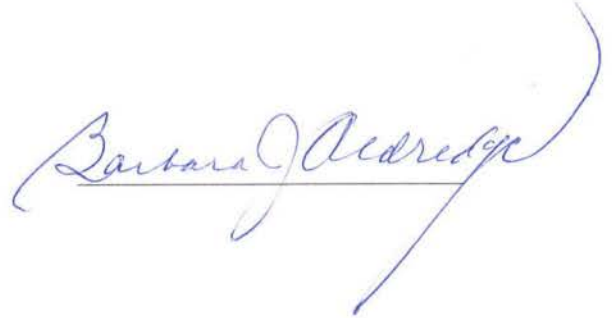
I certify that on March 19, 2012 the original and a true and correct copy of this Order, Docket No. CWA 06-2011-2724, were filed with the Regional Hearing Clerk, EPA Region 6, and that true and correct copies of the Order were deposited with the U.S. Postal Service addressed to the following:

Certified mail, return receipt requested: 7009 2820 0001 8283 7937

Mr. Ryan T. Lovell
AmeriPort, LLC
3330 South Sam Houston Parkway East
Houston, TX 77047

First-class mail:

Mr. Keith Morgan, project manager
Berg-Oliver Associates, Inc.
14701 Saint Mary's Lane, Suite 400
Houston, Texas 77079

A handwritten signature in blue ink, reading "Barbara J. Adredge". The signature is written in a cursive style with a long, sweeping underline that extends to the right.