



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

May 12, 2022

TRANSMITTED VIA EMAIL

Mr. Larry Davison
331 Bonito Lane
Surfside Beach, TX 77541
larry_davison@att.net
budcorebios@gmail.com

Re: Administrative Order on Consent, Docket Number: CWA-06-2022-2708
Administrative Consent Agreement and Final Order, Docket Number: CWA-06-2022-2709

Dear Mr. Davison:

Enclosed are the Administrative Order on Consent (AOC) and Administrative Consent Agreement and Final Order (CAFO) to resolve Clean Water Act violations at the 2918 Bluewater Highway site. The EPA requests that you immediately confirm receipt of this e-mail and the attached AOC and CAFO by a response via e-mail to Mr. Tom Nystrom of my staff at nystrom.thomas@epa.gov. Please follow the steps in both Orders to resolve this matter.

EPA acknowledges that the COVID-19 pandemic may impact your operations. If this is the case, please contact us regarding any specific issues you need to discuss. If you need assistance, or have questions regarding the AOC and CAFO, please contact Mr. Tom Nystrom, or have your attorney contact Ms. Kristine Talbot at talbot.kristine@epa.gov.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl T. Seager".

Digitally signed by
CHERYL SEAGER
Date: 2022.05.12 17:04:19
-05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Enclosure(s)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
Dallas, Texas 75270**

In the Matter of

Larry Davison

Respondent.

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Docket No. CWA-06-2022-2708

ADMINISTRATIVE ORDER ON CONSENT

STATUTORY AUTHORITY

The following findings of fact and conclusions of law are made and Administrative Order on Consent (Order) issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act (Act), 33 U.S.C. § 1319(a). The Administrator delegated this authority to the Regional Administrator of EPA Region 6, who further delegated such authority to the Director of the Enforcement and Compliance Assurance Division, EPA Region 6.

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. EPA makes the following Findings of Fact and Conclusions of Law in support of its authority to issue this Order on Consent.
2. Larry Davison (Respondent) is an individual, and as such, Respondent is a "person" as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).
3. At all times relevant to the violation alleged herein (relevant time period), Respondent owned, controlled and/or operated a project on real property located at 2918 Bluewater Highway (County Road 257), a residential property in Surfside Beach, Brazoria County, Texas known as Surfside Beach Estates (Subject Property).

4. On multiple dates between May 24, 2017 and July 26, 2017, Respondent or Respondent's contractors discharged, directed the discharge, and/or agreed with other persons or business entities to discharge "dredged material" and/or "fill material," as those terms are 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 such as grading equipment, in, on and into 0.12 acres of dune swale wetlands (wetlands) within the Subject Property. The impacted wetlands were adjacent to, hydrologically connected to, or had a significant nexus to the Gulf of Mexico, a traditionally navigable water of the United States.
5. Each piece of heavy equipment used during the excavation or construction activities that resulted in a discharge acted as a "point source" as that term is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).
6. The dredged and fill material referred to in paragraph 4 was a "pollutant" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).
7. During the relevant time period, the impacted dune swale wetlands referred to in paragraph 4 were adjacent to, hydrologically connected to, or had a significant nexus to "navigable waters" as that term is defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 232.2, and as such, are "waters of the United States" as defined by 40 C.F.R. § 232.2.
8. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to navigable waters, except with the authorization of, and in compliance with, a permit issued under the Act. Section 404 of the Act, 33 U.S.C. § 1344, provides that the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers (COE), may issue permits for the discharge of dredged or fill material into navigable waters.
9. At no time during the relevant time period did Respondent have a permit issued by the COE that authorized the discharges alleged in paragraph 4 above.
10. Each day of unauthorized discharge was a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

II. CONSENT AGREEMENT

11. EPA and Respondent agree that settlement of this matter will save time and resources and is in the public interest and that issuance of this Administrative Order on Consent is the most appropriate means of resolving this matter with respect to Respondent's restoration of certain impacted waters referenced herein and described in Section III below. Respondent concurs in the issuance of this Administrative Order on Consent and agrees to comply with the Order. Respondent neither admits nor denies the findings of fact and conclusions of law set forth above.

III. SECTION 309(a)(3) COMPLIANCE ORDER

12. Based on the foregoing Findings of Fact and Conclusions of Law and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA ORDERS, and Respondent agrees, to the following:
- a. Respondent shall immediately cease any discharge of dredged and/or fill material to waters of the United States on the Subject Property.
 - b. Within 30 days of the effective date of this Order, Respondent shall restore 2,500 square feet (sf) of dune swale wetlands identified in Figure 1 (attached). Restoration shall include excavation of fill material down to the pre-discharge elevation such that the hydrology functions as it did prior to the unauthorized activity. The area shall be allowed to naturally vegetate. Vegetation management of the restored area is allowed as long as it does not involve a discharge of fill material.

IV. GENERAL PROVISIONS

13. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review that Respondent may have with respect to any issue or fact or law set forth in this Order on Consent, including, but not limited to, any right of judicial review of this Order on Consent under Sections 701 through 706 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

14. Respondent acknowledges the jurisdiction of EPA to issue the Section 309(a)(3) Order on Consent.
15. Issuance of this Order on Consent shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines or any other relief appropriate under the Act for the violations cited herein or other violations that become known to EPA.
16. If EPA issues an administrative complaint or a civil judicial action is initiated by the U.S. Department of Justice, Respondent may be subject to a monetary penalty. The failure to comply with this Order or the Act can result in civil penalties of up to \$59,973 per day of violation. If a criminal action is initiated by the U.S. Department of Justice, Respondent may be subject to a fine and/or imprisonment and may also become ineligible for certain government contracts, grants or loans under Section 508 of the Act, 33 U.S.C. § 1368.
17. Compliance with the terms and conditions of this Order on Consent does not relieve Respondent of the obligation to comply with any applicable federal, state or local law or regulation.
18. 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. § 1.162-21(b)(2), performance of Paragraph 12 is restitution, remediation, or required to come into compliance with the law.
19. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this Order on Consent by email to the following addresses:

To EPA: talbot.kristine@epa.gov and nystrom.thomas@epa.gov
To Respondent: larry.davison@att.net, copy to consultant: budcorebios@gmail.com
20. The parties shall bear their own costs and fees in this action, including attorneys' fees.
21. The effective date of this Order is the date it is signed by all parties.


22. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:

Date 4/22/22


Mr. Larry Davison
Surfside Beach Estates

Date May 12, 2022

 Digitally signed by CHERYL SEAGER
Date: 2022.05.12 17:02:19 -05'00'

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

Figure 1. Restoration Area



CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent to the following persons, in the manner specified, on the date below:

Signed Original E-mailed: Lorena Vaughn
Regional Hearing Clerk (6ORC)
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov

**File Stamped Copy
Transmitted via Email:** Mr. Larry Davison
Surfside Beach Estates
larry_davison@att.net

Buddy Ortego
Coastal Resources Biologists
budcorebios@gmail.com

Electronic Copy: Kristine Talbot (6ORCEW)
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
talbot.kristine@epa.gov

Dated: 7/7/2022

**THOMAS
NYSTROM**

Digitally signed by THOMAS
NYSTROM
Date: 2022.07.11 14:45:56 -05'00'