



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS TX 75202-2733

JUN 2016

CERTIFIED MAIL - RETURN RECEIPT REQUESTED (7014015000024535508)

Mr. Tim Wilkins
Bracewell LLP
111 Congress Avenue
Suite 2300
Austin, Texas 78701-4061

Re: EPA Docket Numbers CWA-06-2016-2705 and CWA-06-2016-2706

Dear Mr. Wilkins:

Enclosed is an Administrative Order ("Order") issued by the Environmental Protection Agency, Region 6 ("EPA") to Chesapeake Operating, LLC ("Respondent") citing violations of the Clean Water Act ("Act"), 33 U.S.C. § 1251 et seq., resulting from dredged and fill activities involving wetlands and an intermittent stream channel located at 28 41'00"N and 99 50'59.31"W and approximately 0.75 miles west of Crystal City, Zavala County, Texas. Your Respondents compliance with the provisions of this Order is required.

Also enclosed is a Consent Agreement and Final Order ("CAFO") which represents the agreement between the EPA and Respondent to settle violations of Section 301(a) of the Act, 33 U.S.C. § 1311(a), as specified therein. Please note that Respondent is ordered to pay a civil penalty of NINE THOUSAND DOLLARS (\$9,000.00), as set forth in Section IV (Terms of Settlement) of the CAFO. Please refer to the CAFO for specific instructions regarding payment of the civil penalty.

If you have any questions, I recommend that you contact Ms. Donna Mullins at (214) 665-7576.

Sincerely yours,

A handwritten signature in black ink, appearing to read "W.K. Honker".

William K. Honker
Director
Water Division

Enclosures

cc: w/CAFO
Regional Hearing Clerk
Neil Lebsack Fort Worth District USCOE

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED

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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

§
§
§
§
§

DOCKET NO. CWA-06-2016-2706

Chesapeake Operating, LLC

Respondent.

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (“CAFO”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) pursuant to Section 309(g) of the Clean Water Act (herein “the Act”), 33 U.S.C. § 1319(g). This CAFO is issued to simultaneously commence and conclude this proceeding to assess a Class I civil penalty in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), as described in the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.”

2. The Parties agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public’s interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged herein.

3. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this CAFO.

4. This CAFO states a claim(s) upon which relief may be granted.

5. Respondent expressly waives any right to contest the factual allegations or Conclusions of Law contained in this CAFO and waives its right to appeal the Final Order set forth herein.

6. Before the taking of any testimony and without adjudication of any issue of law or fact, the parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Chesapeake Operating, LLC ("Respondent") is a corporation organized under the laws of Oklahoma, 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).

8. At all times relevant to the violations alleged herein ("relevant time period"), Respondent constructed and used water from a pond on real property located at 28 41'00.40" N, 99 50'59.31"W and approximately 0.75 miles west of Crystal City in Zavala County, Texas ("Subject Property").

9. On or about October 2010, Respondent and/or persons or entities acting at Respondents direction and/or on its behalf ("Respondent's Agents") discharged pollutants from point sources into navigable waters without a permit issued under the Act.

10. Respondent and/or Respondent's Agents "discharged dredged material" and "discharged fill material", as those terms are defined by 40 C.F.R. § 232.2, by means of heavy equipment into approximately 11.7 acres of wetland habitat, including approximately 1,919 linear feet of intermittent stream channel, during land clearing and development activities on the Subject Property.

11. The dredged material and fill material referenced in paragraph 10 are considered "pollutants" as that term is defined at Section 502(6) of the Act, 33 U.S.C. § 1362(6).

12. Equipment used to carry out the discharges referenced in paragraph 10 was a "point source" as that term is defined at Section 502(14) of the Act, 33 U.S.C. § 1362(14).

13. The impacted wetlands and stream channel referenced in paragraph 10 are “navigable waters” as that term is defined in Section 502(7) of the Act, 33 U.S.C. 1362(7).

14. 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 Chief of Engineers of the U.S. Army Corps of Engineers (“Corps”), may issue permits for the discharge of dredged or fill material into navigable waters.

15. Respondent did not have a permit issued by the Corps that authorized the discharges described in paragraph 10 above.

16. Each day of unauthorized discharge by Respondent is a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

17. 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 \$16,000 per day for each day during which a violation continues, up to a maximum of \$37,500.

18. The State of Texas was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

19. EPA notified the public of the proposed CAFO and afforded the public forty (40) days to comment on the proposed penalty in accordance with 40 C.F.R. § 22.45. At the expiration of the notice period, EPA received no comments from the public.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

20. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of nine thousand dollars (\$9,000.00) to settle the violations as alleged in this CAFO, in accordance with 40 C.F.R. § 22.18(c).

21. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO:

- a. By mailing a bank check, a cashier's check or certified check, payable to "Treasurer of the United States," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fed wire message should read:
"D 68010727 Environmental Protection Agency"

- c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Bank
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-4087

d. By credit card payments to <https://www.pay.gov/paygov/>

When paying by check, the case name and docket number — “In the Matter of Chesapeake Operating, LLC, Docket No. CWA-06-2016-2706” — should be clearly marked on the check to ensure credit for payment.

22. Respondent shall send simultaneous notice of payment, including a copy of the check or other proof of payment, to each of the following:

- (a) Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (b) Donna Mullins
Enforcement Officer (6WQ-EM)
Water Quality Protection Division
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
- (c) Tucker Henson
Assistant Regional Counsel (6RC-EW)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Respondent’s adherence to these procedures will ensure proper credit when payment is received by EPA.

23. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

24. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not

paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b).

25. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent (6%) per year will be assessed monthly on any portion of the debt that remains delinquent more than ninety (90) days. 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

26. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be twenty percent (20%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

27. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.

28. In the event a collection action is necessary, Respondent shall pay — in addition to any applicable penalty, fees, and interest described herein — all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g) (9) of the Act, 33 U.S.C. 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO, shall not be subject to review.

29. This CAFO shall become effective upon filing with EPA's Regional Hearing Clerk.

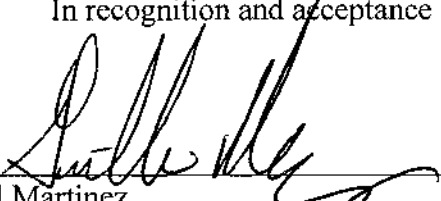
30. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

31. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

32. Each party agrees to bear its own costs and attorneys fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO. Furthermore, Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under the Equal Access to Justice Act, 5 U.S.C. § 504, as amended by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. § 601 *et seq.*, and any regulations promulgated pursuant to those Acts.

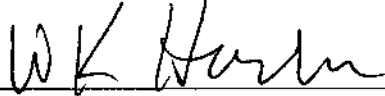
33. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

In recognition and acceptance of the foregoing:



Bill Martinez
Vice-President, South Texas Business Unit
Chesapeake Operating, LLC

3/24/16
Date



William K. Honker, Director
Water Quality Protection Division
Complainant

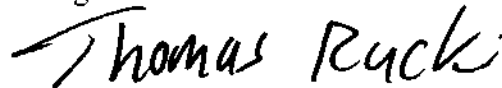
5/19/16
Date

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. This CAFO shall become effective upon filing with the Regional Hearing Clerk, pursuant to 40 C.F.R. § 22.31(b).

Issuance Date: 6/1/16

Regional Judicial Officer



CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of June, 2016, the original of the foregoing Consent Agreement and Final Order was hand delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6RC-D), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, and that a true and correct copy was placed in the United States Mail, by certified mail, return receipt requested, addressed to the following:

Tim Wilkins
Attorney for Chesapeake Operating, LLC
Bracewell LLP
111 Congress Ave., Ste. 2300
Austin, Texas 78701-4061

Copy hand-delivered:

Donna Mullins
Water Quality Protection Division (6WQ-EM)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, TX 75202-2733



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6

FILED
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REGIONAL HEARING CLERK
EPA REGION VI

In the Matter of:

Chesapeake Operating, LLC

Respondent

§ Clean Water Act § 309(a)
§
§ ADMINISTRATIVE ORDER
§ ON CONSENT
§
§ Docket No. CWA 06-2016-2705

I. AUTHORITY

The following findings of violations 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 Water Quality Protection Division, EPA Region 6.

EPA and Respondents recognize that this Order has been negotiated in good faith and that the actions undertaken by Chesapeake Operating, LLC (“Respondent”) in accordance with this Order do not constitute an admission of fault or liability. EPA and Respondents have voluntarily entered into this Order in lieu of alternatives available to the Parties, including litigation. Respondent does not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Order, the validity of the findings of violation set forth in this Order. Respondent agrees to comply with and be bound by the terms of this Order and further agree that they will not contest the basis or validity of this Order or its terms as specified herein.

II. FINDINGS OF VIOLATIONS

1. Respondent is a corporation organized under the laws of Oklahoma, and as such, Respondent is a “person” as that term is defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).

2. At times relevant to the violations alleged herein, Respondent constructed and used water from a pond on real property located at 28°41’00.40” N, 99°50’59.31” W and approximately 0.75 miles west of Crystal City in Zavala County, Texas (“Subject Property”).

3. On or about October 2010, Respondent and/or other persons or entities acting at Respondent’s direction and/or on its behalf (“Respondent’s Agents”) discharged pollutants from point sources into navigable waters without a permit issued under the Act. Specifically, Respondent and/or Respondent’s Agents “discharged dredged material” and “discharged fill material,” as those terms are defined by 40 C.F.R. § 232.2, by means of heavy equipment into approximately 11.7 acres of wetland habitat, including approximately 1,919 linear feet of intermittent stream channel, during land clearing and development activities on the Subject Property.

4. The dredged and fill material referenced in paragraph 3 was a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

5. Equipment used to carry out the discharges referenced in paragraph 3 was a “point source” as that term is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14).

6. The impacted wetlands and stream channel referenced in paragraph 3 are “navigable waters” as that term is defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7).

7. 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 (“Corps”), may issue permits for the discharge of dredged or fill material into navigable waters.

8. Respondent did not have a permit issued by the Corps that authorized the discharges described in paragraph 3 above.

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

10. On October 1, 2015, EPA and Respondent entered into a series of tolling agreements for potential claims arising from the violations referenced herein. The tolling agreements are effective through May 31, 2016.

11. EPA acknowledges that the foregoing violations came to the attention of the Corps and EPA as a result of Respondent’s voluntary disclosure to the Corps on October 21, 2013 and that Respondent voluntarily provided the Corps with a plan to restore the impacted wetlands in July 2014.

III. CONSENT AGREEMENT

12. 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 wetlands referenced herein and described in the attached Conceptual Mitigation Work Plan (Attachment A). Respondent concurs in the issuance of this Administrative Order on

Consent and agrees to comply with the Order.

IV. COMPLIANCE ORDER

13. Based on the foregoing Findings of Violations and pursuant to the authority of Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA orders, and Respondent agrees to, immediately cease any additional discharge of dredged and/or fill material to navigable waters on the Subject Property and to take the following actions:

- a. Within 30 days after the effective date of this Order, Respondent shall begin implementation of Option 1 in its Woodward Pond Mitigation Work Plan (“WPMP”), as approved by EPA on December 31, 2015;
- b. Within 180 days after the effective date of this Order, Respondent shall complete all work associated with the WPMP; provided, however, that EPA is agreeable to providing reasonable extensions of this deadline upon Respondent’s showing of good cause;
- c. Respondent shall contact Donna Mullins, EPA Region 6, at (214) 665-6687 upon commencement and completion of the WPMP; and,
- d. Respondent shall submit a report, including detailed photographic documentation, describing the actions completed pursuant to the WPMP to Ms. Mullins at the following address:

Donna Mullins
EPA, Region 6
1445 Ross Ave, Suite 1200
Dallas, Texas 75202-2733

IV. GENERAL PROVISIONS

14. 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, including, but not limited to, any right of judicial review of this Order on Consent under Sections 701 through 708 of the Administrative Procedure Act, 5 U.S.C. §§ 701–708.

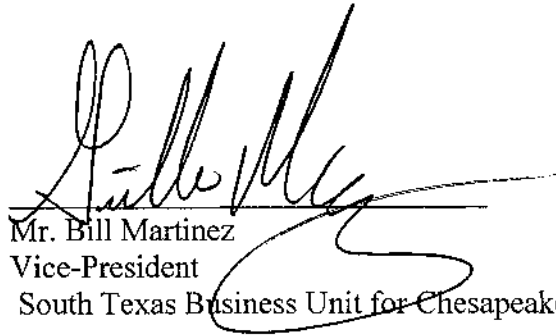
15. Issuance of this Order shall not be deemed an election by EPA to forego any administrative or judicial, civil or criminal action to seek penalties, fines or any other relief appropriate under the Act for the violations cited herein or other violations that become known to EPA.

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 \$37,500 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 does not relieve Respondent of its obligation to comply with any applicable federal, state or local law or regulation.

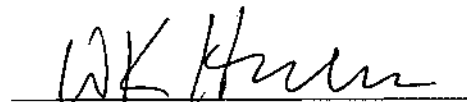
18. The effective date of this Order is the date a signed copy is received by Respondent.

In recognition and acceptance of the foregoing:



Mr. Bill Martinez
Vice-President
South Texas Business Unit for Chesapeake Operating, LLC

5/2/16
Date



William K. Honker, P.E.
Director, Water Quality Protection Division
U.S. EPA Region 6

5/19/16
Date