



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

November 5, 2019

Honorable Susan L. Biro
Chief, Administrative Law Judge (1900)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

RE: In the Matter of Great Lakes Dredge & Dock Co., LLC
Docket No: MPRSA-04-2019-7500

Dear Judge Biro:

Pursuant to §22.21(a) of the Consolidated Rules of Practice, 40 CFR Part 22, the above-captioned matter is hereby referred to you for assignment to an Administrative Law Judge. In accordance therewith, the entire Docket file is enclosed.

Respondent is represented by:

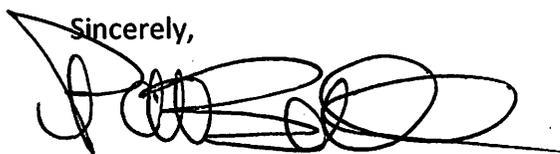
T. Neal McAliley
Carlton Fields, P.A.
100 S.E. Second Street, Suite 4200
Miami, Florida 33131-2113

Complainant is represented by:

Natalie Beckwith, Esq.
Office of Regional Counsel – 13th Floor
U.S. Environmental Protection Agency
61 Forsyth Street, S.W.
Atlanta, GA 30303

If you require any additional information, please feel free to contact me at 404-562-9511.

Sincerely,

A handwritten signature in black ink, appearing to be "Patricia Bullock", written over a horizontal line.

Patricia Bullock
Regional Hearing Clerk

Enclosures:

Cc: (w/o enclosures)
Natalie Beckwith, Esq.
T. Neal McAliley

Neal McAliley
Shareholder
Direct Dial: 305-530-4039
Email: nmcaliley@carltonfields.com

Atlanta
Florham Park
Hartford
Los Angeles
Miami
New York
Orlando
Tallahassee
Tampa
Washington, DC
West Palm Beach

October 30, 2019

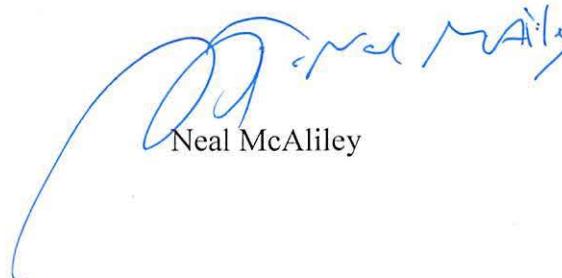
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

Re: In re Great Lakes Dredge & Dock Co., LLC
Docket No. MPRSA-04-2019-7500

Dear Clerk:

Attached please find a copy of Respondent Great Lakes Dredge & Dock Company LLC's Answer to the Civil Penalty Complaint in this proceeding. A copy has been separately sent to counsel for Petitioner EPA. For future filings in this case, please let us know if there is a means by which we could electronically file papers in this action. We believe that this would be more efficient for all parties, and would be consistent with filing procedures in federal courts.

Sincerely,



Neal McAliley

Enclosure

Carlton Fields, P.A.

Carlton Fields, P.A. practices law in California through Carlton Fields, LLP.

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY REGION 4

IN THE MATTER OF

Great Lakes Dredge & Dock Company, LLC

Docket No. MPRSA-04-2019-7500

Respondent.

Proceeding Pursuant to § 105(a) of the Marine
Protection, Research and Sanctuaries Act,
33 U.S.C. § 1415(a)

RECEIVED
2019 NOV -5 AM 8:5
OFFICE OF THE
GENERAL COUNSEL

**GREAT LAKES DREDGE & DOCK COMPANY, LLC'S ANSWER
TO COMPLAINT, FINDINGS OF VIOLATION, NOTICE OF PROPOSED ASSESSMENT OF
CIVIL PENALTY, AND NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

Respondent Great Lakes Dredge & Dock Company, LLC ("Great Lakes") hereby answers and asserts defenses to EPA's Complaint, Findings of Violation, Notice of Proposed Assessment of Civil Penalty and Notice of Opportunity to Request a Hearing ("Complaint") filed September 27, 2019. Great Lakes answers each numbered paragraph of the Complaint individually, and the numbered paragraphs of this Answer correspond to the numbered paragraphs of Complaint. Great Lakes incorporates certain headings from the Complaint to assist in the structure and organization of the Answer, but in so doing does not admit any allegation contained therein or waive any defenses. Any allegation of the Complaint that is not specifically admitted, denied or qualified is expressly denied.

I. Introduction

1. This paragraph contains EPA's characterization of its Complaint and conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, those facts are denied.

2. This paragraph contains EPA's characterization of its Complaint and conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, those facts are denied.

II. Legal Authority

3. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the Marine Protection Research and Sanctuaries Act ("MPRSA"), those provisions speak for themselves.

4. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the MPRSA, those provisions speak for themselves.

5. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the MPRSA, those provisions speak for themselves.

6. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the MPRSA, those provisions speak for themselves.

7. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves. Great Lakes admits that the Miami Offshore Dredged Material Disposal Site ("ODMDS") has been designated as a site for ocean dumping.

8. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the MPRSA, those provisions speak for themselves.

9. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves.

10. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the MPRSA, those provisions speak for themselves.

11. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the MPRSA, those provisions speak for themselves.

12. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves.

III. Findings of Fact

13. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, Great Lakes admits that the Miami ODMDS has been designated for disposal of dredged materials, and respectfully refers the tribunal to the Code of Federal Regulations for details regarding its size and location.

14. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, Great Lakes admits that EPA issued a document entitled, "Miami Ocean Dredged Material Disposal Site, Site Management and Monitoring Plan," dated September 2008. Great Lakes further admits that EPA issued a letter to the U.S. Army Corps of Engineers dated September 26, 2011, which attached a document entitled, "Revisions to the Miami Ocean Dredged Material Disposal Site (ODMDS) Site Management and Monitoring Plan, September 2011."

15. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, counsel for Great Lakes has not been able to review the document referenced in this paragraph, and therefore lacks information regarding the truth or falsity of the allegations in this paragraph.

16. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, Great Lakes admits that the Miami Harbor Construction Dredging Project, Phase 3 (the "Project" or "Phase 3 Project") was a Federal project conducted by the U.S. Army Corps of Engineers pursuant to authorization from

Congress; that the Port of Miami was the local sponsor; and that the areas identified in this paragraph were dredged in connection with the Project. Great Lakes respectfully refers the tribunal to the project documents for details regarding the nature, scope and location of work conducted.

17. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, Great Lakes admits that on December 29, 2011 and June 11, 2012, EPA sent correspondence to the U.S. Army Corps of Engineers regarding the Miami ODMDS. Those documents speak for themselves, and Great Lakes respectfully refers the tribunal to those documents for a true statement of their contents.

18. Great Lakes admits that on or about July 25, 2012, the U.S. Army Corps of Engineers issued a modification to Permit SAJ-2006-06547 (IP-MLC). The remainder of this paragraph purports to characterize the provisions of the permit, which is the best evidence of its contents and speaks for itself.

19. Great Lakes admits that on or about May 15, 2013, it entered into Contract #W912EP-13-C-0015 (the "Contract") with the U.S. Army Corps of Engineers. The remainder of this paragraph purports to characterize the provisions of that contract and related documents, which are the best evidence of their contents and speak for themselves.

20. Great Lakes admits that EPA issued letters to the U.S. Army Corps of Engineers dated December 19, 2014 and June 5, 2015 related to the Project. The remainder of this paragraph purports to characterize the contents of those letters, which speak for themselves and are the best evidence of their contents.

21. This paragraph contains conclusions of law, to which no response is required. Great Lakes admits that it is a private, nongovernmental entity.

22. Great Lakes admits the allegations in this paragraph.

23. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, Great Lakes admits those facts.

24. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, Great Lakes admits that the Phase 3 Project was a Federal project, conducted by the U.S. Army Corps of Engineers pursuant to authorization from Congress, but denies any remaining allegations in this paragraph.

25. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, Great Lakes denies those allegations.

26. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, Great Lakes admits that it performed dredging and ocean disposal work in connection with the Phase 3 Project, but denies any remaining allegations in this paragraph.

IV. Alleged Violations

27. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, those allegations are denied.

28. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, those allegations are denied.

29. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, those allegations are denied.

30. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, those allegations are denied.

31. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph is deemed to plead purported facts, those allegations are denied. In particular, Great Lakes denies that violations of provisions in the Site Management and Monitoring Plan and the Contract can be the basis for civil penalties under 33 U.S.C. § 1415(a).

V. Notice of Proposed Order Assessing a Civil Penalty

32. This paragraph contains EPA's proposal to issue a Final Order Assessing Administrative Penalties, and its reasoning for that proposal, to which no response is required. To the extent that this paragraph is deemed to plead purported facts, Great Lakes denies that imposition of civil penalties are warranted; denies that its actions were contrary to the purpose of the MPRSA; denies that its actions undermined the integrity of the regulatory scheme; and denies that its actions adversely affected human health, welfare or amenities or the marine environmental, ecological systems or economic potentialities. Great Lakes also denies that there were a large number of alleged violations in the context of this multiyear project, and denies that it has a prior pattern of improper behavior in EPA Region 4.

VI. Procedures Governing this Administrative Litigation

33. This paragraph contains conclusions of law to which no response is required.

34. This paragraph recites procedural requirements set forth in 40 CFR Part 22, to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves.

35. This paragraph recites procedural requirements set forth in 40 CFR Part 22, to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves.

36. This paragraph recites procedural requirements set forth in 40 CFR Part 22, to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves.

37. This paragraph contains conclusions of law to which no response is required. This paragraph appears to characterize provisions of the Code of Federal Regulations which speak for themselves.

38. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves.

39. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves.

VII. Opportunity to Request a Hearing

40. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves. Great Lakes requests that the Presiding Officer hold a hearing on the claims in the Complaint, so that EPA carries its burden of proof and Great Lakes has the opportunity to contest those claims.

41. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves. Consistent with 40 CFR § 22.21(d), Great Lakes requests that the hearing in this proceeding take place in DuPage County, Illinois (where Great Lakes resides) or Washington, DC (where the Presiding Officers are located).

VIII. Informal Settlement Conference

42. This paragraph contains conclusions of law to which no response is required. To the extent that this paragraph characterizes provisions of the Code of Federal Regulations, those provisions speak for themselves. This paragraph further states EPA's encouragement of settlement, which Great Lakes appreciates and will consider as the proceeding moves forward.

43. This paragraph characterizes EPA's authority under 40 CFR Part 22 to modify the amount of the proposed penalty and to dismiss the charges, to which no response is required.

44. This paragraph characterizes the legal effect of settlement discussions under 40 CFR Part 22, to which no response is required.

45. This paragraph contains conclusions of law to which no response is required.
46. This paragraph contains conclusions of law to which no response is required.
47. This paragraph contains conclusions of law, and procedures if there is a settlement, to which no response is required.

IX. Resolution of This Proceeding Without Hearing or Conference

48. This paragraph contains conclusions of law, and instructions for how Great Lakes could pay penalties to EPA, to which no response is required.
49. This paragraph contains conclusions of law to which no response is required.

X. Filing of Documents

50. This paragraph contains instructions regarding the filing of documents, to which no response is required.
51. This paragraph contains instructions regarding the service of documents, to which no response is required.

XI. General Provisions

52. This paragraph contains conclusions of law, to which no response is required.
53. This paragraph contains conclusions of law, to which no response is required.
54. This paragraph contains conclusions of law, to which no response is required.

General Denial

To the extent that any allegation of fact has been unanswered in the paragraphs above, Great Lakes denies those allegations.

Defenses

1. EPA lacks authority to assess civil penalties under 33 U.S.C. § 1415(a) based on alleged violations of a U.S. Army Corps of Engineers contract for a Federal project under 33 U.S.C. § 1413(e).

2. EPA lacks authority to assess civil penalties under 33 U.S.C. § 1415(a) based on alleged violations of a Site Management and Monitoring Plan for a Federal project under 33 U.S.C. § 1413(e).

3. EPA lacks standing, privity of contract and/or authority to enforce the terms of a contract between the U.S. Army Corps of Engineers and a contractor such as Great Lakes.

4. Great Lakes did not commit the violations of the MPRSA identified in the Complaint. To the extent that such violations occurred, third parties committed those violations and Great Lakes is not legally responsible for their actions.

5. Great Lakes' actions were not the proximate cause of the violations alleged in the Complaint.

6. EPA is estopped from claiming that any loss of draft by scows is a violation of project requirements, because the Contract indicates that only more than 1.0 feet of draft loss between the dredging area and disposal area is prohibited, EPA accepted that standard for assessing draft loss compliance over the course of the Project, and Great Lakes relied on that standard over the course of the Project.

7. Great Lakes operated in substantial compliance with applicable requirements of the Project. Even assuming arguendo the allegations in the Complaint that there were violations on 95 scow trips to the ODMDS, that represents a very small proportion of the more than 4,200 scow trips on the project.

8. EPA cannot assess civil penalties for "open hull" violations pursuant to 33 U.S.C. § 1415(h) due to the risk of loss of life associated with boarding the scows while they were offshore to address issues related to the scow doors.

9. If EPA assesses a civil penalty, it should be for no more than a nominal amount. The reasons why the penalty amount should be small include, but are not limited to the following: Great Lakes did not knowingly or intentionally violate any applicable requirement, and was not negligent or otherwise at fault for any violation that might have occurred on the Project. Great

Lakes took numerous proactive measures to avoid or minimize the potential for violations of applicable requirements. To the extent that potential violations were identified, Great Lakes took immediate action to determine the facts and minimize the chance of future violations. The total number of alleged violations were very small given the scale of the project. The amount of dredged material arguably released from scows between the dredging area and the disposal area was negligible, the material released was not toxic and did not otherwise present any particular risk of harm, and there is no evidence that such releases in fact caused any environmental harm. Any releases that did occur were allowed, and if any such releases were not allowed they occurred far away from sensitive environmental resources. Great Lakes received no benefit from the alleged violations. Great Lakes worked closely with the U.S. Army Corps of Engineers, which oversaw the project, and other agencies to minimize environmental harm. The U.S. Army Corps of Engineers had access to real time sensor data regarding the scow trips to the ODMDS, so there was no delay in reporting any data to the agency responsible for the project. The U.S. Army Corps of Engineers determined that Great Lakes did an outstanding job complying with environmental project requirements. Great Lakes has not knowingly, intentionally or negligently violated applicable requirements on other relevant projects. Assessing civil penalties against Great Lakes would not serve the goals of penalty assessment, but would simply be punitive.

Dated: October 30, 2019

Respectfully Submitted,

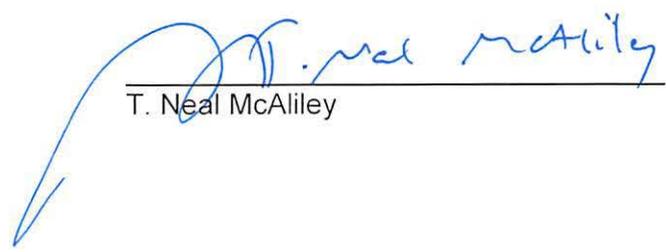


T. Neal McAilley (Florida Bar No. 172091)
Email: nmcaliley@carltonfields.com
David Chee (Florida Bar No. 109659)
Email: dchee@carltonfields.com
CARLTON FIELDS, P.A.
100 S.E. Second Street, Suite 4200
Miami, Florida 33131-2113
Telephone: (305) 530-0050

*Counsel for Respondent Great Lakes
Dredge & Dock Co., LLC*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document was sent by overnight delivery on this date to Natalie Beckwith, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 4, 61 Forsyth St., SW, Atlanta, Georgia 30303.



T. Neal McAiley