

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY REGION 4

IN THE MATTER OF

Great Lakes Dredge & Dock Co, LLC

Respondent

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

Proceedings to Assess Civil Penalty  
under § 105(a) of the Marine  
Protection, Research and Sanctuaries  
Act

Docket No.  
MPRSA-04-2019-7500

ENVIRONMENTAL PROTECTION AGENCY REGION 4'S RESPONSE TO  
RESPONDENT'S NOTICE OF SUPPLEMENTAL AUTHORITY

The United States Environmental Protection Agency Region 4 (“EPA”) has reviewed Respondent’s Notice of Supplemental Authority (“Notice”) served on March 30<sup>th</sup>, 2020. The primary case cited by Respondent, United States v. Blankenship, dates to 2004. This caselaw was available at the time that Respondent filed its Motion to Dismiss and should have been included in the Respondent’s Reply filed on December 23<sup>th</sup>, 2019 and subject to the filing deadlines in 40 C.F.R. § 22.16(b), which have now passed<sup>1</sup>.

Nevertheless, EPA believes the caselaw cited by Respondent has no application to the facts before this Court and only speaks to the federal government’s limitations to criminally convict a party of false statements. Respondent quoted caselaw to support the proposition that a breach of contract can only give rise to contract remedies. However, these quotations are found

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<sup>1</sup> Per 40 C.F.R. § 22.16(b), Respondent’s reply was due ten days after EPA’s December 11<sup>th</sup> Response.

in the 11<sup>th</sup> Circuit's findings that statements in a contract, and promises contained in a contract, between a contractor and a subcontractor are not "false" even if either party never intended to follow through<sup>2</sup>. The caselaw does not speak to a contract's relevance in the Marine Protection, Research, and Sanctuaries Act ("MPRSA"), the Administrative Procedure Act, or the status of the Respondent as a "person" transporting dredged material for the purpose of ocean disposal. EPA's Complaint filed on September 27<sup>th</sup>, 2019 and EPA's Response to Respondent's Motion to Dismiss filed on December 11<sup>th</sup>, 2019 describe multiple avenues through which EPA may recover civil penalties against Respondent pursuant to Section 105(a) of the MPRSA. Specifically, and in accordance with Section 105(a) of MPRSA, 33 U.S.C. § 1415(a), EPA bases its claims for penalties on allegations that Respondent violated MPRSA, the regulations promulgated pursuant to MPRSA, and a permit issued pursuant to MPRSA.

Respectfully submitted this 14<sup>th</sup> day of April.

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<sup>2</sup> See United States v. Blankenship, 382 F.3d 1110, 1133 (2004).

**CERTIFICATE OF SERVICE**

I certify that the foregoing “RESPONSE TO RESPONDENT’S NOTICE OF SUPPLEMENTAL AUTHORITY” was sent to the following parties in the manner indicated below on April 14, 2020.

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Mary Angeles, Headquarters Hearing Clerk  
U.S. Environmental Protection Agency  
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Washington DC 20004

\*Documents filed electronically are deemed to have been filed with the Headquarters Hearing Clerk and served electronically on the Honorable Susan Biro, the Presiding Administrative Law Judge

Consented to Service by Email

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