

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

BUSINESS CONFIDENTIALITY ASSERTED

The exhibits submitted with Complainant's Initial Prehearing Exchange contain material claimed to be confidential business information (CBI) pursuant to 40 C.F.R. § 2.203(b). The material claimed as CBI are Complainant's Exhibits CX9, CX13, CX15-17, and CX19-23. These exhibits include information considered confidential by Great Lakes Dredge & Dock Co, LLC (Respondent) and the U.S. Army Corps of Engineers (USACE) and are therefore redacted in e-filed version and further filed under seal pursuant to 40 C.F.R. § 22.5(d). In addition, exhibit CX18 consists of a witness resume and may contain sensitive personally identifiable information (PII) subject to 5 U.S.C. § 552a.

The prehearing exchange, omitting exhibits containing CBI and PPI, has been e-filed with the Court. The complete set has been mailed, via USPS, to the Headquarters Hearing Clerk. A complete set has been provided to Respondent via dropbox as agreed to by the parties. If you have any questions, please contact Natalie Beckwith at 404-562-9051 or at Beckwith.natalie@epa.gov.

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COMPLAINANT'S INTIAL PREHEARING EXCHANGE

Comes now, Director, Enforcement and Compliance Assurance Division of the U.S. Environmental Protection Agency (EPA) Region 4 (Complainant), by and through its counsel and in response to the Prehearing Order issued in this matter, respectfully submits its Prehearing Exchanges, stating as follow:

1(A) Potential Witnesses

1. Laurel Reichold, USACE, Jacksonville District. Ms. Reichold was the program manager for Phase 3 and can testify as a fact witness. She can testify to the general aspects of the project including the solicitation, contract, EPA's concurrences, and compliance documents.
2. Katrina Hills-Denson, USACE, Jacksonville District. Ms. Hills-Denson was the contracting officer during Phase 3 and can testify as a fact witness.

3. Shealy Bowell, USACE, South Florida Area Office. Ms. Bowell received compliance information and can testify as a fact witness.
4. Gavin Jackson, USACE, Jacksonville District. Mr. Jackson received, analyzed, and reported compliance information and can testify as a fact witness. He can testify to the “DQM” tracking system and how the information is transferred between parties and verified. Mr. Jackson also received compliance information from Respondent during a project in Jacksonville.
5. Rhonda Lenoir, USACE, Mobile District. Ms. Lenoir can testify as a fact witness regarding how compliance information is transferred between parties and verified.
6. Chris McArthur, Environmental Engineer, EPA Region 4. Mr. McArthur was the project manager and will testify as a fact witness. He can testify to compliance information, final enforcement and regulatory decisions, and penalty considerations including a past enforcement actions against Great Lakes. He may be offered as an expert witness regarding interpretation of the monitoring data.
7. Marc Wakeman, President, ADISS Vessel Tracking. Mr. Wakeman’s company collected data during Phase 3 and can testify as a fact witness.
8. Wade Lehmann, Toxicologist, EPA Region 4. Mr. Lehmann was the project manager subsequent to Chris McArthur and can testify as a fact witness. Mr. Lehmann can similarly testify to compliance information, final enforcement and regulatory decisions, and penalty considerations.
9. Gary Collins, Physical Scientist, EPA Region 4. Mr. Collins manages projects where Respondent has operated and can testify as a fact witness.

10. Brandon Kyzar, USACE Charleston District, received and transmitted compliance data during Respondent's work in Charleston and can testify as a fact witness.
11. Philip Wolf, USACE Charleston District, received and transmitted compliance data during Respondent's work in Charleston and can testify as a fact witness.
12. Jennifer Tyler, USACE Jacksonville District, received and transmitted compliance data during Respondent's work in King's Bay and can testify as a fact witness.
13. Mike Hollingsworth, USACE, Jacksonville District, received and transmitted compliance data during Respondent's work in King's Bay and can testify as a fact witness.
14. Aaron Lassiter, USACE Jacksonville District. Mr. Lassiter received and transmitted compliance data during Respondent's work in Miami and King's Bay and can testify as a fact witness. He can also testify to the production of the Post Disposal Summary Report.
15. Jason Spinning, USACE Jacksonville District. Mr. Spinning can testify to the production of the Post Disposal Summary Report and can testify as a fact witness.
16. EPA reserves the right to call the following USACE personnel to testify as fact witnesses regarding Respondent's compliance as may be necessary:
 - a. Eric Summa
 - b. Christopher Rego
17. EPA reserves the right to call the following persons employed by Respondent to lay the foundation of emails as may be necessary:
 - a. Michelle Loewe
 - b. Christopher Dearing
 - c. John Winn
 - d. Christopher Miller

e. Armand F. Riehl

f. Matthew Paladino

1(B) Documents and Exhibits

See Exhibit CX00, Title “Complainant’s Prehearing Exchange Index,” for a list of the exhibits that Complainant may introduce at hearing. Each exhibit is labeled as prescribed by the Prehearing Order.

1(C) Time Needed to Present Case

Counsel expects no more than two (2) days to present the case, and an interpreter is not needed.

2(A) Documentation of Service of Complaint

Legal Counsel, on behalf of Complainant, served the complaint and a copy of the Consolidated Rules of Practice by certified mail to Kathleen Mackie Lavoy, Senior Vice President, Chief Legal Officer, Chief Compliance Officer, and General Counsel. See exhibit CX1.

2(B) Response to Allegations Denied or Not Admitted in Respondent’s Answer

Specifically, Respondent denied allegations in paragraphs 24 to 31 of the Complaint. In EPA’s Response to Respondent’s Motion to Dismiss filed December 11, 2019, EPA further clarified its authority to assess civil penalties and allegations that Respondent transited and disposed of dredged material in a manner inconsistent with the site management and monitoring plan and in violation of a dredged material permit, regulation and Section 101(a) of the Marine Protection, Research, and Sanctuaries Act (MPRSA), 33 U.S.C. § 1411(a). This Court responded by issuing the Order Denying Respondent’s Motion to Dismiss on May 28, 2020, which counsel believes resolved the issues denied in the Complaint. As noted in Paragraph 15 of the

Respondent's answer, Respondent does not have a copy of the Section 103 Evaluation Report (Report) submitted by the USACE to EPA. The Report was USACE's avenue to assure EPA that the material proposed was suitable for disposal at the ocean dredged material site. EPA's Section 103 Concurrence Letters responded to that report and placed conditions on disposal. EPA has not alleged that any of the material disposed by Respondent was not suitable for disposal. This concurrence process ensured that the parties complied with statutory and regulatory requirements of the concurrence process when the USACE employs the "in-lieu-of permit procedure" in federal projects.

3(C) Factual Information Relevant to Penalty

EPA has not issued a specific penalty policy or guidance for issuing penalties under Section 105 of MPRSA, 33 U.S.C. § 1415(a). Exhibits CX27-29 include general policies which EPA relies upon for purposes of penalty assessment. Exhibits CX21-26 include documentation relevant to these general policies and the gravity of the violations, prior violations, and demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation consistent with Section 105(a) of MPRSA, 33 U.S.C. § 1415(a).

4(D) EPA Guidance for Allegations in the Complaint

EPA has not issued specific guidance for allegations in the complaint.

Respectfully submitted this 10th day of July 2020.

Natalie Beckwith
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U.S. Environmental Protection Agency, Region 4
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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

In the Matter of:)
)
Great Lakes Dredge and Dock Co, LLC) **Docket No. MPRSA-04-2019-7500**
)
Respondent.)

CERTIFICATE OF SERVICE

I certify that the foregoing “COMPLAINANT’S INITIAL PREHEARING EXCHANGE” was sent to the following parties in the manner indicated below on July 10, 2020.

Redacted:
OALJ E-Filing System

Unredacted:
Mary Angeles, Headquarters Hearing Clerk
U.S. Environmental Protection Agency
Office of Administrative Law Judges
Ronald Reagan Building, Room M1200
1300 Pennsylvania Ave., NW
Washington DC 20004

Unredacted via Dropbox as agreed to by the parties:
nmcaliley@carltonfields.com
mramudo@carltonfields.com
dchee@carltonfields.com
