

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)

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**GREAT LAKES DREDGE & DOCK COMPANY, LLC'S NOTICE OF SUPPLEMENTAL  
AUTHORITY RELEVANT TO ITS MOTION TO DISMISS**

Respondent Great Lakes Dredge & Dock Co., LLC ("Great Lakes") hereby provides Notice of Supplemental Authority in connection with its Motion for Dismiss. Undersigned counsel has recently become aware of *United States v. Blankenship*, 382 F.3d 1110 (11<sup>th</sup> Cir. 2004), in which the Eleventh Circuit stated (in the context of a criminal case) the general rule that "[i]t is not illegal for a party to breach a contract; a contract gives a party two equally viable options (perform or pay compensation), between which it is generally at liberty to choose. A 'promise' contained in a contract is ... a grant of a legal right by the other party to either enjoy performance or receive damages. ... Moreover, a party has the power to waive its rights under a contract – that is, a party may choose not to enforce a contract if the other side breaches." *Id.* at 1133-34. This case supports Great Lakes' argument in its Motion to Dismiss that an alleged breach of the contract between the U.S. Army Corps of Engineers and Great Lakes gives rise only to contract-based remedies, and is not otherwise a violation of law that may be the basis for the U.S. Environmental Protection Agency to impose civil penalties under the MPRSA. See

also *Robert C. Herd & Company v. Krawill Machinery Corp.*, 359 U.S. 297, 304-05 (1959)  
(statutes are not to be construed to derogate common law unless they clearly say so).

Dated: March 30, 2020

Respectfully Submitted,

/s/ Neal McAliley  
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*Counsel for Respondent Great Lakes  
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**CERTIFICATE OF SERVICE**

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

/s/ Neal McAliley  
T. Neal McAliley