



REGION 4

ATLANTA, GA 30303

ELECTRONIC MAIL

CONFIRMATION OF EMAIL RECEIPT REQUESTED

Thom Richard
WB Hangars, LLC
c/o Timothy R. Henderson & c/o Jeff Hershey
Rich & Henderson, P.C.
2661 Riva Road, Suite 300
Annapolis, Maryland 21401
thenderson@richlaw.com and jhershey@richlaw.com

Re: Notice of Clean Water Act Violations and Opportunity to Show Cause for WB Hangars, LLC in Ninety Six, South Carolina Pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a); Docket Number 309-2024-01

Dear Thom Richard:

This letter is to inform you that the U.S. Environmental Protection Agency, Region 4 has identified violations of Sections 301(a) of the Clean Water Act (CWA), 33 U.S.C. § 1311(a), at the property located at latitude 34.094243, longitude -81.886744, near Ninety Six, Saluda County, South Carolina (Site). Two enclosures have been included with this letter that provide the location of the "Site," also known as "Warbird Adventures" and/or "American Dream Sky Ranch," and the "Discharge Area" (Exhibit A: Site Location, Exhibit B: Discharge Area).

In a letter electronically transmitted to the U.S. Army Corps of Engineers, Charleston District (Corps) on April 27, 2023, the EPA requested to be the lead enforcement agency in the matter that the Corps assigned the reference number SAM-2022-01755. In accordance with the Memorandum of Agreement between the agencies, the EPA has reviewed the Corps' case file as part of its assessment of the associated unpermitted discharge of dredged and/or fill material into waters of the United States at the Site. In August 2023, prior to conducting its site visit, the EPA issued WB Hangars, LLC (WB Hangars) an Information Request pursuant to Section 308 of the CWA, 33 U.S.C. § 1318. WB Hangars' response to the 308 information request was received by the EPA on September 22, 2023. The EPA conducted its inspection of the Site on October 31, 2023, along with a representative from the Corps.

Based on the information in the case file and the EPA inspection, the EPA has reason to believe that WB Hangars discharged dredged and/or fill material into waters of the United States while constructing a runway expansion and related activities without authorization under Section 404 of the CWA, 33 U.S.C. § 1344.

The EPA believes WB Hangars is in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), for the following reasons:

1. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except in compliance with a permit or exemption issued under, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.
2. After the February 15, 2023, site visit by the Corps, the October 31, 2023, EPA inspection, and investigations conducted by the Corps and the EPA, both agencies concur that commencing in 2022, WB Hangars and/or those acting on its behalf discharged dredged and/or fill material into waters of the United States using earth-moving machinery without Corps authorization by means of a Department of the Army permit pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. To date, the unauthorized dredge and/or fill material remains in waters of the United States.
3. These unauthorized activities impacted approximately 1,507 linear feet of a relatively permanent unnamed tributary and approximately 7.8 acres of adjacent wetlands with a continuous surface connection to Halfway Swamp Creek, a relatively permanent tributary. Halfway Swamp Creek flows into the Saluda River, a Traditional Navigable Water.
4. At no time during the discharge of dredged and/or fill material into waters of the United States did WB Hangars possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material. Each discharge of pollutants into waters of the United States without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
5. Each day the discharged material remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
6. Therefore, WB Hangars has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants into waters of the United States without a permit.

Such violations are subject to enforcement actions pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, including the issuance of compliance orders, the assessment of administrative penalties, and/or the initiation of civil or criminal actions. Any continued work by WB Hangars that involves discharge of dredged and/or fill material into waters of the United States without authorization is being done at risk of adding to the scope of the violations. Work includes, but is not limited to, any contractors, family members, and/or anyone hired or voluntarily conducting work at the Discharge Area on your behalf.

Within 14 calendar days of receiving this letter, you must contact Rachel Earwood at (404) 562-9774 or earwood.rachel@epa.gov, or have your legal counsel contact Tyler Sniff at (404) 562-9499 or sniff.tyler@epa.gov, to arrange a meeting to show cause why the EPA should not take formal civil enforcement action against WB Hangars for the violations, including the assessment of appropriate civil penalties and injunctive relief. In lieu of appearing in the EPA's offices for this meeting, a video or telephone conference may be scheduled.

You should be prepared to provide all relevant information with supporting documentation pertaining to the violations, including but not limited to any financial information which may reflect an inability to pay a penalty. You have the right to be represented by legal counsel. All information submitted in response to or during the show cause meeting should be accompanied by the following certification that is signed by a duly authorized official:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Please be aware that the EPA may use information provided during the telephone or video conference in any potential enforcement proceeding related to this matter. Notwithstanding the scheduling of a show cause meeting, the EPA retains the right to bring further enforcement action under Section 309 of the CWA, 33 U.S.C. § 1319, for the violations cited herein or for any other violation of the CWA.

The EPA appreciates your prompt attention to this matter. If you have questions regarding this letter, please contact Rachel Earwood at (404) 562-9774 or via email at earwood.rachel@epa.gov. For legal inquiries, contact Tyler J. Sniff, Associate Regional Counsel, at (404) 562-9499 or via email at sniff.tyler@epa.gov.

Sincerely,

Keriema S. Newman

Digitally signed by Keriema S.
Newman
Date: 2024.03.08 07:09:33 -05'00'

Keriema S. Newman
Acting Director
Enforcement and Compliance Assurance Division

cc: Jonathan Swartz, U.S. Army Corps of Engineers, Charleston District
jonathan.m.swartz@usace.army.mil