



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
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ATLANTA, GEORGIA 30303-8960

APR 27 2012

Thomas M. Beason
General Counsel
Florida Department of Environmental Protection
Marjory Stoneman Douglas Building
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

Re: Florida Public Employees for Environmental Responsibility (PEER) and
Florida Clean Water Network (FCWN) Petition to Investigate Potential
Violations of the Federal Clean Water Act

Dear Mr. Beason:

Thank you for your letters of May 2, 2011, and August 25, 2011, providing a response to the allegations in the above-referenced Petition and in follow-up letters submitted to EPA by the Petitioners. As you know, the issue is whether Mr. Vinyard earned a significant portion of his income, within the meaning of 40 CFR § 123.25(c)(1)(ii), either directly or indirectly from NPDES permits holders or applicants during the two years prior to his appointment as Secretary of the Florida DEP. Because of the complex nature of the BAE Systems Inc. corporate structure and differences in the information provided by Florida PEER and yourself, we need additional information to enable EPA to evaluate this issue.

Your May 2, 2011, letter asserts that Mr. Vinyard does not have a prohibited conflict of interest under Section 304(i)(2)(D) of the Clean Water Act (CWA) and implementing regulations at 40 C.F.R. § 123.25(c), because Mr. Vinyard was never employed by a permit holder or a permit applicant. Specifically, you assert that Mr. Vinyard's activities as a lobbyist for Atlantic Marine Holding Company; as a two-year employee of Classic Act, LLC; and as a two-week employee of BAE Systems Southeast Shipyards AMHC, Inc., do not disqualify him under the conflict of interest prohibition because neither Atlantic Marine Holding Company, Classic Act, LLC, or BAE Systems Southeast Shipyards AMCH, Inc., held or applied for an NPDES permit in the two years preceding his appointment as FDEP Secretary. You further indicate that Mr. Vinyard's employment with BAE Systems Southeast Shipyards AMHC, Inc., was of short duration (January 1, 2011 through January 14, 2011) and did not account for a significant portion of his income during that two-year period. Finally, you indicate that Mr. Vinyard received no income from the Shipbuilders Council of America (SCA).

After your May 2, 2011, letter, EPA received two additional letters from Florida PEER, dated May 20, 2011, and June 3, 2011. Your August 25, 2011, letter refers to PEER's May 20, 2011, letter. I am enclosing a copy of PEER's June 3, 2011, letter in case you do not have a copy. Florida PEER asserts that your letter dated May 2, 2011, responding to the Petition, fails to adequately take into account the fact that, in making the conflict of interest determination, the statute and regulation require consideration of income that is received "directly or indirectly" from NPDES permittees or applicants. Florida PEER is correct that Section 304(i)(2)(D) of the CWA and the implementing regulation at 40 C.F.R. § 123.25(c) prohibit the participation of a person on a board or body which approves all or portions of NPDES permits when that person "receives, or has during the previous two years received, a significant portion of income *directly or indirectly* from permit holders or applicants for a permit." (emphasis added).

Florida PEER's letters also allege various inconsistencies between the information in your written responses and information about Mr. Vinyard's employment history that was made available at the time of his appointment as FDEP Secretary. Florida PEER's June 3, 2011, supports their allegations with documentation obtained from the Executive Office of the Governor of the State of Florida. This documentation includes the answers provided on the "Questionnaire for Gubernatorial Appointments." On that questionnaire, Mr. Vinyard describes his employment during the last five years as "BAE Systems Southeast Shipyards (f/k/a Atlantic Marine); 8500 Heckscher Dr., Jacksonville, FL 32226: Director/VP/Attorney 1999-2011." Mr Vinyard also states in the questionnaire that "Shipyard experience allowed me to counsel the company on major environmental permitting decisions."

Your response to the Florida PEER allegations, dated August 25, 2011, reasserts that Mr. Vinyard's employment for the two years prior to his appointment, with the exception of two weeks, was at Classic Act, LLC, a subsidiary of BAE Systems Southeast Shipyards AMHC, Inc. Further, you explain that Classic Act, LLC provided managerial, legal and/or other services for the parent company, BAE Systems Southeast Shipyards AMHC, Inc., and for subsidiaries of the parent company, at least one of which held an NPDES permit.

According to the information you have provided, Mr. Vinyard's direct employer for most of the relevant time period, Classic Act, LLC, was a subsidiary of Atlantic Marine Holding Company and its successor companies and was not, itself, an NPDES permit holder or applicant. You have also explained that Atlantic Marine Holding Company and its successors had subsidiaries that held NPDES permits, but that Mr. Vinyard was not employed by those subsidiaries. Further, according to information that you have provided, Classic Act, LLC, provided legal, management and other services to the permit-holding subsidiaries of its parent company.

In order to better inform our analysis and evaluate both PEER's claims and your responses, EPA seeks additional information. Specifically, please respond to the following questions:

1. Please explain how the acquisition of Atlantic Marine Holding Company by BAE Systems in 2010 changed Mr. Vinyard's employment status or the identity of his employer. Indicate whether BAE Systems Southeast Shipyards is a successor company to Atlantic Marine Holding Company and became the holding/parent company to the former subsidiaries of Atlantic Marine Holding Company, including Classic Act, LLC. Did Classic Act, LLC continue to exist after the acquisition?
2. Please list all of the subsidiaries of the parent company (Atlantic Marine Holding Company or its successor), and indicate which of the subsidiaries held or applied for NPDES permits during the two years preceding Mr. Vinyard's appointment
3. Did BAE Systems Southeast Shipyards or Atlantic Marine Holding Company hold an NPDES permit during the two years preceding Mr. Vinyard's appointment, as alleged in the February 23, 2011, Florida PEER letter?
4. Did Classic Act, LLC, participate in any business besides the provision of legal, management and other services on behalf of its parent company and its parent company's other subsidiaries?
5. Please explain the apparent discrepancy between the assertion in your letter of May 2, 2011, that Mr. Vinyard was employed, prior to January 1, 2011, by Classic Act, and the information on Mr. Vinyard's questionnaire, resume, and in media accounts indicating that he was instead employed by BAE Systems Southeast Shipyards or Atlantic Marine Holding Company.

In addition to responding to the questions above, we ask that you provide any additional information necessary to respond to the information provided by PEER in its June 3, 2011, letter.

To the extent information you provide may constitute confidential business information as defined under 5 U.S.C. § 552(b)(4), you may assert a business confidentiality claim covering part, or all, of the information requested, in the manner described by 40 C.F.R. § 2.203(b). To make such a claim, you must mark each document claimed to be confidential with "CONFIDENTIAL" or a similar designation. If a document contains both confidential and non-confidential information, the portions claimed to be confidential must be clearly marked with brackets or similar identifiers. Information covered by such a claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to you. Note that certain categories of information cannot be made subject to a claim of confidentiality. See 50 FR 51663, Dec. 18, 1985.

Should you have any questions, please contact me at (404) 562-9556, or Mita Ghosh, Chief of the Office of Water Legal Support, at (404) 562-9568.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mary J. Wilkes", is written over a faint, circular official stamp.

Mary J. Wilkes
Regional Counsel and Director
Environmental Accountability Division

Enclosures

cc: Gwendolyn Keyes Fleming, Regional Administrator, EPA Region 4
James D. Giattina, Director, Water Protection Division, EPA Region 4
Jerry Phillips, Director, Florida PEER
Linda Young, Director, Florida Clean Water Network