

September 13, 2012

Ms. Mary J. Wilkes  
Regional Counsel and Director  
Environmental Accountability Division  
Environmental Protection Agency, Region 4  
Sam Nunn Atlanta Federal Center  
61 Forsyth Street, SW  
Atlanta, Georgia 30303-3104

**Re: Petition to Investigate Potential Violations of the Federal Clean Water Act That May Require Withdrawal of Approval for the Florida, Department of Environmental Protection to Administer NPDES Permitting.**

Dear Ms. Wilkes:

On August 29, 2012 FDEP Secretary Herschel Vinyard submitted a response to your office as requested by you four months earlier on April 27, 2012. Simply stated, Mr. Vinyard's response once again displays a remarkable attempt to distance himself from a company for whom he swore under oath that he worked as a "Director/VP/Attorney." Not only did he claim that he worked for said company, BAE Systems Southeast Shipyards, but he claimed that he had worked there since 1999.

By now it is abundantly clear to everyone concerned that there are many different companies associated with BAE Systems, Inc. But what is not clear to this day is the company that employed Mr. Vinyard from 1999 until his appointment to be FDEP's Secretary. This is largely due to Mr. Vinyard's own characterizations. And through all of this it must be remembered that he is an attorney who knows, or should know, that these characterizations have ramifications. With that in mind, this is how he has characterized his prior employment:

1. On January 21, 2011, he filed a notarized employment application with the Governor and Legislature that he worked for "BAE Systems Southeast Shipyards (f/k/a Atlantic Marine).<sup>1</sup> He also identified himself as a registered lobbyist for the same company.<sup>2</sup>
2. On Page 1 of Mr. Vinyard's resume, again submitted to the Governor and Legislature as support for his Secretarial appointment, he once again listed the same employer. This time he characterized his position as "Director of Business Operations, BAE Systems Southeast Shipyards (formerly Atlantic Marine Shipyards)" He likewise stated on his resume that he "[c]ounseled company on major environmental permitting decisions, including extended effort to obtain

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<sup>1</sup> Answer 15 on Application.

<sup>2</sup> Answer 26 on Application.

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necessary state approval to expand the company's submerged land lease and to eliminate a treated wastewater stream from the St. Johns River."

3. As we noted in our May 20, 2011 correspondence to you, the FDEP's press release dated January 11, 2011, likewise touted Mr. Vinyard's prior environmental experience. This press release noted that he was "director of business operations at BAE Systems Southeast Shipyards. . ."
4. In his May 2, 2011, letter to you, however, there was a significant change in Mr. Vinyard's characterization of his prior employment. In response to our petition and your request for an explanation he now stated that he worked for ". . . BAE Systems Southeast Shipyards AMHC from January 1, 2011 until his resignation on January 14, 2011."<sup>3</sup> He further claimed that prior to that he worked for Classic Act, L.L.C.<sup>4</sup>
5. Now, in his August 29, 2012, letter to you Mr. Vinyard again claims that he worked for Classic Act, L.L.C. after which he worked for BAE Systems Southeast Shipyards AMHC for the two week period in January 2011.

We continue to maintain that the weight of the evidence in this matter points to Mr. Vinyard's most recent employment at BAE Systems Southeast Shipyards. He would have you believe that he worked for Classic Act, L.L.C. for an extended period of time even though neither his sworn application nor his resume even mention the company by name. Further, since May 2, 2011, he has claimed that he worked for BAE Systems Southeast Shipyards AMHC for two weeks in January 2011. And, as with Classic Act L.L.C., nowhere on his resume or on his sworn application does he mention BAE Systems Southeast Shipyards AMHC. Neither company is mentioned on the January 11, 2011 FDEP press release. It stretches credulity to believe that an attorney and director would work for a company for over 10 years yet not remember its name when it comes to applying to become the chief environmental officer of the State of Florida.

Mr. Vinyard, through counsel, also claims that neither of these companies has held an NPDES permit. Yet, on his resume Mr. Vinyard touted his prior work experience where he worked to eliminate his company's discharge to the St. John's River. This would have been, and was, an NPDES discharge, but he now maintains that he was working for a company that held no permits. We therefore ask, for whom was he working at the time?

As your April 27, 2012 letter to Mr. Vinyard presupposed, there are a number of companies who fell under the BAE Systems, Inc. and Atlantic Marine Holding Company umbrellas. In your second question you asked Mr. Vinyard to identify all companies who were "subsidiaries of the parent company (Atlantic Marine Holding Company or its successor). You also asked him to state whether any of the subsidiaries had held or applied for an NPDES permit. Mr. Vinyard's response avoided answering this question in two fundamental ways.

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<sup>3</sup> May 20, 2011 response letter, page 1.

<sup>4</sup> May 20, 2011 response letter, page 2.

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First, let us examine the issue of corporate identity. Mr. Vinyard's counsel referred back to his answer to your first question in which you asked whether the acquisition of Atlantic Marine Holding Company by BAE Systems Southeast Shipyards AMHC, Inc. changed Mr. Vinyard's employment status. You were asking for the manner in which his alleged employment by Classic Act L.L.C. changed. Counsel's response was that the acquisition did not change Mr. Vinyard's employment status.

On page 2 of his response, counsel for Mr. Vinyard alleged that BAE Systems, Inc. acquired Atlantic Marine Holding Company at the same time that the company changed its name to BAE Systems Southeast Shipyards AMHC, a statement that is not supported by the records of Florida's Department of State.<sup>5</sup> He further recited other companies that were supposedly acquired by BAE Systems, Inc., stating that the companies were "*reported to have included at least the following companies*" (emphasis added) after which a number of companies are listed. The entire response leaves one with the impression that Mr. Vinyard really did not know what was happening with these companies. Then when he answers your second question asking for a list of "*all of the subsidiaries of the parent company (Atlantic Marine Holding Company or its successor)*" (emphasis added) counsel refers back to this list, thus leaving you with the impression that your question was answered. It clearly was not.

One of the matters conspicuously omitted from Mr. Vinyard's response is his own involvement in the BAE chain of companies. While he mentions Atlantic Marine Property Holding Company, Inc. on page 2 of the response, he neglected to note that on September 2, 2003, the enclosed Plan of Merger was filed with Florida's Department of State on behalf of Atlantic Marine Property Holding Company. This plan stated that the company was subsuming Atlantic Marine Holding Company and that it was wholly owned by Atlantic Dry Dock Corp. *Annual reports filed for 2004, 2005, 2006, 2007 and 2008 show Herschel T. Vinyard as either a Director or VP (or both) of Atlantic Marine Property Holding Company, Inc.* On December 24, 2008 the Atlantic Marine Property Holding Company was then converted to a LLC and the annual report filed by the new LLC in 2010 showed the sole managing partner to be Atlantic Marine Holding Company, LLC., the company that Atlantic Marine Property Holding Company had acquired 7 years earlier.

Atlantic Dry Dock Corp. submitted Articles of Conversion to Florida's Department of State in 2006 changing its name to Atlantic Dry Dock LLC.<sup>6</sup> For the next four years the corporate filings for Atlantic Dry Dock LLC showed the managing partner to be Atlantic Marine Holding Company. Then, on July 16, 2010, its name was formally changed to BAE

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<sup>5</sup> See,

[http://ccfcorp.dos.state.fl.us/scripts/cordet.exe?action=DEFIL&inq\\_doc\\_number=J49615&inq\\_came\\_from=NAMFWD&cor\\_web\\_names\\_seq\\_number=0001&names\\_name\\_ind=&names\\_cor\\_number=&names\\_name\\_seq=&names\\_name\\_ind=&names\\_comp\\_name=BAESYSTEMSSOUTHEASTSHIPYARD&names\\_filing\\_type=](http://ccfcorp.dos.state.fl.us/scripts/cordet.exe?action=DEFIL&inq_doc_number=J49615&inq_came_from=NAMFWD&cor_web_names_seq_number=0001&names_name_ind=&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=BAESYSTEMSSOUTHEASTSHIPYARD&names_filing_type=)

<sup>6</sup> See,

[http://ccfcorp.dos.state.fl.us/scripts/cordet.exe?action=DEFIL&inq\\_doc\\_number=307566&inq\\_came\\_from=NAMFWD&cor\\_web\\_names\\_seq\\_number=0000&names\\_name\\_ind=&names\\_cor\\_number=&names\\_name\\_seq=&names\\_name\\_ind=&names\\_comp\\_name=ATLANTICDRYDOCK&names\\_filing\\_type=](http://ccfcorp.dos.state.fl.us/scripts/cordet.exe?action=DEFIL&inq_doc_number=307566&inq_came_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=ATLANTICDRYDOCK&names_filing_type=)

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Systems Southeast Shipyards Jacksonville LLC.<sup>7</sup> This latter company (which was all but ignored by Mr. Vinyard in his response) was also managed by Atlantic Marine Holding Company, as its enclosed 2011 Annual Report shows.

Throughout Mr. Vinyard's response to your April 27, 2012 letter he mentions several different companies that are connected to what he quite loosely refers to as BAE Systems. And he quite pointedly fails to mention that for four years he served as a director and/or vice president of Atlantic Marine Property Holding Company, which was wholly owned by Atlantic Dry Dock. What he also failed to mention, except in passing, are the other BAE Systems companies, BAE Systems Southeast Shipyards Jacksonville, L.L.C.,<sup>8</sup> a company that we addressed on page 3 of our May 20, 2011 reply to your office, Atlantic Dry Dock Corp and Atlantic Dry Dock, L.L.C. All three of these companies are important with respect to the permit issue.

The reason, it appears, that Mr. Vinyard is silent with respect to the above-mentioned trio of companies is that BAE Systems Southeast Shipyards, L.L.C. holds two NPDES permits: NPDES wastewater permit number FL0040592 and generic stormwater permit number FLR05C567. We advised you of both of these permits in our May 20, 2011 reply to Mr. Vinyard's letter. With all due respect, Mr. Vinyard's response about the issue of permits was misleading. On page 2 of his August 29, 2012 letter he states, in pertinent part that:

“We discuss the question regarding permits first. The Department's records indicate that the only NPDES permits issued to an Atlantic Marine Company were issued to Atlantic Marine Florida, LLC, which held a stormwater discharge permit and a permit for a backup/emergency discharge of reclaimed water from a small scale domestic wastewater facility and incidental industrial wastewater discharges. These were later transferred to BAE Southeast Shipyards Jacksonville. Petitioners' letter identifies a NPDES permit supposedly issued to BAE Systems, Inc. Our records show that BAE Systems does not have a permit. BAE was issued a “no exposure certification for exclusion from NPDES permitting.” This review confirms that no permit was issued to Classic Act or BAE Systems Southeast Shipyards AMHC (formerly Atlantic Marine Holding Company). In the Department's view, this definitively

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<sup>7</sup> See,

[http://ccfcorp.dos.state.fl.us/scripts/cordet.exe?action=DETFIL&inq\\_doc\\_number=M06000004333&inq\\_came\\_from=NAMFWD&cor\\_web\\_names\\_seq\\_number=0000&names\\_name\\_ind=&names\\_cor\\_number=&names\\_name\\_seq=&names\\_name\\_ind=&names\\_comp\\_name=ATLANTICDRYDOCK&names\\_filing\\_type=](http://ccfcorp.dos.state.fl.us/scripts/cordet.exe?action=DETFIL&inq_doc_number=M06000004333&inq_came_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=ATLANTICDRYDOCK&names_filing_type=)

<sup>8</sup> On page 2 of his response, Mr. Vinyard references the company as BAE Southeast Shipyards Jacksonville. The company's actual name is BAE Systems Southeast Shipyards Jacksonville LLC.

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answers the question on conflict of interest and the petition should be denied.”

Mr. Vinyard wants everyone to believe that there are two small NPDES permits that were issued to companies with which he had no association. Yet on the FDEP’s own website the wastewater permit is listed as belonging to BAE Systems Southeast Shipyards Jacksonville L.L.C. at the same address of 8500 Heckscher Drive, Jacksonville, Florida 32226. And the description of the facility is “**Extended Aeration Domestic Wastewater Treatment Facility With Final Effluent Discharged To St. Johns River.**” (Emphasis added) That permit was issued on August 8, 2010 and expires on August 7, 2015.<sup>9</sup> On another site, the Department also shows the same permit as being owned by Atlantic Dry Dock. See, [www.pnj.com/assets/xls/DPI10992619.XLS](http://www.pnj.com/assets/xls/DPI10992619.XLS).

The assertions with respect to corporate identity and Mr. Vinyard’s involvement with these corporations have all been made by counsel for Mr. Vinyard on his behalf. There are only two documents that were authored by Mr. Vinyard himself. In those two documents, his application and his resume, he proudly points to his time at “BAE Systems Southeast Shipyards (f/k/a Atlantic Marine)” as qualifying him to be the FDEP Secretary. And, in his resume he specifically points to his experience at that company wherein he fought “to eliminate a treated wastewater stream from the St. Johns River.” It goes without saying that this sounds much more like he was working for BAE Systems Southeast Shipyards Jacksonville L.L.C under permit number FL0040592. But if he was not alluding to the above-mentioned permit, then we respectfully ask; what permit was he alluding to and for whom was he working at the time?

Incredibly, Mr. Vinyard’s counsel states on page 4 of his latest response that Mr. Vinyard’s application and resume are consistent with his current position, even though neither document mentions either company for which he now claims to have worked. And, he says that “[h]is responsibilities did not substantially change within the two years prior to his appointment. He practiced as an environmental lawyer for years and, then, during his tenure with Classic Act, he advised on planning, operations, regulatory compliance, and permitting.” One must ask if his prior work experience was at two companies that held no NPDES permits, then where did he get his regulatory experience, particularly when he was working to end an NPDES discharge to the St. Johns River? Further, did he work for only one company at a time, or did he oversee operations in more than one?

Finally, if Mr. Vinyard is to be believed one must believe that a corporate lawyer and director when completing a sworn job application and a resume either forgot who he

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<sup>9</sup> Interestingly, when we viewed this information in February 2011 prior to filing the original petition the Department’s site listed the effective dates of the permit. The effective dates for this permit have now been removed by the Department in its current listing. See, Wastewater Facility Information, NPDES Facilities (both Domestic and Industrial) and NPDES Stormwater Facilities at <http://www.dep.state.fl.us/water/wastewater/facinfo.htm>.

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worked for or deliberately mislead the Legislature and Governor as to his prior employment. Then we are expected to believe that two weeks before he was appointed to the position of Secretary of FDEP he chose to work for a company that just happened to hold no NPDES permits. And then he simultaneously misled Floridians (via a press release) about his environmental qualifications. To our knowledge he has never provided you or anyone else with any proof of his prior employment, other than his application and resume.

We submit that the convoluted picture that Mr. Vinyard paints, together with the clear interrelated nature of the companies identified thus far, empirically points to him being employed, at minimum, from 1999 to 2011 at BAE Systems Southeast Shipyards Jacksonville, L.L.C. Accordingly, our petition should be upheld and Mr. Vinyard disqualified from overseeing any Clean Water Act projects.

Thank you for your kind assistance in this matter.

Sincerely,

Jerry Phillips  
Director  
*Florida PEER*

Encl.

cc.: Paul Schwartz, Associate Regional Counsel, Region 4  
Herschel T. Vinyard, Secretary, FDEP  
Tom Beason, General Counsel, FDEP