



Florida Department of Environmental Protection

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Jennifer Carroll
Lt. Governor

Herschel T. Vinyard Jr.
Secretary

August 29, 2012

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

Re: Florida Public Employees for Environmental Responsibility and Florida Clean Water
Network Petition

Dear Ms. Wilkes:

This letter is in response to your letter of April 27, 2012. The second paragraph of your April 27 accurately summarizes the Department's earlier letters. The facts stated in those letters are dispositive of Petitioners' claim of conflict of interest. During 2009 and 2010, Secretary Vinyard was a salaried employee of Classic Act. For two weeks immediately prior to his appointment, the Secretary was an employee of BAE Southeast Shipyards AMHC, Inc. Petitioners' May 20 letter, does not contradict the basic facts that Classic Act and BAE Southeast Shipyards AMHC, Inc., were not an applicant for, or holders of, a NPDES permit.

You have asked that the Department respond to five specific questions to better inform your analysis and evaluation of the petition.

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?

This acquisition did not change Mr. Vinyard's status as an employee of Classic Act. After the acquisition, Classic Act did not change its name. Florida corporation records show a change in managers. Classic Act is no longer doing business in Florida and its current status as a Delaware organized company is unknown.

According to published reports, BAE Systems, Inc. acquired Atlantic Marine Holding Company in July 2010. After the acquisition, Atlantic Marine Holding Company Inc. filed an amendment changing its name to BAE Systems Southeast Shipyards AMHC Inc. The BAE acquisition is reported to have included at least the following companies: Atlantic Marine Mayport and Atlantic Marine Jacksonville, located in Florida, Atlantic Marine Alabama LLC, located in Alabama, and Millennium Industrial and Marine Solutions, LLC, located in Mississippi. Shortly after the acquisition, BAE Systems filed amendments with the Florida Division of Corporations¹ changing the names of Atlantic Marine Florida, LLC, Atlantic Marine Mayport, LLC, and Atlantic Marine Property Holding Company, LLC, to respectively, BAE Systems Southeast Shipyards Jacksonville, LLC, BAE Systems Southeast Shipyards Mayport, LLC, and BAE Systems SSY Floating Dry Dock Holdings, LLC.

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.

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

The first part of this question asks the Department to list all subsidiaries of Atlantic Marine Holding Company. In the answer to question 1 the Department provided a list derived from media reports of companies that are apparently affiliated with Atlantic Marine Holding Company, but this list is incomplete as Classic Act was not included.

You also ask that we list the successor company's subsidiaries. We have identified in answer to question 1 some of the Atlantic Marine companies that were renamed after the BAE Systems acquisition. Most of these companies are Delaware limited liability companies. We can express no opinion on whether the companies are in fact legal successors. The Department does not know the configuration of the member interests in these LLCs and cannot say, for example, whether BAE Southeast Shipyards AMHC or some other entity owns all or a portion of the member interest in BAE Southeast Shipyards Mayport.

¹ available at <http://sunbiz.org/>

Florida and Delaware corporation records list many companies that include BAE Systems as part of their name. BAE Systems is one of the world's largest defense contractors with more than 90,000 employees² and is a much larger enterprise than Atlantic Marine Holding Company. Based on the information it has found in publicly available records, the Department believes the companies are related, but cannot describe which company owns another or the profitability or relative incomes of these companies.

As explained in our August 25, 2011 letter until the end of 2010, the Secretary was an employee of Classic Act which provided services to BAE Systems Southeast Shipyards AMHC, Inc. (formerly Atlantic Marine Holding Company, Inc.). Neither Classic Act nor BAE Systems Southeast Shipyards AMHC, Inc. ever held a NPDES permit. Petitioners do not dispute the facts, but argue that the Secretary worked for a company that was managed by a company that managed a third company that held an NPDES permit and from that conclude that he must have received income directly or indirectly from a permit holder. This argument is contrary to the clear statement in the 1973 EPA General Counsel Opinion³ which explained that an employee of a firm, which itself is not a permit holder or applicant but whose income is principally from permit holders, who receives a salary from the firm, does not receive income from client permit holders and therefore is not disqualified by a conflict of interest.

Petitioners' May 20, 2011, letter confuses the relationship among the BAE Systems Southeast Shipyards companies and the Atlantic Marine Companies and erroneously concludes that the Atlantic Marine companies are connected to BAE Systems. Perhaps they were unaware that the BAE Systems acquired Atlantic Marine in July 2010, which is after the Atlantic Marine companies filed their 2010 annual reports; otherwise there is no explanation for their stating, as they do on page 4 of 6, that the 2009 and 2010 annual reports show that the BAE Systems companies list Atlantic Marine Holding Company as managing entity. They also neglect to note that the 2011 annual reports reflects a change in managing members for Classic Act and a change in officers and directors for BAE Systems Southeast Shipyards AMHC.

As noted above, BAE Systems is reported to be among the largest defense contractors. The BAE Systems companies are much larger and far more diversified than the Atlantic Marine companies. BAE Systems consolidates its financial statements to include the results of its subsidiaries. The individual subsidiaries contributions to income are unknown. Therefore, the primary sources of income to BAE Systems Southeast Shipyard AMHC or, in turn, to Classic Act are unknown. This situation is analogous to the diversified investment example in the 1973 EPA General Counsel Opinion:

The Guidelines provide . . . that "income is not received directly or indirectly from permit holders or applicants for a permit" where it is derived from mutual-fund payments, or *other diversified investments over which the recipient does not know the identity of the primary sources of income.*

² The BAE Systems Annual Report 2011 is online (<http://bae-systems-investor-relations-v2.production.investis.com/>).

³ "Conflict of Interest --- EPA Guidelines," General Counsel Opinion (Feb. 14, 1973).

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?

No. Neither BAE Southeast Shipyards AMHC nor Atlantic Marine Holding Company applied for or held an NPDES permit. Petitioners' February 23, 2011, letter was predicated on their "information and belief" that Secretary Vinyard was a lobbyist and an employee of BAE Systems Southeast Shipyards which held NPDES permits.⁴ The Department responded that Atlantic Marine Holding Company, for whom he registered to lobby and served as an unpaid corporate officer, and BAE Systems Southeast Shipyards AMHC, by whom he was employed for two weeks, did not hold NPDES permits. Petitioners May 20, 2011, letter concedes that these two companies are not permit holders.

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?

No, insofar as it is known, Classic Act did not participate in any business other than the described services in Florida.

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.

There is no discrepancy. His resume and the Department's explanation above and in previous responses to EPA correctly represented his then current employer and his work history. His 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. Petitioners contrive an argument that the Secretary "meant to leave EPA with the impression that he had no significant environmental experience." This is nonsense. There is nothing in our prior letters that suggests the Secretary lacks such experience. His environmental experience is not emphasized in the earlier letters because the conflict of interest provision is not triggered by providing advice and representation to applicants or permittees. In the section on Corporate or Institutional Employment, the 1973 General Counsel Opinion states, "the provision is tied to the receipt of income . . . not the nature of the person's position within the institution or corporation."

Petitioners originally claimed that Secretary Vinyard was employed by a permit holder. As that is not the case, Petitioners now argue that he worked for a company that is related through another company to a company that held a permit. This argument has no foundation in the 1973

⁴ February 23, 2011 letter, p. 4.

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General Counsel Opinion which defined limits on the interpretation of receiving income “indirectly” for purposes of the conflict of interest provision. The Secretary was an employee, not an owner, of Classic Act.

We apologize for the length of this letter, but we believe that Petitioners’ sweeping generalizations required a detailed response. If the Agency has any additional questions, please contact me.

Sincerely,



Thomas M. Beason
General Counsel