



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sea Bay Development Corporation
P.O. Box 655
Virginia Beach, VA 23451

MAY 02 2000

Beech Tree Park, Inc.
1075 General Booth Blvd.
Virginia Beach, VA 23451

Elwood Perry
2875 Forge Road
Toano, VA 25168

Frank T. Williams Farm, Inc.
5021 Morris Neck Road
Virginia Beach, VA 23457

Allen Ferrel
Ferrel's Backhoe Service, Inc.
Rte. 2, Box 314
Hertford, NC 27944-9802

Re: EPA Docket No. III-2000-022-DW
ORDER FOR COMPLIANCE

Gentlemen:

Enclosed is an Order for Compliance that requires Sea Bay Development Corporation, Beech Tree Park, Inc., Elwood Perry, Frank T. Williams Farm, Inc. and Ferrel's Backhoe Service, Inc. ("Respondents") to take certain steps to address violations of the Clean Water Act on the property known as the Boshier Farm Site ("Site") which property you own, and/or operate as a principle in the construction firm that engaged in land clearing activities, and which is located in Chesapeake, Virginia, South of Stonegate, east of Shillelagh Road, and west of Johnstown Road, and further identified on the map attached hereto as Exhibit "A." The Order also requires mitigation of the environmental harm which was caused by the unlawful discharge

Customer Service Hotline: 1-800-438-2474

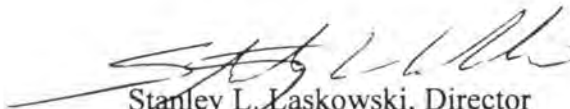
to waters of the United States. The U.S. Environmental Protection Agency ("EPA") has filed this Order under the authority of Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a).

00 MAY -3 PM 12: 25

To the extent that you may qualify as a "small business" under the Small Business Regulatory Enforcement and Fairness Act ("SBREFA"), a copy of the SBREFA Information Sheet is enclosed for your information. This Information Sheet provides information on contacting the SBREFA Ombudsman to comment on federal enforcement and compliance activities and also provides information on compliance assistance. As noted in the Information Sheet, any decision to participate in such a program or to seek compliance assistance does not relieve you of your obligation to respond in a timely manner to an EPA request or other enforcement action, create any new rights or defenses under law and will not affect EPA's decision to pursue this enforcement action. To preserve your legal rights, you must comply with all rules governing the administrative enforcement process. The Ombudsman and fairness boards do not participate in the resolution of EPA's enforcement actions.

EPA is prepared to answer any questions you may have and to help in the development of a plan to mitigate the environmental harm which was caused by your unlawful activities. Jeffrey Lapp is assigned to this matter and may be reached at 215/814-2717.

Sincerely,



Stanley L. Laskowski, Director
Environmental Services Division

Enclosure

cc: COE - Woodie Poore, Norfolk District Office, Norfolk, VA
COE - Greg Culpepper, Norfolk District Office, Norfolk, VA
FWS - Karen Mayne, Virginia Field Office, Gloucester, VA
DEQ - Harold Winer, Tidewater Regional Office, Virginia Beach, VA
DCR - Jack Frye, Richmond, VA

bcc: EPA - Lydia Guy (3RC00), Regional Hearing Clerk
EPA - Jeffrey Lapp (3ES30), Regional Wetlands Enforcement Coordinator
EPA - Pamela Lazos (3RC20), Senior Asst. Regional Counsel
EPA - Brigid Lowery (3CG10), State Liaison Officer

Customer Service Hotline: 1-800-438-2474

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

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REG. CLERK
EPA, PHILA, PA

In The Matter of:)

Sea Bay Development Corporation)
P.O. Box 655)
Virginia Beach, VA 23451)

Proceeding Under Section 309(a)
of the Clean Water Act,
33 U.S.C. § 1319(a)

Beech Tree Park, Inc.)
1075 General Booth Blvd.)
Virginia Beach, VA 23451)

EPA Docket No. III-2000-022-DW

Elwood Perry)
2875 Forge Road)
Toano, VA 25168)

Frank T. Williams Farm, Inc.)
5021 Morris Neck Road)
Virginia Beach, VA 23457)

**ADMINISTRATIVE ORDER
FOR COMPLIANCE**

Allen Ferrel)
Ferrel's Backhoe Service, Inc.)
Rte. 2, Box 314)
Hertford, NC 27944-9802)
Respondents)

Property located in Chesapeake, Virginia,)
south of Stonegate, east of Shillelagh Road,)
and west of Johnstown Road)

I. STATUTORY AUTHORITY

1. This Order for Compliance is issued under the authority vested in the United States Environmental Protection Agency (EPA) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) ("CWA" or "Act"). The Administrator has delegated this authority to the Regional Administrator of EPA Region III who in turn has redelegated it to the Director of the Environmental Services Division and the Director of the Water Protection Division pursuant to delegation No. 2-22 (6/19/93).

II. FINDINGS

2. Respondents, Sea Bay Development Corporation ("Sea Bay"), Beech Tree Park, Inc. ("Beech Tree"), Elwood Perry ("Perry"), Frank T. Williams Farms, Inc. ("Williams"), and Ferrel's Backhoe Service ("Ferrel's"), are "persons" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. Respondents, Perry, Williams and Ferrel's are operators who either performed or directed performance of land clearing and ditching activities at the Site, and Respondents, Sea Bay and Beech Tree are owners of property identified as the Boshier Farm Site located south of Stonegate, east of Shillelagh Road, and west of Johnstown Road in Chesapeake, Virginia, and further identified on the map attached hereto as Exhibit "A."
4. The Site contains wetlands which constitute "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 33 C.F.R. § 323.2(a); 40 C.F.R. § 232.2, and 40 C.F.R. § 122.2.
5. Commencing in or about February 1999 and continuing periodically until at least March 1999, Respondents or persons acting on behalf of Respondents operated equipment which discharged fill material into wetlands on the Site. Such operation included, but was not limited to, the ditching of various wetland areas on Site which resulted in the discharge of the removed fill into the wetlands area alongside the ditch. EPA inspected the Site on September 10, 1999.
6. The term "fill material" within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces portions of "waters of the United States" with dry land or which changes the bottom elevation of a water body for any purpose.
7. The equipment referenced in paragraph II.5, above, which has discharged and continues to discharge fill material to "waters of the United States" constitutes a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).
8. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant, which includes fill material, from point sources to "waters of the United States" except in compliance with a permit issued by the Secretary of the Army under Section 404 of the Act, 33 U.S.C. § 1344.
9. At no time during the discharge of fill material to the "waters of the United States" located on the Site did the Respondent have a permit from the Secretary of the Army as required by Section 404 of the Act, 33 U.S.C. § 1344.
10. Respondents, by discharging fill material to the "waters of the United States" without authorization, have violated Section 301(a) of the Act, 33 U.S.C. § 1311(a).

III. ORDER FOR COMPLIANCE

Therefore, this 2nd day of May, 2000, Respondents are hereby ORDERED, pursuant to Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a), to conduct the following activities:

11. Within thirty (30) days of the effective date of this Order, Respondents shall submit to EPA for approval a wetlands delineation performed on the Site and prepared in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual along with all supporting documentation. Include on this delineation a description of the total acreage of land disturbance, including non-wetland areas.
12. If EPA disapproves all or part of the wetlands delineation plan, Respondent shall, within fourteen (14) days of receipt of EPA's disapproval, correct the deficiencies in response to EPA's comments, and resubmit the plan for approval.
13. Within forty-five (45) days of approval of the wetlands delineation plan, Respondents shall submit a restoration plan to EPA for approval. This plan shall provide for, at a minimum, the removal of fill material from the impacted areas and disposal of these materials in an approved upland location, the planting of native wetland vegetation similar to that which pre-existed the filling activities, and re-creation of the hydrologic conditions existing prior to the filling activities. This plan shall also include a monitoring proposal to measure the extent to which the restoration of wetlands is successful. After review of the restoration plan, EPA will: a) approve the plan, in whole or in part; b) approve the plan upon specified conditions; c) modify the plan to cure any deficiencies; d) disapprove the plan, in whole or in part, or e) any combination of the above.
14. If EPA disapproves all or part of the restoration plan, Respondents shall, within fourteen (14) days of receipt of EPA's disapproval, correct the deficiencies and resubmit the plan for approval. EPA retains the right, if the plan is not approved as provided in this Order, to order restoration and/or mitigation in accordance with a plan developed by EPA. Upon approval of the plan, Respondents shall implement the plan as approved or modified by EPA as provided below. All restoration work shall be completed within ninety (90) days of EPA's approval of the plan.
15. Implementation of the restoration work shall be accompanied by a sedimentation and erosion control plan approved by the Virginia Department of Conservation and Recreation with a copy sent to EPA.
16. Notify EPA within ten (10) days of completion of the restoration work. EPA will inspect the site to ensure whether Respondents have complied with this Order and the terms of the approved restoration plan.

17. Respondents' failure to complete the work in a manner consistent with this Order shall be deemed a violation of this Order.
18. The wetlands delineation, restoration plan and all other related correspondence shall be sent to:

Jeffrey D. Lapp
Regional Wetlands Enforcement Coordinator (3ES30)
United States Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029

19. All submissions provided pursuant to this AO shall be signed by Respondents and shall include the following certification:

"I certify that the information contained in or accompanying this submission is 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."

IV. GENERAL PROVISIONS

20. Issuance of this Order shall not be deemed an election by EPA to forego any administrative, civil, or criminal action to seek penalties, fines, or any other appropriate relief under the Act for the violations cited herein. EPA reserves the right to seek any remedy available under the law that it deems appropriate for the violations cited.
21. If a criminal judicial action is initiated by the U.S. Department of Justice, and Respondent is convicted of a criminal offense under Section 309(c) of the Act, Respondent may be subject to a monetary fine and/or imprisonment, and may become ineligible for certain contracts, grants, or loans under Section 508 of the Act.
22. Respondents' compliance with the terms of this Order shall not constitute compliance with the Clean Water Act or any other Federal, State or local law or regulation. Nor does this Order constitute a waiver or modification of the terms or conditions of any issued permit.
23. Violation of the terms of this Order may result in further EPA enforcement action including, but not limited to, imposition of administrative penalties, 33 U.S.C. § 1319(g), and/or initiation of judicial proceedings that allow for civil penalties of up to \$27,500 per day, 33 U.S.C. §§ 1319(b) and (d), for each day of violation that occurred prior to January 31, 1997, and, pursuant to Public Law 105-134, up to \$27,500 for each day of violation

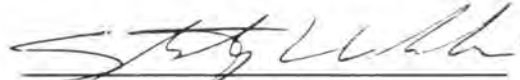
which occurred or occurs after January 31, 1997, and/or for the criminal sanctions of imprisonment and fines of up to \$50,000 per day, 33 U.S.C. § 1319(c).

IV. EFFECTIVE DATE

1. The effective date of this Order shall be the date it is received by Respondents.

Date: _____

5/2/00



Stanley L. Laskowski, Director
Environmental Services Division

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent the enclosed Administrative Order to the following:

Delivery by Certified Mail, Return Receipt Requested:

Sea Bay Development Corporation
P.O. Box 655
Virginia Beach, VA 23451

Beech Tree Park, Inc.
1075 General Booth Blvd.
Virginia Beach, VA 23451

Elwood Perry
2875 Forge Road
Toano, VA 25168


Frank T. Williams Farm, Inc.
5021 Morris Neck Road
Virginia Beach, VA 23457

Allen Ferrel
Ferrel's Backhoe Service, Inc.
Rte. 2, Box 314
Hertford, NC 27944-9802

And Delivery by Hand to the:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date: 5/3/0


~~Pamela J. Lazos~~ STEFANIA D. STARNET
US EPA Region III

SITE →

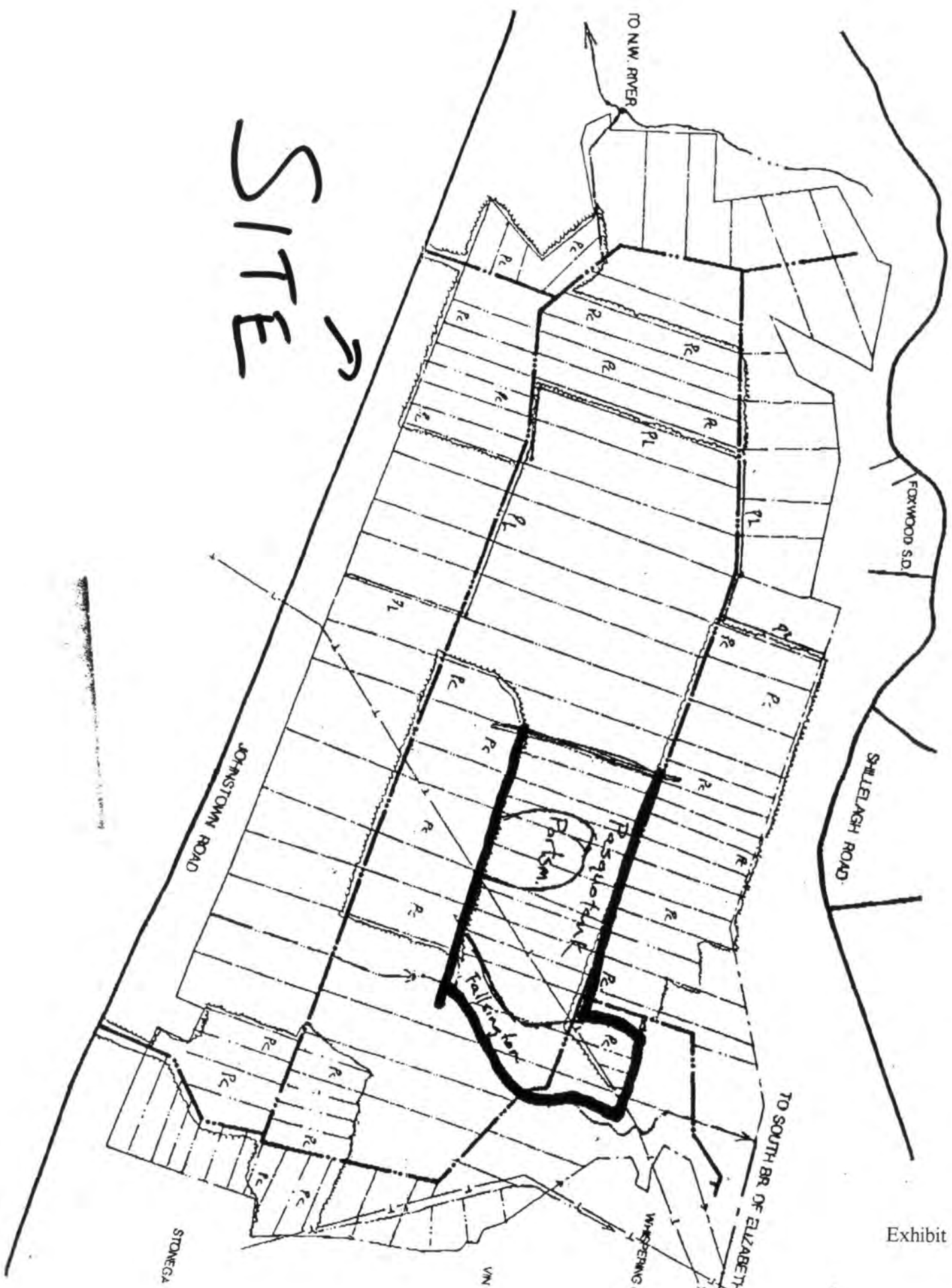


Exhibit A

BEFORE THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103

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REGIONAL PUBLIC CLERK
EPA, REGION III, PHILA, PA

In The Matter of:)

Sea Bay Development Corporation)
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Proceeding Under Section 309(a)
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EPA Docket No. III-2000-022-DW

Elwood Perry)
2875 Forge Road)
Toano, VA 25168)

Frank T. Williams Farm, Inc.)
5021 Morris Neck Road)
Virginia Beach, VA 23457)

**AMENDMENT TO ADMINISTRATIVE
ORDER FOR COMPLIANCE**

Allen Ferrel)
Ferrel's Backhoe Service, Inc.)
Rte. 2, Box 314)
Hertford, NC 27944-9802)
Respondents)

Property located in Chesapeake, Virginia,)
south of Stonegate, east of Shillelagh Road,)
and west of Johnstown Road)

1. On May 2, 2000, EPA Region III issued to Respondents an Administrative Order for Compliance ("AO") with respect to certain property known as the Boshier Site, located in Chesapeake, Virginia, as more fully described in the AO (the "Boshier Site").
2. The AO issued to Respondents was one of several AOs issued simultaneously to, *inter alia*, protect wetlands located at several sites in eastern Virginia. Upon information and belief, activity at one or more of those sites may have continued that will or may result in

further unauthorized discharges into wetlands. To the extent that illegal discharges are or may be occurring at the Boshier Site, Respondents are hereby ORDERED to immediately cease and desist from all activity at the Boshier Site other than in full compliance with applicable, duly-issued federal permits(s).

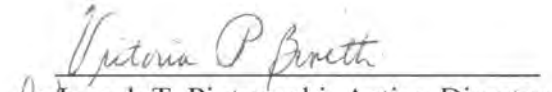
3. This Amendment is an addition to the provisions and requirements of the AO, and those requirements remain in full force and effect.

The effective date of this Amendment shall be the date it is received by Respondents.

Date: MAY 18 2008


Stanley L. Laskowski, Director
Environmental Services Division

Date: MAY 18 2008


for Joseph T. Piotrowski, Acting Director
Water Protection Division

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent the enclosed Administrative Order to the following:

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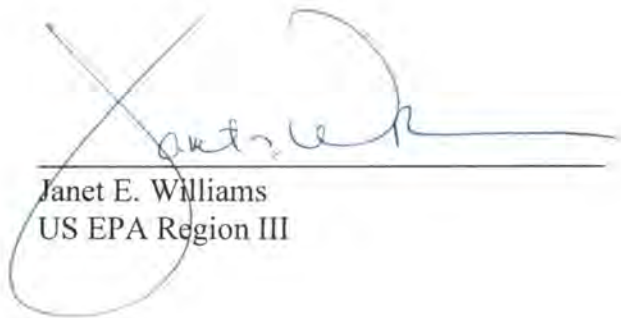
Frank T. Williams Farm, Inc.
5021 Morris Neck Road
Virginia Beach, VA 23457

Allen Ferrel
Ferrel's Backhoe Service, Inc.
Rte. 2, Box 314
Hertford, NC 27944-9802

And Delivery by Hand to the:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Date: MAY 18 2000



Janet E. Williams
US EPA Region III