

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
Dallas, Texas 75270**

In the Matter of	§	
	§	
Future Frontiers, LLC	§	Docket No. CWA-06-2024-2715
	§	
Respondent.	§	

CONSENT AGREEMENT AND FINAL ORDER

I. PRELIMINARY STATEMENT

1. This Consent Agreement and Final Order (CAFO) is issued under the authority vested in the United States Environmental Protection Agency (EPA) pursuant to Section 309(g) of the Clean Water Act (the Act), 33 U.S.C. § 1319(g). This CAFO is issued to simultaneously commence and conclude this proceeding to assess a Class I civil penalty in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), as described in the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits.”
2. The EPA and Respondent (Parties) agree that settlement of the relevant matters without litigation will save time and resources, that it is in the public’s interest, and that the entry of this CAFO is the most appropriate means of resolving such matters. Compliance with all the terms and conditions of this CAFO resolves only those violations alleged herein.

3. Respondent admits the jurisdictional allegations herein; however, Respondent neither admits nor denies the specific Findings of Fact and Conclusions of Law contained in this CAFO.
4. Respondent expressly waives any right to contest the factual allegations or conclusions of law contained in this CAFO and in this proceeding and waives its right to appeal the Final Order set forth herein.
5. Before the taking of any testimony, and without adjudication of any issue of law or fact, the Parties agree to the terms of this CAFO and to its issuance. Respondent consents to the assessment and payment of a civil penalty in the amount and by the method stated below.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. Future Frontiers, LLC, Mr. Wade Johnson, President (Respondent) is a “person” as defined by Section 502(5) of the Act, 33 U.S.C. § 1362(5).
7. At all times relevant to the violation alleged herein (relevant time period), Respondent owned, controlled and or operated a project on real property, along Nealy Way north of East Loop 281 and east of N. Eastman Road, Longview, Gregg County, Texas (Subject Property).
8. On multiple dates between approximately May 2017 and September 2021, Respondent and or Respondent’s contractor and or Respondent’s agent discharged, directed the discharge, and/or agreed with other persons or business entities to discharge “dredged material” and/or “fill material,” as those terms are defined by Section 502 of the Act, 33 U.S.C. § 1362, and 40 C.F.R. § 232.2, from point sources, including heavy equipment, in,

on and into a stream channel within the Subject Property. The impacted stream flows to Oakland Creek, which flows into Guthrie Creek, thence Grace Creek, which flows into the Sabine River, a traditional navigable water.

9. Each piece of heavy equipment used during the construction activities that resulted in a discharge acted as a “point source” as that term is defined in Section 502(14) of the Act, 33 U.S.C. § 1362(14)
10. The dredged and fill material referred to in paragraph 8 was a “pollutant” as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).
11. During the relevant time period, the impacted stream referred to in paragraph 8 had a continuous surface connection to the Sabine River, a traditional navigable water, and as such, is a “water of the United States” under Section 502(7) of the Act, 33 U.S.C. § 1362(7), and as defined by 40 C.F.R. § 232.2.
12. Under Section 301(a) of the Act, 33 U.S.C. § 1311(a), it is unlawful for any person to discharge a pollutant from a point source to navigable waters, except with the authorization of, and in compliance with, a permit issued under the Act. Section 404 of the Act, 33 U.S.C. § 1344, provides that the Secretary of the Army, acting through the Chief of Engineers for the U.S. Army Corps of Engineers (COE), may issue permits for the discharge of dredged or fill material into navigable waters.
13. At no time during the relevant time period did Respondent have a permit issued by the COE that authorized the discharges alleged in paragraph 8 above
14. Under Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), the Administrator is authorized to assess a Class I or Class II civil penalty whenever, on the basis of any

available information, the Administrator finds that a person has violated Section 301 of the Act, 33 U.S.C. § 1311.

15. Each day of unauthorized discharge by Respondent was a violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

16. Under Section 309(g)(2)(A) of the Act, 33 U.S.C. § 1319(g)(2)(A), Respondent is liable for a Class I civil penalty in an amount not to exceed \$26,685 per day for each day during which a violation continued, up to a maximum of \$66,712.

17. The State of Texas was notified and given an opportunity to consult with EPA regarding the proposed assessment of an administrative penalty against Respondent.

18. EPA notified the public of the proposed CAFO and afforded the public forty (40) days to comment on the proposed penalty in accordance with 40 C.F.R. § 22.45. At the expiration of the notice period, EPA received no comments.

III. TERMS OF SETTLEMENT

A. PENALTY PROVISIONS

19. Based on the foregoing Findings of Fact and Conclusions of Law, EPA Region 6, considering the relevant criteria pursuant to Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3), and acting pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), hereby orders that Respondent shall pay to the United States a civil penalty in the amount of thirty-two thousand eight hundred ninety dollars (\$32,890) to settle the violations as alleged in this CAFO, in accordance with 40 C.F.R. § 22.18(c).

20. Payment shall be made by one of the following methods within thirty (30) days of the effective date of this CAFO:

- a. By mailing a bank check, a cashier's check or certified check, payable to "Treasurer of the United States," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

- b. By wire transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

- c. By overnight mail (Express, FedEx, DHL, etc.) to:

U.S. Environmental Protection Agency
Government Lockbox
(depends on type of payment, please refer to
<https://www.epa.gov/financial/makepayment> for details)
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone: 314-418-4087

- d. By credit card payments to <https://www.pay.gov/paygov/>
(enter sfo 1.1 in the search field)

When paying by check, the case name and docket number ("In the Matter of Future Frontiers, LLC, Respondent, Docket No. CWA-06-2024-2715") should be clearly marked on the check to ensure credit for payment.

21. Respondent shall send simultaneous notice of payment, including a copy of the check or other proof of payment, to each of the following:

- (a) Lorena Vaughn
Regional Hearing Clerk (6ORC?)
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov
- (b) Tom Nystrom (6ECDWR)
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
nystrom.thomas@@epa.gov
- (c) Tucker Henson (6ORCWE)
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
henson.tucker@epa.gov

Respondent's adherence to these procedures will ensure proper credit when payment is received by EPA.

22. Respondent agrees not to claim, or attempt to claim, a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.
23. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. See 40 C.F.R. § 13.11(b).

24. EPA will also assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. See 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. See 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.
25. Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be twenty percent (20%) of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.
26. Failure by Respondent to pay the penalty assessed according to the terms of this CAFO, in full, by its due date, may subject Respondent to a civil action to collect the assessed penalty and any accrued interest and penalties.
27. In the event a collection action is necessary, Respondent shall pay - in addition to any applicable penalty, fees, and interest described herein - all reasonable costs and expenses, including legal expenses and court costs, incurred by the United States for enforcement and collection proceedings for nonpayment of the amounts agreed hereunder, pursuant to Section 309(g)(9) of the Act, 33 U.S.C. 1319(g)(9). In any such collection action, the validity, amount, and appropriateness of the penalty, and the terms of this CAFO shall not be subject to review.

IV. GENERAL PROVISIONS

28. EPA and Respondent agree to the use of electronic signatures for this matter. EPA and Respondent further agree to electronic service of this CAFO by email to the following addresses:

To EPA: nystrom.thomas@epa.gov

To Respondent: wadej@johnsonpace.com

29. Issuance of this CAFO does not relieve Respondent from responsibility to comply with all requirements of the Act and the requirements of any permits issued thereunder, as described in Section 309(g)(7) of the Act, 33 U.S.C. § 1319(g)(7), nor does it constitute a waiver by EPA of its right to enforce compliance with the requirements of Respondent's permits or other requirements of the Act by actions pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

30. The provisions of this CAFO shall be binding upon Respondent, its officers or officials, managers, employees, and their successors or assigns, in their capacity on behalf of Respondent.

31. Each party agrees to bear its own costs and attorneys' fees in this matter, except to the extent that Respondent may be responsible for reasonable costs and expenses of enforcement and collection proceedings for failure to comply with the terms of this CAFO.

32. Each undersigned representative of the Parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement and to execute and legally bind that party to it.

33. In recognition and acceptance of the foregoing:

Date: _____

Wade Johnson, President
Future Frontiers, LLC

Date: _____

Cheryl T. Seager, Director
Enforcement and
Compliance Assurance Division

FINAL ORDER

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged in the Complaint. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect Respondent's (or its officers', agents', servants', employees', successors', or assigns') obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. Respondent is ordered to comply with the terms of settlement and the civil penalty payment instructions as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Issuance Date: _____

Thomas Rucki, Regional Judicial Officer
EPA, Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2024, the original of the foregoing Consent Agreement and Final Order was delivered to the Regional Hearing Clerk, U.S. EPA, Region 6 (6ORC), 1201 Elm Street, Suite 500, Dallas, Texas 75270-2102, and that a true and correct copy emailed to the Respondent at:

Wade Johnson, PE
Johnson & Pace Incorporated
1201 NW Loop 281, Suite 100
Longview, Texas 75604
wadej@johnsonpace.com

Copy hand-delivered:

Lorena Vaughn
Regional Hearing Clerk (6ORC)
U.S. Environmental Protection Agency, Region 6
1201 Elm Street, Suite 500
Dallas, Texas 75270-2102
vaughn.lorena@epa.gov

Date: _____