

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

CENTER FOR BIOLOGICAL DIVERSITY, *et al.*,

*Plaintiffs,*

v.

U.S. ARMY CORPS OF ENGINEERS and  
LIEUTENANT GENERAL SCOTT A.  
SPELLMON<sup>1</sup> (in his official capacity as  
Commanding General of the U.S. Army Corps of  
Engineers),

*Federal Defendants,*

and

FG LA, LLC,

*Defendant-Intervenor.*

Civil Case No. 1:20-cv-103-RDM

**STATUS REPORT**

Defendants the U.S. Army Corps of Engineers and Lieutenant General Scott A. Spellmon (collectively, “the Corps”) file this status report in response to the Court’s November 5, 2020 Minute Order. The Court ordered the Corps to file a status report within 24 hours after issuing notice to FG LA, LLC of the Corps’ reevaluation of the challenged permit under 33 C.F.R. § 325.7. On November 12, 2020, the Corps gave notice to FG LA, LLC via counsel that the Corps is reevaluating Permit MVN-2018-00159-CM and has suspended the permit under 33 C.F.R. § 325.7(c). The notice of suspension and the associated statement of findings supporting

---

<sup>1</sup> Lieutenant General Scott A. Spellmon has succeeded Todd T. Semonite as Chief of Engineers and Commanding General of the U.S. Army Corps of Engineers and, pursuant to Fed. R. Civ. P. 25(d), is automatically substituted as a party in this case.

the Corps' decision are attached as Exhibits 1 and 2, respectively. This status report is being filed within 24 hours after the Corps issued the notice of suspension to FG LA, LLC.

Respectfully submitted,

Date: November 13, 2020

Of Counsel:

MELANIE CASNER  
*Attorney*  
U.S. Army Corps of Engineers

/s/ Andrew D. Knudsen  
JACQUELINE LEONARD  
Natural Resources Section  
NY Bar No. 5020474  
(202) 305-0493  
ANDREW D. KNUDSEN  
Environmental Defense Section  
DC Bar No. 1019697  
(202) 353-7466  
U.S. Department of Justice  
Environment & Natural Resources Division  
P.O. Box 7611  
Washington, DC 20044

**CERTIFICATE OF SERVICE**

I hereby certify that on November 13, 2020, I filed the foregoing via the Court's CM/ECF system, which will provide electronic notice to all counsel of record.

/s/ Andrew D. Knudsen  
Andrew D. Knudsen

# **EXHIBIT 1**



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
7400 LEAKE AVE  
NEW ORLEANS, LA 70118-3651

November 10, 2020

SUBJECT: Notice of Suspension of Department of the Army Permit MVN-2018-00159-CM

FG LA, LLC  
c/o POWER Engineers, Inc.  
Attn: Jude Comeaux  
One America Place  
301 Main Street., Suite 2284  
Baton Rouge, Louisiana, 70801

Dear Mr. Comeaux,

This notice is in reference to your Department of the Army (DA) Permit MVN-2018-00159-CM issued by the U.S. Army Corps of Engineers, New Orleans District (Corps) on September 5, 2019 authorizing the clearing, grading, excavating, and placing fill and aggregate material to construct and maintain a Greenfield Petrochemical Complex and Marine Facility (The Sunshine Facility), pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The project site is located on and adjacent to the Mississippi River, Right Descending Bank, mile 165.5, near Welcome, Louisiana, in St. James Parish.

The regulations on processing DA permits at 33 CFR 325.7 allow for the District Engineer, at their discretion, to reevaluate the circumstances and conditions of any permit and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the public interest.

The Corps has determined it to be in the public interest to suspend DA Permit MVN-2018-00159-CM so that we may re-evaluate the alternatives analysis under the Clean Water Act and other aspects of the permit decision if appropriate. Accordingly, all activities authorized under Permit MVN-2018-00159-CM must cease. Please let us know if you believe some activities are necessary to stabilize project site integrity or otherwise prevent adverse impacts during the re-evaluation. Please be advised that following this suspension, a decision will be made to either reinstate, modify, or revoke the DA permit.

Within 10 days of receipt of this notice of suspension, you may request a meeting to present information in this matter. If you have any questions or would like to schedule a meeting, please contact Martin Mayer at 504-862-2255, or at [martin.s.mayer@usace.army.mil](mailto:martin.s.mayer@usace.army.mil).

Sincerely,

A handwritten signature in blue ink, appearing to read "Stephen F. Murphy", is written over a printed name and title.

Stephen F. Murphy  
Colonel, U.S. Army  
District Commander

# **EXHIBIT 2**



**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, NEW ORLEANS DISTRICT  
7400 LEAKE AVENUE NEW ORLEANS LA 70118-3651

Operations Division  
Central Evaluation Section

**SUBJECT:** SUSPENSION OF PERMIT (MVN-2018-00159-CM)

**FINDINGS FOR SUSPENSION**

1. Department of the Army (DA) permit MVN-2018-00159-CM was issued to FG LA, LLC, on September 5, 2019. This permit authorized the clearing, grading, excavation, and placement of fill material to construct and maintain a Greenfield Petrochemical Complex and Marine Facility (The Sunshine Facility) at an approximately 2,500-acre site on and adjacent to the Mississippi River, Right Descending Bank, in Welcome, Louisiana, in St. James Parish. FG LA has done only limited construction on site and has no plans to perform any work regulated by the Corps until February 2021 at the earliest.
2. On 15 Jan 2020, Center for Biological Diversity, Healthy Gulf, Louisiana Bucket Brigade and Rise St. James, filed a complaint against the US Army Corps of Engineers (Corps) in the United States District Court for the District of Columbia, challenging the New Orleans District's (MVN) decision to grant the DA permit. The basis for the complaint alleges violations of the National Environmental Policy Act (NEPA), Rivers and Harbors Act, Clean Water Act (CWA) and National Historic Preservation Act. In responding to the litigation, the Corps identified a portion of its permit analysis related to the Corps' alternatives analysis under the CWA, which requires re-evaluation. While the issues the Corps identified with its alternatives analysis alone provide a sufficient basis to suspend and reevaluate the permit, the Corps may also consider additional issues as appropriate during the re-evaluation.
3. As noted in the Memorandum for Record, the Corps considered thirteen alternative sites, but eliminated five alternative sites in Ascension Parish from further NEPA and CWA 404(b)(1) analysis solely because that Parish was presumed to be designated by EPA in nonattainment status under the Clean Air Act (CAA). See e.g. Memorandum for the Record, Subject: Department of the Army Environmental Assessment and Statement of Findings for the Above-Referenced Standard Individual Permit Application at 35 (Sept. 5, 2019). The Corps considered the remaining eight alternative sites in St. John the Baptist and St. James Parishes in the NEPA and 404(b)(1) alternatives analysis because they were designated attainment status under the CAA. Id. The elimination of the five alternative sites in Ascension Parish was based on erroneous information regarding the attainment status of those alternatives. Ascension Parish was assumed to be considered a non-attainment area but was in fact designated by EPA in

attainment status. See Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards, 83 Fed. Reg. 25,776, 25,810-11 (June 4, 2018). This incorrect information does not support the conclusion to eliminate those five alternatives.

4. It is therefore necessary in consideration of the public interest to suspend the permit while the Corps considers whether to reinstate, modify, or revoke the permit because of this erroneous information. See 33 C.F.R. § 325.7 (a)&(c). The Corps will reexamine the alternatives analysis under the CWA and other aspects of the permit, if deemed appropriate.

5. The Corps will notify the permittee as required by 33 C.F.R. § 325.7(c). During the suspension, the Corps will work with the permittee to get the information needed for this re-evaluation and will make a decision as expeditiously as possible on whether to reinstate, modify, or revoke the permit.

6. In sum, the permitting authority granted by regulations empower the District Engineer to suspend, modify and revoke DA permits when it is in the overall public interest to do so. 33 C.F.R. § 325.7(a) – (e). With these findings, I have determined that immediate suspension of the subject DA permit would be in the public interest. Within 10 days of receipt of this notice of suspension, the permittee may request a meeting with me and/or a public hearing to present information in this matter. Thereafter, following completion of the reevaluation of the permit application including any additional information that may be provided by FG LA, I will take action to reinstate, modify, or revoke the permit.

7. MVN is committed to rendering a decision as to whether to reinstate, modify, or revoke the subject permit in a timely manner.

GAUTHIER.NEIL. Digitally signed by  
TIMOTHY.13742 GAUTHIER.NEIL.TIMOTHY.13  
88900 74288900  
Date: 2020.11.10 14:40:19  
-06'00'

Preparer  
Neil T. Gauthier  
Senior Project Manager

Date

HERMAN.JOHN.MA Digitally signed by  
TTHEW.1119334280 HERMAN.JOHN.MATTHEW.11193  
34280  
Date: 2020.11.10 14:45:15 -06'00'

Reviewer  
John M. Herman  
Chief, Central Evaluation Section

Date



MAYER.MAR  
TIN.STEVEN.  
1230824947

Digitally signed by  
MAYER.MARTIN.ST  
EVEN.1230824947  
Date: 2020.11.10  
14:53:16 -06'00'

---

Reviewer  
Martin S. Mayer  
Chief, Regulatory Branch

---

Date



---

Approving Official  
COL Stephen F. Murphy  
District Commander

---

11/10/2020

---

Date