

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL NO. 21-56
v. * SECTION:
GREAT LAKES DREDGE & DOCK *
COMPANY, LLC *
* * *

FACTUAL BASIS

Should this matter have proceeded to trial, the United States of America would have proven beyond a reasonable doubt, through the introduction of relevant, competent, and admissible testimonial, physical, and demonstrative evidence, the following facts, beyond a reasonable doubt, to support the charge pending against defendant **GREAT LAKES DREDGE & DOCK COMPANY, LLC** (“**GREAT LAKES**”).

The National Oceanic and Atmospheric Administration (“NOAA”) contracted with **GREAT LAKES** to complete the Chenier Ronquille Barrier Island Restoration Project, which was designed to restore an eroded barrier island where the Gulf of Mexico meets Louisiana’s coastal wetlands. The Chenier Ronquille Barrier Island (the “island”) is approximately eight miles east of Grand Isle, Louisiana, in the territorial jurisdiction of the Eastern District of Louisiana. The restoration project involved building up dikes on the outside of the island and then filling in the interior with sediment¹ dredged from the Gulf of Mexico.

¹ “Sediment” is used in this document to include mud, sand, silt, clay, etc.

AUSA NDM
Def. Counsel [Signature]
Defendant VS

GREAT LAKES' contract with NOAA showed approximate pipeline locations based on government databases, "for informational purposes only," and that the government was not liable for exact locations. The contract specified that the government was not responsible for any conclusion that **GREAT LAKES** drew from the survey data provided in the contract. Instead, the contract specified that **GREAT LAKES** had to perform a magnetic survey in all areas of excavation, to ensure that all excavation activity was at least 50 feet away from pipelines and other infrastructure, unless specifically allowed by the contract. **GREAT LAKES** contracted with an engineering firm, who surveyed the area in March of 2016. Following **GREAT LAKES'** instructions, the engineering firm conducted surveys that showed the location of the pipelines and gave the depth of the pipeline in certain spots.

The contract also required that **GREAT LAKES** comply with Louisiana One Call notification requirements. Under the Pipeline Safety Act, 49 U.S.C. § 60123(d), and its corresponding regulations, 49 C.F.R. §§ 190-199, there is a specific prohibition against engaging in "excavation activity without first using an available one-call notification system to establish the location of underground facilities in the excavation area; or without considering location information or markings established by a pipeline facility operator." 49 C.F.R. § 190.291. Under Louisiana's One Call system, created by the Louisiana Underground Utilities and Facilities Damage Prevention Law, L.R.S. 40:1749.1 *et seq.*, excavators give notice to a centralized notification center between two and five days before excavation activity. The pipeline companies must then provide detailed information about the location of the pipeline and mark their locations in the construction sites. An excavator's notification under One Call must be renewed every twenty days. **GREAT LAKES** made its first One Call notification to the various pipeline companies on or about September 25, 2015.

A pair of pipelines called Bay Marchand-to-Ostrica-to-Alliance (“BOA”) ran underneath and parallel to the dike on the northern side of the island. The BOA pipelines were accurately marked for the duration of the restoration project with cane poles with three orange flags and other markers. There were also separate cane poles marking buffer zones on either side of the pipelines, running parallel to the pipelines. The pipeline cane poles and the buffer zone cane poles were color-coded. No surveys, conducted from the start of the island restoration project through the end of August 2016, either by GREAT LAKES or done at its direction, showed that any portion of the BOA pipelines were uncovered and exposed in the water column in the area of the island.

Construction of the island began in or around May of 2016. On or about May 27, 2016, Harvest Pipeline Company, which had recently taken over operation of the BOA pipelines from another company, asked GREAT LAKES employees for more information regarding the project and expressed concerns about the pipeline’s location under the northern-most dike. On or about June 1, 2016, GREAT LAKES made a One Call notification to Harvest Pipeline Company and sent them the plans for the island project. That One Call notification expired on June 21, 2016.

GREAT LAKES continued excavation work at the project without updating its expired One Call notification, in violation of the Pipeline Safety Act and the Louisiana Underground Utilities and Facilities Damage Prevention Law. GREAT LAKES did not make another One Call notification until after the oil spill that occurred on September 5, 2016.

NOAA’s plans for the project allowed GREAT LAKES to dig a deep-water access channel (the “Authorized Access Channel”) at the western tip of the island. The Authorized Access Channel ran parallel to the BOA pipelines but south of them, following the same approximately east-west orientation as both the BOA pipelines and the northern dike of the island. The project plans showed that, at the point where the BOA pipelines ran next to the Authorized Access

Channel, the BOA pipelines were shallower than the depth that **GREAT LAKES** was allowed to dig for the Authorized Access Channel.


GREAT LAKES used several subcontractors. Shallow Water Equipment, LLC (“Shallow Water”), which provided marsh buggies and operators, was initially involved in the project when it was hired by another of **GREAT LAKES**’ subcontractors. In or around July of 2016, Shallow Water contracted with, and began working directly for, **GREAT LAKES**. James Tassin was employed by Shallow Water as a marsh buggy operator who worked on the project. Tassin’s work involved digging and moving sediment to construct and maintain the dikes that formed the outside of the island.

GREAT LAKES supervised Tassin’s work for the island restoration project and gave him instructions regarding what to do, when to do it, and how to do it. **GREAT LAKES** paid for the marsh buggy and operator as a part of the work arrangement between Shallow Water and **GREAT LAKES**. Tassin understood that if **GREAT LAKES** was not pleased with his work, it could either hire another company to provide marsh buggies and operators or request Shallow Water to replace Tassin.

On September 5, 2016, which was Labor Day, Tassin was travelling in the marsh buggy, which had been stationed south of the BOA pipelines, with the intention of crossing the BOA pipelines. While Tassin was near the pipeline, part of the marsh buggy that he was driving struck a BOA pipeline and caused it to leak oil. The oil caused a visible sheen on the water. Tassin’s actions resulted in the marsh buggy striking a pipeline and caused the oil leak and resulting sheen in navigable waters of the United States. The evidence will show that **GREAT LAKES** site managers failed to supervise Tassin properly and exercise reasonable care under the circumstances, which was a proximate cause of the pipeline rupture.

This proffer of evidence is not intended to constitute a complete statement of all facts known by the government or **GREAT LAKES**, but rather is a minimum statement of facts intended to prove the necessary factual predicate for the guilty plea. The limited purpose of this proffer is to demonstrate that there exists a sufficient legal and factual basis for **GREAT LAKES'** plea of guilty.

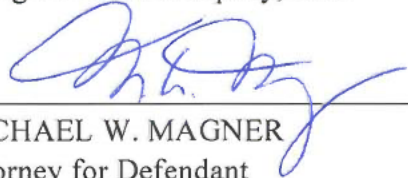
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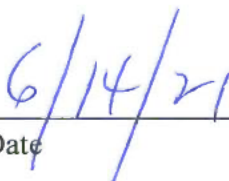
VIVIENNE SCHIFFER
Representative for Defendant Great Lakes
Dredge & Dock Company, LLC



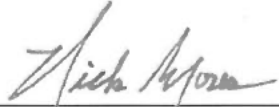
Date



MICHAEL W. MAGNER
Attorney for Defendant



Date



NICHOLAS D. MOSES
Assistant United States Attorney

6/2/2021

Date