



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

AUG - 7 2019

CERTIFIED MAIL 7018 2290 0000 6353 9113
RETURN RECEIPT REQUESTED

JS LLC
Attn: Mr. Jason Scruggs
3575 Tom Watson Drive
Saltillo, Mississippi 38866

Re: Consent Agreement and Final Order Docket No.: CWA-04-2019-5502(b)

Dear Mr. Scruggs:

Enclosed is a copy of the Consent Agreement and Final Order that has been finalized by the U.S. Environmental Protection Agency Region 4 and the Regional Judicial Officer. Please make note of the provisions under Section V.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Mr. Zachary Schlachter at (404) 562-9267.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mary Jo Bragan".

Mary Jo Bragan, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division

Enclosures (3)

cc: Ms. Courtney Shea
Corps of Engineers, Mobile District

Ms. Florance Bass
Mississippi Department of Environmental Quality,
Environmental Permits Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

2019 AUG -7 PM 1:22
HEARING CLERK
OFFICE OF REGIONAL COUNSEL
U.S. ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF:

JS LLC
Saltillo, Mississippi

RESPONDENT

)
) ADMINISTRATIVE
) CONSENT AGREEMENT AND
) FINAL PENALTY ORDER
)
) Docket No.: CWA-04-2019-5502(b)

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding under Section 309(g)(2) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, published at 64 Fed. Reg. 40176 (July 23, 1999), codified at 40 Code of Federal Regulations (“C.F.R.”) Part 22 (“Part 22”).

2. The authority to take action under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), is vested in the Administrator of the United States Environmental Protection Agency (“EPA”). The Administrator has delegated this authority to and through the Director of the Enforcement and Compliance Assurance Division of the EPA, Region 4, to the Chief of the Water Enforcement Branch of the EPA, Region 4 (“Complainant”).

II. Statutory and Regulatory Background

3. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), states “[w]henever, on the basis of any information available - the Administrator finds that any person has violated [section 301 of the CWA, 33 U.S.C. § 1311], . . . the Administrator . . . may, after consultation with the State in which the violation occurs, assess a class I civil penalty or a class II civil penalty under [33 U.S.C. § 1319(g)(2)].”

4. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states “[e]xcept as in compliance with . . . [Section 404 of the CWA, 33 U.S.C. § 1314], the discharge of any [dredged or fill material] by any person shall be unlawful.” Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (“COE”), to issue permits for the discharge of dredged or fill material into navigable waters.

5. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a “discharge of pollutants” as “[a]ny addition of any pollutant to navigable waters from any point source....”

6. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged.”

7. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”

8. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines a “person” to include any “individual [and] corporation.”

III. Allegations

9. Respondent, JS LLC, at all times relevant to this Consent Agreement and Final Order, was the owner and operator of the Site.

10. JS LLC is a corporation duly organized under the laws of the State of Mississippi and, as such, is a person within the definition set forth by section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. The term “Discharge Area” means the jurisdictional waters that have been impacted through the discharge of fill material as a result of the unauthorized activities that are the subject of this enforcement action. More specifically, the Discharge Area is approximately 989 linear feet of perennial stream that flows directly into Town Creek, a navigable water.

12. The term “Site” means the parcel or parcels of land on which the Discharge Area is located. The Site is located at Section 18, Township 9 South, Range 6 East, North Gloster Street, in Lee County, Mississippi near latitude 34.30336°N, and longitude 88.70994°W. (See Exhibits A and B).

13. Commencing on or about March 1, 2017, until on or about August 30, 2017, Respondent, or those acting on behalf of Respondent, discharged fill material consisting of earthen material and a 48-inch diameter corrugated pipe into waters of the United States on the Site, without a permit, using earth moving machinery during unauthorized activities associated with commercial development.

14. Respondent impacted approximately 989 linear feet of perennial stream (“Discharge Area”) that flows directly into Town Creek, a navigable-in-fact water of the United States. This perennial stream is a water of the United States subject to the jurisdiction of the CWA because it maintains a relatively permanent, continuous surface connection to a navigable-in-fact water of the United States.

15. The discharged fill material, including the 48-inch diameter corrugated pipe and earthen material deposited at the Discharge Area, are “pollutants” as defined by Section 502(6) of the CWA, U.S.C. § 1362(6).

16. The earth moving machinery employed by Respondent to deposit the fill material at the Discharge Area are “point sources” as defined by Section 502(14) of the CWA, U.S.C. § 1362(14).

17. Respondent’s placement of the fill material at the Discharge Area constitutes a “discharge of pollutants” as defined by Section 502(12) of the CWA, U.S.C. § 1362(12).

18. At no time during the discharge of the fill material at the Discharge Area from March 1, 2017, to the present, did Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities it performed.

19. Each discharge by Respondent of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

20. Each day the material discharged by Respondent remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

IV. Stipulations and Findings

21. Complainant and Respondent have conferred for the purpose of settlement under 40 C.F.R. Part 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without gathering any evidence or testimony, making of any argument, or adjudicating any issue in this matter, and in accordance with 40 C.F.R. Part 22.13(b), this Administrative Consent Agreement and Final Penalty Order (“CAFO”) will simultaneously commence and conclude this matter.

22. For the purposes of this CAFO, Respondent admits the jurisdictional and factual allegations set out above.

23. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

24. For the purpose of this proceeding, Respondent:

A. agrees that this CAFO states a claim upon which relief may be granted against Respondent;

B. acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondent's compliance history in any subsequent enforcement actions;

C. waives any rights it may possess at law or in equity to challenge the authority of EPA to bring a civil action in a United States District Court to compel compliance with the CAFO, and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action; and

D. waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum, or communication is to persuade such official to accept and issue this CAFO.

25. Respondent consents to the assessment of and agrees to pay the administrative penalty and the other conditions set forth in this CAFO.

26. By signing this CAFO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and continues to be, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information, under 18 U.S.C. § 1001.

27. The EPA also reserves the right to revoke this CAFO and settlement penalty if and to the extent that the EPA finds, after signing this CAFO, that any information provided by Respondent was materially false or inaccurate at the time such information was provided to the EPA. If such false or inaccurate material was provided, the EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. The EPA shall give Respondent notice of its intent to revoke, which shall not be effective until received by Respondent in writing.

28. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of the CWA.

V. Payment

29. Under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 19, and considering the nature of the violations and other relevant factors, EPA has determined that nineteen thousand, five hundred dollars (\$19,500) is an appropriate civil penalty to settle this action.

30. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CAFO by cashier's check, certified

check, by electronic funds transfer (“EFT”), or by Automated Clearing House (“ACH”) (also known as REX or remittance express). If paying by check, the check shall be payable to: Treasurer, United States of America, and the Facility name and docket number for this matter shall be referenced on the face of the check. If Respondent sends payment by the U.S. Postal Service, the payment shall be addressed to:

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

If Respondent sends payment by non-U.S. Postal express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1818

If paying by EFT, Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
“D 68010727 Environmental Protection Agency”

If paying by ACH, Respondent shall remit payment to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 – checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, Maryland 20737
Contact: Craig Steffen, (513) 487-2091
REX (Remittance Express): 1-866-234-5681

31. At the time of payment, Respondent shall send a separate copy of the check, if using that payment option, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

and

Mr. Zachary Schlachter
Water Protection Branch
Surface Water and Ground Waters Section
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

32. The penalty amount specified above shall represent civil penalties assessed by the EPA and shall not be deductible for purposes of federal taxes.

33. If Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may request the Attorney General to bring a civil action in an appropriate district court to recover: (a) the amount assessed; (b) interest at rates established pursuant to 26 U.S.C. § 6621(a)(2); (c) the United States' attorneys' fees and enforcement expenses; and (d) a 20 percent quarterly nonpayment penalty pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the penalty and of this CAFO shall not be subject to review.

34. In addition to the terms of the prior Paragraph, if Respondent fails to timely pay any portion of the penalty assessed under this CAFO, EPA may:

A. refer the debt to a credit reporting agency or a collection agency, pursuant to 40 C.F.R. §§ 13.13, 13.14;

B. collect the debt by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government), which includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, pursuant to 40 C.F.R. Part 13, Subparts C and H;

C. suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, pursuant to 40 C.F.R. § 13.17; and/or

refer the debt to the Department of Justice after having taken aggressive collection action, pursuant to 40 C.F.R. § 13.33.

VI. General Provisions

35. Full payment of the civil penalty, as provided in Section V above, shall not in any case affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. As stated in 40 C.F.R. § 22.18(c), full compliance with this CAFO, as provided in Section V above, shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged above.

36. Nothing in this CAFO shall relieve Respondent of the duty to comply with all applicable provisions of the CWA and other federal, state, or local laws or statutes, nor shall it restrict the EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, except as expressly provided herein.

37. Nothing herein shall be construed to limit the power of the EPA to undertake any action against Respondent or any person in response to conditions that may present an imminent and substantial endangerment as provided under the Act.

38. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of both Parties, and approval of the Regional Judicial Officer.

39. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and agrees that this CAFO does not contain any confidential business information or personally identifiable information.

40. By signing this Consent Agreement, the undersigned representative of Complainant and the undersigned representative of Respondent each certify that he or she is fully authorized to execute and enter into the terms and conditions of this CAFO and has the legal capacity to bind the party he or she represents to this CAFO.

41. By signing this Consent Agreement, both Parties agree that each party's obligations under this CAFO constitute sufficient consideration for the other party's obligations.

42. This CAFO applies to and is binding upon Respondent and its officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

43. Any change in the legal status of Respondent, or change in ownership, partnership, corporate or legal status relating to the Facility, will not in any way alter Respondent's obligations and responsibilities under this CAFO.

44. Each party shall bear its own costs and attorneys' fees in connection with the action resolved by this CAFO.

45. In accordance with 40 C.F.R. Part 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Mr. Nathan Stopper
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9670

For Respondent:

Mr. Jason Scruggs
Manager, JS LLC
3575 Tom Watson Drive
Tupelo, Mississippi 38866

46. The parties acknowledge and agree that this CAFO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

47. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

48. This CAFO in no way affects the rights of the Complainant as against any person or entity not a party to this CAFO.

49. Effective upon signature of this CAFO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondent the payment required by this CAFO shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the EPA related to the matters addressed in this CAFO and that, in any action brought by the EPA related to the matters addressed, Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If the EPA gives notice to Respondent that it will not make this CAFO effective, the statute of limitations shall begin to run again commencing ninety (90) days after the date such notice is sent by the EPA.

50. It is the intent of the parties that the provisions of this CAFO are severable. If any provision or authority of this CAFO or the application of this CAFO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CAFO shall remain in force and shall not be affected thereby.

VII. Release by Respondent

51. Respondent hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the matters addressed and resolved in this CAFO, including but not limited to, any claim that any of the matters or actions described in this CAFO have resulted in a taking of Respondent's property without compensation.

VIII. Effective Date

52. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For RESPONDENT:



Jason Scruggs, Manager
JS LLC

Date: 6-11-19

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



Mary Jo Bragan, Chief
Water Enforcement Branch
Enforcement and Compliance Assurance Division
U.S. EPA Region 4

Date: 7/26/19

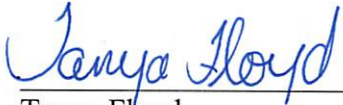
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
) ADMINISTRATIVE
JS LLC) CONSENT AGREEMENT AND
Saltillo, Mississippi) FINAL PENALTY ORDER
)
RESPONDENT.) Docket No.: CWA-04-2019-5502(b)
_____)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 C.F.R. Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Tanya Floyd
Regional Judicial Officer

Date: August 7, 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of: **Docket No. CWA-04-2019-5502(b)** on the parties listed below in the manner indicated:

EPA Internal Mail:

Mr. Zachary Schlachter
Enforcement and Compliance Assurance Division
U.S. EPA, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

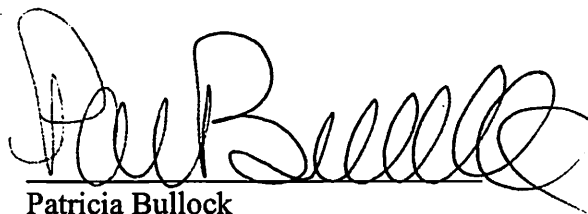
By hand-delivery:

Mr. Nathan Stopper
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

By Certified mail,
return receipt requested:

Mr. Jason Scruggs
JS LLC
3575 Tom Watson Drive
Tupelo, Mississippi 38866

Dated: 8-7-19



Patricia Bullock
Regional Hearing Clerk
U. S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9511

ATTACHMENT A

COLLECTION INFORMATION

WIRE TRANSFERS:

Wire transfers should be directed to the Federal Reserve Bank of New York

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"

OVERNIGHT MAIL:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

St. Louis, MO 63101

Contact: Natalie Pearson

314-418-4087

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact – Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006

CTX Format

ON LINE PAYMENT:

There is now an On Line Payment Option, available through the Dept. of Treasury.

This payment option can be accessed from the information below:

WWW.PAY.GOV (Enter sfo 1.1 in the search field Open form and complete required fields).

EXHIBIT A
JS LLC JASON SCRUGGS
LEE COUNTY, MISSISSIPPI

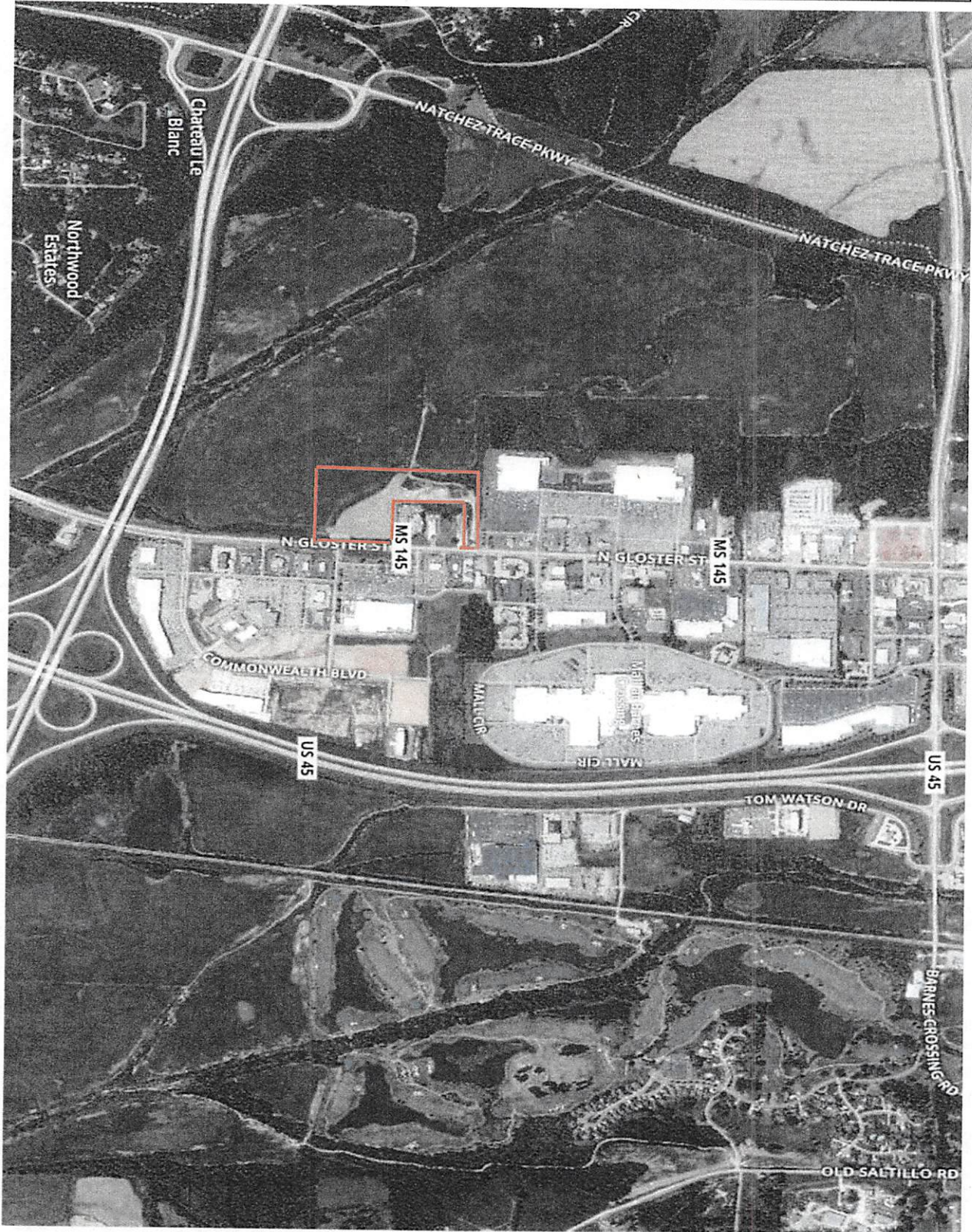


EXHIBIT B
JS LLC JASON SCRUGGS
LEE COUNTY, MISSISSIPPI

