

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:)
)
ArcelorMittal Minorca Mine Inc.,)
Virginia, Minnesota,)
Respondent.)
_____)
Docket No. CWA-05-2015-0010
Consent Agreement and
Final Order
Pursuant to Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g).

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

WHEREAS, the parties to this administrative action have agreed to simultaneously commence and conclude the above-captioned action before the filing of a complaint via the filing of this Consent Agreement and Final Order (“CAFO”) pursuant to Section 309(g) of the Clean Water Act, (the “Act” or “CWA”), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2) and (3) of 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. § 22.13(b) and 22.18(b)(2) and (3).

WHEREAS, the Complainant is, by lawful delegation of the Administrator and the Regional Administrator, the Director of the Water Division, Region 5, United States Environmental Protection Agency (“EPA”).

WHEREAS, the Respondent in this proceeding is ArcelorMittal Minorca Mine Inc., 5950 Old Highway 53, Virginia, MN 55792, a corporation doing business in the State of Minnesota.

WHEREAS, the Respondent admits that the Administrator of EPA has jurisdiction of this proceeding pursuant to Sections 301 and 309 of the Act, 33 U.S.C. §§ 1311 and 1319, and the regulations at 40 C.F.R. § 22.38, and pursuant to 40 C.F.R. § 22.18(b)(2).

WHEREAS, the Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms and conditions of this CAFO.

WHEREAS, the Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

WHEREAS, settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in the public interest.

NOW, THEREFORE, the parties agree as follows:

Statutory and Regulatory Background

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters by any person except in compliance with, inter alia, a permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344.
2. Section 404 of the Act authorizes the Secretary of the Army, acting through the Chief of Engineers of the United States Army Corps of Engineers (“Corps”), to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites. 33 U.S.C. § 1344.
3. Section 502(5) of the Act defines “person” as “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.” 33 U.S.C. § 1362(5).
4. Section 502(12) of the Act defines “discharge of pollutants” as, inter alia, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).
5. Section 502(6) of the Act defines “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological

materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. § 1362(6).

6. Section 502(14) of the Act defines “point source” as “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).
7. Section 502(7) of the Act defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
8. 40 C.F.R. § 230.3(s) defines the term “waters of the United States” to include, among other things:
 - a. All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce;
 - b. all interstate waters;
 - c. all other waters such as intrastate lakes, rivers, streams (including intermittent streams), the use, degradation, or destruction of which could affect interstate or foreign commerce;
 - d. tributaries of waters identified above; and
 - e. wetlands adjacent to waters (other than waters that are themselves wetlands) identified above.

9. Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), authorizes the Administrator to assess a Class II civil penalty under 33 U.S.C. § 1319(g)(2)(B), “whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of” Section 301 of the Act, 33 U.S.C. § 1311.
10. Pursuant to Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty not to exceed \$16,000 per day for each day during which the violation continues, to a maximum amount of \$177,500, for violations of Section 301 of the Act, 33 U.S.C. § 1311, which occurred from January 12, 2009, through December 6, 2013.

Factual Allegations and Alleged Violations

11. Respondent, ArcelorMittal Minorca Mine Inc., 5950 Old Highway 53, Virginia, MN 55792 (“ArcelorMittal” or “Respondent”), is a corporation under the authorities of the State of Minnesota.
12. Respondent is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).
13. Respondent, ArcelorMittal, neither admits nor denies the factual allegations and alleged violations in this CAFO.
14. The wetlands referenced in paragraphs 15, 22, and 29 are “waters of the United States” as defined under 40 C.F.R. § 232.2 and “navigable waters” as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

15. On May 5, 2007, the United States Army Corps of Engineers (“USACE”) issued to Respondent a permit authorizing, among other things, the filling of certain designated wetlands in connection with the construction of a haul road between East Pit #1 and East Pit #2 (the “Permit”). During calendar year 2012, and on various dates and times during calendar year 2012, ArcelorMittal discharged fill material into 1.98 acres of wetlands that were not authorized by the Permit to be filled, for the construction of a haul road between East Pit #1 and East Pit #2. Mechanized land moving equipment was used to facilitate construction of this road. An outline of the discharge area is illustrated on Exhibit 1 to this CAFO.
16. The fill material discharged into the wetlands referenced in paragraph 15 constitutes “pollutants” as defined under Section 502(6) of the Act, 33 U.S.C. § 1362(6).
17. The mechanized land moving equipment used to construct the haul road constitutes a “point source” as defined under Section 502(14) of the Act, 33 U.S.C. § 1362(14).
18. The addition of fill material into waters of the United States constitutes a “discharge of a pollutant” as defined under Section 502(12) of the Act, 33 U.S.C. § 1362(12).
19. At no time did Respondent have a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344, to discharge fill material into the wetlands described in paragraph 15.
20. Therefore, Respondent is a person who discharged pollutants from a point source into waters of the United States, without a permit, in violation of Section 301 of the Act, 33 U.S.C. § 1344.
21. Each day the pollutants remain in the waters of the United States constitutes a continuing violation of the Act and an additional day of violation of Section 301 of the Act,

33 U.S.C. § 1311.

22. On May 19, 2013, a pipeline coupling failure occurred at a location between the ArcelorMittal plant site and the upland tailings basin. Approximately 87,800 cubic feet of mine tailings were released into the pipeline tailings system and adjacent wetlands. 2.66 acres of wetland were filled with mine tailings. Outlines of the discharge areas are illustrated on Exhibits 2 and 3 to this CAFO.
23. The mine tailings discharged into the wetlands referenced in paragraph 22 constitute “pollutants” as defined under Section 502(6) of the Act, 33 U.S.C. § 1362(6).
24. The pipeline from which mine tailings were released constitutes a “point source” as defined under Section 502(14) of the Act, 33 U.S.C. § 1362(14).
25. The addition of mine tailings into waters of the United States constitutes a “discharge of a pollutant” as defined under Section 502(12) of the Act, 33 U.S.C. § 1362(12).
26. At no time did Respondent have a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344, to discharge mine tailings into the wetlands described in paragraph 22.
27. Therefore, Respondent is a person who discharged pollutants from a point source into waters of the United States, without a permit, in violation of Section 301 of the Act, 33 U.S.C. § 1344.
28. Each day the pollutants remain in the waters of the United States constitutes a continuing violation of the Act and an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.
29. On July 30, 2013, a section of the tailings pipeline between the ArcelorMittal plant site and the upland tailings basin developed a hole. Approximately 46,000 cubic feet of mine

tailings were released into the pipeline corridor and adjacent wetlands. 0.9 acres of wetlands were filled with mine tailings. An outline of the discharge area is illustrated on Exhibit 4 to this CAFO.

30. The mine tailings discharged into wetlands referenced in paragraph 29 constitute “pollutants” as defined under Section 502(6) of the Act, 33 U.S.C. § 1362(6).
31. The pipeline from which mine tailings were released constitutes a “point source” as defined under Section 502(14) of the Act, 33 U.S.C. § 1362(14).
32. The addition of mine tailings into waters of the United States constitutes a “discharge of a pollutant” as defined under Section 502(12) of the Act, 33 U.S.C. § 1362(12).
33. At no time did Respondent have a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344, to discharge mine tailings into the wetlands described in paragraph 29.
34. Therefore, Respondent is a person who discharged pollutants from a point source into waters of the United States, without a permit, in violation of Section 301 of the Act, 33 U.S.C. § 1344.
35. Each day the pollutants remain in the waters of the United States constitutes a continuing violation of the Act and an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.

Civil Penalty

38. Based upon the facts alleged in this CAFO; upon the nature, circumstances, extent and gravity of the violations alleged; after consideration of the Respondent's ability to pay, prior history of such violations, degree of culpability and economic benefit resulting from the violation; the Respondent's good faith and cooperation in resolving this matter; and such other matters as justice may require; EPA hereby proposes to issue a Final Order assessing civil penalties to ArcelorMittal in the amount of \$177,500.00 for the violations of Section 301 of the CWA, 33 U.S.C. § 1311, alleged in this CAFO.
39. The Respondent shall pay this civil penalty within 30 days of the effective date of this CAFO by certified or cashier's check payable to "Treasurer, the United States of America," and shall deliver it, with a transmittal letter identifying the CAFO, to:

For checks sent by regular U.S. Postal Service mail

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

For checks sent by express mail

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

40. The check must be annotated with the docket number and with the name of the case. Copies of the transmittal letter and the check shall simultaneously be sent to these recipients:

Yone Yu
Watershed and Wetlands Branch (WW-16J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

Jeffrey A. Cahn
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

41. This civil penalty is not deductible for federal tax purposes.
42. If the Respondent fails to timely pay the civil penalty, the Complainant may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and EPA's enforcement expenses for the collection action.
43. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. The Respondent must pay a \$15.00 handling charge each month that any portion of the penalty due is more than thirty days past due. The Complainant will assess a six percent per year penalty on any principal amount not paid timely pursuant to this CAFO.
44. This CAFO constitutes a complete and full settlement of, and resolves the Respondent's liability with prejudice for, the violations alleged in this CAFO.
45. This CAFO does not affect the right of the Complainant or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

46. This CAFO does not affect the Respondent's responsibility to comply with the Act and other applicable federal, state, and local, laws and regulations.
47. The terms of this CAFO bind EPA and the Respondent and their successors and assigns.
48. Each person signing this CAFO certifies he or she has the authority to sign this CAFO for the party he or she represents and to bind that party to its terms.
49. Each party agrees to bear its own costs and fees, including attorney's fees, for this action.
50. This CAFO constitutes the entire agreement between the parties.
51. No modification shall be made to this CAFO without written notification to, and written approval of, all parties hereto and no oral modification of this CAFO shall be effective.
52. The effective date of this CAFO is the date EPA files it with the Regional Hearing Clerk.

In the Matter of ArcelorMittal Minorca Mine Inc.

Docket No. CWA-05-2015-0010

ArcelorMittal Minorca Mine Inc., Respondent

Date: Jan. 9, 2015


Jonathan Holmes
Jonathan H. Holmes
Vice President/Operations Manager

In the Matter of ArcelorMittal Minorca Mine Inc.

Docket No. CWA-05-2015-0010

United States Environmental Protection Agency, Region 5, Complainant

Date: January 21, 2015



Tinka G. Hyde, Director
Water Division
United States Environmental Protection Agency,
Region 5

In the Matter of ArcelorMittal Minorca Mine Inc.

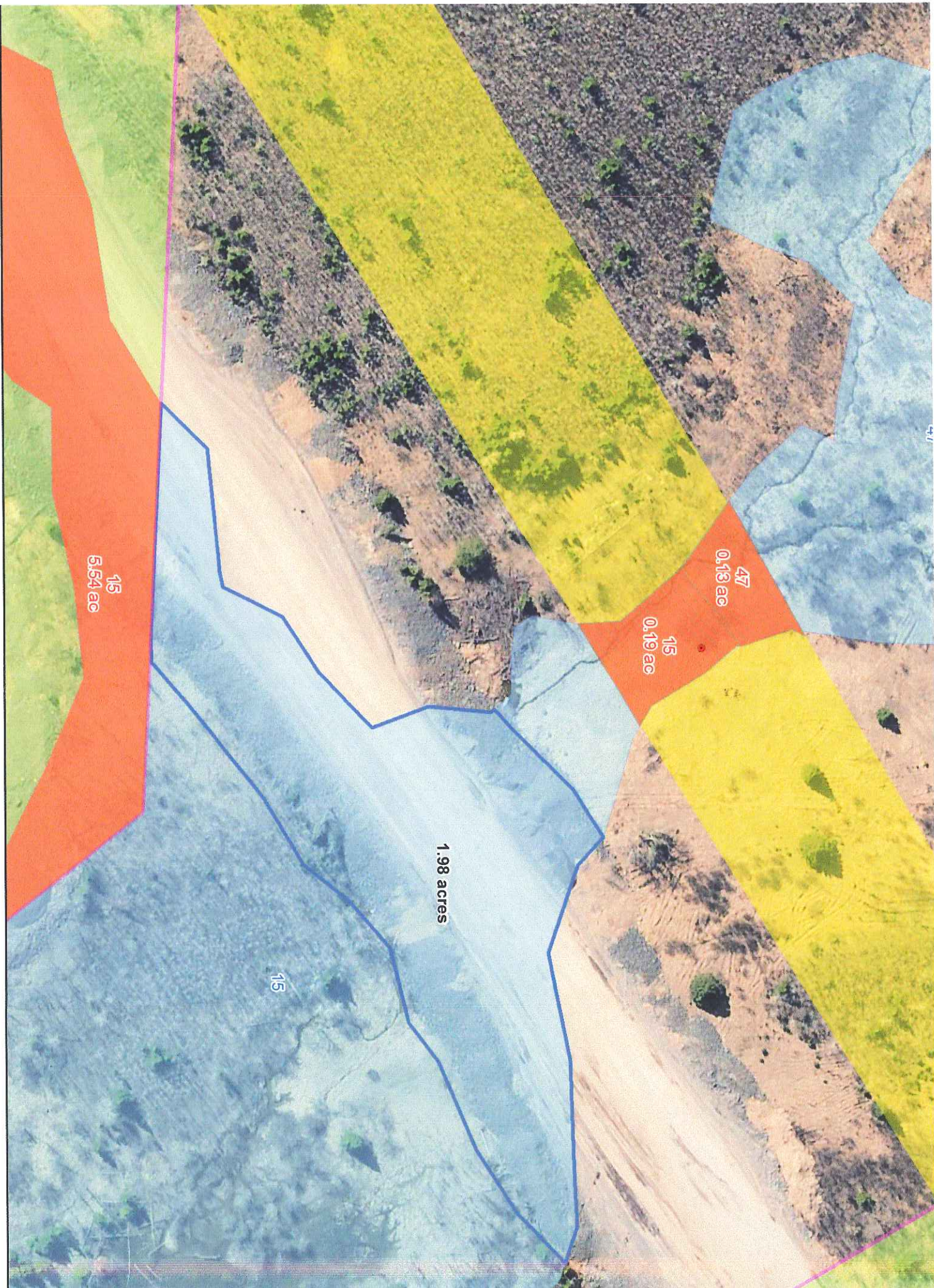
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FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

Date: _____

Susan Hedman
Regional Administrator
United States Environmental Protection Agency,
Region 5



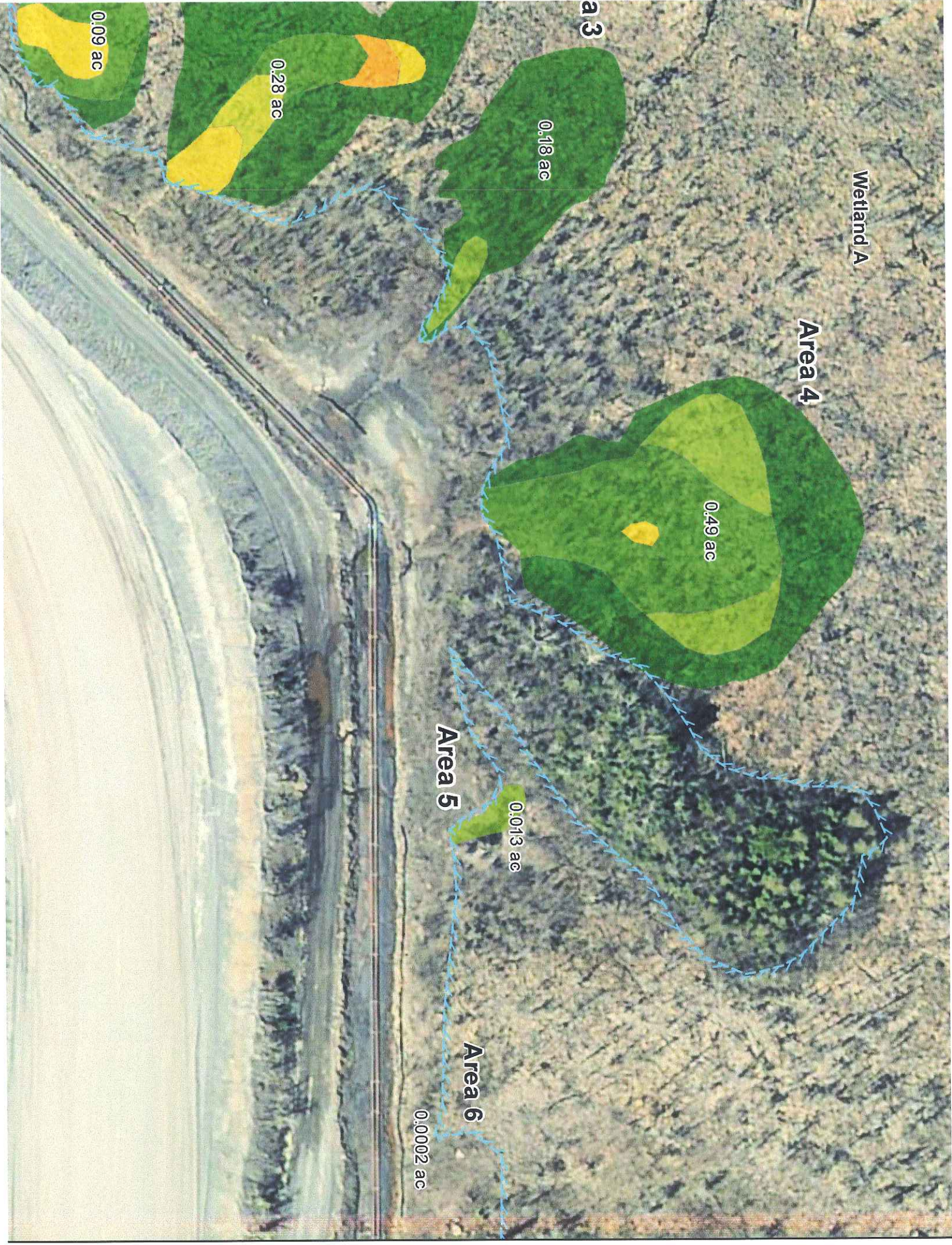


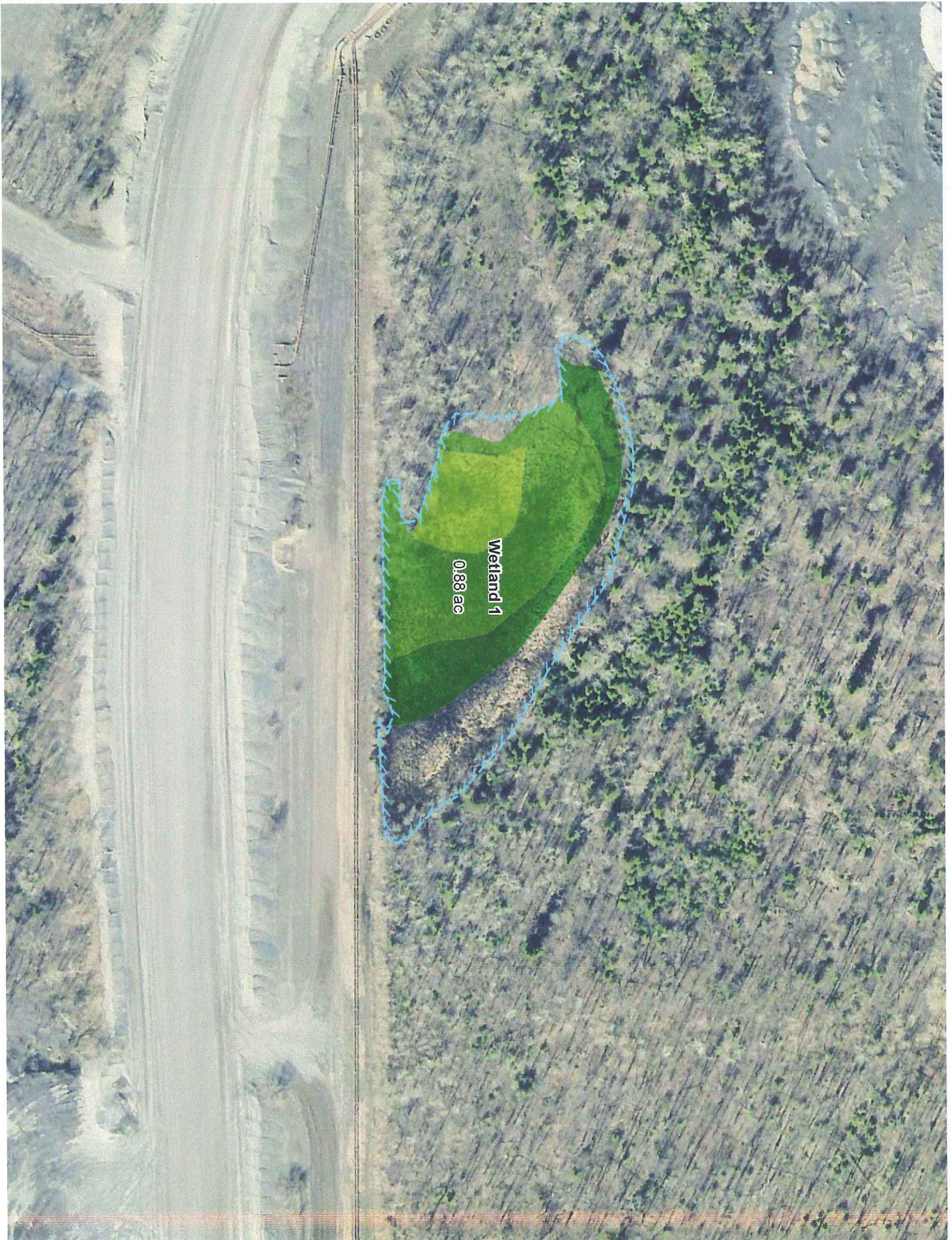
Wetland B

0.87 ac

Wetland A Ditch

Wetland A





Wetland 1
0.88 ac