



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

SEP 04 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rodney O. Corr
2320 Vienna Drive
Granbury, Texas 76048-1468

Dear Mr. Corr:

Enclosed please find an **amended filed** Administrative Complaint, Docket No. CWA-04-2008-5505, which the U.S. Environmental Protection Agency (EPA) Region 4 filed on September 4, 2008. The Complaint was issued under the authority vested in the Administrator of EPA as set forth in Section 309(g) of the Clean Water Act, 33 U.S.C. Section 1319(g).

Also enclosed is a copy of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits". These rules govern all administrative adjudicatory proceedings for the assessment of civil penalties under section 309(g) of the Clean Water Act 33 U.S.C. 1319(g).

If you have any comments or questions regarding this matter, please contact Mara Lindsley at (404) 562-9296, or your attorney can contact Wilda Cobb, Associate Regional Counsel, at (404)-562-9530.

Sincerely,

A handwritten signature in black ink, appearing to read "Wilda W. Cobb", written over a horizontal line.

Wilda W. Cobb
Associate Regional Counsel

Enclosure



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

SEP 02 2003

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rodney O. Corr
2320 Vienna Drive
Granbury, Texas 76048-1468

Re: Administrative Complaint
Docket No. CWA-04-2008-5508

Dear Mr. Corr:

Enclosed please find an Administrative Complaint, Docket No. CWA-04-2008-5508, which the U.S. Environmental Agency (EPA), Region 4 has filed. This Administrative Complaint was issued under the authority vested in the Administrator of EPA as set forth in Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g).

The regulations that set out the administrative enforcement procedures – the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits” – are located at 40 C.F.R. Part 22.

If you have any comments or questions regarding this matter, please contact Mara Lindsley of my staff at (404) 562-9296, or your attorney can contact Wilda Cobb, Associate Regional Counsel, at (404) 562-9530.

Sincerely,

A handwritten signature in black ink, appearing to read "J. D. Giattina".

James D. Giattina
Director
Water Management Division

Enclosure

cc: COE, Mobile District
MS DEQ, Jackson
MS DMR, Biloxi

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
) ADMINISTRATIVE COMPLAINT
)
Rodney O. Corr) FOR CLASS II PENALTY
) UNDER SECTION 309(g)
) OF THE CLEAN WATER ACT,
RESPONDENT) 33 U.S.C. § 1319(g)
) Docket No.: CWA-04-2008-5508

RECEIVED
ADMINISTRATIVE COMPLAINT
2008 OCT -4 PM 3:30
EPA REGION 4

ADMINISTRATIVE COMPLAINT

I. Statutory Authority

1. This is an Administrative Complaint issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22, the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits." The Administrator has delegated this authority to the Regional Administrator of EPA, Region 4, who has duly delegated this authority to the Director of the Water Management Division, Region 4, who hereby issues this Complaint and Notice.

II. Statutory and Regulatory Background

2. Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), 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)(B)]."

3. 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.

4. 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"

5. 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.”

6. 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.”

7. Federal regulations under 40 C.F.R. § 232.2 define the term “waters of the United States” to include “wetlands.”

8. Federal regulations under 40 C.F.R. Part 232.2 and 33 C.F.R. Part 328.3(b) define “wetlands” as “[t]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

III. Allegations

9. Mr. Rodney O. Corr (Respondent,) at all times relevant to this Complaint, was the owner and operator of a tract of land located adjacent to Highway 603 and Farve Lane, north of Waveland, Hancock County, Mississippi, near 30° 18.74' north latitude and 89° 23.21' west longitude (the Site) (Exhibits A and B.)

10. Respondent is a person within the definition set forth under section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. Commencing on or about May 26, 2004, Respondent, or those acting on behalf of the Respondent, discharged dredged and/or fill material into wetlands on the Site using earth moving machinery, during unauthorized activities associated with the clearing and filling of wetlands for commercial development.

12. Respondent impacted approximately 14 acres of wetlands that are adjacent to Edwards Bayou, which is tributary to the Jourdan River, a navigable water of the United States.

13. The discharged dredged and/or fill material, including earthen material deposited at the Site, are “pollutants” as defined under the CWA § 502(6).

14. Prior to Respondent’s activity described above, the Discharge Area was a “water of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. Section 1362 (7) and associated regulations.

15. The earth moving machinery employed by the Respondent to deposit the dredged and/or fill material at the Site are “point sources” as defined under the CWA § 502(14).

16. Respondent's placement of the dredged and/or fill material at the Site constitutes a "discharge of pollutants" as defined under the CWA § 502(12).

17. At no time during the discharge of dredged and/or fill material at the Site did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1314 authorizing the activities performed by Respondent. Each discharge by the 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), makes unlawful the discharge of any pollutant into waters of the United States except as in compliance with certain sections of the CWA, including Section 404, 33 U.S.C. § 1344. Under Section 404, a permit is a legal prerequisite to discharges of the type described above. However, Respondent did not obtain a Section 404 permit before initiating work in the Discharge area.

18. Each day the material discharged by the 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. Notice

19. As required under the CWA § 309(g), EPA has consulted with the Mississippi Department of Environmental Quality regarding this proposed action by mailing a copy of this document to the appropriate official of the State of Mississippi and offering an opportunity for the State to consult with EPA on the proposed penalty assessment. EPA, contemporaneously with the issuance of this proposed action, published a public notice on the EPA Region 4 website at: http://www.epa.gov/region4/water/wpeb/npdes_states.html, regarding this proposed action.

V. Penalty

20. Based on the foregoing Findings of Violation and under Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), the Administrator may assess a civil penalty of up to \$11,000 per violation per day, not to exceed a maximum of \$137,500, for violations of Section 301(a) and 404 of the CWA, 33 U.S.C. § 1311(a) and 1344. Consistent with the Civil Monetary Penalty Inflation Adjustment Rule, the upper limit of such penalties has been increased to \$157,500 for violations occurring after March 15, 2004. 69 Fed. Reg. 7121 (Feb. 13, 2004). Based upon the facts alleged in this Complaint, and based upon the nature, circumstances, extent and gravity of the violations alleged, as well as the Respondent's ability to pay, prior history of such violations, and such other matters as justice may require, EPA Region 4 hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent for violations alleged in this Complaint. This Complainant proposes that the Respondent pay a penalty in an amount of up to \$157,500 for the violations stated in this Complaint.

VI. Hearing

21. As provided under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Respondent has the right to request a hearing to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. If the Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint and a Request for Hearing within 30 days of service of this Complaint with the:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta Federal Center
Atlanta, Georgia 30303-3104

22. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly state that the Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer also must state:

- a. the circumstances or arguments that are alleged to constitute grounds of defense, and
- b. the facts which the Respondent intends to place at issue.

23. Failure to deny any of the factual allegations in this Complaint constitutes admission of the undenied allegations. A copy of this Answer and any subsequent documents that the Respondent files in this action should be sent to Ms. Wilda Cobb, Attorney, OEA, U.S. Environmental Protection Agency, 61 Forsyth Street S.W., Atlanta, Georgia, 30303. Ms. Cobb represents EPA in this matter and is authorized to receive service for EPA in this proceeding. She may be telephoned at (404) 562-9530.

24. Any hearing that Respondent requests regarding this Complaint will be held and conducted in accordance with the provisions of 40 C.F.R. Part 22. If Respondent fails to file a written Answer within 30 calendar days of receipt of this Complaint, a Default Order may be issued against Respondent by the Regional Administrator. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of Respondent's right in this case to a hearing under the CWA. 40 C.F.R. § 22.17. The civil penalty proposed in this Complaint will then become due and payable without further proceedings 60 days after the Default Order becomes the Final Order of the Administrator. 40 C.F.R. § 22.31. Respondent's failure to fully pay the proposed penalty, as assessed by the Final Order, by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty under section 309(g)(9)(B) of the CWA, 33 U.S.C. § 1319(g)(9)(B).

25. Should Respondent request a hearing on the proposed penalty amount, members of the public who have exercised their right to comment, and to whom EPA is obligated to give notice of this proposed action, will have a right under section 309(g)(4)(B), 33 U.S.C. § 1319(g)(4)(B), to present evidence on the appropriateness of the penalty assessment. If Respondent does not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who commented on this proposal during the 30 day period following Respondent's receipt of this document will have an additional 30 days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and hold the hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

VII. Settlement Conference

26. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, please contact:

Ms. Mara Lindsley
U.S. Environmental Protection Agency - Region 4
Wetlands Regulatory Section
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9296.

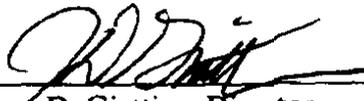
27. Respondent's request for an informal settlement conference does not extend the 30 day period during which a written Answer and Request for Hearing must be submitted. Respondent may pursue the informal conference procedure, however, simultaneously with the adjudicatory hearing procedure. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. EPA, however, will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference will be embodied in a Final Order. Respondent's consent to a Final Order will constitute a waiver of the right to request a hearing on any matter stipulated to therein.

28. Neither assessment nor payment of an administrative civil penalty under this section of the CWA will affect Respondent's continuing obligation to comply with the CWA, or any other Federal, State or local law or regulation.

29. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

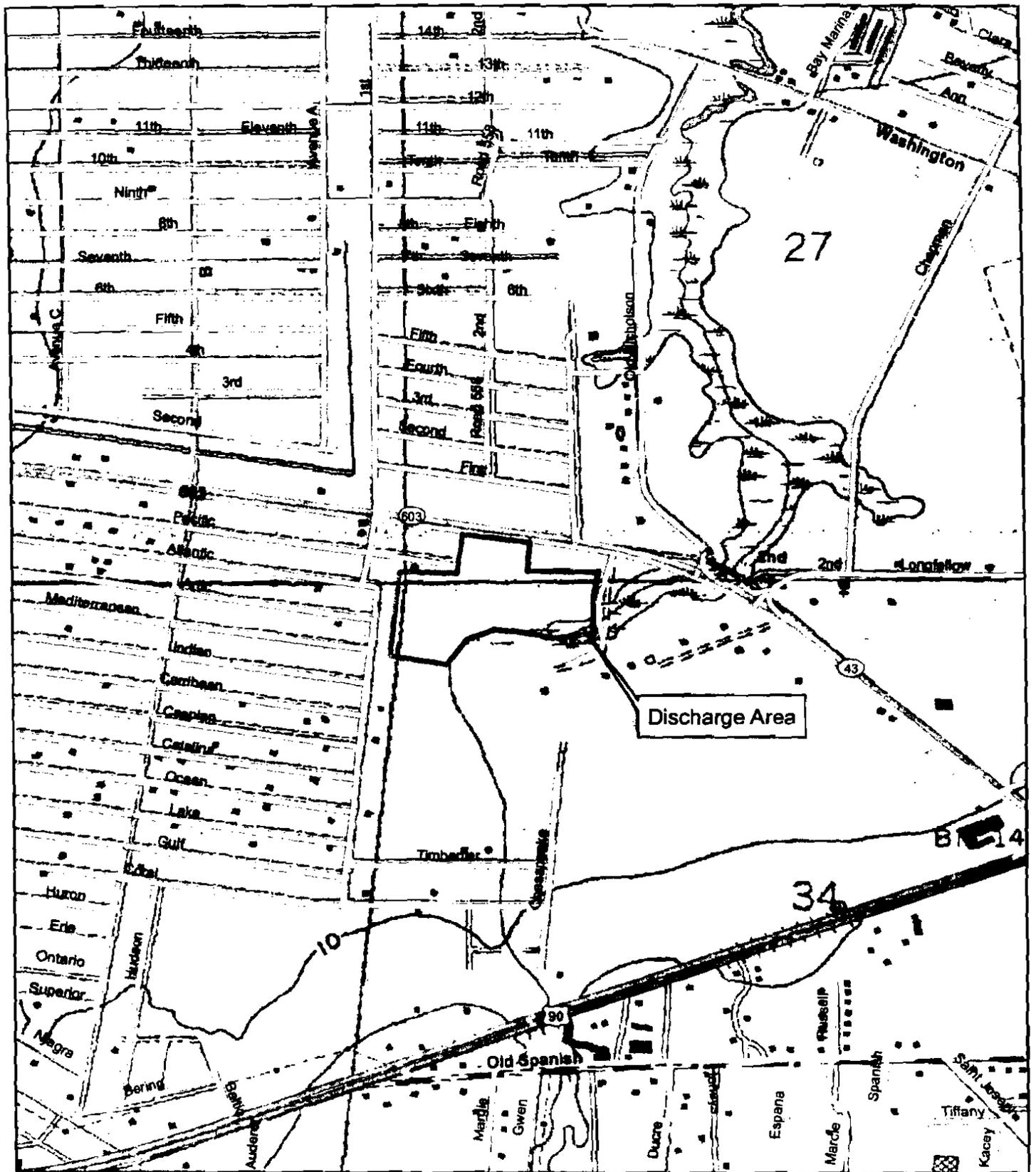
Ms. Wilda Cobb
Associate Regional Counsel
U.S. Environmental Protection Agency - Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-9530

30. Any settlement reached as a result of the informal conference will be finalized by the issuance of a written Consent Agreement and Final Order approved by U.S. E.P.A. Region 4.



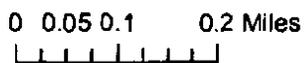
James D. Giattina, Director
Water Management Division
U.S. Environmental Protection Agency
Region 4

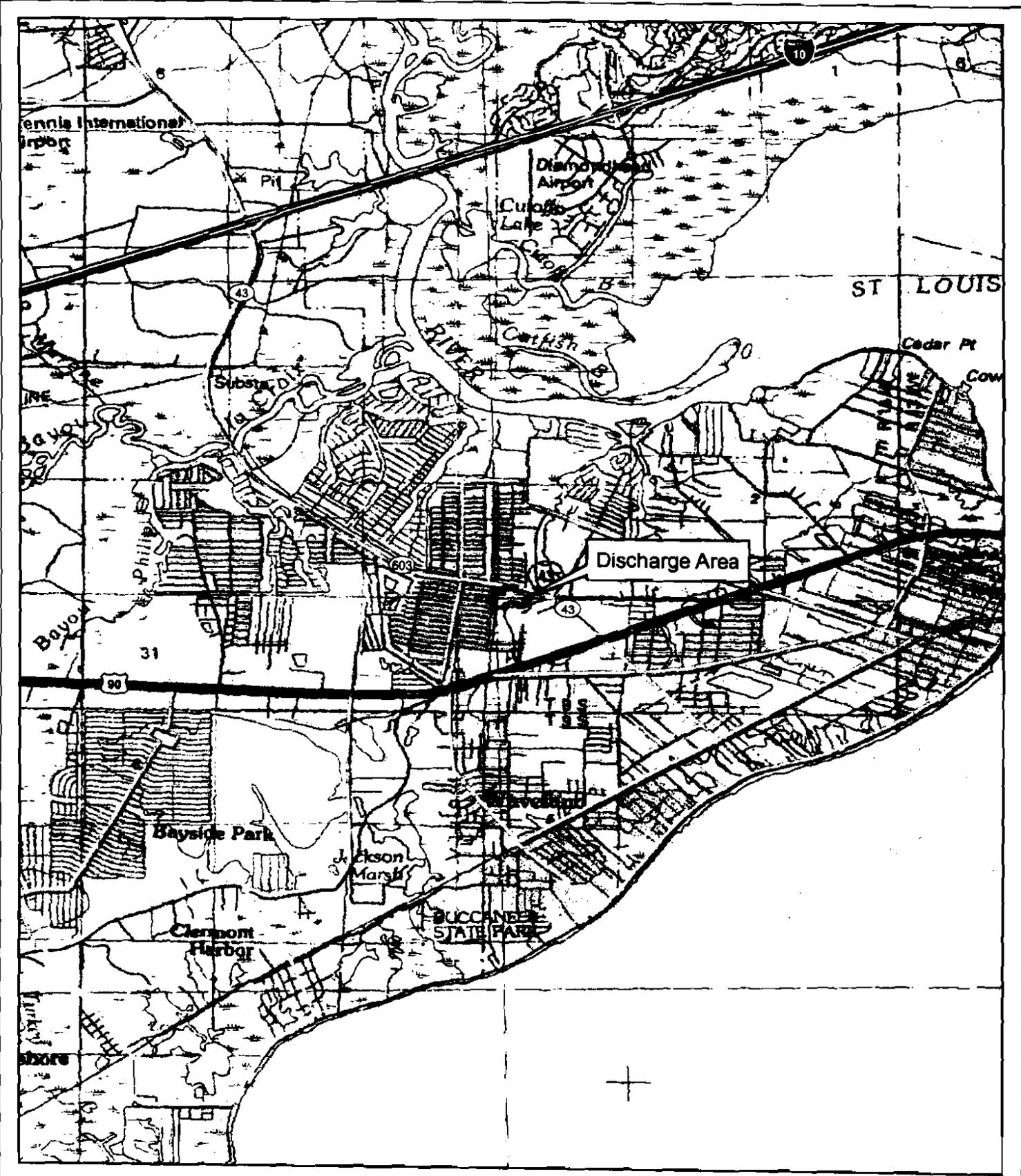
Date: SEP 02 2008



Rodney O. Corr Violation

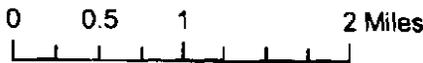
EXHIBIT A





Rodney O. Corr Violation

EXHIBIT B



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
) ADMINISTRATIVE COMPLAINT
Rodney O. Corr)
)
) FOR CLASS II PENALTY
) UNDER SECTION 309(g)
) OF THE CLEAN WATER ACT,
RESPONDENT) 33 U.S.C. § 1319(g)
) Docket No.: CWA-04-2008-5508
_____)

CERTIFICATE OF SERVICE

I certify that on September 2, 2008, I served a true and correct copy of the attached **ADMINISTRATIVE COMPLAINT** in the matter of Rodney Corr, Docket No. CWA-04-2008-5508, to each of the persons listed below.

By hand-delivery: Wilda Cobb
Associate Regional Counsel
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303

By certified mail,
return receipt requested: Mr. Rodney O. Corr
2320 Vienna Drive
Granbury, Texas 76048-1468

By certified mail,
return receipt requested: Mr. Robert Seyfarth, Chief
Environmental Permitting Branch
Mississippi Department of Environmental Quality
Office of Land and Water Resources
P. O. Box 2309
Jackson, MS 39225



Tressa Turner
Secretary
U.S. EPA, Region 4
61 Forsyth Street, SW
Atlanta, GA 30303
(404) 562-9366