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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
BEFORE THE ADMINISTRATOR

HEARING CLERK

IN THE MATTER OF: )  
)  
Atkinson Developers, LLC )  
Francis M. Atkinson Jr. )  
Aynor, South Carolina )  
)  
)  
RESPONDENTS )  
\_\_\_\_\_ )

Proceeding under Section 309(g)  
of the Clean Water Act, 33 U.S.C.  
§ 33 U.S.C. § 1319(g)

Docket No.: CWA-04-2010-5515

**COMPLAINANT'S MOTION TO SUPPLEMENT RECORD**

COMES NOW the Complainant, Director of the Clean Water Protection Division of the U.S. Environmental Protection Agency (EPA) Region 4, and provides the attached documents as supplements to the record filed in this case. On January 15, 2015, in response to the Regional Judicial Officer's (RJO) Order to Supplement the Record, dated October 29, 2014, Complainant provided the Declaration of Mike Wylie, which provides the factual grounds for the proposed penalty in this case, together with the documents Mr. Wylie relied on in his calculation of that penalty. Complainant inadvertently failed to include a copy of a letter to the Respondents notifying them that enforcement of this case was referred to the EPA, cited in Mr. Wylie's declaration as Exhibit E. A copy of that letter is attached to this pleading as Exhibit A. Also attached are documents which served as the basis for the referral, as follows: a Violation Analysis prepared by the Army Corps of Engineers (Exhibit B), and an email from the Army Corps of Engineers asking that a violation number be assigned to this case (Exhibit C),

Complainant respectfully requests that the RJO supplement the record with the attached exhibits and, considering the entire record in this case, find that default has occurred, issue a default order against the defaulting party as to all parts of the proceeding, and issue an Order for Default and \$157,500 civil penalty against Respondents.

Respectfully submitted,



Wilda Watson Cobb  
Associate Regional Counsel  
U. S. Environmental Protection Agency, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

## **EXHIBIT LIST**

- Exhibit A Copy of letter to Respondents from Army Corps of Engineers Charleston District advising the Respondents that enforcement of the case has been referred to the EPA
- Exhibit B Violation Analysis prepared by the Army Corps of Engineers
- Exhibit C Email from the Army Corps of Engineers asking that a violation number be assigned to this case

**EXHIBIT 1**



**DEPARTMENT OF THE ARMY**  
CHARLESTON DISTRICT, CORPS OF ENGINEERS  
69-A Hagood Avenue  
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO  
ATTENTION OF

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

October 3, 2005

Regulatory Division

Mr. F.M. Atkinson, Jr.  
Atkinson Developers, LLC  
5711 Springs Avenue  
Myrtle Beach, South Carolina 29577

Dear Mr. Atkinson:

This is in reference to mechanized land clearing and filling which has occurred in wetlands on your property located off Huckleberry Road, approximately 1.0 miles east of Nichols Highway, in Horry County, South Carolina. The specific area of concern is shown on the enclosed sketch dated October 3, 2005.

After a review of available information in this matter, it has been decided that the appropriate course of action would be for this office to refer this case to the Environmental Protection Agency (EPA) for enforcement action. This action is taken pursuant to a Memorandum of Agreement between the Corps of Engineers and the EPA on enforcement matters. A copy of the file in this matter is being forwarded to EPA by copy of this letter. Any future discussions or correspondence concerning this case should be directly with the EPA as the lead enforcement agency in this matter.

If you have any questions, please contact Mr. Mike Wylie of the EPA at (404)-562-9409. The address is shown below.

Respectfully,

A handwritten signature in black ink, appearing to read "Tina B. Hadden".

Tina B. Hadden  
Chief, Regulatory Division

Enclosure  
Wetland Map

**EXHIBIT 2**

## VIOLATION ANALYSIS

**VIOLATION FILE NUMBER:** SAC 60-2005-2017-4

**AUTHORITY:**  Section 404 of the Clean Water Act  
 Section 10 of the Rivers and Harbors Act of 1899

**STATUTE of LIMITATIONS BEGIN DATE:**

**ALLEGED VIOLATOR:** F.M. Atkinson, Jr  
name: Atkinson Developers, LLC  
address: 5711 Springs Avenue  
Myrtle Beach, South Carolina 29577

**ASSOCIATED PARTIES:** Unknown

**DATE VIOLATION NOTIFICATION ISSUED:** October 3, 2005

**LOCATION OF UNAUTHORIZED WORK:** Off Huckleberry Road, approximately 1.0 miles east of its junction with Nichols Highway, Horry County, South Carolina.

### EVALUATION OF THE VIOLATION:

*This analysis will discuss those factors identified in the statute:*

- *seriousness of the violation*
- *economic benefit*
- *history of violations*
- *good-faith effort to comply with applicable requirements*
- *economic impact of penalty on the violator, ability to pay*
- *other matters as justice may require*

#### **A. SERIOUSNESS OF THE VIOLATION**

1. Acreage of Affected Aquatic Area: Approximately 24.0 acres
2. Duration of the Violation: NRCS discovered during a site visit on June 20, 2005.
3. Relative Quality of the Aquatic Resource: Fully functional, jurisdictional wetlands & other waters

**status:** Major

#### **B. ECONOMIC BENEFIT TO VIOLATOR**

Proposed mini farm development

**status:** Major

#### **C. KNOWLEDGE OF PERMIT REQUIREMENTS / DEGREE OF CULPABILITY**

1. Prior History of Responsible Party(ies):

No past infractions located in database.

2. Degree of Culpability:

Being that the property owner is a local developer, it is believed at this time the owner was fully aware of all permit requirements.

**status:** Major

#### **D. GOOD-FAITH EFFORT / RECALCITRANCE OF VIOLATOR**

**status:** N/A

#### **E. ABILITY TO PAY**

**status:** Unknown

#### **F. OTHER MATTERS AS JUSTICE MAY REQUIRE**

1. Equity Issues

**status:** \_\_\_\_\_

2. State Coordination / Enforcement Action: I conducted a site visit at the request of NRCS on June 20, 2005 (Ben Stuckey, Rebecca Harper & Shaun Worley). On June 22, I directed and accompanied Mike Wiley, USEPA to the site.



HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION

Form with fields: Name Address, Request Date, County, Agency or Person Requesting Determination, Tract No., FSA Farm No.

Section I - Highly Erodible Land

Is a soil survey now available for making a highly erodible land determination? Are there highly erodible soil map units on this farm?

Fields in this section have undergone a determination of whether they are highly erodible land (HEL) or not; fields for which an HEL Determination has not been completed are not listed.

Table with columns: Field(s), HEL(Y/N), Sodbust(Y/N), Acres, Determination Date

The Highly Erodible Land determination was completed in the -

Section II - Wetlands

Are there hydric soils on this farm? Yes

Fields in this section have had wetland determinations completed. See the Definition of Wetland Label Codes for additional information regarding allowable activities under the wetland conservation provisions of the Food Security Act and/or when wetland determinations are necessary to determine USDA program eligibility.

Table with columns: Field(s), Wetland Label\*, Occurrence Year (CW)\*\*, Acres, Determination Date, Certification Date

The wetland determination was completed in the -Field It was -mailed to the person on 9/6/05.

Remarks: Ron Morton, NRCS Resource Soil Scientist completed the determination on 6/20/05 and Ben Stuckey, NRCS State Soil Scientist field review the determination for Converted Wetland determination..

I certify that the above determinations are correct and were conducted in accordance with policies and procedures contained in the National Food Security Act Manual.

Signature Designated Conservationist, Date 9/6/05

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status.

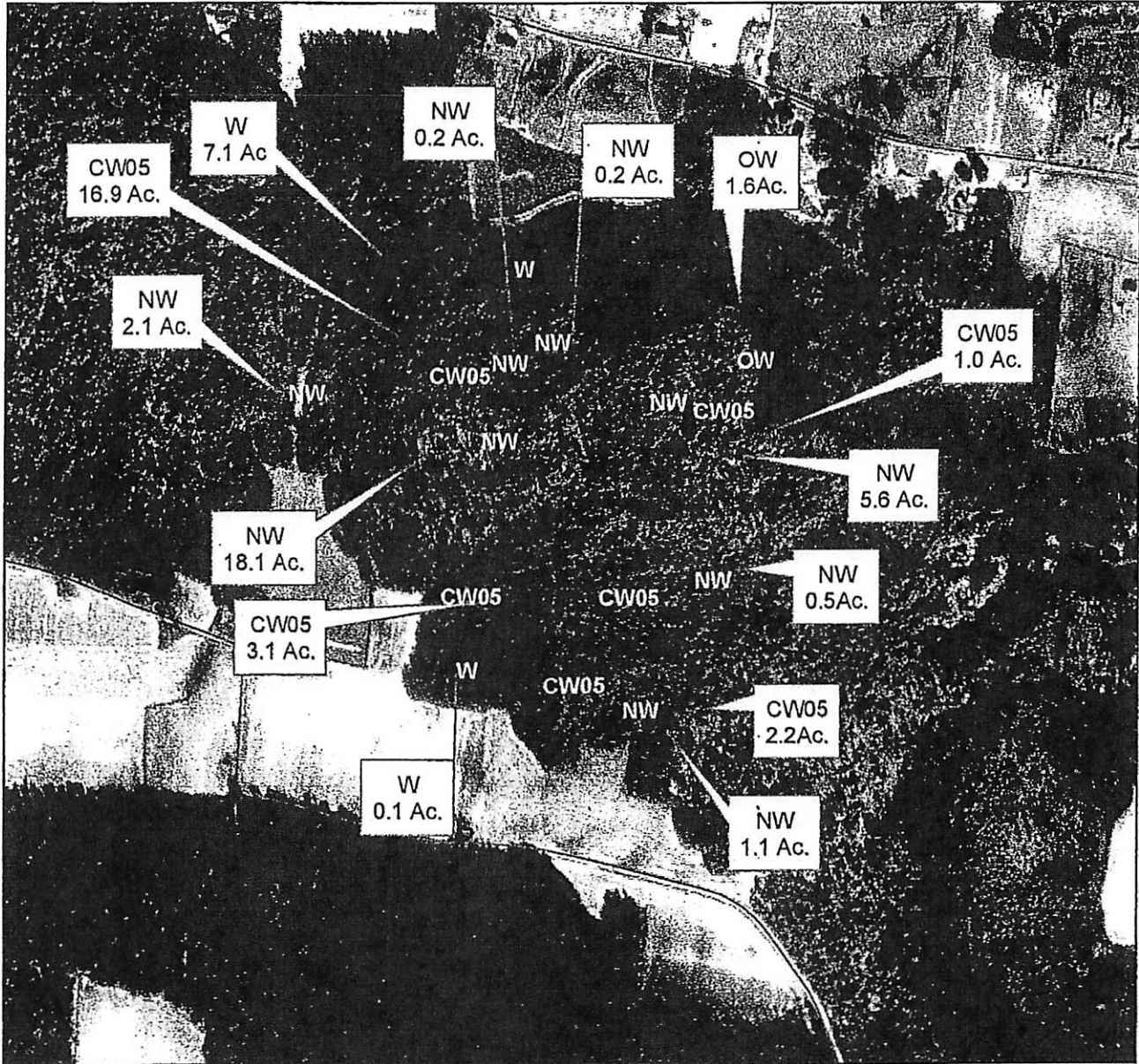
To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.



# Wetland Map

Customer(s): ATKINSON DEVELOPERS LLC  
District: HORRY SOIL & WATER CONSERVATION DISTRICT

Field Office: CONWAY SERVICE CENTER  
Agency: USDA - NRCS  
Assisted By: Rebecca C Harper



## Legend



— horry\_roads

□ Copy of T14594W

Image: MOSAIC\_1-1\_S\_SC051.SID





## VIOLATION ANALYSIS

**Enforcement Case**

**Name:** Atkinson Developers, LLC  
**Number:** SAC 60-2005-2017-4

**PREPARED BY:**

**Tommy Fennel**  
**Conway Field Office**  
**EA & Enforcement Branch**  
**Regulatory Division**

**Date:** October 3, 2005

**REVIEWED BY:**

\_\_\_\_\_  
**D. Hampton Hill, Sr.**  
**Chief, EA & Enforcement Branch**  
**Regulatory Division**

**Date:** \_\_\_\_\_

**APPROVED BY:**

\_\_\_\_\_  
**Tina B. Hadden**  
**Chief, Regulatory Division**

**Date:** \_\_\_\_\_

In the event of recommended Penalty Action only:  
**CONCUR:**

\_\_\_\_\_  
**Office of Counsel**  
**Charleston District**

**Date:** \_\_\_\_\_

**EXHIBIT 3**

2017

**Middleton, Cathy M SAC**

**From:** Fennel, Tommy E SAC  
**Sent:** Thursday, September 29, 2005 4:09 PM  
**To:** Middleton, Cathy M SAC  
**Subject:** Violation Number

Cathy  
Please assign a violation number for the following:

Turned in by NRCS

Name--F.M. Atkinson, Jr  
Atkinson Developers, LLC  
5711 Springs Avenue  
Myrtle Beach, SC 29577

843-449-9460

Location:  
Travel SC Hwy 319 from Conway towards Aynor. Turn Right onto Nichols Hwy. Turn Right onto Huckleberry Road. Site is located on the left approx 1.5 miles.

Work: Mechanized land clearing and filling in wetlands

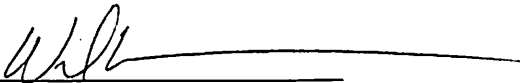
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and a copy of the forgoing Complainant's Motion to Supplement the Record with accompanying Exhibits were hand delivered to the Region 4 Regional Hearing Clerk, and that a true and accurate copy was served via U.S. Mail, Return Receipt Requested on the Respondent as follows:

Original by Hand-Delivery: Ms. Patricia Bullock  
Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

Copy by U.S. Mail: Mr. Francis M. Atkinson, Jr.  
Atkinson Developers, LLC  
4368 Green Sea Road South  
Aynor, South Carolina 29511

Date: 3/8/16

  
\_\_\_\_\_  
Wilda Watson Cobb  
Associate Regional Counsel  
U. S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303

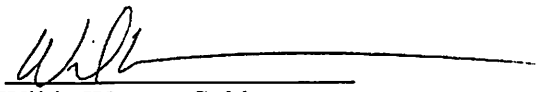
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Regional Hearing Clerk  
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Copy by U.S. Mail: Mr. Francis M. Atkinson, Jr.  
Atkinson Developers, LLC  
4368 Green Sea Road South  
Aynor, South Carolina 29511

Date: 3/8/16

  
\_\_\_\_\_  
Wilda Watson Cobb  
Associate Regional Counsel  
U. S. Environmental Protection Agency, Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303