



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 27 2019

CERTIFIED MAIL 7018 2290 0000 6353 9083
RETURN RECEIPT REQUESTED

Mr. Burton Heatwole
Sunshine Place Farms, Inc.
213 Byne Sunshine Road
Millen, Georgia 30442

Re: Consent Agreement and Final Order No.: CWA 04-2019-9994(b)

Dear Mr. Heatwole:

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. Joel Strange at (404) 562-9455.

Sincerely,

A handwritten signature in blue ink that reads "Daniel J. O'Connell for".

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

Enclosure

cc: Mr. Shaun Blocker
U.S. Army Corps of Engineers
Savannah

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
SUNSHINE PLACE FARMS, INC.)
) ADMINISTRATIVE
and BURTON HEATWOLE) CONSENT AGREEMENT AND
) FINAL PENALTY ORDER
MILLEN, GEORGIA)
)
RESPONDENTS) Docket No.: CWA-04-2019-9994(b)
)

HEARINGS OFFICE
2019 SEP 27 AM 6:52
OFFICE OF REGIONAL COUNCIL
REGIONAL COUNCIL

CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding under Section 309(g)(2)(A) 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 the Regional Administrator of the EPA, Region 4, who in turn 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(5) of the CWA, 33 U.S.C. § 1362(5), defines a “person” to include any “individual [and] corporation.”

6. 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....”

7. 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.”

8. 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.”

9. Federal regulations at 40 C.F.R. § 232.2 define the term “waters of the United States” to include “wetlands,” including those that are adjacent to interstate waters.

10. Federal regulations at 40 C.F.R. § 232.2 and 33 C.F.R. § 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

11. Mr. Burton Heatwole and Sunshine Place Farms, Inc. (Sunshine and together with Mr. Heatwole, Respondents), at all times relevant to this Consent Agreement and Final Order, were the operators of the Site.

12. Mr. Burton Heatwole is a person within the definition set forth by Section 502(5) of the CWA, 33 U.S.C. § 1362(5). Sunshine Place Farms, Inc., is a corporation duly organized under the laws of the State of Georgia and, as such, is also a person within the definition set forth by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. The term “Discharge Area” means the jurisdictional waters that have been impacted through the discharge of dredged and/or fill material as a result of the unauthorized activities that are the subject of this enforcement action. More specifically, the Discharge Area is approximately 31 acres of wetlands impacted by Respondents.

14. The 31 acres of wetlands in the Discharge Area are waters of the United States subject to the jurisdiction of the CWA because they are adjacent to an unnamed perennial

tributary of Beedy Branch, a tributary of Buckhead Creek, which itself flows to the Ogeechee River, a navigable-in-fact water of the United States.

15. The term "Site" means the parcel or parcels of land on which the Discharge Area is located. The Site is located near Millen, Burke County, Georgia, at approximately latitude 33.004464° N and longitude -82.119162° W (*See Exhibits A and B, attached hereto*).

16. Commencing on or about September 2014 to the present, Respondents, or those acting on behalf of Respondents, discharged dredged and/or fill material into jurisdictional waters on the Site using earth moving machinery during activities associated with the conversion of wetlands to agricultural land. To date, the unauthorized dredge and/or fill material remains in waters of the United States.

17. The discharged dredged and/or fill material, including earthen material, deposited at the Discharge Area are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

18. The earth moving machinery employed by Respondents to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

19. Respondents' placement of the dredged and/or fill material at the Discharge Area constitutes a "discharge of pollutants" as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

20. At no time during the discharge of dredged and/or fill material at the Discharge Area from September 2014, until the present, did Respondents possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities they performed.

21. Each discharge by Respondents of pollutants into navigable waters without the required permit issued by 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).

22. Each day the material discharged by Respondents remained in waters of the United States without the required permit by 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

23. Complainant and Respondents 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.

24. For the purposes of this CAFO, Respondents admit the jurisdictional and factual allegations set out above.

25. Respondents hereby waive their right to contest the allegations set out above and their right to appeal the Final Order accompanying this Consent Agreement.

26. For the purpose of this proceeding, Respondents:

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

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

C. waive any rights they 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. waive any right they 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.

27. Respondents consent to the assessment of and agrees to pay the administrative penalty and the other conditions set forth in this CAFO.

28. By signing this CAFO, Respondents certify 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. Respondents realize 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.

29. 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 Respondents 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 Respondents notice of its intent to revoke, which shall not be effective until received by Respondents in writing.

30. Complainant and Respondents 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

31. 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, the EPA has determined that twenty-eight thousand dollars (\$28,000) is an appropriate civil penalty to settle this action. Respondents shall submit this payment, plus daily interest at the 2019 second quarter Internal Revenue Service Underpayment Rate of six percent (6%) for the two installments paid more than thirty (30) days after the Effective Date, in the following three installments:

- A. Within thirty (30) days of the Effective Date: \$9,334.00.
- B. Within one hundred and five (105) days of the Effective Date: \$9,463.00.
- C. Within one hundred and eighty (180) days of the Effective Date: \$9,555.00.

32. Respondents shall make the payments specified in the preceding paragraph 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 Respondents send 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 Respondents send 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, Respondents 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, Respondents 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

33. At the time of payment, Respondents 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. Joel Strange
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

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

35. If Respondents fail 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.

36. In addition to the terms of the prior Paragraph, if Respondents fail 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 Respondents' licenses or other privileges, or suspend or disqualify Respondents from doing business with EPA or engaging in programs EPA sponsors or funds, pursuant to 40 C.F.R. § 13.17; and/or

D. 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

37. 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 IV above, shall only resolve Respondent's liability for federal civil penalties for the violations specifically alleged above.

38. Nothing in this CAFO shall relieve Respondents 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.

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

40. 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.

41. By signing this Consent Agreement, Respondents acknowledge 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.

42. By signing this Consent Agreement, the undersigned representative of Complainant and the undersigned representative of Respondents 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.

43. 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.

44. This CAFO applies to and is binding upon Respondents and their officers, directors, employees, agents, trustees, servants, authorized representatives, successors, and assigns.

45. Any change in the legal status of Respondents, 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.

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

47. 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
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9581

For Respondents:

Mr. Burton Heatwole
213 Byne Sunshine Road
Millen, Georgia 30442

48. 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.

49. 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.

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

51. Effective upon signature of this CAFO by Respondents, Respondents agree that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondents 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, Respondents 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 Respondents 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.

52. 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 Respondents

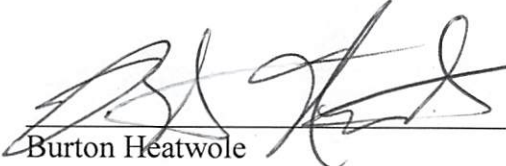
53. Respondents hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States, including any department, agency or instrumentality of the United States, with respect to the matters addressed and resolved in this CAFO, including but not limited to, any claim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

VIII. Effective Date

54. 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 RESPONDENTS: BURTON HEATWOLE and SUNSHINE PLACE FARMS, INC.


Burton Heatwole

Date: 7/22/19

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:


Mary Jo Bragan, Chief

Water Protection Branch
Enforcement and Compliance Assistance Division
U.S. EPA Region 4

Date: 9/12/2019

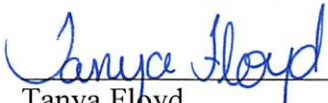
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
SUNSHINE PLACE FARMS, INC.) ADMINISTRATIVE
and BURTON HEATWOLE) CONSENT AGREEMENT AND
MILLEN, GEORGIA) FINAL PENALTY ORDER
)
)
RESPONDENTS) Docket No.: CWA-04-2019-9994(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), Respondents are hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY:



Tanya Floyd
Regional Judicial Officer

Date: September 26, 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-04-2019-9994(b)** on the parties listed below in the manner indicated:

EPA Internal Mail:

Mr. Joel Strange
Water Protection Branch
Surface Water and Groundwater Section
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

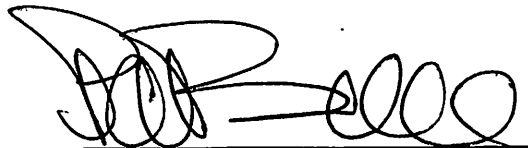
By hand-delivery:

Mr. Nathan Stopper
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

By Certified mail,
return receipt requested:

Mr. Burton Heatwole
213 Byne Sunshine Road
Millen, Georgia 30442

Dated: 9-27-19



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

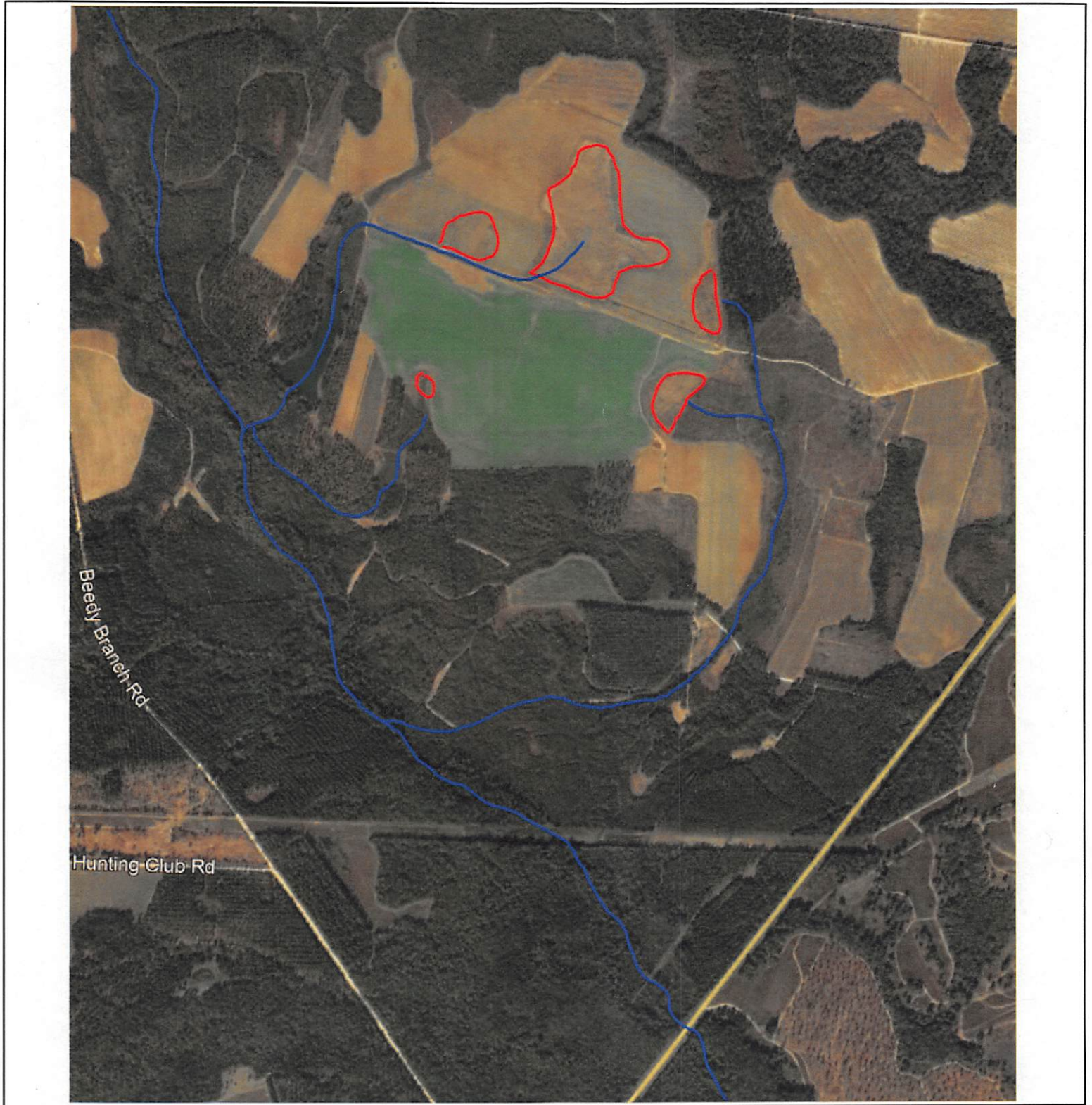


EXHIBIT A

Sunshine Place Farm
Burke County,
Georgia

 **EPA** United States
Environmental Protection
Agency



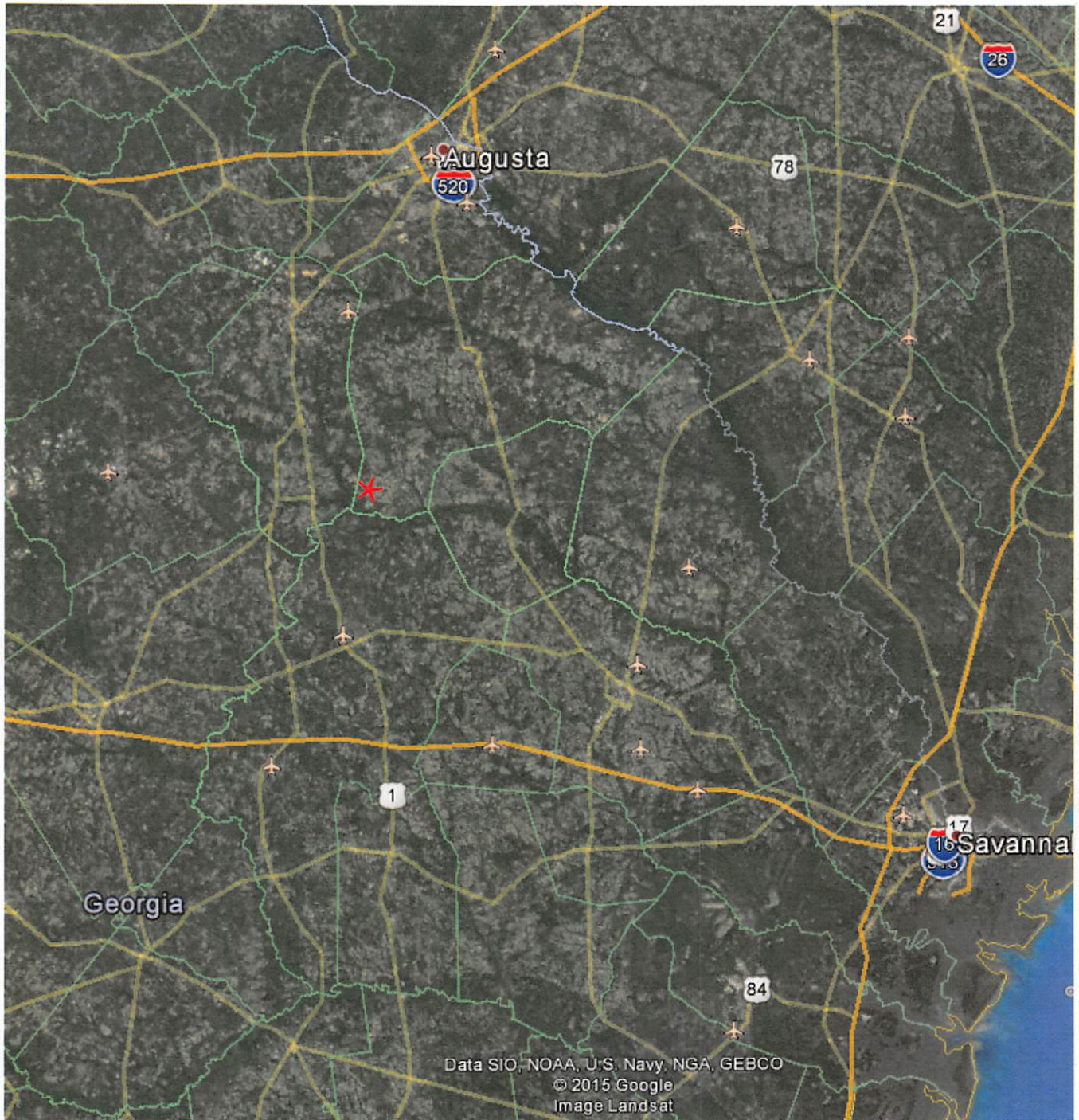


EXHIBIT B

Sunshine Place Farm
Burke County, Georgia



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).