



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

January 7, 2010

Rodney O. Corr
5315 Mission Circle
Granbury, Texas 76048-1468

Re: Consent Agreement and Final Order
In The Matter of Rodney O. Corr
Docket No. CWA-04-2008-5508

Dear Mr. Corr:

Please be advised that the cover letter enclosed with this Consent Agreement and Final Order (CAFO) signed by James Giattia refers to an incorrect docket number. The correct docket number for this settlement and the number you should include with your payments is CWA-04-2008-5508.

Thank you for your corporation and if you have any questions or concerns please contact me at 404-562-9530.

Sincerely,

A handwritten signature in black ink, appearing to read "Wilda W. Cobb", with a long horizontal line extending to the right.

Wilda W. Cobb

Internet Address (URL) • <http://www.epa.gov>

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

JAN 07 2009

CERTIFIED MAIL 70091680000146900704
RETURN RECEIPT REQUESTED

Rodney O. Corr
5315 Mission Circle
Granbury, Texas 76049

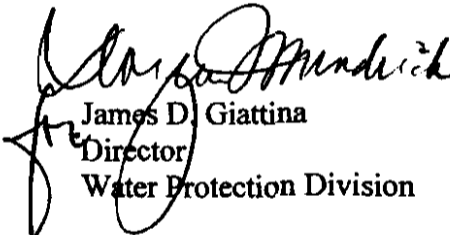
Re: Consent Agreement and Final Order
Docket No. CWA-04-2010-5504(b)

Dear Mr. Corr:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) that has been finalized by the U.S. Environmental Protection Agency and the Regional Administrator. Please make note of the provisions under Section V. Payment.

Thank you for your cooperation in settling this matter. Should you have any questions or concerns, please contact Ms. Mara Lindsley of my staff at (404) 562-9296, or your attorney may contact Ms. Wilda Cobb, Attorney Advisor, at (404) 562-9530.

Sincerely,


James D. Giattina
Director
Water Protection Division

Enclosure

cc: U.S. Corps of Engineers, Mobile District
Mississippi Department of Environmental Quality, Jackson
Mississippi Department of Marine Resources, Biloxi

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Rodney O. Corr
Granbury, Texas

RESPONDENT

)
) ADMINISTRATIVE
) CONSENT AGREEMENT AND
) FINAL PENALTY ORDER
)
) Docket No.: CWA-04-2008-5508

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CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding under Section 309(g)(2)(B) 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)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency (EPA). The Administrator has delegated this authority to the Regional Administrator Region 4, who in turn has redelegated this authority to the Director of the Water Management Division of EPA Region 4 (Complainant).

II. Statutory and Regulatory Background

3. 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)]."

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

9. Federal regulations under 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

10. The term "Discharge Area" means the jurisdictional waters that have been impacted either through filling or dredging as a result of the unauthorized activities that are the subject of this enforcement action. More specifically, the Discharge Area refers to 14 acres of wetlands lying adjacent to Edwards Bayou, located at the intersection of Highway 603 and Farve Lane, Waveland, Hancock County, Mississippi, near 30° 18.74' north latitude and 89° 23.21' west longitude. The Discharge Area is indicated on the enclosed Exhibits A and B.

11. The term "Site" means the parcel or parcels of land on which the Discharge Area is located.

12. On September 19, 2008 EPA issued an Administrative Penalty Complaint, Docket No. CWA-04-2008-5508, under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(A), alleging that the Respondent was in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a). The Administrative Penalty Complaint alleged that:

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

- D. 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.
- E. The discharged dredged and/or fill material, including earthen material deposited at the Site, are "pollutants" as defined under the CWA § 502(6).
- F. 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.
- G. 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).
- H. 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).
- I. 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.
- J. 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. Stipulations and Findings

13. For the purposes of only this Consent Agreement and Final Order (CAFO) and any action to enforce this CAFO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above and in the Administrative Penalty Complaint.

14. Respondent hereby waives his right to contest the allegations set out above in any action to enforce this Consent Agreement and his right to appeal the Final Order accompanying this Consent Agreement.

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

16. By signing this CAFO, Respondent affirms that the information he has supplied to Complainant concerning this matter was, at the time of submission, and is, not materially false or misleading for such information. Respondent acknowledges that there are significant penalties that can be sought under the CWA for submitting materially false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

17. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein and in the Administrative Penalty Complaint to the extent that any information or affirmation provided by Respondent was materially false or misleading at the time such information or affirmation was provided to EPA.

18. 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

19. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. § 19, and considering the nature of the alleged violations and other relevant factors, EPA has determined that one hundred thousand dollars (\$100,000.00) is an appropriate civil penalty to settle this action. Respondent shall submit quarterly payments of twenty-five thousand dollars (\$25,000.00) over an 18 month period. Interest will accrue on the unpaid amount at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. The payments and interest will be made in accordance with the following schedule:

Payment Due Date	Payment Due
Within 21 days of final CAFO	\$25,563.16
Six (6) months after execution	\$25,563.16
Twelve (12) months after execution	\$25,563.16
Eighteen (18) months after execution	\$25,563.16

Payment of the remaining balance of the penalty may be made prior to the schedule listed above. To pay early, Respondent shall contact EPA sixty (60) days prior to making the final payment to determine the remaining balance owed on the penalty.

20. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CAFO via a cashier's or certified check, payable to the order of "Treasurer, United States of America." The check shall reference on its face the name of Respondent and the Docket Number of this CAFO. Such payment shall be submitted by U.S. Postal Service to:

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

For payments submitted by any overnight mail service (Fed Ex, UPS, DHL, etc.):

U.S. Bank
 1005 Convention Plaza
 Mail Station SL-MO-C2GL
 St. Louis, MO 63101

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

U.S. Environmental Protection Agency, Region 4
 Office of Environmental Accountability
 61 Forsyth Street, S.W.
 Atlanta, Georgia 30303-8960
 ATTN: Ms. Patricia Bullock – Regional Hearing Clerk

and

Ms. Mary E. Halback
Wetlands Enforcement Section
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

22. Civil penalty payments under this CAFO are penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), or of 26 C.F.R. § 1.162-21 and are not tax deductible expenditures for purposes of federal law.

23. Under 40 C.F.R. § 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CAFO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six per cent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

24. Under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondent to pay the penalty assessed by the CAFO in full by its due date may subject the Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CAFO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CAFO shall not be subject to review.

VI. General Provisions

25. Subject to Paragraph 27 of this CAFO to settle CWA civil penalties, this CAFO shall not relieve Respondent of his obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit. Other than as expressed herein, compliance with this CAFO shall not be a defense to any actions subsequently commenced under federal laws and regulations administered by the EPA.

26. Subject to Paragraph 27 of this CAFO to settle CWA civil penalties, nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of United States to seek any other remedies or sanctions available by virtue of Respondent's violation of

this CAFO or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any federal or state statute, regulation or permit.

27. This CAFO constitutes a settlement by Complainant and Respondent of all claims for civil penalties under the CWA with respect to only those violations alleged in this CAFO and in the Administrative Penalty Complaint. Compliance with this CAFO shall resolve the civil penalty liability of Respondent for the allegations of only the violations contained in this CAFO and in the Administrative Penalty Complaint. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondent, or other liability resulting from violations that were not alleged in this CAFO or in the Administrative Penalty Complaint. Other than as expressed in this document, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

28. Subject to Paragraph 27 of this CAFO, as of the effective date of this CAFO, EPA Region 4's Water Protection Division is not aware of and has no information of any other CWA section 404 violations for which Respondent may be liable, other than as alleged herein.

29. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

30. This CAFO applies to and is binding upon Respondent and any officers, directors, employees, agents, successors and assigns of the Respondent.

31. Any change in the legal status of Respondent including, but not limited to, any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CAFO.

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

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

For Complainant:

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

For Respondent:

Mr. John Milner
Brunini Law Firm
P.O. Box 119
Jackson, Mississippi 39205
(601) 960-6842

34. 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.

35. Under 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 Mississippi was provided a prior opportunity to consult with Complainant regarding this matter.

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

VII. Release by Respondent


37. 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 Site or this CAFO, including but not limited to, any claim that there has been a taking of Respondent's property without compensation.

VIII. Effective Date

38. 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 COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:



James D. Ciattina, Director
Water Management Division
U.S. EPA Region 4

Date: 12/14/09

For RESPONDENT:



Rodney O. Corr

Date: 11-11-2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Rodney O. Corr,
Granbury, Texas

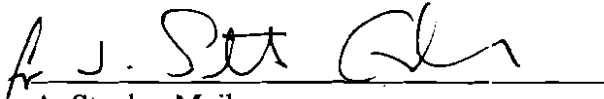
RESPONDENT

)
) ADMINISTRATIVE
) CONSENT AGREEMENT AND
) FINAL PENALTY ORDER
)
)
) Docket No.: CWA-04-2008-5508
)

FINAL ORDER

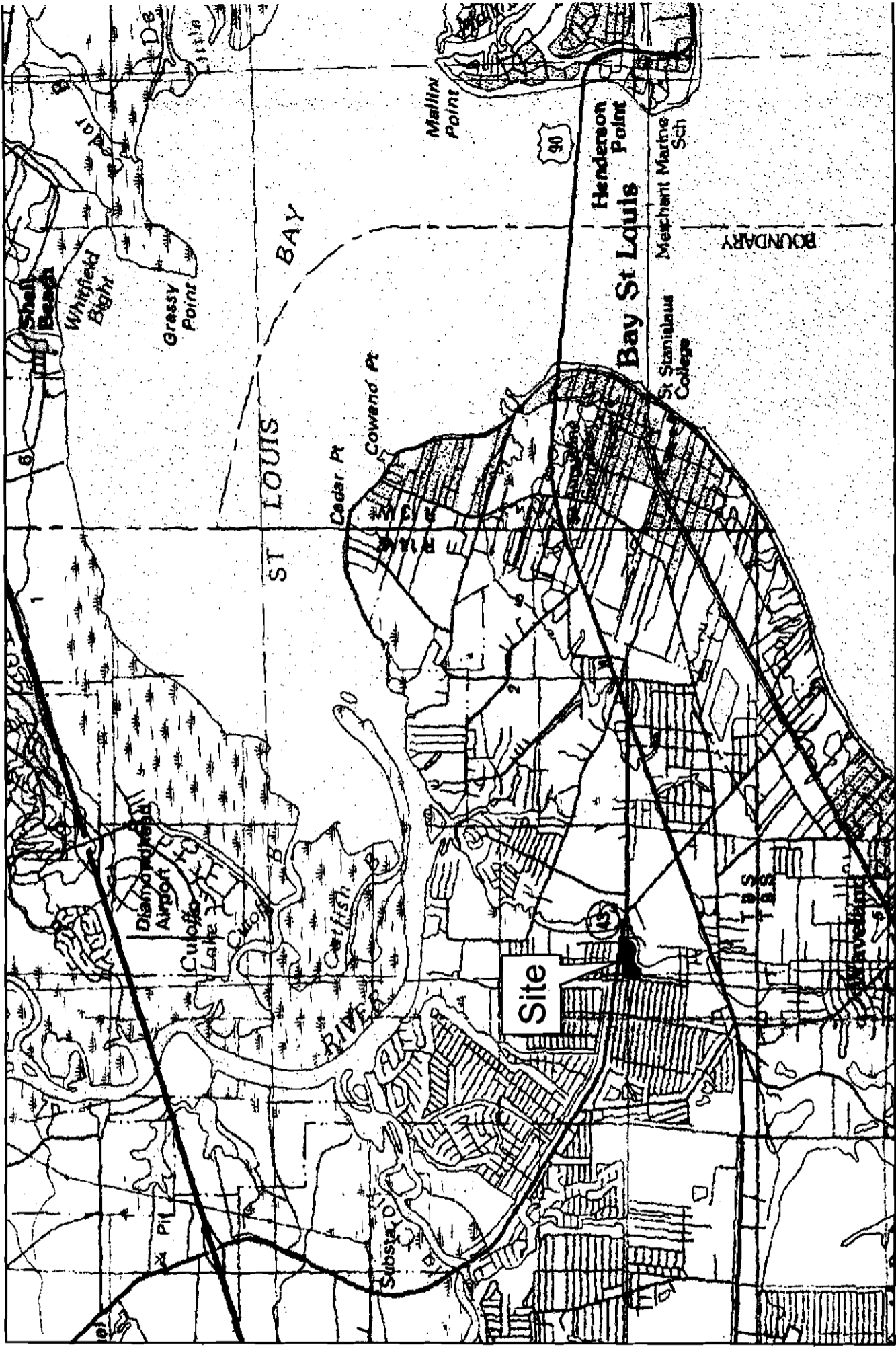
In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, 40 CFR Part 22, and authorities delegated to me, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Under Section 309(g)(2)(B) 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



A. Stanley Meiburg
Acting Regional Administrator
U.S. EPA, Region 4

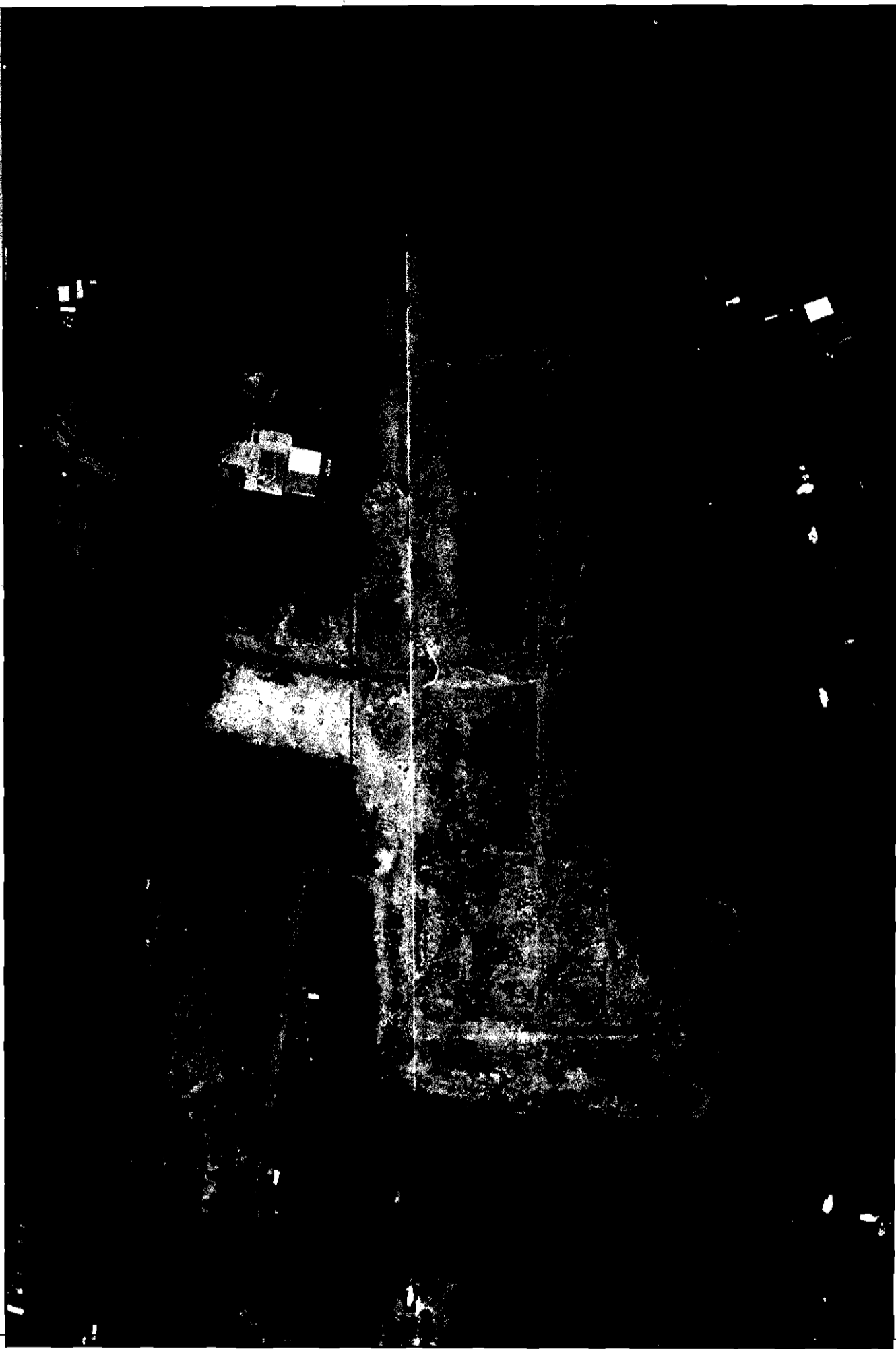
Date: JAN -7 2010



Rodney O. Corr

Exhibit A





Rodney O. Corr

Exhibit B

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original and a copy of the foregoing, Consent Agreement and Final Order in the Matter of Rodney Corr, Docket No. CWA-04-2008- 5508 were hand delivered to the Regional Hearing Clerk, and that a true and accurate copy was served via facsimile and U.S. Mail, Administrative Law Judge and to Respondent as follows:

EPA Internal; Mal:

Mara Lindsley
U.S. EPA, Region 4
61 Forsyth St.
Atlanta, GA 30303

Copy by fax and U.S. Mail:

Honorable Barbara A. Gunning
Office of Administrative Law Judges
U.S. EPA
Mail Code 1900L
401 M Street, S.W.
Washington, DC 20460
Fax Number (202) 565-0044

By Hand delivery

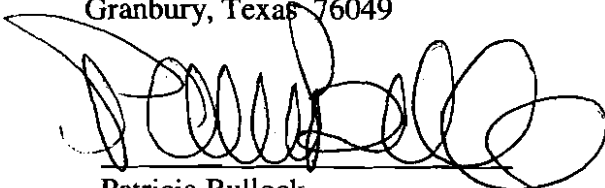
Wilda W. Cobb
U.S. EPA, Region 4
61 Forsyth St.
Atlanta, GA 30303

By Certified mail

Return receipt requested

Rodney O. Corr
5315 Mission Circle
Granbury, Texas 76049

DATE: 1-2-10



Patricia Bullock
Regional Hearing Clerk
U.S. EPA Region 4