



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 15 2010

REPLY TO THE ATTENTION OF

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

WW-16J

Todd C. Young, Esq.
Tucker and Tucker, P.C.
188 South Court Street
Paoli, Indiana 47454

Re: Consent Agreement and Final Order, (Docket No. CWA-05-2010-0010)
Seminole Stone, Inc.

Dear Mr. Young:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) we filed on June 15, 2010, resolving the matters alleged therein. Your \$25,750 civil penalty payment is due within 30 days of the effective date of the CAFO or June 10, 2010. Please refer to Billing Docket No. 2751043W009, and the case Docket Number above when remitting payment. Payment obligations and instructions are noted in paragraphs 31 – 32 of the CAFO.

Thank you for resolving this matter. Should you have any questions, please do not hesitate to contact me at (312) 886-0124 or Michael Berman, Associate Regional Counsel at (312) 886-6837.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gregory T. Carlson".

Gregory T. Carlson, Enforcement Officer
Watersheds and Wetlands Branch
U.S. EPA - Region 5

Enclosure

cc: Greg McKay (w/ encl.), USACOE, Louisville, KY
Kimberly Simpson (w/ encl.), USACOE, Louisville, KY
David Carr (w/ encl.), IDEM, Indianapolis, IN
Michael Berman (w/ encl.), ORC, C-14J

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In The Matter Of:

Seminole Stone, Inc.
Jasper, Indiana,

Respondent.

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APR 22 2010

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Docket No. CWA-05-2010-0010

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 Seminole Stone, Inc., a corporation doing business in the State of Indiana.

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 neither admits nor denies the specific factual allegations in 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.

STATUTORY AND REGULATORY BACKGROUND

1. Section 301 of the CWA, 33 U.S.C. § 1311, prohibits any person from discharging any pollutant from any point source into navigable waters except, among other things, in accordance with the terms of a valid permit issued by the U.S. Army Corps of Engineers (“ACOE”) under Section 404 of the CWA, 33 U.S.C. § 1344.
2. The term “person” is defined as, among other things, a “... corporation...” 33 U.S.C. § 1362(5).
3. A “pollutant” is defined 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).

4. The term “discharge of pollutants” is defined as “any addition of any pollutant to navigable waters from any point source....” 33 U.S.C. § 1362(12).
5. A “point source” is defined 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).
6. The term “navigable waters” is defined as all “... waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).
7. The term “waters of the United States” is defined at 33 C.F.R. § 328.3(a) and 40 C.F.R. § 232.2, to include the following: (i) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce; (ii) all other waters, such as, among others, rivers, streams or wetlands, the use, degradation or destruction of which could affect interstate or foreign commerce; and (iii) tributaries of such waters.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. At all times relevant to this CAFO, the Respondent (a corporation doing business in Indiana) either owned, leased or otherwise controlled parcels of property (“Knies Farm”) situated at Farm 261, Tract 997 and Farm 267, Tract 998, in the SW ¼ of Section 2, Township 2 South, Range 5 West, consisting of

approximately 25 acres in the southeast of Jasper, Dubois County, Indiana (located north of State Highway 162, east of the Jofco Furniture Plant, and northwest/west/southwest of the Patoka River), and/or otherwise controlled the activities that occurred on such parcels of property. (See Map at Attachment A).

9. The Respondent was engaged in agricultural development at the Knies Farm property in question.
10. The Knies Farm property is located at an upstream location on two (2) water bodies (Tributaries) that merge and flow into the Patoka River.
11. The Patoka River is a Traditionally Navigable Water, as defined by the ACOE; and a tributary to the Wabash River, an interstate water body.
12. Knies Farm property Tributaries 1 and 2 are both relatively permanent, non-navigable waters. (See Attachment A)
13. Tributaries 1 and 2 on the Knies Farm property were non-navigable and relatively permanent (exhibiting seasonal characteristics of water flow during the winter thaw, and spring and summer rain or thunder storms), but joined at the southeastern section of the property and directly connected to the Patoka River.
14. Tributaries 1 and 2 significantly affected the physical, chemical, and biological integrity of the Patoka River, a downstream Traditionally Navigable Waterway.
15. During October and November 2007, Respondent contracted for or otherwise allowed or directed the discharge of dredged and fill material and organic debris from excavators and bulldozers into approximately 1,833 feet of above referenced Tributary 1 located on the Knies Farm property as described in Paragraphs 8-14.

16. During October and November 2007, Respondent contracted for or otherwise allowed or directed the discharge of dredged and fill material and organic debris from excavators and bulldozers into approximately 1,151 feet of above referenced Tributary 2 located on the Knies Farm property as described in Paragraphs 8-14.
17. Respondent's October and November 2007 filling activities resulted in the total deposit of approximately 1,200 cubic yards of dredged and fill material and organic debris into the above referenced Tributaries 1 and 2.
18. Respondent's October and November 2007 filling activities included mechanized relocation of Tributaries 1 and 2 through the use of dredging and filling with soil, sediment, uprooted trees and other organic matter.
19. Respondent performed the October and November 2007 filling activities at Tributaries 1 and 2 of the Knies Farm property without a Section 404 permit from the ACOE.
20. Because the Respondent is a corporation, it is a "person" within the meaning of the definition set forth in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
21. Because Tributaries 1 and 2 of the Knies Farm property joined and flowed into the Patoka River (Traditionally Navigable Waterway), the Tributaries are both "navigable waters" as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and "waters of the United States" as defined at 40 C.F.R. § 232.2.
22. Because Tributaries 1 and 2 of the Knies Farm property significantly affected the chemical, physical, and biological integrity of a Traditionally Navigable Waterway, the Tributaries are "navigable waters" as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

23. Because the mechanized land moving equipment used to perform the filling activities (described at Paragraphs 15-18) is or was rolling stock, such equipment constituted a "point source" within the meaning of the definition set forth in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).
24. Because the dredged or fill material (described at Paragraphs 15-18) was soil, sediment, uprooted trees and other organic matter, these constituted "pollutants" within the meaning of the definitions set forth in Section 502(6) of the CWA, 33 U.S.C. § 1362(6).
25. Because Respondent used a point source to add pollutants to navigable waters of the United States, the placement of such materials by the Respondent in the streams constituted a "discharge of pollutants" within the meaning of the definition set forth in Section 502(12) of the CWA, 33 U.S.C. § 1362(12).
26. Each discharge of pollutants, by the Respondent, into navigable waters without the required permit issued pursuant to 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.
27. Each day the material discharged by the Respondent remains in navigable waters without the required permit issued pursuant to 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.
28. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), EPA has consulted the Indiana Department of Environmental Management regarding the assessment of this civil penalty.

29. Pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), the Administrator may assess a Class II civil penalty of \$10,000 per day for each day during which the violation continues, up to a total of \$125,000, for violations of, among other things, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), or any limit or condition in a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344. Section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, provides for the increase of penalty amounts to account for inflation. The rule increasing the civil monetary penalty amount for a Class II civil penalty to \$16,000 per day of violation, up to a total of \$177,500, took effect on January 12, 2009, 73 Fed. Reg. 75340-6 (Dec. 11, 2008).

PENALTY

30. 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 Seminole Stone, Inc. in the amount of \$25,750.
31. 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:

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

32. 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:

Greg Carlson (WW-16J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and

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

33. This civil penalty is not deductible for federal tax purposes.
34. 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.
35. 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 30 days past due. The Complainant will assess a six percent per year penalty on any principal amount not paid timely pursuant to this CAFO.

GENERAL PROVISIONS

36. This CAFO constitutes a complete and full settlement of, and resolves the Respondent's liability with prejudice for, the violations alleged in this CAFO.
37. 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.
38. This CAFO does not affect the Respondent's responsibility to comply with the Act and other applicable federal, state, and local, laws and regulations.
39. The terms of this CAFO bind EPA and the Respondent and their successors and assigns.
40. 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.
41. Each party agrees to bear its own costs and fees, including attorney's fees, for this action.
42. This CAFO constitutes the entire agreement between the parties.
43. 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.
44. The effective date of this CAFO is the date EPA files it with the Regional Hearing Clerk.

In the Matter of Seminole Stone, Inc.
Docket No.

Seminole Stone, Inc., Respondent

Date:


3-31-2010 

Joseph Knies, President
Seminole Stone, Inc.
1503 South Meridian Street
Jasper, Indiana

In the Matter of Seminole Stone, Inc.
Docket No. CWA-05-2010-0010

United States Environmental Protection Agency, Region 5, Complainant

Date: 2-19-2010



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

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In the Matter of Seminole Stone, 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 22.41. IT IS SO ORDERED.

Dated: 6-10-10



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency Region 5
Chicago, Illinois

Seminole Stone Tributaries Filled

Legend

- Direction of Flow
- Culvert
- Drainage Divide
- Drainage Termination

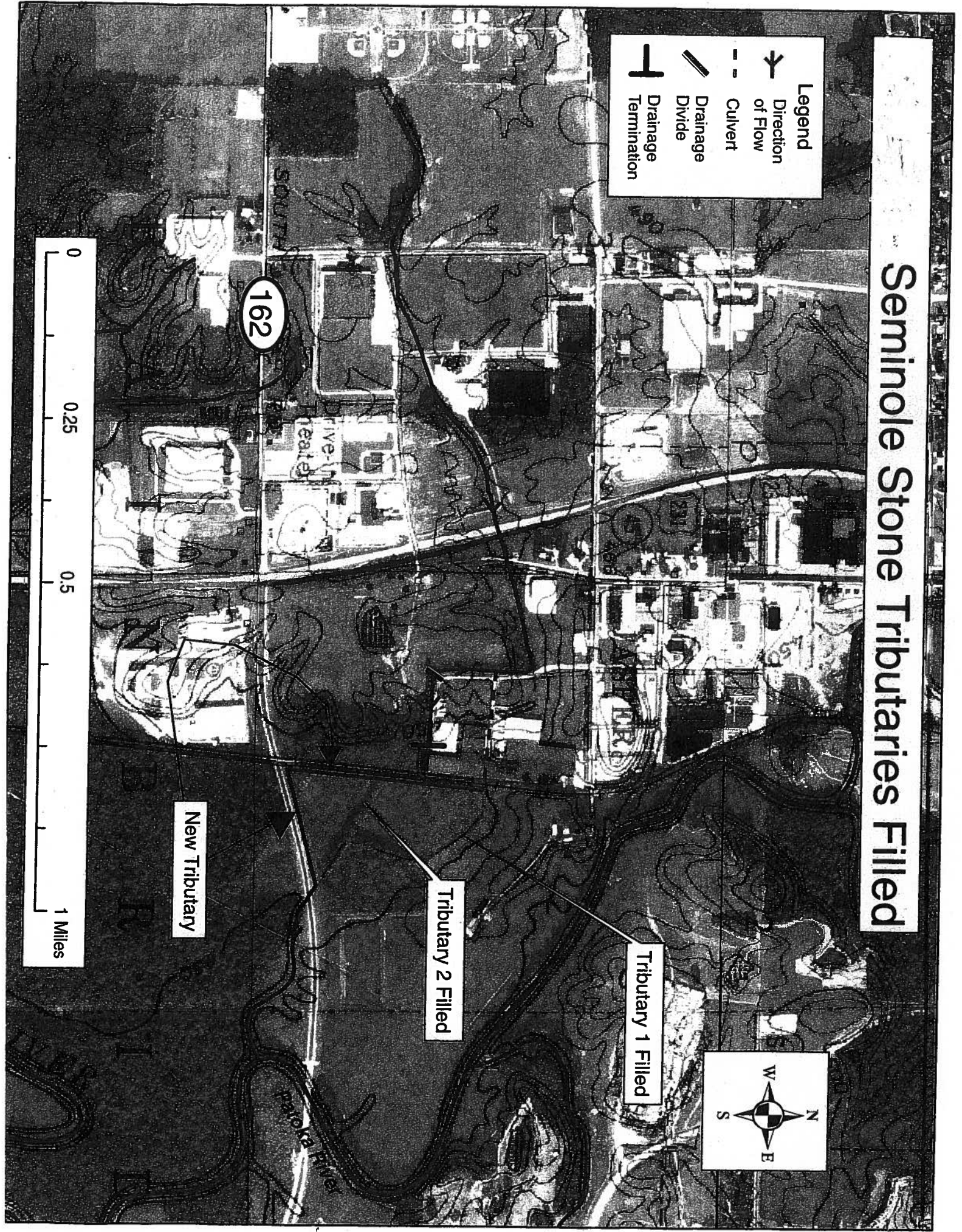
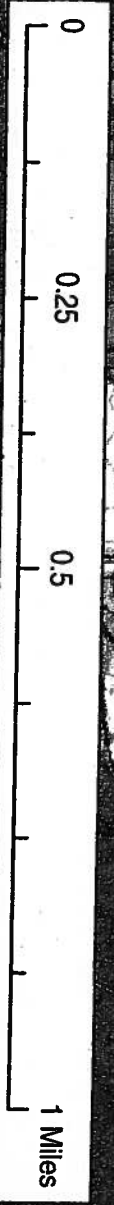


Tributary 1 Filled

Tributary 2 Filled

New Tributary

162





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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REPLY TO THE ATTENTION OF

CERTIFICATE OF SERVICE

I, Gregory T. Carlson, hereby certify that an original of the Consent Agreement and Final Order (Docket No. CWA-05-2010-0010) was filed with the Regional Hearing Clerk on June 15, 2010, and that a copy was served by United States Mail, Certified and Postage Prepaid, on the 15th day of June 2010, upon the following:

Todd C. Young, Esq.
Tucker and Tucker, P.C.
188 South Court Street
Paoli, Indiana 47454

A Consent Agreement and Final Order copy (Docket No. CWA-05-2010-0010) was served by United States Mail, Certified and Postage Prepaid, on the 15th day of June 2010, upon the following:

Honorable Chief Judge Susan Biro
Chief Administrative Law Judge
Office of Administrative Law Judges (1900L)
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20460

Gregory T. Carlson
U.S. Environmental Protection
Agency - Region 5 (WW-16J)
77 West Jackson Boulevard
Chicago, Illinois 60604