



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

CID HAND DELIVERY

**FEB - 6 2014**

Mr. Warren Soileau, Jr.  
35 New River Road  
Tylertown, Mississippi 39667

Re: Administrative Complaint, Docket No.: CWA-04-2014-5502

Dear Mr. Soileau:

Enclosed please find an Administrative Complaint (Complaint), Docket No.: CWA-04-2014-5502, which the U.S. Environmental Agency Region 4 has filed against you. This Complaint was issued under the authority vested in the Administrator of the 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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits” – are located at 40 C.F.R. Part 22, which is also enclosed with the Complaint.

If you have any comments or questions regarding this matter, please contact Mr. Joel Strange, of my staff, at (404) 562-9455 or Ms. Kavita Batra, Attorney Advisor, at (404) 562-9697.

Sincerely,

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

James D. Giattina  
Director  
Water Protection Division

Enclosure

cc: Mr. Charles Allred  
U.S. Army Corps of Engineers, Vicksburg

Mr. Chris Sanders  
Mississippi Department of Environmental Quality

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )

Mr. Warren Soileau, Jr. )  
Tylertown, Mississippi )

RESPONDENT )  
)  
)  
\_\_\_\_\_ )

ADMINISTRATIVE COMPLAINT  
FOR CLASS II PENALTY  
UNDER SECTION 309(g)(2)(B)  
OF THE CLEAN WATER ACT,  
33 U.S.C. § 1319(g)(2)(B)

Docket No.: CWA-04-2014-5502

HEARING CLERK

2014 FEB -6 PM 2:46

RECEIVED  
EPA REGION IV

**ADMINISTRATIVE COMPLAINT**

**I. Statutory Authority**

1. This is an Administrative Complaint (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, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits.” The Administrator has delegated this authority to the Regional Administrator of EPA, Region 4, who has duly re-delegated this authority to the Director of the Water Protection Division (Complainant), who hereby issues this Complaint and Notice.

2. This Complaint is issued to Mr. Warren Soileau, Jr., hereinafter referred to as the Respondent.

**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 II civil penalty under [Section 309(g)(2)(B) of the CWA, 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. § 1344], 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 “person” as an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.

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

10. 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**

11. At all times relevant to this Complaint, the Respondent was the owner or operator of a tract of land located at 35 New River Road in Tylertown, Walthall County, Mississippi, near latitude 31°6'37"N and longitude 90°13'55"W (the Site) (Exhibits A and B). Sometime in 2008, the Respondent sold the property to Craig Anthony Gaspard.

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

13. The Respondent, or those acting on behalf of the Respondent, used earth moving machinery, during activities associated with the construction of a crawfish impoundment.

14. The Respondent’s activities at the Site commenced on or about March 2009, and the fill remains in place to the present.

15. The Respondent’s activities at the Site impacted approximately 12.1 acres of wetlands at the Site that are adjacent to the Bogue Chitto River. The discharge involved mechanized land clearing, including stump removal, and placement of fill to construct a dam and build up low areas around the impoundment.

16. The Bogue Chitto River is a Section 10 water of the United States and a navigable water of the United States.

17. The Bogue Chitto River is a “water of the United States,” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

18. Prior to Respondent's activities described above, the 12.1 acres of bottomland hardwood wetlands were defined as a "water of the United States," within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

19. The discharged dredged and/or fill material, at the Site, are "pollutants" as defined Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

20. The earth moving machinery employed by the Respondent to deposit the dredged and/or fill material into 12.1 acres of wetlands at the Site are "point sources" as defined under Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

21. Respondent's placement of the dredged and/or fill material into the 12.1 acres of wetlands at the Site constitutes a "discharge of pollutants" as defined under Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

22. At no time during the discharge of dredged and/or fill material into the wetlands at the Site from March 2009, to the present, did the Respondent possess a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondent.

23. Each discharge by the Respondent of pollutants into the wetlands at the Site without the required permit issued pursuant to 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).

24. Each day the pollutants discharged by the Respondent remain in the 12.1 acres of wetlands at the Site without the required permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a separate day of violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

#### **IV. Notice**

25. As required under Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), the Complainant has consulted with the State of Mississippi regarding this proposed action by mailing a copy of this Complaint to the appropriate official of the Mississippi Department of Environmental Quality and offering an opportunity for the State to consult with the Complainant on the proposed penalty assessment.

26. Pursuant to 40 C.F.R. § 22.45(b), within 30 days following proof of service of this Complaint on the Respondent, the Complainant shall publish a public notice on its website at <http://www.epa.gov/region4/water/wpeb> regarding this Complaint.

#### **V. Penalty**

27. Based on the above Allegations and pursuant to Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and the 2004 Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121 (Feb. 13, 2004), the Administrator may assess a civil penalty of up to \$11,000 per violation per day, not to exceed a maximum of \$157,500, for violations of Section 301(a) and 404 of the CWA, 33

U.S.C. § 1311(a) and 1344, which occurred after March 15, 2004, through January 12, 2009. For violations occurring after January 12, 2009, through December 6, 2013, the penalties are \$16,000 per violation per day up to a maximum of \$177,500, pursuant to the 2008 Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340 (Dec. 11, 2008). For violations occurring after December 6, 2013, the penalties are \$16,000 per violation per day up to a maximum of \$187,500, pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 78 Fed. Reg. 66643 (Nov. 6, 2013).

28. Based upon the above Allegations and 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, the Complainant proposes that Respondent pay a penalty in an amount of up to one hundred eighty seven thousand five hundred dollars (\$187,500) for the violations stated in this Complaint.

#### **VI. Answer and Right to Request a Hearing**

29. Pursuant to 40 C.F.R. §§ 22.15(a) and 22.17(a), if the Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint within 30 days of service of this Complaint with the:

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

30. Pursuant to 40 C.F.R. § 22.15(b), 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 the circumstances or arguments that are alleged to constitute grounds of defense, and facts which the Respondent intends to place at issue.

31. Pursuant to 40 C.F.R. § 22.15(d), the Respondent's failure to admit, deny or explain any material factual allegation in its Answer to this Complaint constitutes admission of the allegation.

32. Pursuant to 40 C.F.R. § 22.15(c), the Respondent has the right to request a hearing in the Answer to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. 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.

33. A copy of this Answer and any subsequent documents that the Respondent files in this action should be sent to:

Ms. Kavita K. Batra  
Associate Regional Counsel  
EPA Region 4  
OEA 13th Floor  
61 Forsyth Street, SW  
Atlanta, GA 30303  
(404) 562-9697

34. Pursuant to Section 309(g)(4)(B) of the CWA, 33 U.S.C. § 1319(g)(4)(B), if Respondent requests a hearing on the proposed penalty amount, members of the public who have exercised their right to comment on this proceeding during the public notice period will have a right to present evidence on the appropriateness of the penalty assessment. Pursuant to Section 309(g)(4)(C) of the CWA, 33 U.S.C. § 1319(g)(4)(C), if Respondent does not request a hearing, such members of the public will have an additional thirty (30) days to petition the Presiding Officer to set aside any final order assessing administrative penalties and to hold a hearing thereon. The Presiding Officer will grant the petition and hold the hearing only if the petitioner's evidence is material and was not considered by the Complainant in the issuance of the final order assessing administrative penalties.

35. If the Respondent fails to file a written Answer within 30 calendar days of receipt of this Complaint, a Default Order may be issued by the Presiding Officer upon motion by the Complainant. Issuance of a Default Order will constitute an admission of all factual allegations made in the Complaint and a waiver of Respondent's right to contest such factual allegations, pursuant to 40 C.F.R. § 22.17(a). Any penalty assessed in the Default Order shall become due and payable by the Respondent without further proceedings 30 days after the Default Order becomes a Final Order. Pursuant to 40 C.F.R. § 22.27(c), a Default Order will become a Final Order 45 days after its service upon the Respondent and without further proceeding unless the Respondent moves to reopen the hearing, appeals the initial decision to the Environmental Appeals Board, moves to set aside a Default Order, or the Environmental Appeals Board elects to review the initial decision on its own initiative.

36. Neither assessment nor payment of an administrative civil penalty under Section 309(g)(2)(B) of the CWA will affect the Respondent's continuing obligation to comply with the CWA, or any other federal, State or local law or regulation.

37. The Respondent's failure to fully pay the proposed penalty, as assessed by the Final Order, by its due date may 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) of the CWA, 33 U.S.C. § 1319(g)(9).

## **VII. Settlement Conference**


38. 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. Kavita Batra  
Associate Regional Counsel  
EPA Region 4  
OEA 13th Floor  
61 Forsyth Street, SW  
Atlanta, GA 30303  
(404) 562-9697

Ms. Batra represents the EPA in this matter and is authorized to receive service for the EPA in this proceeding.

39. 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 simultaneously with the adjudicatory hearing procedure. The Complainant encourages all parties facing civil penalties to pursue settlement through an informal conference. The Complainant, 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 Consent Agreement and Final Order. Respondent's consent to a Consent Agreement and Final Order will constitute a waiver of the right to request a hearing on any matter stipulated to therein.

**COMPLAINANT:**

  
\_\_\_\_\_  
James D. Giattina  
Director  
Water Protection Division  
U.S. EPA Region 4

Date: 2/6/14

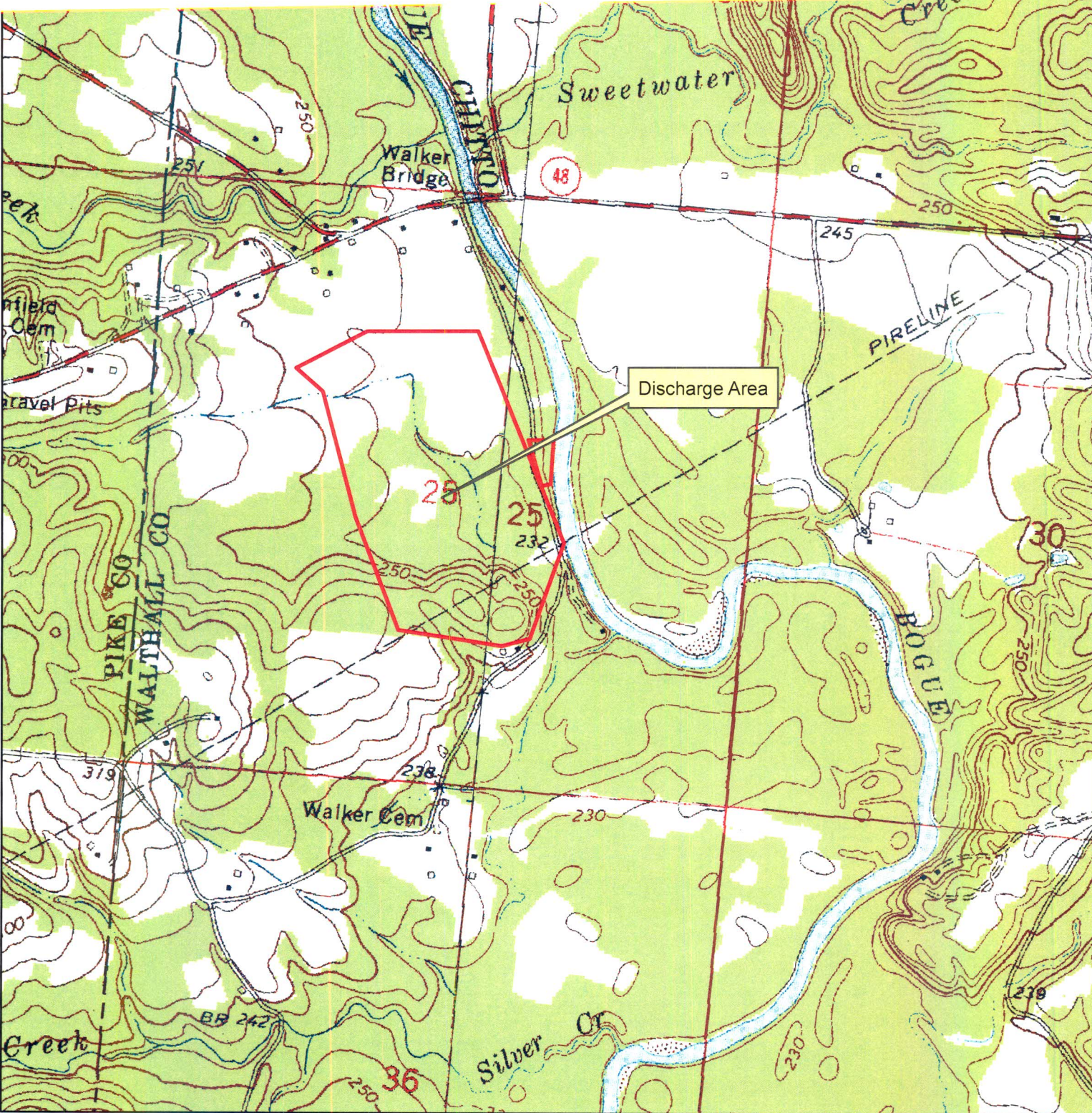


Exhibit A - Soileau Property  
Walthall County, MS







Discharge Area



Exhibit B - Soileau Property  
Walthall County, MS



## CERTIFICATE OF SERVICE

The undersigned certifies that the original and one copy of the foregoing Administrative Complaint, in the matter of: Mr. Warren Soileau, Jr.; **Docket No. CWA-04-2014-5502**, was filed with the Regional Hearing Clerk, Region 4, U.S. Environmental Protection Agency, and that a true and correct copy was sent to the following persons, in the manner specified on the date below:

By hand-delivery:

Ms. Kavita Batra  
Associate Regional Counsel  
Office of Environmental Accountability  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

By Hand Delivery:

Mr. Warren Soileau, Jr.  
35 New River Road  
Tylertown, Mississippi 39667

Copy by Regular Mail:

Mr. Chris Sanders, Chief  
Environmental Compliance and Enforcement Division  
Mississippi Department of Environmental Quality  
P.O. Box 2261  
Jackson, Mississippi 39225

Dated:

2/6/14



Mary Mattox  
Clean Water Enforcement Branch  
U.S. Environmental Protection Agency, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960  
(404) 562-9733