



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

SEP 26 2013

CERTIFIED MAIL 7012 1010 0001 8097 1914  
RETURN RECEIPT REQUESTED

Mr. Michael Todd Smith  
1320 Greenhill Road  
Columbia, South Carolina 29026

Re: Consent Agreement and Final Order No.: CWA 04-2013-5511(b)  
Normandy Corporation

Dear Mr. Smith:

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. Chris Parker at (404) 562-9838, or your attorney may contact Mr. Philip Mancusi-Ungaro, Attorney Advisor, at (404) 562-9519.

Sincerely,

A handwritten signature in black ink, appearing to read "Denisse D. Diaz".

Denisse D. Diaz, Chief  
Clean Water Enforcement Branch  
Water Protection Division

Enclosure

cc: Mr. Tommy Fennel  
U.S. Army Corps of Engineers

Mr. David Wilson  
South Carolina Department of Health and Environmental Control

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF:

Normandy Corporation  
Columbia, South Carolina

RESPONDENT.

)  
) CONSENT AGREEMENT AND  
) FINAL ORDER  
)  
)  
)  
) Docket No.: CWA-04-2013-5511(b)

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HEARING CLERK

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)(2)(A) 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 for EPA Region 4, who in turn has redelegated this authority to the Director of the Water Protection Division, who in turn has delegated this authority to the Chief of the Clean Water Enforcement Branch of 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 ("Corps"), 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 is approximately 40 acres of forested wetlands adjacent to and abutting an unnamed perennial tributary of the Waccamaw River, a navigable water of the United States. The discharge occurred on property located near latitude 33°52’50.311” north and longitude 78°40’55.831” west (“the Site”). (See Exhibits A and B).

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

12. Normandy Corporation (“Respondent”) is a company duly organized under the laws of the State of South Carolina and, as such, is a person within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. Respondent at all times relevant to this AOC, were the owners and/or operators of the parcel of land located east of Highway 9 and south of Highway 57 near the town of Stephens Crossroads, Horry County, South Carolina, near latitude 33°52’50.311” north and longitude 78°40’55.831” west, which contained the Discharge Area.

14. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except in compliance with a permit issued under, *inter alia*, Section 404 of the CWA, 33 U.S.C. § 1344.

15. Prior to October 11, 2007, Respondent, and/or those acting on behalf of the Respondent, discharged dredged and/or fill material into wetlands on the Site using earth moving machinery during construction of drainage ditches throughout the Site. These drainage ditches were constructed at a frequency and depth sufficient to effectively drain and remove hydrology



from the Site. These activities were not part of a normal ongoing silviculture operation; therefore, they are not exempt under Section 404 of the CWA.

16. Respondent's unauthorized activities impacted approximately 40 acres of wetlands that are adjacent to and abutting an unnamed perennial tributary of the Waccamaw River, a navigable water of the United States.

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

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

19. A "discharge of a pollutant" as defined at Section 502(12)(A) of the CWA, 33 U.S.C. § 1362(12)(A), is any addition of any pollutant to navigable waters from any point source.

20. Respondent's placement of the dredged and/or fill material into the Discharge Area constitutes a "discharge of pollutants" as defined under the CWA Section 502(12), 33 U.S.C. § 1362(12).

21. The term "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), means the waters of the United States, including the territorial seas.

22. The Discharge Area includes "navigable waters" as that term is defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

23. At no time during the discharge of dredged and/or fill material into the Discharge Area did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material by Respondent.

24. 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).

25. 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.

26. Respondent has violated Section 301 of the CWA, 33 U.S.C. § 1311, by discharging pollutants into navigable waters without a permit.

27. EPA staff discovered the unpermitted discharge described in Paragraph 10 above during an inspection on October 11, 2007.

28. On January 14, 2011, Red Bay Environmental, on behalf of the Respondent, submitted a mitigation and monitoring plan entitled Mitigation Plan for Normandy Corporation (“the Plan”) which established mitigation and monitoring criteria to compensate for the wetlands impacted.

29. On June 13, 2011, the EPA issued Respondent an Administrative Consent Agreement and Compliance Order, Docket No. CWA-04-2011-5772, effective August 19, 2011 (hereinafter, “CACO”), directing Respondent to implement the Plan and complete enhancement activities outlined in the Plan no than December 31, 2011. Respondent has been fully compliant with the CACO.

#### **IV. Stipulations and Findings**

30. Complainant and Respondent have conferred for the purpose of settlement under 40 C.F.R. § 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. § 22.13(b), this Administrative Consent Agreement and Final Penalty Order (“CA/FO”) will simultaneously commence and conclude this matter.

31. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

32. For purposes of this settlement, Respondent hereby waives their right to contest the allegations specifically as set out above in this CA/FO, and their right to appeal the Final Order accompanying this Consent Agreement unless EPA proposes to and/or changes the final order after the comment period closes.

33. Respondent consents to the assessment of and agrees to pay the administrative penalty as set forth in this CA/FO, and consents to the other conditions set forth in this CA/FO.

34. By signing this CA/FO, Respondent certifies that the information they have supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete in all material respects for each such submission, response and statement. Respondent realizes 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.

35. The EPA reserves the right to assess and collect any and all civil penalties for any violation described in this Consent Agreement to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to the EPA.

36. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

**V. Payment**

37. 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 seven thousand dollars (\$7,000) is an appropriate civil penalty to settle this action.

38. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO 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 CA/FO. Such payment shall be submitted by U.S. Postal Service to:

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

For other payment options (Ex: Wire Transfers, Overnight Mail, ACH, and On Line), please refer to Attachment A.

39. 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 CA/FO, 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

Ms. Mary Mattox  
Clean Water Enforcement Branch  
Wetlands Enforcement Section  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960



40. Civil penalty payments under this CA/FO 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.

41. Under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), 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 CA/FO shall not be subject to review.

## **VI. General Provisions**

42. This CA/FO shall not relieve Respondent of their obligations 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 CA/FO shall not be a defense to any actions subsequently commenced under federal laws and regulations administered by the EPA.

43. Nothing in this CA/FO 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(s) of this CA/FO, or of the statutes and regulations upon which this agreement is based, or for Respondent's violation(s) of any federal or state statute, regulation or permit.

44. This CA/FO 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 CA/FO. Except as otherwise set forth in this document, compliance with this CA/FO shall resolve the allegations of violations contained in this CA/FO. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. 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.

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

46. This CA/FO applies to and is binding upon Normandy Corporation and any successors and assigns of Respondent.

47. 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 CA/FO.

48. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

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

For Complainant:

Philip Mancusi-Ungaro  
Attorney-Advisor  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9519

For Respondent:

Normandy Corporation  
1320 Greenhill Road  
Columbia, South Carolina 29026

50. The parties acknowledge and agree that this CA/FO 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.

51. 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 South Carolina was provided a prior opportunity to consult with Complainant regarding this matter.

52. This CA/FO in no way affects the rights of the Complainant as against any person or entity not a party to this CA/FO.

53. Effective upon signature of this CA/FO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date the EPA receives from Respondent the payment required by this CA/FO 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 CA/FO and that, in any action brought by the EPA related to the matters addressed, Respondent 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 Respondent that it will not make this CA/FO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by the EPA.



**VII. Release by Respondent**

54. 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 matters addressed and resolved in this CA/FO, including but not limited to, any claim that any of the matters or actions described in this CA/FO have resulted in a taking of Respondent's property without compensation.

**VIII. Effective Date**

55. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

For RESPONDENT, NORMANDY CORPORATION:

by [Signature], Pres.  
Normandy Corporation

Date: 8/14/13

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

[Signature] for  
Denisse D. Diaz  
Chief, Clean Water Enforcement Branch  
Water Protection Division  
U.S. EPA Region 4

Date: 9/26/13



IN THE MATTER OF:

Normandy Corporation  
Columbia, South Carolina

RESPONDENT.

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)  
) **CONSENT AGREEMENT AND**  
) **FINAL ORDER**  
)  
)  
)  
)

) **Docket No.: CWA-04-2013-5511(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), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Susan B. Schub  
Susan B. Schub  
Regional Judicial Officer

Date: Sept. 26, 2013

**CERTIFICATE OF SERVICE**

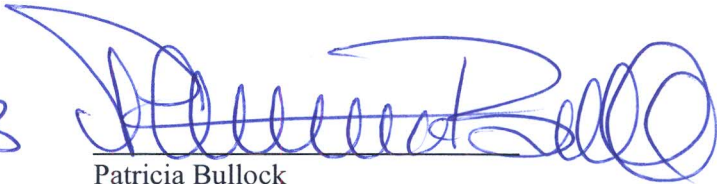
I HEREBY CERTIFY that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order in the matter of: **Docket No. CWA-04-2013-5511(b)** on the parties listed below in the manner indicated:

EPA Internal Mail: Christopher Parker, Enforcement Officer  
Clean Water Enforcement Branch  
Wetlands Enforcement Section  
U.S. EPA, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

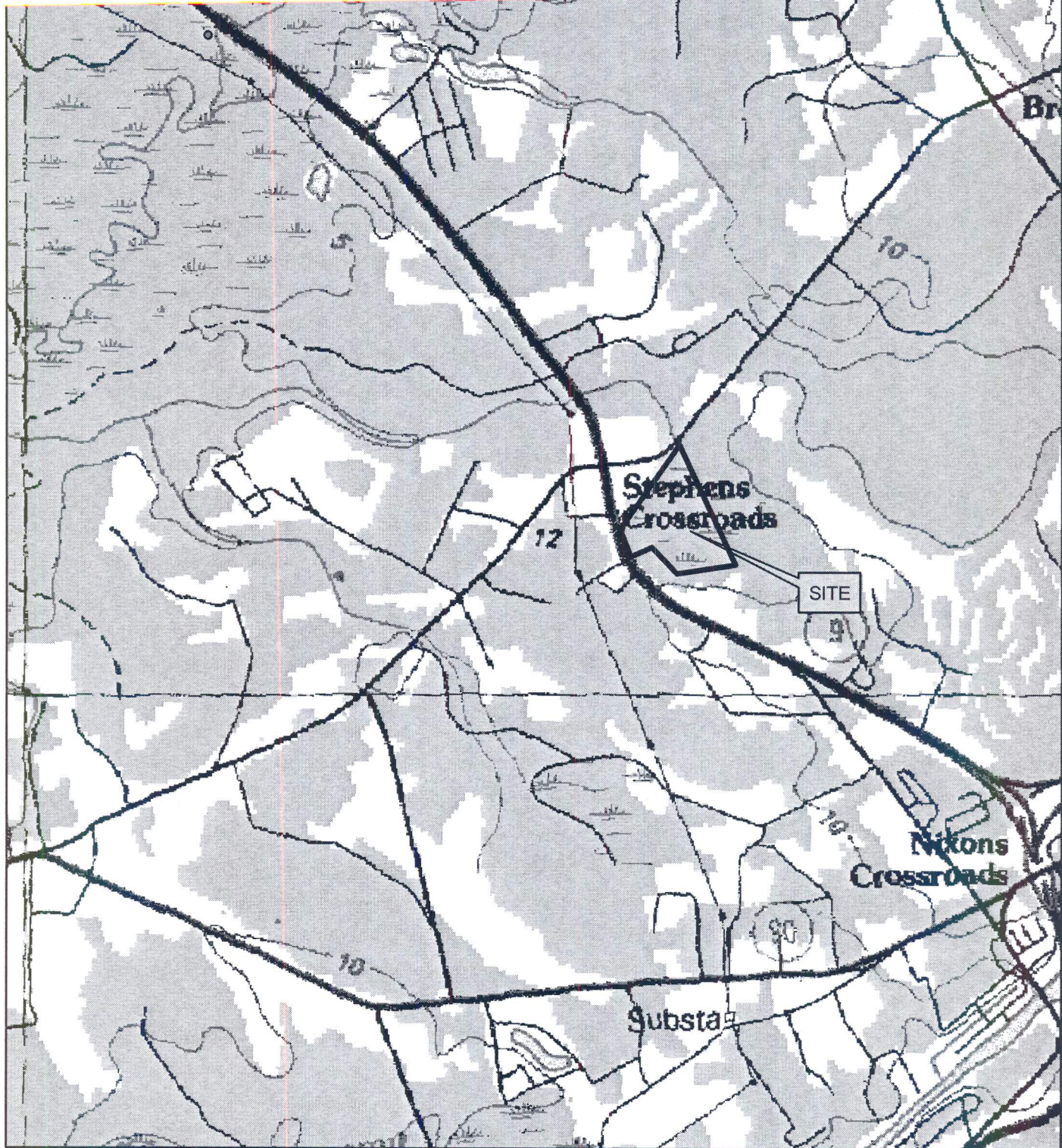
By hand-delivery: Philip Mancusi-Ungaro, Associate Regional Counsel  
Office of Water Legal Support  
U.S. EPA, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

By Certified mail,  
return receipt requested: Normandy Corporation  
1320 Greenhill Road  
Columbia, South Carolina 29026

Dated: 9-26-13

  
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

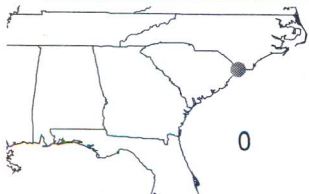
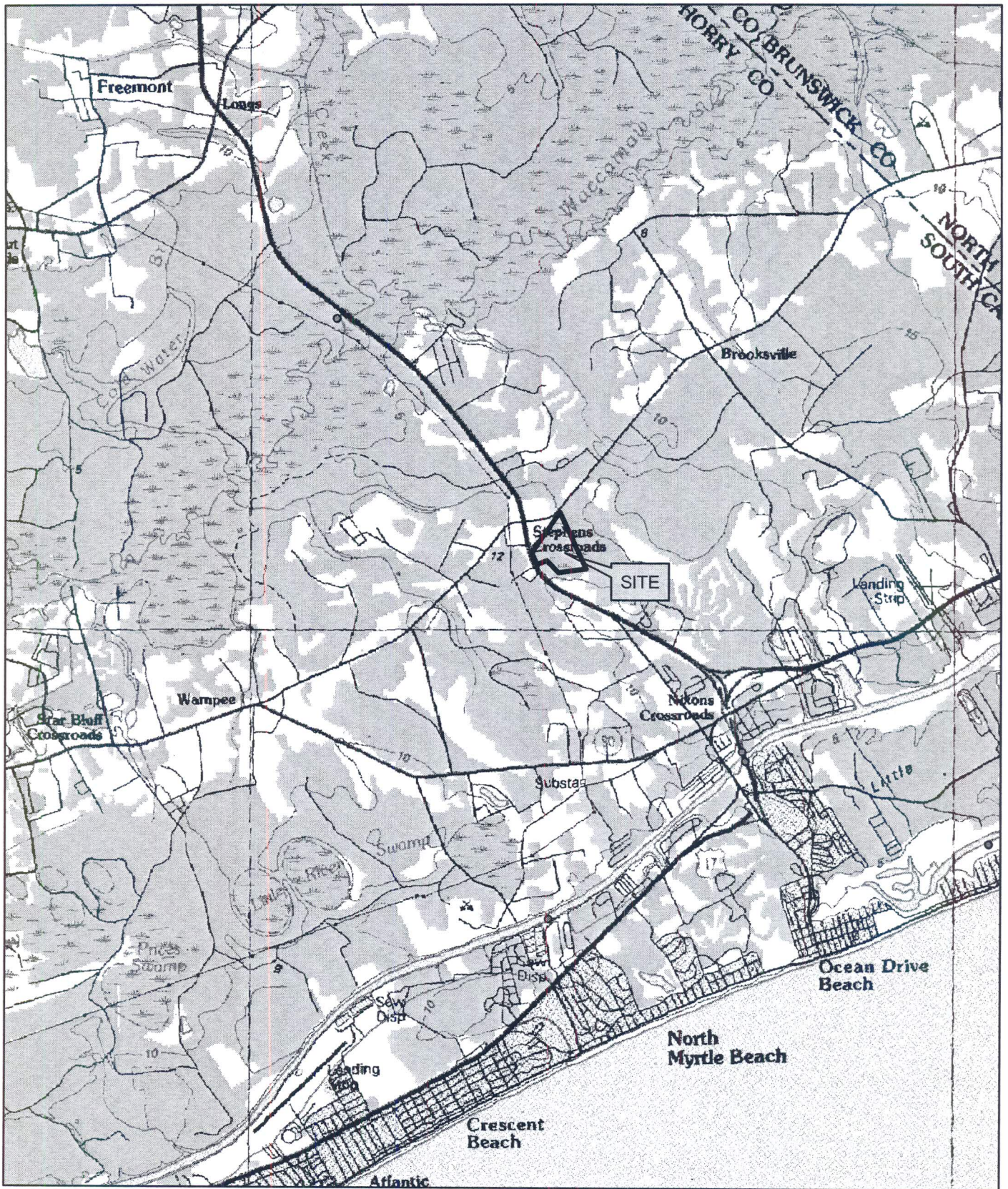




**EXHIBIT A**  
**Normandy**  
**Horry County, South Carolina**







**EXHIBIT B**  
**Normandy**  
**Horry County, South Carolina**

