



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

SEP 30 2015

CERTIFIED MAIL 7010 1060 0002 1703 8563  
RETURN RECEIPT REQUESTED

Mr. Drew St. John  
281 Old Jackson Road  
Madison, Mississippi 39110

Re: Consent Agreement and Final Order No. CWA CWA-04-2015-5501(b)

Dear Mr. St. John:

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. Mike Wylie at (404) 562-9409.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas McGill".

Thomas McGill  
Chief  
Ocean, Wetlands and Streams Protection Branch

Enclosure

cc: Mr. Charles Allred  
Chief, U.S. Army Corps of Engineers Enforcement Section, Regulatory Branch

Ms. Florence Bass  
Chief, Environmental Permitting, Mississippi Department of Environmental Quality

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

<b>IN THE MATTER OF:</b>	)	
	)	<b>ADMINISTRATIVE</b>
	)	<b>CONSENT AGREEMENT AND</b>
<b>DREW ST. JOHN</b>	)	<b>FINAL PENALTY ORDER</b>
<b>SHARKEY COUNTY, MISSISSIPPI,</b>	)	
	)	
<b>RESPONDENT.</b>	)	<b>Docket No.: CWA-04-2015-5501(b)</b>
<hr/>		

RECEIVED  
MAY 13 2015  
10:17:31 AM  
EPA REGION 4

**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*, including Subpart I, published at 64 Fed. Reg. 40,176 (July 23, 1999), codified at 40 Code of Federal Regulations (C.F.R.) 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. 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 Protection Division, who in turn has delegated this authority to the Chief of the Ocean, Wetlands and Streams Protection 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 (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 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 located in Sharkey County, Mississippi, at approximately 32°59'4.57"N latitude and 90°39'35.81"W 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. Mr. Drew St. John (Respondent), at all times relevant to this Consent Agreement and Final Order (CAFO), was the owner and/or operator of the Site.

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

14. Commencing in or about June 2013, Respondent, and/or those acting on behalf of the Respondent, discharged dredged and/or fill material into jurisdictional wetlands on Site using earth moving machinery during the establishment of a wildlife food plot, excavation of a drainage ditch with side cast of dredged material, and storage of spoil material. To date, the unauthorized dredged and/or fill material remains in waters of the United States.

15. Respondent impacted approximately 6.44 acres of forested wetlands (Discharge Area) that abut an unnamed tributary, which flows to Dowling Bayou, a navigable-in-fact water of the United States.

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

17. The excavators and bulldozers employed by Respondent to deposit the dredged and/or fill material at the Discharge Area are “point sources” as defined under the CWA § 502(14), 33 U.S.C. § 1362(14).

18. Respondent’s placement of the dredged and/or fill material at the Discharge Area constitutes a “discharge of pollutants” as defined under the CWA § 502(12), 33 U.S.C. § 1362(12).

19. At no time during the discharge of dredged and/or fill material at the Discharge Area from June 2013 to the present did Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondent.

20. Each discharge by 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).

21. Each day the material discharged by 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**

22. 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 CAFO will simultaneously commence and conclude this matter.

23. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above and admits the factual allegations set out above.

24. Respondent hereby waives his right to contest the allegations set out above and his right to appeal the Final Order accompanying this Consent Agreement.

25. 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.

26. By signing this CAFO, Respondent certifies that the information he has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete 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.

27. The EPA reserves the right to assess and collect any and all civil penalties for any violation described herein 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.

28. 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**

29. 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 FIFTEEN THOUSAND DOLLARS (\$15,000) is an appropriate civil penalty to settle this action.

30. Respondent shall submit payment of the penalty specified in the preceding paragraph within 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  
P.O. Box 979077  
St. Louis, Missouri 63197-9000

31. 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:

Regional Hearing Clerk  
U.S. Environmental Protection Agency - Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

and

Ms. Stacy Witherspoon  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

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

33. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CAFO 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 CAFO), attorneys' 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**

34. 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.

35. Issuance of this CAFO shall not be deemed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions available to it under law. Such actions may include, without limitation, any administrative, civil, or criminal action to seek penalties, fines, injunctive, or other appropriate relief, or to initiate an action for imminent and substantial endangerment, under the CWA or any other federal or state statute, regulation, or permit.

36. Except as otherwise set forth in this document, 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. Except as otherwise set forth herein, compliance with this CAFO shall resolve the allegations of violations contained in this CAFO.

37. Nothing in this C/FO 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.

38. 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.

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

40. 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.

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

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

For Complainant:

Suzanne Armor  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9701

For Respondent:

Drew St. John  
281 Old Jackson Road  
Madison, Mississippi 39110

43. 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.

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

45. Effective upon signature of this CAFO by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date EPA receives from Respondent 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, 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 CAFO effective, the statute of limitations shall begin to run again commencing ninety days after the date such notice is sent by EPA.

## **VII. Release by Respondent**

46. 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 CAFO, including

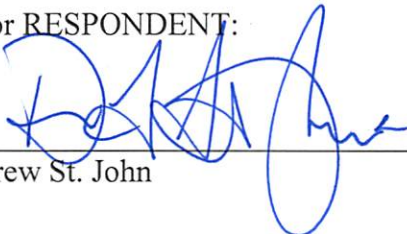
but not limited to, any claim that any of the matters or actions described in this CAFO have resulted in a taking of Respondent's property without compensation.

**VIII. Effective Date**

47. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

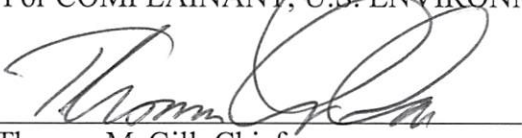
**AGREED AND CONSENTED TO:**

For RESPONDENT:

  
\_\_\_\_\_  
Drew St. John

Date: August 17, 2015

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

  
\_\_\_\_\_  
Thomas McGill, Chief  
Ocean, Wetlands, and Streams Protection Branch  
Water Protection Division  
U.S. EPA Region 4

Date: 9/29/15





Docket No. CWA-04-2015-5501(b)

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of **Drew St. John, Docket No. CWA-04-2015-5501(b)** (filed with the Regional Hearing Clerk on 9-30, 2015) was served on 9-30, 2015, in the manner specified to each of the persons listed below.

EPA Internal Mail:

Mike Wylie  
Marine Regulatory and Wetlands  
Enforcement Section  
U.S. EPA, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-8960

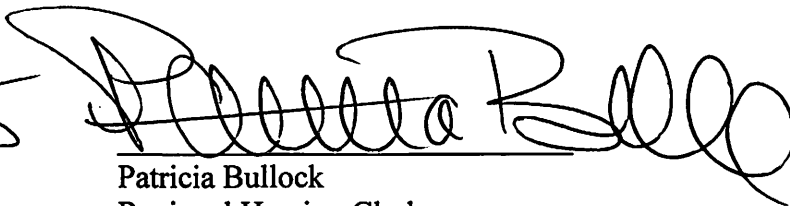
By hand-delivery:

Suzanne Armor  
U.S. EPA, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

By Certified mail,  
return receipt requested:

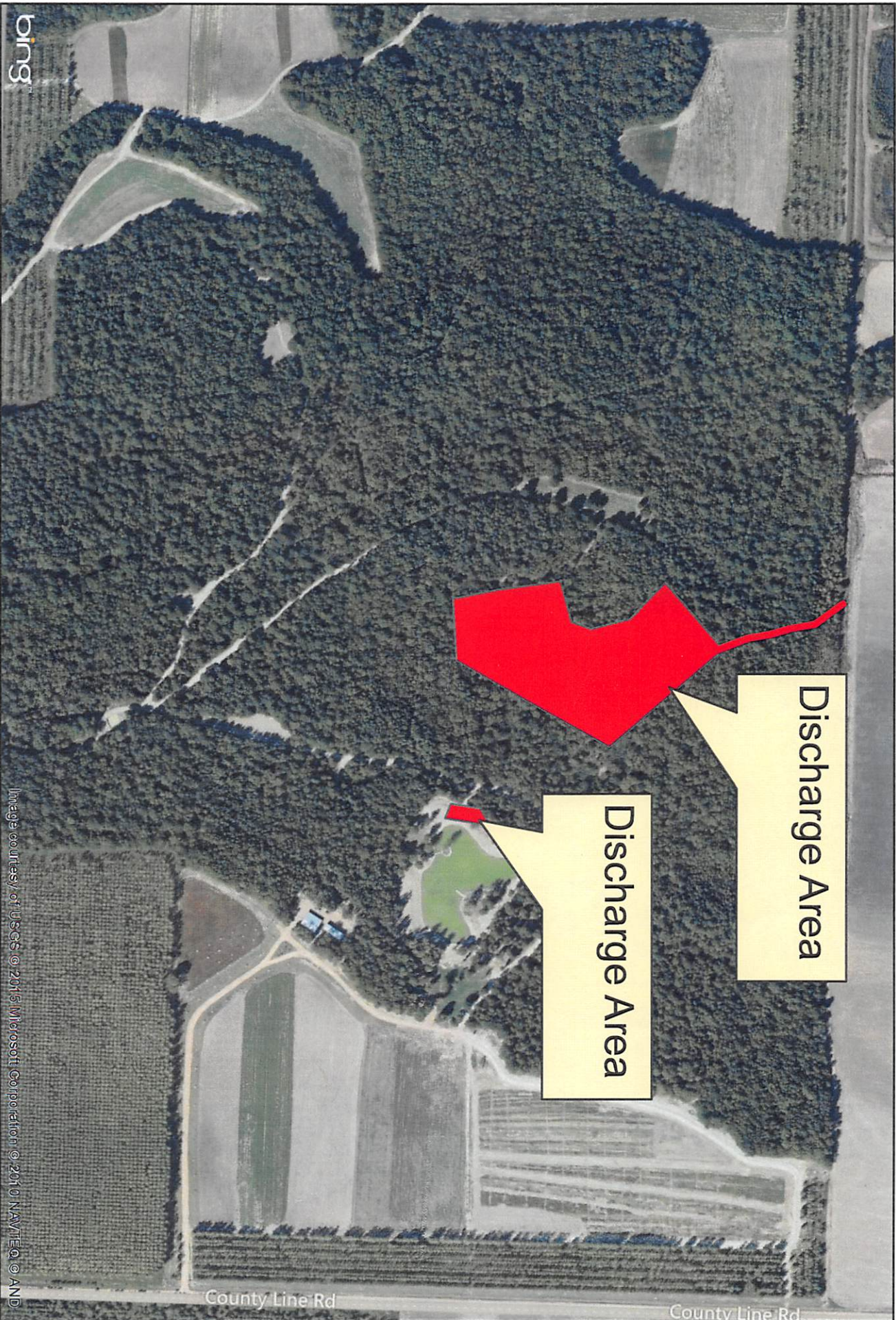
Drew St. John  
281 Jackson Road  
Madison, Mississippi 39110

Dated: 9-30-15



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



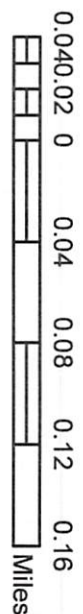
Discharge Area

Discharge Area

County Line Rd

County Line Rd

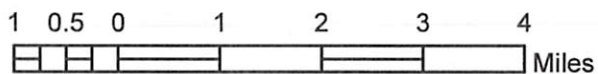
Image courtesy of USGS © 2016 Microsoft Corporation © 2010 NAVTEQ © AND



Drew St. John  
Sharkey County, MS



# Exhibit B



Drew St. John  
Sharkey County, MS

