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

MAR 0 5 2013

CERTIFIED MAIL 7012 1010 0001 8097 3635/3642
RETURN RECEIPT REQUESTED

Mr. Ray F. Flow
919 N. Atlantic Ave.
Lantana, Florida 33462

Mr. Rick Wagner
2722 N. Oak St
Valdosta, Georgia 31602

Re: Consent Agreement and Final Order
Docket No. CWA-04-2013-5501(b)

Dear Mr. Flow and Mr. Wagner:

Enclosed is a copy of the Consent Agreement and Final Order (CAFO) that has been finalized by the U.S. Environmental Protection Agency, Region 4 and the Regional Judicial Officer. Please make note that you have met all of the provisions under this CAFO. We acknowledge receipt of full payment in the amount of $1,500.00.

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 Mr. Rolando Bascumbe, Attorney Advisor, at (404) 562-9545.

Sincerely,

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

Enclosures

cc: Mr. Mark Padgett
U.S. Army Corps of Engineers, Savannah District

Mr. Bryan Snow
Georgia Forestry Commission

Ms. Jennifer Welte
Georgia Environmental Protection Division

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cc: Mr. Mark Padgett
U.S. Army Corps of Engineers, Savannah District

Mr. Bryan Snow
Georgia Forestry Commission

Ms. Jennifer Welte
Georgia Environmental Protection Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	
	)	ADMINISTRATIVE
Ray Flow, and,	)	CONSENT AGREEMENT AND
Rick Wagner,	)	FINAL PENALTY ORDER
Reidsville, Georgia	)	
	)	
RESPONDENTS.	)	Docket No.: CWA-04-2013-5501(b)
	)	

RECEIVED
EPA REGION IV
2013 FEB 27 PM 2:29
HEARING CLERK

RECEIVED
EPA REGION IV
2013 MAR -5 AM 8:49
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 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 Clean Water Enforcement Branch of EPA Region 4 (Complainant).

II. Statutory and Regulatory Background

3. Section 309(g)(1)(A)(B) of the CWA, 33 U.S.C. § 1319(g)(1)(A)(B), 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."

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 includes approximately 1.5 acres of forested wetlands located in the city of Reidsville, Tattnall County, Georgia, near 31°54'42.095"N latitude and 82°8'12.779"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.

III. Allegations

12. Respondents at all times relevant to this Consent Agreement and Final Order, were the owners and operators of the Site.

13. Respondents are persons within the definition set forth under section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. Commencing on or about October 7, 2011, Respondents, or those acting on behalf of the Respondents, 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 silvicultural road construction.

15. Respondents impacted approximately 1.5 acres of wetlands. The impacted areas include: wetlands that are adjacent to an unnamed intermittent tributary to Slaughter Creek,

which is a perennial tributary to the Altamaha River; wetlands that abut Slaughter Creek; and wetlands adjacent to the Altamaha River, 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).

17. The earth moving machinery employed by the Respondents to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined under the CWA § 502(14).

18. Respondents' placement of the dredged and/or fill material at the Discharge Area constitutes a "discharge of pollutants" as defined under the CWA § 502(12).

19. At no time during the discharge of dredged and/or fill material at the Discharge Area from October 7, 2011 to January 24, 2012, did the Respondents possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondents. Each discharge by the Respondents 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).

20. Each day the material discharged by the Respondents 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

21. Complainant and Respondents have conferred for the purpose of settlement under 40 C.F.R. Part 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. Part 22.13(b), this Administrative Consent Agreement and Final Penalty Order will simultaneously commence and conclude this matter.

22. For the purposes of this CAFO, Respondents admit the jurisdictional allegations set out above and the factual allegations set out above.

23. Respondents hereby waive their right to contest the allegations set out above and their right to appeal the Final Order accompanying this Consent Agreement.

24. Respondents consent to the assessment of $1,500.00, and agree to pay the administrative penalty as set forth in this CAFO and consents to the other conditions set forth in this CAFO.

25. By signing this CAFO, Respondents certify that the information they have supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondents realize 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.

26. 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 Respondents was materially false or inaccurate at the time such information or certification was provided to EPA.

27. Complainant and Respondents 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

28. 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, EPA has determined that one thousand five hundred dollars ($1,500.00) is an appropriate civil penalty to settle this action.

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

30. At the time of payment, Respondents 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. Mary Mattox
Clean Water Enforcement Branch
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8960

31. 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.

32. Under Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by the Respondents to pay the penalty assessed by the CAFO in full by its due date may subject the Respondents 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

33. This CAFO shall not relieve Respondents of their 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.

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

35. Except as otherwise set forth in this document, this CAFO constitutes a settlement by Complainant and Respondents of all claims for civil penalties under the CWA with respect to only those violations alleged in this CAFO. Except as otherwise set forth in this document, compliance with this CAFO shall resolve the allegations of violations contained in this CAFO. Nothing in this CAFO is intended to nor shall be construed to operate in any way to resolve any criminal liability of the Respondents, or other liability resulting from violations that were not alleged in this CAFO. Other than as expressed in this document, Complainant does not waive any right to bring an enforcement action against Respondents 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.

36. 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.

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

38. The obligations of the Respondents under this CAFO are joint and several.

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

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

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

For Complainant:

Mr. Rolando Bascumbe
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303
(404) 562-9545

For Respondents:

Mr. Ray F. Flow
919 N. Atlantic Ave.
Lantana, Florida 33462

and Mr. Rick Wagner
2722 N. Oak St
Valdosta, Georgia 31602

42. 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.

43. 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 Georgia was provided a prior opportunity to consult with Complainant regarding this matter.

44. 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 Respondents

45. Respondents hereby covenant not to sue and agree 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 Respondents' property without compensation.

VIII. Effective Date

46. 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 RESPONDENTS:

Mr. Ray Flow

Date: 1-2-13

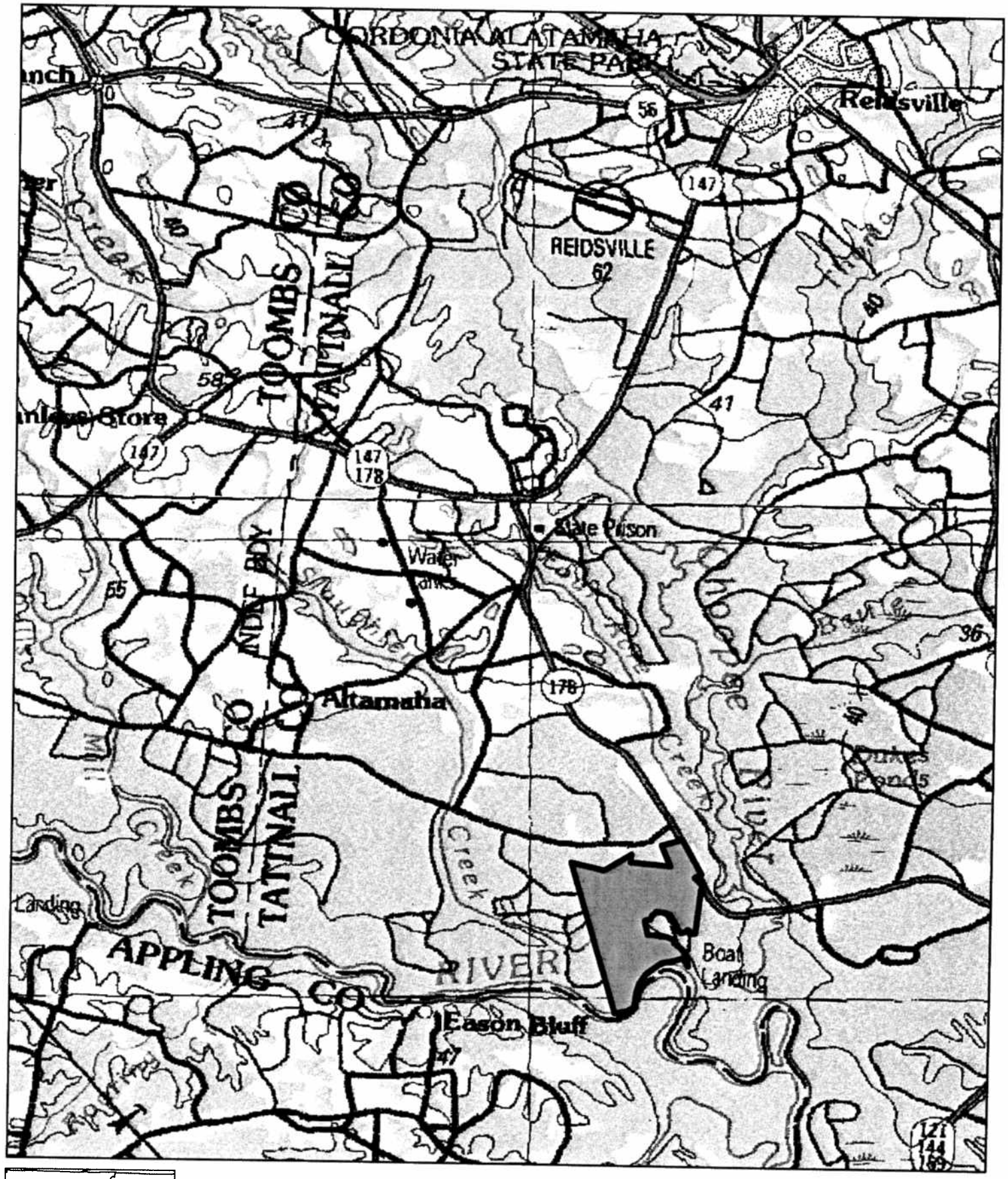
Mr. Rick Wagner

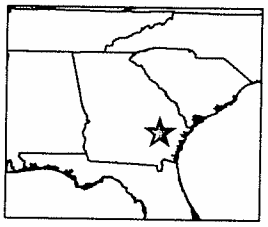
Date: 1-2-13

For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

Denise D. Diaz
Chief, Clean Water Enforcement Branch
Water Protection Division
U.S. EPA Region 4

Date: 2/21/13





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Flow Wagner

Exhibit A

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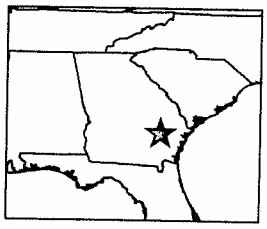

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Discharge_areas

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Flow Wagner

Exhibit B′

N

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	
	)	ADMINISTRATIVE
Ray Flow, and,	)	CONSENT AGREEMENT AND
Rick Wagner,	)	FINAL PENALTY ORDER
Reidsville, Georgia	)	
	)	
RESPONDENTS.	)	Docket No.: CWA-04-2013-5501(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: March 4, 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-04-2013-5501(b)** on the parties listed below in the manner indicated:

EPA Internal Mail:

Mara Lindsley
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:

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

By Certified mail,
return receipt requested:

Mr. Ray F. Flow
919 N. Atlantic Ave.
Lantana, Florida 33462

and,

Mr. Rick Wagner
2722 N. Oak St
Valdosta, Georgia 31602

Dated: 3-5-13

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