

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

Appellate Case No. 2017-001554

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutton Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown, Petitioners,

Of Which Town of Arcadia Lakes is the Appellant/Respondent,

vs.

South Carolina Department of Health and Environmental Control, Respondent, and Roper Pond, LLC, Respondent/Appellant.

**RECORD ON APPEAL
VOLUME III OF IV**

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**Transcript of the Testimony of
ARCADIA LAKES V. SCDHEC**

Date: September 3, 2009

**CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index**

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1
2 1 THE COURT: You may step down, Mr.
3 2 Hightower. Thank you.
4 3 MR. CHANDLER: Your Honor, would
5 4 this be an okay time to take a brief
6 5 recess?
7 6 THE COURT: Yes, it will. We'll
8 7 come back at ten minutes after 3:00. It
9 8 looks like about two or three minutes
10 9 before the hour now.
11 10 (Whereupon, a short break was taken from 2:57
12 11 p.m. to 3:18 p.m.)
13 12 MR. CHANDLER: At this time, the
14 13 Petitioner's call Dr. Seth Reice to the
15 14 stand.
16 15 (SETH REICE, having been duly sworn, testified as
17 16 follows:)
18 17 DIRECT EXAMINATION BY MR. CHANDLER:
19 18 Q. Would you please give us your full name?
20 19 A. Dr. Seth Robert Reice.
21 20 Q. And where do you live?
22 21 A. Chapel Hill, North Carolina.
23 22 Q. And how are you employed?
24 23 A. I'm a Professor of Ecology and Biology at the
25 24 University of North Carolina.
26 25 Q. And how long have you been at the University of
27
28

1
2 1 North Carolina?
3 2 A. 37 years.
4 3 Q. And you're in Chapel Hill at the main campus?
5 4 A. Yes.
6 5 Q. What sort of educational background do you have?
7 6 A. I have a Bachelor's Degree in Biology from the
8 7 University of Rochester and a Ph.D. from Michigan
9 8 State University.
10 9 Q. And what subjects are your degrees in?
11 10 A. My Bachelor's Degree was in Biology. My Ph.D.
12 11 was in Zoology, but there was no degree in
13 12 Ecology, so I was doing Ecology and getting a
14 13 degree in Zoology.
15 14 Q. And in your teaching career, what sort of courses
16 15 have you taught?
17 16 A. I teach Field Ecology, General Ecology, Global
18 17 Ecology, Conservation Biology and Sustainable
19 18 Development.
20 19 Q. And in addition to your role as a teacher, do you
21 20 do scientific research?
22 21 A. I do.
23 22 Q. And what types of research projects have you done
24 23 over the years?
25 24 A. I've worked primarily on the regulation of
26 25 Biodiversity and Leaf Litter Decomposition in
27
28

1
2 1 streams, ponds, wetlands, salt marshes.
3 2 Q. Explain to me what you mean by that.
4 3 A. Materials fall into streams. Leaves fall into
5 4 streams, and they break down and they form the
6 5 basis of a whole food chain of organisms that
7 6 feed on those leaves. The leaves develop
8 7 bacteria and fungi which grow on them, and then
9 8 the animals eat those and shred up the leaves,
10 9 and that's why we don't end up with five feet of
11 10 leaves every winter. We only end up with a
12 11 little veneer on the forest floor, because all
13 12 the rest has been broken down.
14 13 Q. Now, when you talk about the Field of Ecology,
15 14 what does that really mean?
16 15 A. Ecology is the study of interactions of organisms
17 16 and their environment.
18 17 Q. And you say in your research, you've done work in
19 18 streams and lakes and other water bodies?
20 19 A. And ponds, right.
21 20 Q. And what specific kind of things have you looked
22 21 at in your research?
23 22 A. I'm primarily interested in what controls
24 23 biodiversity, the varieties of organisms that
25 24 live there. I'm interested in sedimentation, and
26 25 I published a book on natural disasters called
27
28

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2

1

"The Silver Lining, the Benefits of Natural

3

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Dissasters".

4

3

Q. What is biodiversity?

5

4

A. Biodiversity is the variety of types of organisms

6

5

that exist in any one place. It also includes

7

6

the evenness of distribution of those organisms.

8

7

So, if you had two communities, one that had 100

9

8

individuals, and there were 10 each of 10 kinds,

10

9

that would have a higher diversity of the one

11

10

that was kind of other individuals, 99 of the one

12

11

and one of another. So, by biodiversity measures

13

12

both the evenness and variety of organisms.

14

13

Q. Now, have you had on occasion in your work

15

14

examined things like streams and ponds to

16

15

determine what we would call the ecological

17

16

health of these areas?

18

17

A. Absolutely. I do that all the time.

19

18

Q. And how would you define the ecological health of

20

19

a stream or pond or other body of water?

21

20

A. A very good measure of that is the biodiversity

22

21

of that system and its functioning. So, for

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instance, I did a major study for -- in North

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Carolina on the impact of development of

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communities within streams, and we used two main

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measures to measure the health along with the

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1 variety, the biodiversity of the organisms and
2 the other was the rate of litter decomposition.
3 Q. Now, have you ever testified in a court
4 proceeding as an expert witness?
5 A. Yes, I have.
6 Q. Were you qualified as an expert in those cases?
7 A. I think so. They certainly accepted me as such.
8 Q. You were allowed to give your scientific opinions
9 on topics?
10 A. Yes.
11 Q. And what sorts of topics were you allowed to give
12 opinions on in those other cases?
13 A. There were two different cases, both having to do
14 with biodiversity. One of them was the --
15 Fishing Creek, South Carolina was about to
16 receive four million gallons of sewage ethilon,
17 and I went in and analyzed the impact of the one
18 million gallons it was presently receiving and
19 found that, already, it had lost almost all of
20 its diversity below the outfall, so I was able to
21 make the case that increasing it would only make
22 it worse.
23 The other case was in Connecticut on
24 the Shepaug River, and it had to do with
25 dewatering of the river, of lowering of the

1		
2	1	river, what would happen in the future.
3	2	MR. CHANDLER: Now, we would offer
4	3	Dr. Reice as ---
5	4	Q. Let me back up and ask you this question. If you
6	5	had considered yourself an expert in any one
7	6	field of science, what would it be?
8	7	A. Aquatic ecology.
9	8	Q. And that would be the ecology and diversity of
10	9	species within an aquatic environment, meaning in
11	10	a water?
12	11	A. Yes.
13	12	MR. CHANDLER: We would offer
14	13	Dr. Reice as an expert in aquatic ecology.
15	14	THE COURT: Mr. Lavender?
16	15	MR. LAVENDER: Your Honor, if I
17	16	were only confident that Dr. Reice were
18	17	going to be asked to opine just about the
19	18	aquatic ecology of this pond and go nowhere
20	19	further, I would consent to that, but we
21	20	have some concerns about whether he might
22	21	go beyond the bounds of that. I don't know
23	22	how you would like us to proceed with
24	23	that, but to the extent that the expertise
25	24	to which he seeks to opine is limited to
26	25	aquatic ecology and a condition of this
27		
28		

1
2 1 pond at the time he inspected it, we might
3 2 not object to that qualification, but to
4 3 the extent that that qualification --
5 4 because I've read the dictionary
6 5 definitions of ecology, and to the extent
7 6 that you can even make sense out of the
8 7 dictionary definition, and I heard
9 8 Dr. Reice describe the interrelation
10 9 between organisms and their environment,
11 10 and I can't put a bound on what that might
12 11 allow him to testify to, but that's why
13 12 I'm saying, I don't know where you want to
14 13 go. We can question him now, or we can
15 14 wait and object to him going beyond that
16 15 later, but if what he's provided us, which
17 16 is -- and actually over there is a lot
18 17 different than what we got at the
19 18 deposition -- if what he provided us and in
20 19 his written report, his second written
21 20 report, amended report, is what he intends
22 21 to testify or be offered to testify to and
23 22 nothing beyond that, then we will consent
24 23 to that, stipulate to that. If he's going
25 24 to be asked about the consequences of this
26 25 project, we think he's not qualified.

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2 1 THE COURT: Well, let me handle it
3 2 this way. I'm going to overrule your
4 3 objection and qualify him as an expert with
5 4 an understanding that if he goes beyond the
6 5 limits of what you think is proper, that
7 6 you will object, and I think that's a more
8 7 orderly way of handling it.

9 8 MR. LAVENDER: Thank you, Your
10 9 Honor.

11 10 Q. Dr. Reice, have you served on any special study
12 11 committees or things of that sort as part of your
13 12 work?

14 13 A. I've been Chairman of the Curriculum in Ecology
15 14 at UNC-Chapel Hill for 10 years, and I was
16 15 reappointed last year on an interim basis. I'm
17 16 also a member of the Technical Advisory Committee
18 17 of the Sedimentation Control Commission of the
19 18 State of North Carolina, and I've been on that
20 19 for four years.

21 20 Q. Now, what is the Sedimentation Control
22 21 Commission?

23 22 A. They're responsible for making sure that no
24 23 sediments get into the waters of North Carolina.
25 24 That's what their job is. So, they have a series
26 25 of Sediment Control Officers, and our panel is

1 5,
2 1 the one that makes the rules that those Control
3 2 Officers follow.
4 3 Q. And what, specifically, do you do in connection
5 4 with that role?
6 5 A. I offer my insight into aquatic ecology to help
7 6 make sure that the rules we make are sensible.
8 7 Q. And in that role, do you look at the impacts of
9 8 development on the aquatic communities?
10 9 A. Almost every time we meet, because most of the
11 10 projects are projects of development, of land
12 11 disturbance, and when there's land disturbance,
13 12 that's when the sedimentation laws kick in, just
14 13 as they are here in South Carolina.
15 14 Q. Now, this particular case that we're dealing with
16 15 today involves a pond known either as -- both as
17 16 Roper Pond or the Lily Pad Pond. Have you ever
18 17 been to this pond?
19 18 A. Yes, I have.
20 19 Q. And when was that?
21 20 A. That was June 3rd.
22 21 Q. Of this year, 2009?
23 22 A. 2009.
24 23 Q. And what caused you to come to this pond?
25 24 A. You hired me, and you said "Why don't y'all
26 25 come", and I came.
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Q.

Now, I've got a series of photographs that have

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been marked as Petitioner's 15, 16, 17, 18 and

4

3

19. Have you seen these photographs before?

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4

A.

I saw them five minutes ago. I haven't seen them

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5

before that, but this certainly looks like the

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pond that I visited.

8

7

Q.

Do those photographs appear to be an accurate

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8

depiction of the way the pond looked on the day

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9

that you visited?

11

10

A.

Yes.

12

11

MR. CHANDLER: We would offer

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Petitioner's Exhibits 15 through 19 into

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13

evidence, Your Honor.

15

14

MR. LAVENDER: I'm not sure I

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15

heard Dr. Reice correctly, but I think he's

17

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only seen them five minutes ago.

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17

DR. REICE: I saw them a few

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minutes ago, but I remember the pond.

20

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MR. LAVENDER: He evidently didn't

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take them, but I'm just trying to make

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sure that there were sufficient landmarks

23

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for him to properly identify these

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photographs in a big period of time here.

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THE COURT: He said it accurately

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depicted the scene as he saw it when he was

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1 there. I'm going to admit Petitioner's 15,
2 16, 18 and 19.

3 Q. Now, I want you to take a look at Number 15, and
4 what do you see in that photograph?

5 A. I see the -- well, what I can't see is the road
6 which is right on this side of the picture, and
7 looking back into the ---

8 THE COURT: Excuse me, Dr. Reice.
9 When you say "this side of the picture",
10 somebody subsequently reading the record of
11 this case -- do you mean the left side or
12 the right side?

13 A. The bottom. On the bottom is where the road
14 comes by, and that is looking across the pond
15 into where there is a drainage that comes in here
16 of where the pond -- this is the water source of
17 the pond coming in from the forest back there.

18 Q. And what is that vegetation within the pond?

19 A. Those are water lilies.

20 Q. Now, what type of plants are water lilies?

21 A. Water lilies are aquatic plants. They grow about
22 three feet or maybe four feet above the surface.
23 They float on the surface, and that's where
24 they're flowering, and there happened to be a
25 particularly lovely display of water lilies that

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1 day.
2 Q. And the other photographs that we've admitted, 16
3 through 19, they also show these water lilies?
4 A. Yes.
5 Q. Now, when you were at the site on that date back
6 in June, what did you do?
7 A. I took water chemistry and samples of five
8 different chemical constituents of the pond, and
9 I also took six bottom samples to identify the
10 aquatic life that lived there, and I also caught
11 some fish.
12 Q. Now, when you talk about the samples that you
13 took, tell me exactly how you collected these
14 samples?
15 A. I used what's called -- well, which ones?
16 Q. Let's start out with the water samples?
17 A. Water samples I had meters that I just dipped in
18 the water and I could dial up whatever parameter
19 I wanted. Turbidity samples, I simply took a
20 clear jar and filled it with water and looked in
21 it. And with the benthic samples, the bottom
22 samples, I used an Eckman Dredge which is a grab
23 type device. It grabs a six inch by six inch
24 chunk of the bottom, and I sieved that through a
25 Number 60 sieve which is a half millimeter

opening, and anything bigger than that, I caught.

Okay.

MR. CHANDLER: Your Honor, we've

got a Power Point Presentation with some

photographs and some narrative about the

testing that Dr. Reice did that day.

Unfortunately, when I left my office

yesterday, I did not put my projector in

the car, and we do not have a hard copy of

that. So, I've talked to Mr. Hightower and

Mr. Lavender about going through and

putting this computer up on the counter

here so that you and the attorneys can

observe this Power Point and go through

here, and what I would request is that we

do that with the idea that, at the end of

this hearing, we will produce hard copies

of each of the slides within this show that

we will present to the other attorneys for

their review to make sure it accurately

reflects what we show the Court today, and

we'll put those hard copies in the record

at that later date.

THE COURT: And Dr. Reice will be

available then for any cross examination

1		
2	1	they want on that?
3	2	MR. CHANDLER: Well, he'll be
4	3	available today for cross examination on
5	4	the show we have here on the computer.
6	5	THE COURT: I understand, but for
7	6	the purposes of producing it at the
8	7	hearing to make sure it's correct, that's
9	8	your problem.
10	9	MR. CHANDLER: Well, if we do have
11	10	any dispute over that, then I would agree
12	11	that we would have to produce Dr. Reice if
13	12	there were any follow-up questions on
14	13	that, but we will provide counsel with the
15	14	copies of these things so that they can
16	15	review that.
17	16	THE COURT: Well, that's fine with
18	17	me as long as we lawyers can agree to it.
19	18	MR. LAVENDER: Your Honor, I don't
20	19	thing that we've discussed it far enough
21	20	along to understand that we were not going
22	21	to get a copy until after the conclusion of
23	22	the hearing. I think we would like to have
24	23	a hard copy. We understand that it is
25	24	different from what we were provided at the
26	25	deposition. We've gone through it. We've
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2 1 seen what those differences are, but I
3 2 don't know that I'm in a real good position
4 3 to finish cross examination of Dr. Reice
5 4 without a copy in my hand. If we can break
6 5 or when we break -- and I don't know how
7 6 long Mr. Chandler is going to take, but
8 7 I've now polled the audience, and we have a
9 8 thumb drive, and if we can, at some point,
10 9 very quickly at the conclusion of the break
11 10 get in on a thumb drive, I think if we need
12 11 to run it over to our office, we can make
13 12 copies and get it back over here.

14 13 MR. CHANDLER: That's fine with
15 14 me.

16 15 MR. LAVENDER: I mean, if we want
17 16 to go ahead and get the thumb drive going
18 17 now, we can do that.

19 18 THE COURT: Let's do it in the way
20 19 that's most efficient for you men and
21 20 ladies.

22 21 Q. Dr. Reice, as a result of the -- or after --
23 22 let's say following your visit to the site, did
24 23 you prepare the results of the test that you did?

25 24 A. Of course. I mean, I took the samples back to my
26 25 lab. I sorted through every animal and
27
28

1
2 1 identified all of them except the Chironomids,
3 2 because the Chironomids take forever, and rather
4 3 than run up the bill, I just lumped the
5 4 Chironomids.
6 5 Q. And what are Chironomids?
7 6 A. Chironomids are Dipteran Larvae. They're most
8 7 closely related to Mosquitos. They're probably
9 8 the most common species in every aquatic system
10 9 except the oceans. And in the fresh water,
11 10 they're common in ponds, they're common in
12 11 streams, often representing 50 percent or more of
13 12 the species.
14 13 Q. When you took the water chemistry samples, that's
15 14 what you did with a probe?
16 15 A. Right, with a probe and meter.
17 16 Q. And you dialed up on that meter different
18 17 parameters, I think is what you said?
19 18 A. Right, and there's a slide about that.
20 19 Q. And what types of parameters? What kind of
21 20 things did you measure with your probe?
22 21 A. Dissolved oxygen, salinity, conductivity and PH.
23 22 Q. And what does dissolved oxygen tell you about
24 23 this water body?
25 24 A. Dissolved oxygen has to be at least 6 parts per
26 25 million in order to support life in a pond or in
27
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1
2 1 a stream. Streams are really not a problem
3 2 because they're so turbulent that they take up a
4 3 lot of oxygen, but ponds can get very stagnant,
5 4 and this one was in the low normal range, about
6 5 6.8, 6.9.
7 6 Q. And the other parameters, one was PH?
8 7 A. PH is the acidity of this pond, and the PH was
9 8 slightly acidic, about 6.5 to 6.8 where neutral
10 9 is 7. Conductivity was very low, and salinity
11 10 was zero.
12 11 Q. What is conductivity?
13 12 A. Conductivity is the capacity of a water body to
14 13 conduct an electric current. So, it was very
15 14 very low. In streams and ponds that are
16 15 polluted, you have high concentration of metals,
17 16 and so they can conduct electricity.
18 17 Q. And what was the last parameter?
19 18 A. Salinity, which was zero.
20 19 Q. And have you took the results of your work that
21 20 day and the study when you got back to your lab
22 21 together in a Power Point Presentation?
23 22 A. Yes, I have.
24 23 Q. And you have that with you here today?
25 24 A. Yes, right up there.
26 25 Q. Would you come up and let's walk through that for
27
28

1 the Court and the other attorneys, and if you
2 could just start out and then kind of step to the
3 side, and let's talk about what we ...

4 A. This is basically just a statement of what I did,
5 that on June 3rd, 2009, I visited and sampled the
6 pond bordering the proposed Roper Apartments in
7 Arcadia Lakes, South Carolina. The pond is
8 covered in water lilies. This reflects the
9 general shallowness of the pond, since water
10 lilies rarely colonize ponds deeper than 4
11 meters. And that's just a picture of water
12 lilies.

13 The Water Chemistry data, I took four sets
14 of water samples. The water was very clear and
15 reflected the low turbidity. Dissolved oxygen
16 was in the low normal range, about 6.5 parts per
17 million. The PH was slightly acidic. PH was 6.5
18 to 6.8 where neutral PH is 7. Salinity was
19 always zero. Conductivity was very low. It
20 ranged from .12 to .14 micromhos. This indicates
21 very clean water with very low conductivity and
22 low pollutants.

23 Benthic Samples, I took six Eckman dredge
24 samples ---

25 Q. Let me back you up just a minute. When you say
26
27
28

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1

"Benthic" ...

3

2

A. Benthic means the bottom of the pond. And this

4

3

dredge is a brass device that has jaws that, when

5

4

you lower it to the bottom, they snap close, and

6

5

they take a 6 by 6 inch chunk of the bottom.

7

6

Samples were collected between 2 and 6 meters

8

7

from the shoreline, along the road and along the

9

8

left axis of the pond.

10

9

All samples were preserved in 70 percent

11

10

ethanol, ethyl alcohol, and transported back to

12

11

my laboratory at the Department of Biology at the

13

12

University of North Carolina, Chapel Hill.

14

13

I washed them through a Number 60 Tyler

15

14

Series sieve to retain any particle with a

16

15

minimum diameter of at least 25 microns or a

17

16

quarter or a millimeter.

18

17

They were washed into finger bowls and hand

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18

sorted by me under a 6.4 magnification Wild

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19

dissecting microscope.

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20

The next set of pictures are pictures of

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21

the animals that I actually found. Here are two

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22

Dragonflies, Progomphus obscurus and Omphigomphus,

24

23

left and right. Argia moesta which is a

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24

Damselfly. This is very common. There were

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25

probably a thousand of them flying around the

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1
2 1 pond. Hyalella azteca, which is very abundant.
3 2 It's an amphipod, a freshwater shrimp that's too
4 3 tiny to eat, so don't get excited. It feeds on
5 4 algae and consumes detritus and associated
6 5 bacteria and fungi. There were abundant
7 6 Chironomids, and this is just some examples of
8 7 what Chironomids look like. And this is a detail
9 8 of one, so this is the head end. This is the
10 9 tail end. Chironomidae are Dipteran larvae and
11 10 constitute the base of the food chain in this
12 11 pond, for the Odonates, that is the Dragonflies,
13 12 and the Tricoptera and the fishes. These are
14 13 Hydracarina. They're tiny arachnids. They're
15 14 related to spiders, but they're totally aquatic.
16 15 And this is Polycentropus, which is a caddisfly.
17 16 This is a free living one. It doesn't have a
18 17 case.
19 18 And the reason I redid this Power Point was
20 19 because I was challenged in my deposition that I
21 20 had previously identified this clam as
22 21 Lexingtonia, but Lexingtonia turns out it's only
23 22 found in the Pee Dee River. So, I had to take it
24 23 home and consult with John Alderman who said "No,
25 24 no, it couldn't possibly be Lexingtonia", and
26 25 then he told me what it was, which is Musculium
27
28

securis, which is the Pond Fingernail Clam. And I had Moxostoma collapsum -- I was correct that it was a Moxostoma, but I didn't realize that it was this particular one which is the notchlip redhorse and the piedmont redhorse and the v-lip redhorse. The one that I caught was only 1.5 inches long. It was very small. And the other species which I had mistakingly identified as Moxostoma is Erimyzon ablongus which is a Creek Chubsucker. Probably its larger population is upstream of the pond. It's typical of muddy ponds and soft bottom streams.

And my conclusions were that "Roper Pond is a healthy aquatic community with a wide variety of aquatic species. The presence of two species of fish and an assortment of benthic predators strongly implies that Roper Pond is a functioning aquatic ecosystem."

Q. Now, when you say that the pond is a "functioning aquatic ecosystem", can you kind of put that in terms that I can relate to perhaps as a non-biologist?

A. This community has every constituent species that's necessary for a system to function, so it's got the fishes, which are the top predators.

1
2 1 It's got the Damselflies and two species of
3 2 Dragonflies which are also predators. It has
4 3 this Caddisfly population, lots of Chironomids
5 4 and lots of water mites.

6 5 So, looking at the entire system -- and I
7 6 didn't look at the bacteria and the fungi, but
8 7 they obviously are there, because all these
9 8 animals are dependent on that basis of the
10 9 community, I'm convinced that this is a healthy
11 10 normal system. It's got all the necessary parts
12 11 to function well.

13 12 Q. Now, in your work and in your research and in
14 13 your study of aquatic ecology, have you had the
15 14 occasion to look at the impacts of various
16 15 man-made occurrences and how they affect the
17 16 natural aquatic systems?

18 17 MR. LAVENDER: Your Honor, we're
19 18 going to object to this line of questioning
20 19 to the extent that Mr. Chandler seeks to
21 20 elicit Dr. Reice's opinion beyond what he's
22 21 indicated both in his Power Point as well
23 22 as what he indicated to us multiple times
24 23 in his deposition about what he intended to
25 24 testify about, and that was the condition
26 25 of the pond. We're going to talk now, and

1
2 1 Mr. Chandler, you know, is asking him about
3 2 studying the effects beyond the condition
4 3 of this pond, and it's going to go to the
5 4 area that we have already expressed our
6 5 concern, and that is, getting his opinion
7 6 now of what effects this project will have
8 7 on this pond, and we will continue to
9 8 object to him being qualified to offer that
10 9 testimony.

11 10 THE COURT: I'm going to overrule
12 11 your objection, Mr. Lavender. He
13 12 testified, I think, that the development is
14 13 very much part of what he considers in
15 14 everything that -- almost everything that
16 15 he does. So, proceed.

17 16 Q. Do you remember my question?

18 17 A. Not exactly.

19 18 Q. Have you had an opportunity to study the impacts
20 19 of things that man does to the land and how they
21 20 affect the aquatic communities?

22 21 A. I spent the better part of the last four years
23 22 studying sedimentation effects on aquatic life,
24 23 particularly in streams.

25 24 Q. Now, have you had occasion to study the impacts
26 25 of excavation of these types of areas and how
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that affects the aquatic systems?

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A. No, because all the projects that I've studied

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3

are on the shore and the stuff that runs into the

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stream or the pond that has the impact. The

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5

excavation is something I have no direct

7

6

experience with. It doesn't sound good, though.

8

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Q. Now, in terms of your experience in dealing with

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these systems and man-made changes to these

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systems, do you have an opinion on what would

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happen if the level of this pond is changed

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through excavation?

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MR. LAVENDER: Again, Your Honor,

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I don't think the ground work has been

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laid or the factual basis has been laid

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15

for offering this opinion. So far, he's

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16

talked about sedimentation. He's indicated

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17

he didn't know anything about excavation

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18

impacts, and I don't believe he's indicated

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19

anything about lowering the water level of

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this pond.

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THE COURT: Mr. Lavender, I will

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22

be amazed if he were not to testify about

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23

the lowering of the water level.

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MR. LAVENDER: Your Honor, I would

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agree with you wholeheartedly, because I

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1 elicited from Dr. Reice the response that
2 he would be glad to answer any question of
3 him.

4 THE COURT: Yes, sir. I'm going
5 to overrule your objection.

6 A. If the pond level is dropped, which I understand
7 is three or four feet, first of all, that will
8 expose the entire margin of the pond to the air,
9 and therefore, all the organisms that live there
10 will either migrate or die. Most of them can't
11 move fast enough to be able to get away. The
12 other thing I think is most likely to happen is
13 that it will impact the upstream area, because
14 the difference between the pond level now, which
15 is in equilibrium with the discharge coming in
16 from that upstream wetland, once that pond is
17 dropped, I would expect the area of the wetland
18 to decrease.

19 Q. Now, why would -- I want you to go into a little
20 more detail explaining why lowering the pond is
21 going to affect that wetland up there.

22 A. One of the standard things that we say in aquatic
23 ecology is that water flows downhill. So, if we
24 drop the water level by say lowering the outfall
25 by three or four feet, then all the water that's

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upstream will flow more rapidly downstream, and that should remove a large amount of the area that is the wetland that's upstream.

Q. So, it's basically only going to dry it out?

A. Yes.

Q. Now, the impacts to the area that's excavated in the pond, are these going to be short-term impacts or long-term impacts?

A. I think they would last in the vicinity of ten years. It takes a fairly long time to reestablish a community once you've had a major disturbance to it, and that's something that I discuss in my book, but the recovery period should be quite long. I would expect probably you'd get some animals back in within a year or two, but by the time -- in order to get the full community back again, it will probably take ten years. That's a guess. Nobody knows how rapidly those animals will disburse. The fish will be the last ones to come in.

Q. And if in the process of lowering the pond we have dried out the wetlands up above, is that going to have an impact on what's in the pond at this new lower level?

A. I think so, because a lot of the animals that are

1
2 1 in the pond probably originated in the upstream
3 2 level. There are only a handful of animals that
4 3 migrate upstream. Lots migrate downstream.
5 4 That's the whole concept of stream drift. About
6 5 one percent of the whole stream fauna drifts down
7 6 every night, so I would expect that some of those
8 7 species that are presently in the pond originated
9 8 in the upstream regions.

10 9 Q. Now, have you ever heard the term "a balanced
11 10 aquatic community of flora and fauna", "a
12 11 balanced indigenous aquatic community of flora
13 12 and fauna"?

14 13 A. I heard you say it this morning. The concept is
15 14 clear enough. I think the one thing that we can
16 15 be pretty sure of is that water lilies are not
17 16 indigenous, that they colonize. They're an
18 17 exotic species. They're lovely, but they're
19 18 exotic. I think that the rest of the community
20 19 is balanced and indigenous. All the organisms
21 20 that I discussed are normal for this region of
22 21 the world.

23 22 Q. Now, in terms of what would happen after the
24 23 excavation and other impacts of the pond, would
25 24 it have a balanced indigenous aquatic community
26 25 after that work is done?

1
2 1 A. Not immediately. It would take some years to
3 2 recover.
4 3 Q. Is that what you said would take about ten years
5 4 to recover?
6 5 A. But I mean, again, the ten years is a guess. It
7 6 might be 7. It might be 15.
8 7 Q. And would it end up being the same as it is now?
9 8 A. That's unlikely, because the chance that all the
10 9 same species would colonize is quite small.
11 10 Probably there will be other species there, as
12 11 well.
13 12 Q. Now, would you consider this pond an ecosystem in
14 13 and of itself right now?
15 14 A. Certainly.
16 15 Q. And why do people care about whether or not this
17 16 pond is a healthy ecosystem or not?
18 17 A. Well, I don't know how many mosquitos they have
19 18 in that area, but a lot of those fishes that are
20 19 in there are holding down the mosquito
21 20 population. I think there's also just the
22 21 aesthetic qualities of the pond. I mean, it's a
23 22 beautiful spot. While we were out there
24 23 sampling, one young woman stopped just to take
25 24 pictures of it, and I think the people who walk
26 25 by it every day are enriched by it. I think that
27
28

1
2 1 in terms of the balance of nature, it's probably
3 2 just one other pond of many many ponds in this
4 3 region.

5 4 MR. CHANDLER: Thank you,
6 5 Dr. Reice. Please answer any questions the
7 6 other attorneys may have.

8 7 THE COURT: Mr. Lavender?

9 8 MR. LAVENDER: We are still
10 9 waiting for a copy of that Power Point, and
11 10 I would certainly like to make sure that I
12 11 get a copy of that before I conclude my
13 12 cross examination.

14 13 CROSS EXAMINATION BY MR. LAVENDER:

15 14 Q. Dr. Reice, during the course of these
16 15 proceedings, did you also, in addition to at
17 16 least two versions of a Power Point, have the
18 17 occasion to prepare a written report?

19 18 A. I did.

20 19 Q. Two version of that, as I recall?

21 20 A. You have an earlier version. I can -- the main
22 21 change to the report is the change of the names
23 22 of the species that I misidentified.

24 23 Q. Well, I'm going to ask you if you could identify
25 24 what we've marked as Respondent's Exhibit 12?

26 25 A. Yes. That's the report that I shared with you at
27
28

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2

1

the deposition.

3

2

Q. That's essentially Version I of your report?

4

3

A. I don't know which version ---

5

4

Q. Can you identify that as Version I? Let me also

6

5

show you Exhibit 11 and see if you can confirm

7

6

that that's the second version?

8

7

A. Yes, that's the second version. The only changes

9

8

to the third version are the changes of the names

10

9

of the species, particularly the replacing of the

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10

Carolina Redhorse, Moxostoma anisurum, with the

12

11

Silver Redhorse and the Golden Redhorse with the

13

12

Creek Chubsucker, Erimyzon, and the freshwater

14

13

clam, Lexingtonia, as I mentioned, is really

15

14

Musculium securis.

16

15

Q. Hang on a second. What third version? Is there

17

16

a third version of this written report? You gave

18

17

me two versions. You identified two versions of

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18

this report, the two I've just given you, at the

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19

deposition. Is there now a third version of the

21

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report?

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A. There it is. It's not been copied or

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22

distributed.

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MR. LAVENDER: May I approach the

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24

witness, Your Honor?

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THE COURT: Yes, sir.

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1 A. And Mr. Lavender, I would suggest that the reason
2 that there is a third version is the questions
3 that you raised in the deposition.
4
5 Q. I'll take that as a compliment. Thank you.
6
7 A. I think you should.
8
9 MR. LAVENDER: Your Honor, if I
10 could have this version which Dr. Reice
11 provided me and have it marked as
12 whatever our next exhibit is.
13 (Report by Seth Reice - Third Version marked as
14 Respondent's Exhibit Number 22 for
15 identification.)
16
17 THE COURT: And that is the third
18 version?
19
20 MR. LAVENDER: It appears to be.
21
22 Q. Do you have a copy of this in your hands now, or
23 is this your only copy?
24
25 A. I have -- it's close enough. I can certainly
26 discuss it.
27
28 Q. Okay. Well, let's go back and start with Version
I, which I believe is Exhibit 12. Now, when we
got this one, it contained two sections on the
bottom of the first page with headings -- first
heading, "Ecological Assessment of the Pond
Fauna"?

1		
2	1	A. Right.
3	2	Q. Fauna would be what?
4	3	A. Fauna is all the animals that live in the pond.
5	4	Q. And the second heading is "The Projected
6	5	Consequences of the Proposed Dredging of this
7	6	Pond"?
8	7	A. Right.
9	8	Q. Now, let me call your attention to Version 2 that
10	9	you provided to us at your deposition which is
11	10	now marked as Exhibit 11. It doesn't contain
12	11	those two headings, does it?
13	12	A. No, it does not.
14	13	Q. Now, I think I asked you at your deposition why
15	14	you had deleted that. Do you recall that?
16	15	A. I don't recall that particular question, but I
17	16	can tell you the answer.
18	17	Q. Well, let me tell you what your answer was in
19	18	your deposition and then see if you disagree with
20	19	your answer today.
21	20	MR. LAVENDER: And Your Honor,
22	21	I'm reading from Dr. Reice's deposition on
23	22	Page 42, beginning on Line 24 with the
24	23	question.
25	24	Q. I'll publish this, "But you took out of your
26	25	second version ..." -- let me go back to 17 to
27		
28		

1
2 1 make sure that its context is clear. In your
3 2 first version, I'm reading starting on 17,
4 3 Question: "In your first version, you have a
5 4 heading, 'Projected Consequences of Proposed
6 5 Dredging of the Pond', so I figured you might
7 6 have done ..." -- Answer: "Let me just see what
8 7 I wrote". Line 21, Question: "And I think that
9 8 version is marked as Exhibit 5. I'm handing you
10 9 that one that's not marked." Answer: "Yeah,
11 10 okay. I don't disagree with that." And Line 24,
12 11 "But you took that out of your second version.
13 12 Is there a reason the whole section is not in the
14 13 second version?" Your answer that begins on the
15 14 top of Page 43 on Line 2, "I was trying to
16 15 restrict myself to what I actually knew as
17 16 opposed to my conjectures". Now, is that still
18 17 your answer with respect to why that section is
19 18 not in Version 2?
20 19 A. Yes.
21 20 Q. Okay. Now, let me call your attention to Version
22 21 3 that you've just given us which is Exhibit 22.
23 22 "It's back there. How did it miraculously come
24 23 back to the table? You've quit conjecture?"
25 24 A. Can I see my Version 3?
26 25 Q. Yes, sir. I'm sorry. I thought you had a copy
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1 of it, Exhibit 22.

2 A. The main point of my revision was to correct the

3 species' names, and I was not sensitive to

4 leaving that section in. I probably should have

5 taken it out.

6 Q. Well, I'm a bit sensitive to it since you've

7 opined about it, so my question then, is, is it

8 still conjecture, because that's what you said it

9 was during the course of your deposition?

10 MR. LAVENDER: I'll withdraw that

11 question.

12 Q. Were you provided a copy of the NPDES

13 Construction General Permit which is the subject

14 of this appeal?

15 A. I was not.

16 Q. Were you provided a copy of the The Stormwater

17 Pollution Prevention Plan, the SWPPP, in

18 connection with this?

19 A. No. I'm glad to know what SWPPP stands for,

20 though.

21 Q. So, you do not have any personal knowledge of the

22 particular Best Management Practices that are

23 authorized and to be employed in these land

24 disturbing activities associated with this

25 project?

1
2 1 A. Not beyond what I heard this morning.
3 2 Q. And so, you didn't have any of that information
4 3 at the time of your visit?
5 4 A. That's correct.
6 5 Q. And you didn't have any of it before you got here
7 6 today?
8 7 A. That's correct.
9 8 Q. Now, I think I learned from you previously that
10 9 you are also not a Registered Professional
11 10 Engineer?
12 11 A. No. I'm an ecologist, not an engineer. Give me
13 12 a break.
14 13 Q. And you're not a licensed land surveyor?
15 14 A. I'm not a land licensed land surveyor.
16 15 Q. You're not a licensed landscape architect?
17 16 A. No. I'm not a landscape architect. I'm an
18 17 ecologist. I never claimed to be anything else.
19 18 Q. I just want to make that clear. So, you're not
20 19 in the business of preparing and submitting
21 20 Stormwater Pollution Prevention Plans?
22 21 A. No, but I've seen several.
23 22 Q. Just not this one?
24 23 A. Just not this one.
25 24 Q. Now, did you have any information, or have you
26 25 inquired into the nature of the proposed dredging
27
28

1
2 1 in this pond?
3 2 A. All I have heard about it is that it's expected
4 3 to take the pond down three to four feet.
5 4 Q. And you testified that your expertise really
6 5 isn't in the excavation area?
7 6 A. Right..
8 7 Q. It's really in the sedimentation --
9 8 A. Right.
10 9 Q. -- which is the movement of solid particles in
11 10 the water?
12 11 A. Yes, but if you dredge, you're also going to move
13 12 solid particles, correct?
14 13 Q. You're going to stir them up.
15 14 A. You sure will, but ...
16 15 Q. Not necessarily deposit them. They just go back
17 16 to where they were?
18 17 A. They have to go somewhere.
19 18 Q. They do, but you don't know the nature and extent
20 19 of the proposed activities other than that they
21 20 might just lower the outfall structures. You
22 21 only testified to what you thought would be the
23 22 impact of lowering the water level?
24 23 A. Yes. That's right. Yes.
25 24 Q. What is the function of a ditch, if you dig a
26 25 ditch in a field?
27
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2 1 A. It's to -- they do it a lot in the Midwest. It's
3 2 to take water off the land.
4 3 Q. Does it also have the function of dewatering from
5 4 the land as well as off the surface?
6 5 A. Taking water off the land and dewatering are
7 6 synonyms.
8 7 Q. You started -- I think Mr. Chandler asked you
9 8 about the pond and the aesthetics of the pond.
10 9 That really wasn't the scope of your
11 10 investigation, though, was it? It was really, as
12 11 I understood you, and what your ultimate
13 12 conclusion on your last slide is, was that this
14 13 was a healthy pond. Is that right?
15 14 A. Yes.
16 15 Q. Now, if this were a recreational pond, would you
17 16 consider this particular flora growth on the
18 17 surface desirable? I mean, are you going to swim
19 18 and boat in it?
20 19 A. It's not a good swimming hole right now. It's a
21 20 very difficult swimming hole.
22 21 Q. Same with boating?
23 22 A. Yes. So, if you couldn't swim, you could get a
24 23 canoe, and that would make the navigability
25 24 easier.
26 25 Q. Maybe not. I guess that's navigability according
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1 to Dr. Reice, though?

2 A. I think it's probably fictionary, too.

3 Q. You can't get out of it, though, can you?

4 A. You can't get out of the canoe?

5 Q. Out of the pond with the canoe.

6 A. I think you can go upstream and get out.

7 Q. Not far. The slides that you gave us, you gave

8 us these slides at you're deposition. We've

9 marked those, but you've now changed that Power

10 Point Presentation?

11 A. Yes.

12 Q. We've been through that this morning. I'm not

13 really having any luck with that, but you

14 mentioned that you have changed it for one reason

15 or another. Can you go into some detail about --

16 I think you referred to the clam and the

17 Redhorse. How about give us a bit more

18 elaboration about that.

19 A. In the deposition, you challenged my

20 understanding of the Redhorse, so I went back to

21 find out if I had made a mistake, and there was a

22 fellow from DHEC who questioned a verification of

23 the Lexingtonia, so I went back to see if I made

24 a mistake on that, and I found out I had made

25 mistakes, then I corrected the mistakes.

1
2 1 Q. So, you ---
3 2 A. I was close, very close.
4 3 Q. That's what the science of ecology is, isn't it,
5 4 just getting close, isn't it?
6 5 A. No. We can do better than that.
7 6 Q. When you gave us your first report, you offered
8 7 some conclusions in there. You've now testified
9 8 -- you did testify then and now today that you
10 9 took that section out to limit your report to
11 10 what you knew and not conjecture, and it's back
12 11 in there -- I think you now say that that's
13 12 probably not what you intended to do, is that
14 13 correct, in your final report? Is this your
15 14 final report, the Version 3, Exhibit 22?
16 15 A. I would prefer to type it, but yes.
17 16 Q. Meaning the handwritten notations about the
18 17 species on the second page. Is that right?
19 18 A. Yes.
20 19 Q. Which are the -- I can't pronounce -- the
21 20 Lexingtonia, and that's the clam that Mr.
22 21 Chandler asked you about and the Silver Redhorse
23 22 that I asked you about during your deposition.
24 23 Is that right?
25 24 A. Right.
26 25 Q. Well, the lily pads, let me ask you about a
27
28

1
2 1 picture that Mr. Chandler has gotten into. Do
3 2 you have Exhibit 15 --
4 3 A. Yes.
5 4 Q. -- which is photographed there?
6 5 A. Yes.
7 6 Q. And you say you were able to identify that. What
8 7 was it that helped you identify that as the pond
9 8 that you saw?
10 9 A. The border that -- the grassy border that
11 10 paralleled the street, that outreach of a
12 11 left-hand forest with that log of -- source, and
13 12 the abundant water loads.
14 13 Q. What is it in the back left corner of that
15 14 picture that gives the appearance of a more of a
16 15 homogeneous green surface?
17 16 A. That's duckweed. It's a pond weed that makes a
18 17 thick scum.
19 18 Q. That makes the pond healthy, too, doesn't it?
20 19 A. Well, I mean, the animals eat it, yeah.
21 20 Q. Beg your pardon?
22 21 A. Animals do eat it.
23 22 Q. Animals eat it. Do others consider it a nuisance
24 23 plant?
25 24 A. Some do.
26 25 Q. How about water lilies, do some consider water
27
28

1
2 1 lilies a nuisance plant?
3 2 A. If they want to be using the area for something
4 3 else, then the water lilies could be considered a
5 4 nuisance.
6 5 Q. So, in terms of the presence of the water lilies,
7 6 for example, or the duckweed, it's really a
8 7 matter of preference, whether you want them there
9 8 or not want there, depending on how you want to
10 9 use the pond. Isn't that right?
11 10 A. I would think that there's hardly anybody who
12 11 likes duckweed. There are a lot of people who
13 12 like water lilies.
14 13 Q. Well, it's a pretty good picture?
15 14 A. Yes.
16 15 Q. Have you been involved in activities where people
17 16 sought to control invasive or nuisance plants
18 17 such as water lilies and duckweed?
19 18 A. I had not personally been involved in that.
20 19 Q. So, you don't know ---
21 20 A. I've planted water lilies in my pond, my personal
22 21 pond.
23 22 Q. You put gold fish in it, too, probably?
24 23 A. Yeah, you bet.
25 24 Q. However, are you familiar with the Federal Exotic
26 25 Species List or the State Invasive Plant List,
27
28

1
2 1 either in North Carolina or South Carolina? I
3 2 know you're more familiar in North Carolina.
4 3 A. Do I have the list in my head, no. I know that I
5 4 can find it.
6 5 Q. And do you know what either of these species
7 6 might be considered by either the Federal
8 7 Government or either your state or mine, south of
9 8 the border?
10 9 A. I know that water lilies are considered invasive.
11 10 I don't know -- I can't imagine the duckweed
12 11 would be considered invasive, because it's
13 12 everywhere.
14 13 Q. But you know, then, that people who have ponds
15 14 make some attempts to control it by using some
16 15 approved herbicide?
17 16 A. I don't know that.
18 17 Q. You don't know that? So, you've never been
19 18 involved in any control of nuisance or invasive
20 19 plants? Is that what you're saying?
21 20 A. I have friends who have tried to control
22 21 Hydrilla.
23 22 Q. Was there any Hydrilla in this pond?
24 23 A. I didn't see any.
25 24 Q. So, you really don't know about -- you talked
26 25 about the sedimentation and your study of
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1 sediment movement and the impacts on water
2 bodies?
3 A. Right.
4 Q. That work in the context of what in North
5 Carolina, because -- tell me again what role you
6 played on some committee?
7 A. I'm on the Technical Advisory Committee for the
8 Sedimentation Control Commission.
9 Q. And in that role -- and does that Commission find
10 itself attempting to establish means by which to
11 control sediment from development projects?
12 A. Sure.
13 Q. And do those activities include examination of
14 Best Management Practices that should be employed
15 in balancing the development and the environment?
16 A. They actually make recommendations for practices
17 to be used.
18 Q. Now, you said you have not looked at the SWPPP
19 for this particular project?
20 A. Right.
21 Q. So, you really aren't, then, in a position to
22 know or opine whether or not those Best
23 Management Practices have been employed in the
24 approval of that SWPPP for this project?
25 A. I have not seen the SWPPP, and I have not seen

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2

1

what practices were suggested.

3

2

Q.

So, with respect to the development itself --

4

3

forget the excavation or the lowering of the

5

4

pond. With respect to the development itself,

6

5

you don't really -- you're not trying to offer an

7

6

opinion that the development of the project i.e.

8

7

the land disturbing activities that are being

9

8

conducted outside the pond will have any adverse

10

9

impact on this pond?

11

10

A.

I'd be surprised if they didn't, but I'm not

12

11

offering that as a particular opinion.

13

12

Q.

But your role in connection with -- again, I

14

13

apologize, but the group in North Carolina, is to

15

14

examine the types of Best Management Practices

16

15

and to recommend those practices for purposes of

17

16

employing them and permitting for stormwater or

18

17

other types of projects. Is that correct?

19

18

A.

To help them set the guidelines for permitting,

20

19

correct.

21

20

Q.

And do you understand that most construction or

22

21

stormwater discharges from development, that

23

22

those are not so much end of point numeric

24

23

numbers, but management practice at the site of

25

24

development? Do you know the different between

26

25

how a permit -- well, you said you worked on a

27

28

1
2 1 discharge on Fishing Creek involving a ---
3 2 A. Sewage outfall.
4 3 Q. -- sewage outfall where it was going to increase?
5 4 A. Right.
6 5 Q. That's a point source discharge, right?
7 6 A. Right.
8 7 Q. It's a point source discharge?
9 8 A. Yes.
10 9 Q. That one had numeric limits at the end of the
11 10 pipe for the point source from the sewer plant
12 11 treated (sic), right?
13 12 A. Right.
14 13 Q. And you were examining what that increase flow
15 14 would do?
16 15 A. Right.
17 16 Q. To the pond?
18 17 A. Right.
19 18 Q. I mean, to Fishing Creek, right?
20 19 A. Right.
21 20 Q. The difference between that and this is, is this
22 21 is not necessarily a point source discharge into
23 22 Roper Pond, is it?
24 23 A. Which makes it that much more difficult to
25 24 control.
26 25 Q. Which is the purpose of Best Management
27
28

1
2 1 Practices, right? That's what they're for? I
3 2 mean, you're studying it in North Carolina, so
4 3 you should know. That's what it's for, right?
5 4 A. Right.
6 5 Q. So, those are the methods by which progress can
7 6 occur and balance it with nature. Is that not
8 7 right?
9 8 A. That's pretty optimistic.
10 9 Q. Ecology?
11 10 A. You're making a judgment by calling it
12 11 "progress", but development and progress is not
13 12 synonyms.
14 13 Q. I guess that's a matter of opinion for the
15 14 property owner, though, isn't it? It depends on
16 15 whose property it is, doesn't it?
17 16 A. I don't know.
18 17 Q. Let's just say, then, development instead of
19 18 progress, to allow a landowner to use his
20 19 property the way presumably he's allowed to use
21 20 it, land use wise, but protect the environment
22 21 according to, in this case, Best Management
23 22 practices to ensure appropriate water quality
24 23 from the development? That's what you're
25 24 studying in North Carolina, is it not?
26 25 A. Yeah. That's the idea.
27
28

1
2 1 Q. I mean, your not studying how to keep people from
3 2 doing anything?
4 3 A. No. That's the idea, to try to assure that
5 4 sediment from any project does not reach the
6 5 water level.
7 6 Q. Is your goal, and do you believe that the goal in
8 7 North Carolina is a zero sediment?
9 8 A. As close to zero as it can get.
10 9 Q. But they're still allowing projects to discharge
11 10 employing Best Management Practices, stormwater?
12 11 A. I would not want to be the one who says that
13 12 that's what North Carolina is trying to do.
14 13 Q. You're not in the regulating business, are you?
15 14 A. No.
16 15 Q. You're not involved in the regulatory program.
17 16 You're involved in an evaluation of Best
18 17 Management Practices and how they might be
19 18 improved and making those recommendations?
20 19 A. Right.
21 20 Q. That's what you said?
22 21 A. Right.
23 22 Q. And again, you don't know what they are for this
24 23 project?
25 24 A. No. I mean, I heard somebody saying it was a
26 25 storm scepter. I don't know what that is. It
27
28

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sounded cool.

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Q. You don't know whether there are any deficiencies in the permit?

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A. I have not seen what the project design is. I'm in the pond looking out rather than on the edge looking in.

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MR. LAVENDER: It might be a good

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place for me to stop for me if I had any

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sense. I think I will, Your Honor. Thank

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10

you.

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11

THE COURT: Mr. Hightower?

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MR. HIGHTOWER: Your Honor, my

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co-counsel, Roger will cross examine Dr.

15

14

Reice.

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MR. LAVENDER: I would at least

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like to -- since we don't have the slides,

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to at least -- oh, I apologize. They snuck

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18

up behind me. Let me make one ...

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19

THE COURT: I thought you knew

21

20

that you had them.

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21

MR. LAVENDER: I didn't. I was

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22

focussed on Dr. Reice's body language. I'm

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23

sorry. Let me just quickly compare it to

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what I saw. Okay. I think I'm going to

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quit.

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CROSS EXAMINATION BY MR. HALL:

Q. How are you doing, Dr. Reice?

A. Okay.

Q. Is it ever appropriate to dredge a pond to remove sediment?

A. If you put the sediment in there, yes, it's appropriate.

Q. Would it affect the diversity of the pond?

A. Dredging will almost always have a negative impact on the diversity of a pond, but if you have allowed sediment to get into a pond, then excavating that sediment and taking it out is the very thing that we do with stormwaters, detention waters.

Q. Do you know anything about the history of Roper Pond?

A. No.

Q. Do you know if it was ever deeper than it is now?

A. I don't think it was there originally. I think it's a function of the road and the small culvert that was put in there.

Q. I might disagree with that, but I won't speculate on that. Do you know how deep the pond is now?

A. I know it was deeper than I could walk, so it was at least four -- one-and-a-half meters deep and

1		
2	1	probably deeper.
3	2	Q. You didn't measure the depth of the pond?
4	3	A. No.
5	4	Q. Is the depth of the pond not an important
6	5	function of the ecology of the pond?
7	6	A. Useful to know, but that wasn't what I was hired
8	7	to do.
9	8	Q. You were hired to look at the ecology and the
10	9	potential diversity of the pond --
11	10	A. Right.
12	11	Q. -- instead of the amount of habitat, the depth of
13	12	the pond, the amount of water, the space around
14	13	the lilies and ...
15	14	A. No one asked me to calculate how many individuals
16	15	were in the pond, only to assess the diversity of
17	16	the pond, and I also didn't have a boat to get
18	17	out there.
19	18	Q. So, in your opinion, if Roper Pond -- say it was
20	19	built, that it's not a natural pond, it's a
21	20	man-made pond, and it had filled in with sediment
22	21	over the years allowing these lily pads to grow,
23	22	would it be appropriate to remove the sediment
24	23	that was allowed to get in?
25	24	A. That's a very tricky question, because all ponds
26	25	and all lakes fill. There's no such thing as a
27		
28		

1
2 1 lake that stands, except Lake Superior perhaps,
3 2 but all lakes receive sediments, and they
4 3 eventually fill in. Should we go in with dredges
5 4 to dig out every pond or every lake, I don't
6 5 think.
7 6 Q. How do you decide which ones are appropriate,
8 7 which ones you should dredge and which ones you
9 8 shouldn't?
10 9 A. Fortulatey, it's not my decision.
11 10 Q. We've hinted on one of the goals of the
12 11 Department of Health and Environmental Control is
13 12 to maintain a balanced indigenous community. Do
14 13 you think that's a good goal to have?
15 14 A. Yes, sounds fine.
16 15 Q. You've also testified that the lilies are not
17 16 indigenous?
18 17 A. Yes.
19 18 Q. So, do you know where they came from?
20 19 A. Where they originally came from, I think from
21 20 Europe, but I'm not sure.
22 21 Q. But you don't know how they got into that pond?
23 22 A. Somebody probably stuck them there.
24 23 Q. So, if the goal was to maintain the natural
25 24 existence of ponds, then those lilies shouldn't
26 25 be there?
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A.

If that's your call, I mean, it's all right with me.

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Q.

You testified that maintaining a natural diversity in order of the pond's sediment level is probably a good goal?

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A.

Right.

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Q.

So, therefore, if it had to fill in to remove some of that sediment, it would be better than ...

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A.

I think that to remove the sediment from that pond will destroy the bionomic community that's in it. Now, you can play games with me on this, and clearly, if you have evidence that that sediment has accumulated over a hundred years and now you want to take it out all in one afternoon, it's going to be a big big change.

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Q.

Did you know that one of the goals of the developer is to maintain that pond, maintain the beauty of that pond, to use it as an amenity to the apartment complex or where they build?

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A.

I didn't know anything about what the developer's plans were.

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Q.

Well, it is.

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MR. CHANDLER: Your Honor, it's

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improper for him to testify as to what the

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1 goals of the developer are in this case.

2 THE COURT: I realize it's cross
3 examination, but I think that's beyond the
4 scope of this hearing.

5 MR. HALL: Well, it's in the
6 deposition, Mr. Chandler.

7 MR. CHANDLER: It might be in the
8 deposition, but it doesn't make it evidence
9 in this hearing.

10 MR. HALL: That's fine.

11 Q. Would the nutrient level in the pond be a
12 function that of allowing so many lily pads to
13 cover the surface of the pond?

14 A. Certainly. I mean, the lily pads are sucking up
15 nutrients. If you destroy them or you just plow
16 them under, then those nutrients are going to be
17 released and I expect you'd have probably another
18 problem.

19 Q. Could too many nutrients lead to this condition?

20 A. Could too many nutrients lead to the abundance of
21 lily pads? Is that the question?

22 Q. Yes.

23 A. It's quite possible.

24 Q. Did you sample the pond -- did you check the
25 nutrient level in the pond?

1
2 1 A. No.
3 2 Q. Does the level of nutrients of the pond affect
4 3 the ecology of the pond?
5 4 A. Of course.
6 5 Q. And again, you were asked to look at the aquatic
7 6 ecology of the pond?
8 7 A. Yes.
9 8 Q. But all you looked at was PH dissolved oxygen,
10 9 conductivity and salinity?
11 10 A. And turbidity.
12 11 Q. And turbidity. How did you judge the turbidity?
13 12 A. Visually.
14 13 Q. Visually?
15 14 A. Yes.
16 15 Q. Is that an accepted practice for judging
17 16 turbidity of ponds?
18 17 A. Well, when it's clear, it's fine.
19 18 Q. You said that biodiversity was a function of
20 19 evenness and variety. Is one more important than
21 20 the other?
22 21 A. Generally speaking, variety is more important.
23 22 Q. Do the particular species that you found, are
24 23 those species necessary for a diverse pond, the
25 24 particular ones that you found?
26 25 A. I mean, you could substitute other species that
27
28

1
2 1 filled the same niche, but basically, all the
3 2 niches that you would expect in a pond are filled
4 3 there now with the species that are present.
5 4 Q. And dredging -- the removing sediment and falling
6 5 back where it was is going to destroy the
7 6 diversity of the pond in your opinion, is what
8 7 you testified to?
9 8 A. When you dredge out the sediment, you're going to
10 9 take out the animals. I mean, where are they
11 10 going to go?
12 11 Q. Is it the sediment or the dredge itself?
13 12 A. The sediment is collecting -- is being collected
14 13 by the dredge. I mean, the dredge takes a big
15 14 chunk of sediment out and puts it someplace.
16 15 Q. Is it possible to remove sediment, to dredge the
17 16 pond without -- and minimize the amount of
18 17 sediment -- and not create the amount of sediment
19 18 that will destroy the diversity of the pond?
20 19 A. I don't think so.
21 20 Q. Have y'all looked at that on your committee, the
22 21 different techniques that can be used to remove
23 22 sediment and whether there are different degrees
24 23 of success in minimizing sediment?
25 24 A. There are manufacturers who come and try to tell
26 25 us that they can get the sediment out of a stream
27
28

1
2 1 with a machine, but I haven't seen any that work.
3 2 Q. So, would you say that all dredging of ponds will
4 3 destroy the diversity of the pond?
5 4 A. It depends on how much of the pond you dredge. I
6 5 mean, if you dredge one percent, it's going to
7 6 destroy much less than if you dredge 50 percent.
8 7 Q. And you don't know what extent of the dredging of
9 8 this pond is?
10 9 A. I don't know.
11 10 Q. So, we can't say for sure what the effect of the
12 11 diversity is going to be?
13 12 A. It's not going to be good.
14 13 Q. But you don't know the extent of it?
15 14 A. Right.
16 15 Q. What effect do the lilies have on the dissolved
17 16 oxygen of the pond?
18 17 A. The lilies are complex organisms, and they're
19 18 adding oxygen through photosynthesis into the
20 19 water. The decomposing lilies are using up
21 20 oxygen as they decompose, so I don't know what
22 21 percentage, whether it's a net gain or a net
23 22 loss.
24 23 Q. When would the lilies decompose?
25 24 A. During the winter.
26 25 Q. When did you sample the pond?
27
28

1 1
2 1 A. In June.
3 2 Q. Did you sample it at any other season?
4 3 A. No.
5 4 Q. So, as far as the health of the pond, I guess, in
6 5 June, it was a healthy pond?
7 6 A. It was a healthy pond in June.
8 7 Q. Is it possible that in the winter when those
9 8 lilies die off that there is either some fish
10 9 killed or depletion of oxygen that might affect
11 10 the aquatic life of that pond?
12 11 A. Very unlikely, because the pond is sufficiently
13 12 shallow that any wind would mix the surface and
14 13 add oxygen to the water. I don't think it would
15 14 be a problem.
16 15 Q. At what depth does that -- does the wind affect
17 16 ---
18 17 A. It depends on the land contours of the pond. I
19 18 don't know. In this particular case, I'm sure
20 19 that pond is fully mixed well with it.
21 20 Q. But you didn't look at that?
22 21 A. No, I didn't.
23 22 MR. HALL: That's all I have.
24 23 THE COURT: All right. Before we
25 24 go any further, how long do you y'all want
26 25 to run today? If we're going to go after
27
28

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 09-ALJ-07-0069-CC

Town of Arcadia Lakes, Robert L. Jackson,)
Linda Z. Jackson, Robert E. Williams, Jr.,)
Barbara S. Williams, Elizabeth M. Walker,)
Louis E. Spradlin, Mary Helen Spradlin,)
Thomas Hutto Utsey, Tony Sinclair, Aaron)
Small, Bette Small, Gene F. Starr, M.D.,)
Elaine J. Starr, Sanford T. Marcus, Ruth)
L. Marcus and Steven Brown,)

Petitioners,)

vs.)

South Carolina Department of Health and)
Environmental Control and Roper Pond, LLC,)

Respondents.)

-----)

Columbia, South Carolina
Thursday, September 3rd, 2009
10:02 a.m. - 6:37 p.m.
and
Friday, September 4th, 2009
9:14 a.m. - 10:43 a.m.

The Hearing before the Honorable John
McLeod was taken at the Edgard A. Brown Building,
1205 Pendleton Street, Suite 224, Columbia, South
Carolina, on the 3rd day and 4th day of
September, 2009, before Jill H. Vickers,
Certified Court Reporter and Notary Public in and
for the State of South Carolina.

1

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2

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11

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1
2 1 Q. Now, Petitioner's Exhibit Number 4 included a
3 2 page that has a -- it's got a bate stamp at the
4 3 bottom of it, "RP0089". Have you ever seen that
5 4 before?
6 5 A. No, sir.
7 6 Q. That appears to be a Wetland Delineation Map,
8 7 doesn't it?
9 8 A. Yes, sir.
10 9 Q.. And the wetlands that are delineated on that map
11 10 include the pond, don't they?
12 11 A. They do.
13 12 THE COURT: Well, now, we've been
14 13 talking about more than one pond here
15 14 today. I assume you're talking about the
16 15 pond in question that abuts North Trenholm
17 16 Road.
18 17 MR. CHANDLER: Yes, sir, the pond
19 18 known as either Roper Pond or the Lily Pad
20 19 Pond.
21 20 Q. That's accurate, isn't it, Mr. Hightower?
22 21 A. Yes, sir.
23 22 Q. Now, CORPS Nationwide Permits were last issued in
24 23 2007. Isn't that correct?
25 24 A. Yes, sir.
26 25 Q. And the purpose of the Nationwide Permits is to
27
28

1
2 1 set out a list of specific types of projects that
3 2 either individually or cumulatively don't have a
4 3 large impact. Is that an accurate statement?
5 4 A. Have minimal impact, yes, sir.
6 5 Q. And in this case, what came to you was a proposal
7 6 for approval under Nationwide Number 39, these
8 7 two little fills of wetlands that total .075
9 8 acres. Is that correct?
10 9 A. The provisional letter we got from the Army CORPS
11 10 of Engineers was the authorization to fill .075
12 11 acres.
13 12 Q. Now, those were the only impacts you looked at.
14 13 Isn't that correct?
15 14 A. Yes, sir.
16 15 Q. And when the CORPS issued these Nationwide
17 16 Permits in 2007, your section of the Department
18 17 of Health and Environmental Control also issued a
19 18 certification decision on those Nationwide
20 19 Permits, didn't they?
21 20 A. Yes, sir.
22 21 Q. And when you issued that certification in 2007,
23 22 you were only certifying the impacts specifically
24 23 listed in those Nationwide Permits, each
25 24 individual one. Isn't that correct?
26 25 A. Can you rephrase the question? I'm sorry. Ask
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1 it again. I'm sorry.

2 Q. Well, when the Department issued a certification

3 of the Nationwide Permits, you went through them

4 one by one and looked at Nationwide Number 1, and

5 you either certified it or you denied it, right?

6 A. We either certified, denied it or certified it

7 with conditions.

8 Q. And you also put some specific general conditions

9 on all of the Nationwide Permits, didn't you?

10 A. We put some general conditions on all the

11 Nationwide Permits.

12 Q. And the public notice that went out to the public

13 when the Department was taking that action said

14 "We're only approving these impacts and these

15 impacts alone", didn't it?

16 A. That's correct.

17 Q. And so, if a project had impacts that went beyond

18 one of those Nationwide Permits, you weren't

19 certifying those impacts, were you?

20 A. Say that again.

21 Q. If the project had wetland impacts that went

22 beyond what was narrowly defined in each of those

23 Nationwide Permits, you were not certifying those

24 additional impacts?

25 A. If an activity was going to have additional 404

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permits requiring 401 certification, we typically would not issue a Nationwide General Permit for an individual activity.

Q. Now, some of the Nationwide Permits require a Pre-discharge Notification, don't they?

A. Pre-Construction, yes, sir.

Q. And what does that mean?

A. It means that they have notified the CORPS before they begin the -- as far as I know, they require -- that's a CORPS of Engineers requirement. They submit PCN to them as part of that Nationwide Permit.

THE COURT: What is a PCN?

MR. HIGHTOWER: A Pre-Construction Notification.

Q. On some other types of Nationwide Permits, all you have to do is just go do the work. Isn't that right?

A. That's correct.

Q. But some you have to do a Pre-Construction Notification which the CORPS looks at to see whether it really does meet the requirements of that Nationwide Permit?

A. I believe that's correct. That's an Army CORPS of Engineers' requirement.

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2 1 Q. And in this particular case, the only impacts
3 2 that approval was asked for was for the fill of
4 3 .075 acres of wetlands?
5 4 A. The provisional letter or Pre-Construction
6 5 Notificaiton that I got from the CORPS was to
7 6 authorize .075 acres.
8 7 Q. Now, at the time your section at the Department
9 8 got this notification from the CORPS of
10 9 Engineers, you got that letter from the CORPS
11 10 that we marked as Exhibit 10. Is that right?
12 11 A. That's correct.
13 12 Q. And it had that paragraph in bold print that we
14 13 read a minute ago?
15 14 A. That's correct.
16 15 Q. Now, what does Nationwide Permit Number 39 deal
17 16 with?
18 17 A. Nationwide Permit Number 39 is for commercial and
19 18 institutional developments.
20 19 Q. But that's not what was proposed on this site,
21 20 was it?
22 21 A. I'm not sure I know how to answer that question.
23 22 I know -- if you're asking me, did the CORPS
24 23 re-issue their Nationwide, they reissued it under
25 24 Nationwide 29 after relooking at it again.
26 25 Q. And when did they do that?
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2	1	A. I'm not sure of the date of that letter.
3	2	Q. Did you receive a copy of the notice from the
4	3	CORPS on that second one, Number 29?
5	4	A. I believe we did, yes, sir.
6	5	Q. You did?
7	6	A. Yes, sir, I believe we did.
8	7	Q. Did you issue another decision?
9	8	A. I'm sorry. Can you rephrase the question?
10	9	Q. Did you receive a letter from the CORPS approving
11	10	this project under Nationwide 29?
12	11	A. We received a provisional letter on it.
13	12	Q. And did you issue another decision?
14	13	A. We did not issue another -- to my knowledge, we
15	14	did not issue another authorization letter. In
16	15	hindsight, we probably should have issued another
17	16	letter. There's nothing in our general permit
18	17	that requires that we issue an authorization
19	18	letter. We probably should have, but like I
20	19	said, there's no requirement that we do that.
21	20	Q. Did you issue any kind of public notice either
22	21	when you got the Nationwide 39 or the Number 29
23	22	that you had these projects in your section and
24	23	were reviewing them?
25	24	A. No, sir. There's no requirement for public
26	25	notice. We public noticed our certification of
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2 1 these Nationwide Permits for 2007, stated just
3 2 what you said before, that we were authorizing
4 3 these activities at minimal individual or
5 4 cumulative impacts. We put those out on public
6 5 notice, and they were subsequently certified on,
7 6 I believe, May 11th, 2007.
8 7 Q. And that public notate and the certification that
9 8 went with that public notice was limited just to
10 9 the specific fill authorized by those particular
11 10 Nationwide Permits. Isn't that correct?
12 11 A. Yes, sir.
13 12 Q. Now, the 401 Program operates under a set of
14 13 regulations that are codified as Regulation
15 14 61-101. Isn't that correct?
16 15 A. Yes, sir.
17 16 Q. And under those regulations, you are required to
18 17 assess all of the water quality impacts of a
19 18 project, aren't you?
20 19 A. Yes, sir.
21 20 Q. Now, you're also to determine whether or not
22 21 there are feasible alternatives?
23 22 A. Well, again, you're going back to an individual
24 23 permit. We reviewed -- when we certified these
25 24 Nationwides, we certified them in accordance with
26 25 61-101, and we put it out on public notice that
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2 1 we were going to issue coverage under a
3 2 Nationwide General Permit for these activities
4 3 because they had minimal individual or cumulative
5 4 impacts. So, we certified them and said that
6 5 that's what we certified, under 61-101.
7 6 Q. Well, let me ask you this. Did the property
8 7 owners' engineers send you a set of plans either
9 8 this big or a smaller set at the time?
10 9 A. Yes, sir, I believe they did.
11 10 Q. And did these plans show that they planned to
12 11 change the water level and perhaps do some
13 12 excavation in the pond?
14 13 A. I believe it did.
15 14 Q. And you've seen on that Wetland Delineation that
16 15 the pond had been delineated as a wetland?
17 16 A. That's correct.
18 17 Q. So, they were going to have some impacts on that
19 18 pond, weren't they?
20 19 A. Well, they were going to excavate -- they were
21 20 going to excavate the pond. Again, I don't issue
22 21 permits, Mr. Chandler. I issue certifications.
23 22 Subsequently, I double checked with the Army
24 23 CORPS of Engineers ---
25 24 Q. Well, don't tell us what the CORPS of Engineers
26 25 said, Mr. Hightower.
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1 A. Okay. I did not issue a certification for any
2 activity in the Roper Pond.

3 Q. Now, back 19 -- in 2007, when the Department put
4 out the public notice for the certification of
5 Nationwide 29 and Nationwide 39 and all the other
6 Nationwide Permits, did you say, "We're
7 certifying activities that will fill wetland and
8 excavate ponds"? Did any notice say that?

9 A. No, sir.

10 Q. But at the time this project came in, you knew
11 they were going to do more than just fill
12 wetlands, didn't you?

13 A. Not under Nationwide 29.

14 Q. Well, you were asked to certify -- well, let me
15 ask you this. When you get a project in for
16 individual certification, you look at all the
17 water quality impacts, whether they're fill or
18 excavation or whatever those impacts are, don't
19 you?

20 A. If they're requiring a 404 Permit for the
21 activity, we require 401 Certification.

22 Q. And in that 401 Certification, you're going to
23 look at all the water quality impacts, and you
24 might go beyond the bounds of just what is in the
25 404 Permit in assessing those impacts, don't you?

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A. In assessing the impacts of that particular activity, yes.

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Q. And in fact, that's the stuff that I started going through here. You'll look and see whether there are feasible alternatives. You'll look at all potential water quality of impacts of the project, both direct and indirect over the life of the project. Doesn't that, just what I just read, come straight out of Regulation 61-101, Subsection F?

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A. If you don't mind, I'll turn there. You're reading Subpart F, Part C?

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Q. Yes, sir.

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A. "Potential water quality impacts of a project, both direct and indirect, over the life of the project, including ..." -- and then it has four subsets that it includes.

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Q. And one of those subsets in there is the "cumulative impacts of the proposed activity and reasonably foreseeable similar activities of the applicant and others". Pretty broad, isn't it?

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A. It's pretty broad.

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Q. Now, on occasion, your section gets a request for the Department to sign off on a Nationwide Permit that you decide to require a separate individual

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2 1 401 Certification, don't you?
3 2 A. Yes, sir, that's possible.
4 3 Q. And you have the discretion to require that,
5 4 don't you?
6 5 A. No, sir. I don't think I have the discretion. I
7 6 think if it doesn't meet one of the specific or
8 7 general conditions, then we're required to go get
9 8 an individual permit, but if it meets those
10 9 conditions, then I don't have the discretion to
11 10 put it out on an individual public notice.
12 11 Q. So, what if one includes -- if a project says
13 12 "Well, we want to fill .075 acres of wetlands,
14 13 and we want to excavate some other wetlands",
15 14 that's going beyond the fill authorized by the
16 15 Nationwide Permit, isn't it?
17 16 A. If the Army CORPS of Engineers sends me a letter,
18 17 and they tell me that's the only jurisdiction
19 18 impacts on the site, and it required a 401
20 19 Permit, that's the only impacts that I have to
21 20 certify through the 401.
22 21 Q. So, that's what you did in this case?
23 22 A. Yes, sir.
24 23 Q. You looked only at the fill and didn't look at
25 24 the excavation?
26 25 A. I certified .075 acres to be filled under
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1 Nationwide Permit 39 -- well, actually Nationwide
2 29.
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4 Q. Did you assess the water quality impacts of
5 excavation of the pond?
6 A. No, sir, I did not.
7 Q. You didn't do that?
8 A. No, sir.
9 Q. You didn't look at what was going do be done with
10 the spoil?
11 A. No.
12 Q. And you didn't look at how they were going to
13 accomplish that work and what kind of Best
14 Management Practices or anything else that was
15 going do be done in excavating that pond, did
16 you?
17 A. No, sir.
18 Q. And you didn't look at how that was going to
19 affect that pond, did you?
20 A. No, sir.
21 Q. You didn't look and see how it was going to
22 affect the aquatic life in that pond, did you?
23 A. No, sir.
24 Q. And you didn't look at the impact that it would
25 have on existing and classified water usage, did
26 you?
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1 A. I did -- excavation does not require a 401
2 Certification.

3 Q. Well, how do you define "activity"? Don't you
4 define that broader than just the specific fill?

5 A. I don't know how you would describe an activity
6 -- if you're certifying an activity and the
7 activity is to fill .075 acres, I don't know how
8 you would say that that is not the activity that
9 you're certifying.

10 Q. Well, let's say they wanted to fill some other
11 wetlands, but they didn't list that on there, but
12 you knew that was part of their plans. Would you
13 say, "No, this doesn't qualify"?

14 A. If they were going to require a -- the intent is
15 that you don't piecemeal a project with
16 Nationwide Permits. If I knew that they were
17 going to require -- if the CORPS was going to
18 require a 404 Permit for those extra impacts, I
19 would not certify each one individually. I would
20 ask that they come in altogether as a group.

21 Q. So, is your position and your view of these rules
22 and these regulations that you are strictly
23 limited to just what the CORPS says they are
24 dealing with and you ignore any other water
25 quality impacts that may be on the table. Is

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1 that what you're saying?

2 A. No, sir. I'm saying that I look at water quality

3 impacts from the activity that I'm certifying.

4 Q. And in this case, that was .075 acres of fill?

5 A. That's correct, yes, sir.

6 Q. If the level of this pond is lowered by say three

7 feet, three-and-a-half feet, is it going to have

8 an impact on the wetlands upstream?

9 A. I couldn't answer that question.

10 Q. You don't know, but it's going to change the

11 hydrology in those wetlands, don't you think?

12 A. I don't know. I didn't review that.

13 Q. You don't know. You didn't look at that, did

14 you?

15 A. No, sir.

16 Q. But you knew that that's what they were planning

17 on doing?

18 A. Yes, sir.

19 Q. And that was going to be an impact possibly on

20 those upstream wetlands?

21 A. That activity did not require a Federal 404

22 Permit. Therefore, I had nothing to certify.

23 Q. But you do have your regulations that require

24 that you look comprehensively at the whole

25 project, doesn't it?

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1 A. Not when I've issued a Nationwide General Permit
2 that says that activity will have minimal
3 impacts. It's certified under that Nationwide.

4 Q. So, your position is that the laws create a
5 loophole that allows the pond to just slip
6 through the cracks?

7 A. I'm not saying that there's a loophole in the
8 law. I'm just simply telling you that because
9 only the CORPS of Engineers -- I don't issue --
10 again, I don't issue permits. I certify 404
11 Permits that are required by the Army CORPS of
12 Engineers. If the Army CORPS of Engineers
13 determines that they don't require a 404 Permit
14 for the excavation of that pond, then I cannot
15 assert a 401 Certification for a permit that I
16 don't have before me.

17 Q. Well, does only the CORPS of Engineers have to go
18 by Regulation 61-101?

19 A. No, sir.

20 Q. You're the only one that has to do that, right?

21 A. And we did that when we issued these Nationwide
22 Permits or Nationwide 29.

23 Q. Did you assess the water quality impact of
24 lowering the pond?

25 A. No, sir. That was not the activity that was

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2 1 permitted under this Nationwide for this
3 2 activity.
4 3 Q. Do you know of anybody at DHEC who looked at the
5 4 impacts of lowering that pond?
6 5 A. No, sir, I don't.
7 6 Q. Do you know of any at DHEC, any in the Department
8 7 at DHEC that looked at the impacts of excavating
9 8 the pond?
10 9 A. No, sir, I don't.
11 10 Q. Have you ever been out to the pond?
12 11 A. No, sir, I have not.
13 12 Q. And you didn't analyze how it's going to affect
14 13 the physical, chemical and biological character
15 14 of that pond, did you?
16 15 A. No, sir. I had no permit for any activity in
17 16 that pond to certify.
18 17 Q. But you knew there was going to be activity?
19 18 A. Yes, sir.
20 19 Q. And you operated under the belief, right or
21 20 wrong, that that was outside your scope and that
22 21 you couldn't look at that. Is that right?
23 22 A. That's right. If the Army CORPS of Engineers
24 23 said that that activity is non-jurisdictional, I
25 24 don't have any regulatory authority under a 401
26 25 to have a permit before me to certify.
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2 1 Q. Show me what you had in your file when you issued
3 2 an approval that the CORPS of Engineers said that
4 3 pond was non-jurisdictional?
5 4 A. I never said the pond was non-jurisdictional.
6 5 Q. So, what did the CORPS tell you? Did the CORPS
7 6 come tell you, "We're looking at only this fill,
8 7 and don't look at the pond"?
9 8 A. It's my understanding that the CORPS does not
10 9 have the regulatory authority to require a 404
11 10 Permit for the dredging of that pond.
12 11 Q. Okay. But you have authority if somebody came in
13 12 with an individual permit to fill part of these
14 13 wetlands, if the overall activity they were going
15 14 to do was going to be at the building of a
16 15 apartment complex and they were going to excavate
17 16 a pond and an individual permit, you would have
18 17 authority to look at the impacts of that
19 18 excavation, wouldn't you?
20 19 A. I don't think so. I would look at it the same
21 20 way as a non-jurisdictional isolated wetland. We
22 21 have individual permits all the time that have
23 22 impacts to isolated Federally non-jurisdictional
24 23 wetlands, and again, I have no regulatory
25 24 authority over those.
26 25 Q. So, when does the assessment of all water quality
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2 1 impacts over the life of the project come into
3 2 play? How can this ever come into play if you're
4 3 required to limit your review strictly to how
5 4 they define it, and where does it say in here you
6 5 ignore the other quality impacts?

7 6 A. I don't -- it doesn't say that I ignore the water
8 7 quality impacts, but I don't consider the
9 8 excavation of this pond to be a water quality
10 9 impact of the Nationwide that was issued for .075
11 10 acres of fill.

12 11 Q. But there's no doubt when you got the notice on
13 12 Nationwide 29 that you didn't issue a new
14 13 approval letter, did you?

15 14 A. We did not issue a subsequent letter, no, sir.

16 15 Q. Even though you got another letter from the
17 16 CORPS?

18 17 A. That's right.

19 18 Q. Why not?

20 19 A. Like I said, I don't know why we didn't. In
21 20 hindsight, we probably should have, but again,
22 21 we're not required by the General Permit to send
23 22 out an authorization letter of any kind. And it
24 23 wouldn't have changed anything in the conditions
25 24 of both 39 or 29. It wouldn't have changed
26 25 anything as far as our certification.

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2 1 Q. But if you had issued that letter, you would have
3 2 had to send me a copy, wouldn't you, because we
4 3 had this case going at the time that came in
5 4 front of you, didn't you?
6 5 A. I don't know that I'm required to -- I don't know
7 6 that I'm required to send you a copy of ---
8 7 Q. Well, maybe your attorney would have been
9 8 required to send it to me. If you had written
10 9 out a letter, he would have had to send it to me
11 10 as an update to his document production, wouldn't
12 11 he?
13 12 A. I can't answer for my attorney. I don't know.
14 13 Q. But you didn't issue another approval. You
15 14 didn't do anything that would trigger the
16 15 possibility of another appeal, did you?
17 16 A. I did not issue another authorization letter.
18 17 Q. So, at this point, Roper Pond, LLC does not have
19 18 an authorization letter from DHEC regarding this
20 19 project for Nationwide 29, does it?
21 20 A. No, sir, nor are they required to get an
22 21 authorization letter from DHEC. There's no
23 22 requirement of that General Permit that we
24 23 authorize in writing that they're granted
25 24 coverage.
26 25 Q. What does it say in that letter?
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A. It says that -- it does say -- it says that we've looked at it, and we've concurred that they have coverage, but it's not a requirement.

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Q. But back in October, your Department wrote a letter?

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A. We did, yes, sir.

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Q. And you did a review?

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A. And we should have sent another letter subsequent to that --

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Q. But you haven't done it?

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A. -- but we did not do it.

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Q. And if you had sent a letter, there could have been an appeal of that, couldn't there?

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A. To be honest with you, Mr. Chandler, I didn't know that coverage under a General Permit could be appealed.

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Q. Well, if there's a legal issue of whether or not ---

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A. I guess my answer to the question is, the phone didn't ring in my mind that I was not sending another letter in fear of an appeal. That had nothing to do with it, or I never even gave that a thought, because I didn't know that you could appeal a Nationwide General Permit.

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Q. What did you do with the letter from the CORPS

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1 when you got it?

2 A. I believe we put it in the file.

3 Q. Did you tell your attorney about it?

4 A. That, I can't answer. I don't remember.

5 Q. Just to make sure that I'm clear, nothing that

6 you have done nor any other section of DHEC that

7 you know of has specifically reviewed the impacts

8 of the pond nor issued an authorization for those

9 impacts?

10 A. I can't speak for other parts of the Department.

11 I can just -- but we did not review the impacts

12 or potential impacts or the activity of dredging

13 that pond.

14 MR. CHANDLER: Thank you, sir.

15 CROSS EXAMINATION BY MR. LAVENDER:

16 Q. Mr. Hightower, has the Department issued a 401

17 Certification for Nationwide Permit 39?

18 A. Yes, sir.

19 Q. Has the Department issued a 401 Certification for

20 Nationwide Permit 29?

21 A. Yes, sir.

22 Q. Do either of those -- did the Department include

23 conditions for each of those permits with its

24 certification? Do you have those?

25 A. Yes, sir.

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2 1 Q. -- authorization to proceed, including
3 2 mitigation?
4 3 A. Yes.
5 4 Q. Is that a condition of Nationwide 29 or 39?
6 5 A. Nationwide -- well, on Nationwide 29, if it's
7 6 over a tenth of an acre, you're required to
8 7 submit it, but only if it's over a tenth of an
9 8 acre. In this case ---
10 9 Q. That's 39?
11 10 A. It's 29.
12 11 Q. But 39 also requires that, then, does it not?
13 12 A. Right.
14 13 Q. These impacts, this fill, now, what's the
15 14 difference, if you know, between a 404 permit for
16 15 fill and a Section 10 Permit? Do you do 401
17 16 Certification for Section 10 Permits?
18 17 A. It's required to do a 401 Certification of a
19 18 Section 10 Permit.
20 19 Q. Do you know what that is?
21 20 A. Section 10 is Federal Navigable Water under
22 21 Section 10 of the Rivers and Harbors Act.
23 22 Q. Do you know whether Roper Pond is navigable water
24 23 under either South Carolina or US Navigable
25 24 water?
26 25 A. That is State Navigable water. It's not Section
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2 1 10 Navigable water.
3 2 Q. Would you hazard a guess whether it's a Section
4 3 10 Navigable water?
5 4 A. As I say, it's not a Section 10.
6 5 Q. So, it would not require a Section 10 Permit to
7 6 dredge?
8 7 A. That's correct.
9 8 Q. You know of no other state permit that would be
10 9 required to dredge, do you?
11 10 A. For this particular activity, no, sir.
12 11 Q. Or for this pond, to dredge this pond --
13 12 A. Not that I'm aware of.
14 13 Q. -- not the fill of .075 --
15 14 A. Right.
16 15 Q. -- but are you aware of any permit program in the
17 16 Department?
18 17 A. I'm not aware of any, no, sir.
19 18 Q. How long have you been with the Department?
20 19 A. I've been with the Department going on about 14
21 20 years.
22 21 Q. And you've worked in other program areas?
23 22 A. Yes.
24 23 Q. What's your background? What's your educational
25 24 background?
26 25 A. I have a BS in Biology from the University of
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1 A. What is being built on the property, I believe
2 because of the stormwater permitting and all of
3 that, is certainly something quite different than
4 what we had expected some five years ago, and I
5 don't -- rephrase your question and maybe I can
6 answer it better.
7
8 Q. No. I'm just trying to get to the heart of the
9 matter. I'm trying to understand if your
10 particular concern about this permit is what's
11 going to be done on the property and not how the
12 stormwater is going to be managed?
13
14 A. I would say that the stormwater management is
15 probably the biggest issue, because obviously,
16 that is what is going to impact all of us.
17
18 Q. So, if the stormwater is properly managed, then
19 it really doesn't matter what's on the property
20 if it conforms to the zoning, right?
21
22 A. Well, that's a whole other issue. The zoning, we
23 believe, was obtained improperly.
24
25 Q. Right. That's your opinion, but let me ask you
26 this, is the Roper Pond property in the Town of
27 Arcadia Lakes?
28
29 A. It is not.
30
31 Q. Is it in the unincorporated area of Richland
32 County?

Seth Reice (Cross) Examination by Mr. Lavender

CREEL COURT REPORTING, INC.

ARCADIA LAKES V. SCDHEC - Vol. I

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Mr. Chandler, you know, is asking him about studying the effects beyond the condition of this pond, and it's going to go to the area that we have already expressed our concern, and that is, getting his opinion now of what effects this project will have on this pond, and we will continue to object to him being qualified to offer that testimony.

THE COURT: I'm going to overrule your objection, Mr. Lavender. He testified, I think, that the development is very much part of what he considers in everything that -- almost everything that he does. So, proceed.

Q. Do you remember my question?

A. Not exactly.

Q. Have you had an opportunity to study the impacts of things that man does to the land and how they affect the aquatic communities?

A. I spent the better part of the last four years studying sedimentation effects on aquatic life, particularly in streams.

Q. Now, have you had occasion to study the impacts of excavation of these types of areas and how

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that affects the aquatic systems?

A. No, because all the projects that I've studied are on the shore and the stuff that runs into the stream or the pond that has the impact. The excavation is something I have no direct experience with. It doesn't sound good, though.

Q. Now, in terms of your experience in dealing with these systems and man-made changes to these systems, do you have an opinion on what would happen if the level of this pond is changed through excavation?

MR. LAVENDER: Again, Your Honor,

I don't think the ground work has been laid or the factual basis has been laid for offering this opinion. So far, he's talked about sedimentation. He's indicated he didn't know anything about excavation impacts, and I don't believe he's indicated anything about lowering the water level of this pond.

THE COURT: Mr. Lavender, I will

be amazed if he were not to testify about the lowering of the water level.

MR. LAVENDER: Your Honor, I would

agree with you wholeheartedly, because I

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1 make sure that its context is clear. In your
2 first version, I'm reading starting on 17,
3 Question: "In your first version, you have a
4 heading, 'Projected Consequences of Proposed
5 Dredging of the Pond', so I figured you might
6 have done ..." -- Answer: "Let me just see what
7 I wrote". Line 21, Question: "And I think that
8 version is marked as Exhibit 5. I'm handing you
9 that one that's not marked." Answer: "Yeah,
10 okay. I don't disagree with that." And Line 24,
11 "But you took that out of your second version.
12 Is there a reason the whole section is not in the
13 second version?" Your answer that begins on the
14 top of Page 43 on Line 2, "I was trying to
15 restrict myself to what I actually knew as
16 opposed to my conjectures". Now, is that still
17 your answer with respect to why that section is
18 not in Version 2?
19 A. Yes.
20 Q. Okay. Now, let me call your attention to Version
21 3 that you've just given us which is Exhibit 22.
22 "It's back there. How did it miraculously come
23 back to the table? You've quit conjecture?"
24 A. Can I see my Version 3?
25 Q. Yes, sir. I'm sorry. I thought you had a copy

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1 of it, Exhibit 22.
2 A. The main point of my revision was to correct the
3 species' names, and I was not sensitive to
4 leaving that section in. I probably should have
5 taken it out.
6 Q. Well, I'm a bit sensitive to it since you've
7 opined about it, so my question then, is, is it
8 still conjecture, because that's what you said it
9 was during the course of your deposition?
10 MR. LAVENDER: I'll withdraw that
11 question.
12 Q. Were you provided a copy of the NPDES
13 Construction General Permit which is the subject
14 of this appeal?
15 A. I was not.
16 Q. Were you provided a copy of the The Stormwater
17 Pollution Prevention Plan, the SWPPP, in
18 connection with this?
19 A. No. I'm glad to know what SWPPP stands for,
20 though.
21 Q. So, you do not have any personal knowledge of the
22 particular Best Management Practices that are
23 authorized and to be employed in these land
24 disturbing activities associated with this
25 project?

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1 A. Not beyond what I heard this morning.
2 Q. And so, you didn't have any of that information
3 at the time of your visit?
4 A. That's correct.
5 Q. And you didn't have any of it before you got here
6 today?
7 A. That's correct.
8 Q. Now, I think I learned from you previously that
9 you are also not a Registered Professional
10 Engineer?
11 A. No. I'm an ecologist, not an engineer. Give me
12 a break.
13 Q. And you're not a licensed land surveyor?
14 A. I'm not a land licensed land surveyor.
15 Q. You're not a licensed landscape architect?
16 A. No. I'm not a landscape architect. I'm an
17 ecologist. I never claimed to be anything else.
18 Q. I just want to make that clear. So, you're not
19 in the business of preparing and submitting
20 Stormwater Pollution Prevention Plans?
21 A. No, but I've seen several.
22 Q. Just not this one?
23 A. Just not this one.
24 Q. Now, did you have any information, or have you
25 inquired into the nature of the proposed dredging

1
2 1 what practices were suggested.
3 2 Q. So, with respect to the development itself --
4 3 forget the excavation or the lowering of the
5 4 pond. With respect to the development itself,
6 5 you don't really -- you're not trying to offer an
7 6 opinion that the development of the project i.e.
8 7 the land disturbing activities that are being
9 8 conducted outside the pond will have any adverse
10 9 impact on this pond?
11 10 A. I'd be surprised if they didn't, but I'm not
12 11 offering that as a particular opinion.
13 12 Q. But your role in connection with -- again, I
14 13 apologize, but the group in North Carolina, is to
15 14 examine the types of Best Management Practices
16 15 and to recommend those practices for purposes of
17 16 employing them and permitting for stormwater or
18 17 other types of projects. Is that correct?
19 18 A. To help them set the guidelines for permitting,
20 19 correct.
21 20 Q. And do you understand that most construction or
22 21 stormwater discharges from development, that
23 22 those are not so much end of point numeric
24 23 numbers, but management practice at the site of
25 24 development? Do you know the different between
26 25 how a permit -- well, you said you worked on a
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1 A. Right. Dredging is just a removal. Dredging is
2 not an impact, so. So, the way I described
3 picking up material and moving it to an upland
4 location is not an impact.
5 Q. That's under Section 404. Are you commenting
6 about Section 10 of the Rivers and Harbors Act
7 under "Navigable Waters"? Did you also conclude
8 whether this was a navigable water in your mind?
9 A. Yes. I knew it was not a navigable water.
10 Q. Did the Jurisdictional Determination also
11 indicate that?
12 A. Yes.
13 Q. Did you have the occasion -- even though you
14 didn't do the delineation, did you have the
15 occasion to go back and look at the soil
16 conservation maps for this area?
17 A. Yes, I did.
18 MR. LAVENDER: I'm not going to
19 offer this, Your Honor, but at this point,
20 if I could just get Mr. Whatley here to
21 identify it.
22 MR. CHANDLER: I don't think I've
23 been provided any information on that.
24 MR. LAVENDER: I'm not saying I'm
25 offering anything. I just wanted to

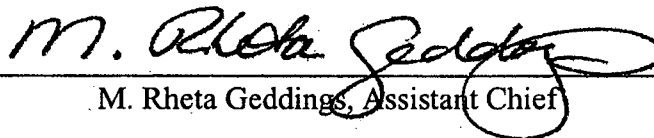
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2	1	Now, do you know anything about the
3	2	Stormwater Permit for this project? Have you
4	3	reviewed the plans?
5	4	A. I have not reviewed the plans.
6	5	Q. And you don't know what the plans are for
7	6	managing the stormwater?
8	7	A. I know that new stormwater plans, because I've
9	8	some input with that, will not affect this
10	9	property, and it's too bad that it doesn't,
11	10	because I think we're in a step in the right
12	11	direction. We're not there yet, but ...
13	12	Q. You're talking about something prospective?
14	13	A. Yes, prospective.
15	14	Q. But with respect to the permitted drawings and
16	15	the management practices for stormwater that are
17	16	required under the permit that's being contested,
18	17	you're not familiar with them?
19	18	A. Not presently.
20	19	Q. And with respect to the conditions of the lake
21	20	that you refer to, those conditions took place
22	21	before this project started, right?
23	22	A. Yes. This has been ongoing.
24	23	Q. Do you think those conditions resulted from
25	24	projects that did what they were supposed to do
26	25	or didn't what they were supposed to do?
27		
28		



South Carolina

**NPDES GENERAL PERMIT
FOR
STORM WATER DISCHARGES
FROM
LARGE AND SMALL CONSTRUCTION ACTIVITIES**

In compliance with the provisions of the SC Pollution Control Act (S.C. Code Sections 48-1-10 *et seq.*, 1976) and with the provisions of the Clean Water Act, 33 U.S.C. §1251 *et. seq.*, (hereafter CWA or the Act), as amended by the Water Quality Act of 1987, P.L. 100-4, Operators of large and small construction activities that are described in Subpart 1.3 of this National Pollutant Discharge Elimination System (NPDES) general permit, except for those activities excluded from authorization of discharge in Subpart 1.3.C of this permit, are authorized to discharge pollutants to Surface Waters of the State in accordance with the conditions and requirements set forth herein. Permit coverage is required from the "commencement of construction activities" until "final stabilization" as defined in Appendix A.


M. Rheta Geddings, Assistant Chief

Bureau of Water

Permit No.: SCR100000

Issued: August 1, 2006

Effective: September 1, 2006

Expires: August 31, 2011

1041 Pet. Ex. 3

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NPDES General Permit for Storm Water Discharges From Construction Activities

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PART 1: COVERAGE UNDER THIS PERMIT

1.1 Introduction

This Construction General Permit (CGP) authorizes storm water discharges from large and small construction activities where those discharges enter Surface Waters of the State or a municipal separate storm sewer system (MS4) leading to Surface Waters of the State subject to the conditions set forth in this permit. This permit also authorizes storm water discharges from any other construction activity designated by DHEC where DHEC makes that designation based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to Surface Waters of the State. This permit replaces the storm water construction general permit (NPDES # SCR100000) issued January 15, 1998. Any references to the 1998 CGP in this permit refer to that permit.

This permit is presented in a reader-friendly, plain language format. This permit uses the terms “you” and “your” to identify the person(s) who owns or operates a “facility” or “activity” as defined in Appendix A and who must comply with the conditions of this permit. This format should allow you, the permittee and Operator of a large or small construction activity, to easily locate and understand applicable requirements. The goal of this permit is to reduce or eliminate storm water pollution from construction activity by requiring that you plan and implement appropriate pollution control practices to protect water quality.

1.2 Permit Area

This permit covers all areas of South Carolina including Indian lands.

1.3 Eligibility

Permit eligibility is limited to discharges from “large” and “small” construction activity as defined in Appendix A. This general permit contains eligibility restrictions, as well as permit conditions and requirements. You may have to take certain actions to be eligible for coverage under this permit. In such cases, you must continue to satisfy those eligibility provisions to maintain permit authorization. If you do not meet the requirements that are a pre-condition to eligibility, then resulting discharges constitute un-permitted discharges. By contrast, if you do not comply with the requirements of the general permit, you may be in violation of the general permit for your otherwise eligible discharges.

A. Allowable Storm Water Discharges

Subject to compliance with the terms and conditions of this permit, you are authorized to discharge pollutants in:

1. Storm water associated with large and small construction activity as defined in Appendix A;
2. Storm water discharges designated by DHEC as needing a storm water permit under §122.26(a)(1)(v) or §122.26(b)(15)(ii) of SC Regulation 61-9;

3. Discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:
 - a. The support activity is directly related to the construction Site required to have NPDES permit coverage for discharges of storm water associated with construction activity;
 - b. The support activity is not a commercial operation serving multiple unrelated construction Projects by different Operators, and does not operate beyond the completion of the construction activity at the last construction Project it supports; and
 - c. Appropriate controls and measures are identified in a Storm Water Pollution Prevention Plan (SWPPP) covering the discharges from the support activity areas.
4. Discharges composed of allowable discharges listed in Subparts 1.3.A and 1.3.B commingled with a discharge authorized by a different NPDES permit and/or a discharge that does not require NPDES permit authorization.

B. Allowable Non-Storm Water Discharges

You are authorized for the following non-storm water discharges, provided the non-storm water component of the discharge is in compliance with Subpart 3.5 (Non-Storm Water Discharge Management):

1. Discharges from fire-fighting activities;
2. Fire hydrant flushings;
3. Waters used to wash vehicles where detergents are not used;
4. Water used to control dust in accordance with Subpart 3.4.J;
5. Potable water including uncontaminated water line flushings;
6. Routine external building wash down that does not use detergents;
7. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used;
8. Uncontaminated air conditioning or compressor condensate;
9. Uncontaminated ground water or spring water;
10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;
11. Uncontaminated excavation dewatering;

12. Landscape irrigation.

C. Limitations on Coverage

1. This permit does not authorize post-construction discharges that originate from the Site after construction activities have been completed and the Site has achieved final stabilization, including any temporary support activity. Post-construction storm water discharges from industrial sites may need to be covered by a separate NPDES permit.
2. This permit does not authorize storm water discharges associated with construction activity that have been covered under an individual permit or required to obtain coverage under an alternative general permit in accordance with Subpart 4.2.
3. This permit does not authorize discharges that DHEC, prior to authorization under this permit, determines will cause, have the reasonable potential to cause, or contribute to a violation of any applicable water quality standard. Where such a determination is made prior to authorization, DHEC may notify you that an individual permit application is necessary in accordance with Subpart 4.2. However, DHEC may authorize your coverage under this permit after you have included appropriate controls and implementation procedures in your SWPPP designed to bring your discharge into compliance with water quality standards.
4. Discharging into Receiving Waters With an Approved Total Maximum Daily Load Analysis
 - a. You are not eligible for coverage under this permit for discharges of pollutants of concern to waters for which there is a total maximum daily load (TMDL) in effect that is applicable stormwater construction discharges unless you incorporate into your SWPPP measures or controls that are consistent with the assumptions and requirements of such TMDL. To be eligible for coverage under this general permit, you must incorporate into your SWPPP any conditions applicable to your discharges necessary for consistency with the assumptions and requirements of such TMDL. If a specific wasteload allocation has been established that would apply to your discharge, you must incorporate that allocation into your SWPPP and implement necessary steps to meet that allocation.
 - b. In a situation where a TMDL has specified a general wasteload allocation applicable to construction storm water discharges, but no specific requirements for construction Sites have been identified in the TMDL, you should consult with the Department to confirm that adherence to a SWPPP that meets the requirements of the CGP will be consistent with the TMDL. Where a TMDL has not specified a wasteload allocation applicable to construction storm water discharges, but has not specifically excluded these discharges, adherence to a SWPPP that meets the requirements of the CGP will generally be assumed to be consistent with the approved TMDL. If the TMDL specifically precludes such discharges, the Operator is not eligible for coverage under the CGP.

1.4 Waivers for Certain Small Construction Activities

Three scenarios exist under which small construction activities (see definition in Appendix A) may be waived from the NPDES permitting requirements detailed in this CGP. These exemptions are predicated on certain criteria being met and proper notification procedures being followed. Details of the waiver options and procedures for requesting a waiver are provided in Appendix B.

PART 2: AUTHORIZATION FOR DISCHARGES OF STORM WATER FROM CONSTRUCTION ACTIVITY

Except for Projects that are located in Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, or Jasper County and disturb 0.5 acres or less, to obtain coverage under this CGP, you, the Owner or Operator, must prepare and submit a complete and accurate Notice of Intent (NOI) and the other required information, as described in this Part. Discharges will not be authorized if your NOI is incomplete or inaccurate or if you are not eligible for permit coverage. Unless the Department specifically requests that an NOI be submitted, all Projects that are located in Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, or Jasper County and disturb 0.5 acres or less are not required to submit an NOI, but are automatically granted coverage under this general permit provided the appropriate Best Management Practices are being used.

2.1 Authorization to Discharge Date

This permit is effective on September 1, 2006 and is effective for five years, expiring at midnight on August 31, 2011.

A. For all Projects except for SC Department of Transportation Projects.

1. When your SWPPP is reviewed and approved by an implementing entity under SC Regulation 72-300 (if applicable); another local government program acceptable to DHEC; or, when applicable, the owner of the municipal separate storm sewer system that receives your storm water discharges, and if DHEC does not send a letter within 7 business days of the receipt of a complete NOI authorizing coverage, denying coverage, requesting additional information or advising you that DHEC has decided to also review the SWPPP, coverage under this CGP is automatically granted.
2. When DHEC reviews your SWPPP, if DHEC does not send a letter authorizing coverage, denying coverage, or requesting additional information within 20 days of the receipt of the complete NOI, coverage under this CGP is automatically granted.

B. For SC Department of Transportation Projects, your SWPPP must be submitted to DHEC. DHEC may require review and approval of your SWPPP prior to granting you coverage under this CGP. If DHEC does not send a letter authorizing coverage, denying coverage, or advising that a review of the SWPPP will take place within 10 business days of receipt of the NOI, coverage will automatically be granted.

C. If a US Army Corps of Engineers' 404 Permit is required by Section 404 of the CWA Act for permanent or temporary storm water control structures, DHEC may not grant you coverage under this CGP until the 404 Permit has been issued and is effective.

1. In situations where the 404 Permit decision will not affect the implementation of the SWPPP, the Department will issue approval of the SWPPP and grant coverage under this permit before the 404 Permit decision is effective.
 2. In situations where the 404 Permit decision will affect only a portion of the "Project Area", the Department may grant the unaffected portion of the "Project Area" coverage under this permit. The remaining portion of the "Project Area" will be considered after the 404 Permit is issued and effective.
 3. In situations where the entire "Project Area" is affected by the 404 Permit decision, the Department will not grant coverage under this general permit until the 404 Permit decision is issued and effective.
- D. When permanent or temporary structures will be placed in State Navigable Waters, the Department will address any issues related to State Navigable Waters' Program under SC Regulation 19-450 during the review of the SWPPP rather than requiring a separate State Navigable Waters Permit.
- E. DHEC may deny or delay your coverage based on eligibility considerations of Subpart 1.3 (e.g., TMDL concerns).

2.2 Notice of Intent Contents and Other Required Information

- A. You must use the NOI form (or a photocopy thereof) provided by the Department. This form will be made available on our WEB site at:

<http://www.scdhec.net/eqc/admin/html/eqforms.html#Water>

If DHEC makes other NOI forms available (either directly, by public notice, or by making information available on the Internet), you may take advantage of any of those options to satisfy the NOI use requirements of this Subpart.

- B. You must provide the following information on the NOI form:
1. Operator name, address, telephone number, and Employer Identification Number (EIN) as established by the U.S. Internal Revenue Service;
 2. Project/Site name, address, county or similar governmental subdivision, and latitude/longitude of your construction Project or Site;
 3. Whether your Site is located in Indian country and if so, the name of the Reservation, if applicable;
 4. Whether the SWPPP has been prepared in accordance with this CGP;
 5. Name of the Water(s) of the State into which your Site discharges;

6. Indication whether your discharge is consistent with the assumptions and requirements of applicable TMDLs;
 7. Estimated dates of commencement of construction activity and final stabilization (i.e., Project start and completion dates);
 8. Total acreage (to the nearest tenth acre) to be disturbed for which you are requesting permit coverage; and
 9. A certification statement, signed and dated by an authorized representative as defined in §122.22 of SC Regulation 61-9 (see Appendix C of this permit), and the name and title of that authorized representative.
- C. The following information must also be submitted with the NOI form for the NOI application to be complete:
1. The fee for coverage under this CGP. A check made payable to SC DHEC must be submitted. SC Regulation 61-30, Environmental Protection Fees, governs this fee. At the time of issuance of this CGP the fee was \$125.
 2. a. For Projects not owned or managed by the SC Department of Transportation:
 - i. If approval of the SWPPP is required under either SC Regulation 72-300 or an applicable MS4 Program or other local program acceptable to DHEC:
 - (1) A copy of the State, MS4, or local application;
 - (2) For non-linear Projects, a copy of the approved SWPPP with the supporting documents and calculations. For linear Projects, this is only applicable if specifically requested. This information is not required if there is a written agreement or memorandum of understanding between DHEC and the Operator of the applicable MS4 or other local program acceptable to DHEC that addresses the availability of the approved SWPPP to DHEC through the local entity that maintains a copy of the approved SWPPP;
 - (3) A copy of the approval of the SWPPP from the entity implementing SC Regulation 72-300 or an applicable MS4 Program or other local program acceptable to DHEC; and
 - (4) If DHEC's Bureau of Water also reviews your SWPPP prior to granting coverage under this CGP, the NPDES plan review fee of \$100 per disturbed acre not to exceed \$2,000.
 - ii. If approval of the SWPPP is not required under SC Regulation 72-300 or an applicable MS4 program or other local program acceptable to DHEC:

- (1) Three copies of the SWPPP;
- (2) For non-linear Projects, the supporting calculations and documents. Linear Projects must submit supporting calculations and documents when requested; and
- (3) The plan review fee of \$100 per disturbed acre not to exceed \$2,000.

b. For SC Department of Transportation Projects:

- i. The SWPPP;
- ii. The supporting calculations and documents, when requested; and
- iii. The plan review fee of \$100 per disturbed acre not to exceed to \$2000. The plan review fee is applicable only if DHEC reviews your SWPPP prior to granting coverage under this CGP.

3. For Projects located in Horry, Georgetown, Berkeley, Charleston, Dorchester, Colleton, Beaufort, or Jasper County, a copy of a letter from DHEC's Office of Ocean and Coastal Resource Management that states the proposed Project is consistent with the Coastal Zone Management Plan.

2.3 Submission Deadlines

- A. New Projects: Except as given in the first paragraph of Part 2, to obtain coverage under this permit, you must submit a complete and accurate NOI with the other required information and be authorized consistent with Subpart 2.1 prior to your commencement of construction activities.
- B. Permitted Ongoing Projects: If you previously received authorization to discharge for the current phase of your Project under the 1998 CGP, you are automatically covered under this permit without resubmitting an NOI.
 1. You must comply with the terms and conditions of the 1998 CGP under which you were previously authorized.
 2. Future phases of the Project must submit an NOI to be covered under this CGP.
- C. Un-permitted Ongoing Projects (only applicable for first 90 days after this permit is issued): If you previously did not receive authorization to discharge for your Project under the 1998 CGP and you wish to obtain coverage under this permit:
 1. Except as noted in 2.3.C.2, you must:
 - a. Submit an NOI with the required other information within 90 days of the issuance date of this permit; and

- b. Until you are authorized under this permit consistent with Subpart 2.1, comply with an interim Storm Water Pollution Prevention Plan (SWPPP) consistent with the 1998 CGP.
 2. If you meet the termination of coverage requirements in accordance with Subpart 5.1 within 90 days of the issuance date of this permit (e.g., construction will be finished and final stabilization achieved) you must comply with an interim Storm Water Pollution Prevention Plan (SWPPP) consistent with the 1998 CGP until permit coverage is no longer required.
- D. *Late Notifications:* Operators are not prohibited from submitting NOIs after initiating clearing, grading, excavation activities, or other construction activities. When a late NOI is submitted, authorization for discharges occurs consistent with Subpart 2.1. DHEC may take enforcement for any unpermitted discharge or violations of laws or regulations that occur between the time construction commenced and discharge authorization.

2.4 Where to Submit

You must send your complete and accurate NOI application to DHEC at the following address:

Construction Storm Water Notice of Intent
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

PART 3: STORM WATER POLLUTION PREVENTION PLANS (SWPPPS)

3.1 Storm Water Pollution Prevention Plan Framework

- A. A SWPPP must be prepared prior to submission of an NOI as required in Part 2. At least one SWPPP must be developed for each construction Project covered by this permit and a qualified individual in accordance with good engineering practices must prepare such SWPPP. For Projects that disturb more than 2 acres, the SWPPP must be prepared, amended when necessary, certified, and stamped by a qualified individual who is licensed as follows:
1. Registered professional engineers as described in Title 40, Chapter 22;
 2. Registered landscape architects as described in Title 40, Chapter 28, Section 10, item (b);
 3. Tier B land surveyors as described in Title 40, Chapter 22; or
 4. Federal government employees as described by Title 40, Chapter 22, Section 280(A)(3).
- B. The SWPPP must:
1. Identify all potential sources of pollution which may reasonably be expected to affect the

quality of storm water discharges from the construction Site;

2. Describe practices to be used to reduce pollutants in storm water discharges from the construction Site; and
 3. Assure compliance with the terms and conditions of this permit when properly implemented.
- C. Once a definable area has been finally stabilized, you may mark this on your SWPPP and no further SWPPP or inspection requirements apply to that portion of the Site (e.g., earth-disturbing activities around one of three buildings in a complex are done and the area is finally stabilized, one mile of a roadway or pipeline Project is done and finally stabilized, etc).
- D. You must implement the SWPPP as written from commencement of construction activity until final stabilization is complete.

3.2 Requirements for Different Types of Operators

You may meet one or both of the operational control components in the definition of Operator found in Appendix A. Subpart 3.2.C applies to all permittees having control over only a portion of a construction Site.

- A. If you have "operational control over construction plans and specifications" as defined in the definition of "Operator" in Appendix A, you must ensure that:
1. The specifications for the BMPs meet the minimum requirements of this Subpart and all other applicable permit conditions;
 2. The SWPPP indicates the areas of the Site where the Operator has operational control over specifications, including the ability to make modifications in specifications and plans including the SWPPP;
 3. All other co-permittees implementing portions of the SWPPP (or their own SWPPP) who may be impacted by a change to the construction plan are notified of such changes in a timely manner;
 4. The SWPPP indicates the name(s) of the Operator(s) with day-to-day operational control of those activities necessary to ensure compliance with the SWPPP or other permit conditions; and
 5. For non-linear Projects that disturb 10 acres or more, you must conduct a pre-construction conference with each co-permittee and contractor who is not a co-permittee in person at the Site prior to that co-permittee or contractor performing construction related work intended to disturb soils at the Site that may affect the implementation of the SWPPP unless it is justified in the SWPPP and approved by the Department to conduct the conference off-site. This pre-construction conference can be with all contractors or the pre-conference may be conducted separately with one or more contractors present so that all contractors who perform land

disturbing activity or construction activity are aware of the requirements of the SWPPP before they start construction.

6. For linear construction of roads or utilities (such as roads built by the SC Department of Transportation and utility construction including electrical power lines, gas lines, main sewer trunk lines, and water distribution lines that are not part of a development) neither of which are a part of a subdivision of other type of development, the conferences with each co-permittee and contractors who are not co-permittees may be conducted off-site unless specifically required by the Department in writing to be conducted onsite. The purpose of the conference is for the preparer of the SWPPP, someone with a registration equivalent to that of the preparer of the SWPPP, or the person with operational control of the plans and specifications to explain the whole SWPPP to the co-permittees and contractors who are not co-permittees and to specifically go over the areas of the SWPPP that are related to the work to be performed by the co-permittee and contractor who is not a co-permittee.

B. If you have "operational control over day-to-day activities" as defined in the definition of "Operator" in Appendix A at the Project that are necessary to ensure compliance with the SWPPP or other Permit conditions, you must ensure that:

1. The SWPPP identifies the parties responsible for implementation of control measures identified in the plan;
2. The SWPPP indicates areas of the Project where you have operational control over day-to-day activities;
3. The SWPPP indicates the name of the party(ies) with operational control over Project specifications (including the ability to make modifications in specifications); and
4. All appropriate contractors have signed either the Co-permittee or non Co-permittee certification and copies of these certifications are in the SWPPP.

C. If you have operational control over only a portion of a larger Project (e.g., one of four homebuilders in a subdivision), you are responsible for compliance with all applicable terms and conditions of this permit as it relates to your activities on your portion of the construction Site, and implementation of best management practices (BMPs) and other controls required by the SWPPP. You must ensure either directly or through coordination with other permittees, that your activities do not render another party's pollution control ineffective. You must either implement your portion of a common SWPPP or develop and implement your own SWPPP.

For more effective coordination of BMPs and opportunities for cost sharing, a cooperative effort by the different Operators at a Site to prepare and participate in a comprehensive SWPPP is encouraged. Individual Operators at a Site may, but are not required to, develop separate SWPPPs that cover only their portion of the Project provided reference is made to other Operators at the Site. In instances where there is more than one SWPPP for a Site, cooperation between the permittees is encouraged to ensure the storm water discharge controls and other measures are consistent with one another.

D. Contractor Certifications and Co-permittee Status.

1. The Owner of a Project, as the applicant for the NPDES permit, is responsible for compliance with all the terms and conditions of this permit and the SWPPP. The Owner may rely on other Persons to assist in compliance with this permit and the SWPPP. As such, the Project Owner and contractors and subcontractors who will conduct construction activities intended to disturb soils may elect to be Co-permittees. Further, all contractors who will conduct construction related work intended to disturb soils at the Site that may affect implementation of the SWPPP, regardless of whether or not they are Co-permittees, must be listed in the SWPPP and attend a pre-construction conference before they can conduct construction activity at the Site.
2. All contractors and subcontractors identified in the plan as Co-permittees must sign a copy of the certification statement given below:

"I certify by my signature below that: a) for Sites that disturb 10 or more acres, I participated in a pre-construction conference onsite or, when allowed, offsite with the individual who is responsible for the operational control of the Storm Water Pollution Prevention Plan (SWPPP); and b) I accept the terms and conditions of SWPPP as required by the general National Pollutant Discharge Elimination System (NPDES permit number SCR100000) issued to the Owner/Operator of the construction activity for which I have been contracted to perform construction related professional services. Further, by my signature below, I understand that I am becoming a Co-permittee with the Owner/Operator and other contractors that have become Co-permittees to the general NPDES permit issued to the Owner/Operator of the facility for which I have been contracted to perform professional construction services. As a Co-permittee, I understand that I, and my company, as the case may be, am legally accountable to the SC Department of Health and Environmental Control (DHEC), under the authorities of the CWA and the SC Pollution Control Act, to ensure compliance with the terms and conditions of the SWPPP. I also understand that DHEC enforcement actions may be taken against any specific Co-permittee or combination of Co-permittees if the terms and conditions of the SWPPP are not met. Therefore, having understood the above information, I am signing this certification and am receiving Co-permittee status to the aforementioned general NPDES permit."

3. All contractors and subcontractors identified in the plan to perform construction related work intended to disturb soils at the Site that may affect the implementation of the SWPPP but who will not be Co-permittees must sign the certification statement given below:

"I certify by my signature below that: a) for Sites that disturb 10 or more acres, I participated in a pre-construction conference onsite or, when allowed, offsite with the individual who is responsible for the operational control of the Storm Water Pollution Prevention Plan (SWPPP); and b) I understand the terms and conditions of SWPPP as required by the general National Pollutant Discharge Elimination System Permit (NPDES permit number SCR100000) issued to the Owner/Operator of the construction activity for which I have been contracted to perform construction related professional services. I understand that I, and my company, as the case may be, may be legally accountable to the SC Department of Health and Environmental Control (DHEC), under the authorities of the CWA and the SC Pollution Control Act, to ensure

compliance with the terms and conditions of the SWPPP.”

4. The date of the signature, the title of the Person providing the signature, and the name, address, and telephone number of the contracted firm, shall also be provided. In the event the owner amends the SWPPP, such amendments should be incorporated to the plan and the contractors and subcontractors should acknowledge by signature. Co-permittees who have completed their work prior to the amendments do not have to sign the amendments.
5. The signatory requirements of §122.22 of South Carolina Regulation 61-9 (see Appendix C of this permit) are applicable to each contracted entity that must sign one of the contractor's certification statements. Upon signing the Co-permittee certification, the contractor is a Co-permittee and becomes accountable to DHEC to ensure the terms and conditions of this permit are implemented. All Co-permittees are subject to DHEC enforcement actions if permit conditions are not met. Enforcement actions may be taken against any specific Co-permittee or combination of Co-permittee, with consideration given to the party responsible for the violation. The Owner/Operator submitting the NOI shall retain all contractor certifications for at least three years after a contractor has completed work at the Site. Contractors who sign the certification for being a Co-permittee may be liable to DHEC enforcement actions related to their work at the Site. All certifications must be included in the storm water pollution prevention plan.
6. Copies of all contractor certifications and a copy of this permit shall be kept with the SWPPP. For construction Sites that disturb 10 acres or more, the first monthly report or copies of the first month's inspection forms (refer to Part 3.10.H) submitted by the Owner/Operator to the Department after construction begins on the facility must include the original and one copy of all Co-permittee and other contractor certifications. If additional Co-permittees or other contractors are added later on, the original and one copy of the additional Co-permittee or contractor certifications must be submitted along with the monthly reports or copies of the inspection forms submitted after the signing of the certification. For construction Sites that disturb less than 10 acres, the Owner/Operator of the facility covered by this permit shall make all contractor certifications available to DHEC upon request. The Department may on a case-by-case basis require the submittal of the Co-permittee and other contractor certifications.

3.3 Pollution Prevention Plan Contents: Site and Activity Description

- A. The SWPPP must identify all Operators for the Project Site, and the areas of the Site over which each Operator has control.
- B. The SWPPP must describe the nature of the construction activity, including:
 1. The function of the Project (e.g., low density residential, shopping mall, highway, etc.);
 2. The intended sequence and timing of planned major activities that disturb soils such as clearing and grubbing, initial and final grading, and cut and fill activities at the Site (except for SC Department of Transportation Projects, unless known at the time the SWPPP is prepared);

3. Estimates of the total area expected to be disturbed by excavation, grading, or other construction activities, including dedicated off-site borrow and fill areas; and
4. A general location map (e.g., USGS quadrangle map, a portion of a city or county map, or other map) with enough detail to identify the location of the construction Site and Surface Waters of the State within one mile of the Site.

C. The SWPPP must contain a legible Site map, showing the entire Site, identifying:

1. Direction(s) of storm water flow and approximate slopes anticipated after major grading activities;
2. Areas of soil disturbance and areas that will not be disturbed;
3. Locations of structural and nonstructural BMPs identified in the SWPPP;
4. Locations where stabilization practices are expected to occur;
5. Locations of off-site material, waste, borrow or construction equipment storage areas, excluding rolloff containers (not applicable to SC Department of Transportation Projects);
6. Locations of all Surface Waters of the State (including wetlands);
7. Locations where storm water discharges to a surface water; and
8. Areas where final stabilization has been accomplished and no further construction-phase permit requirements apply.

D. The SWPPP must describe and identify the location and description of any storm water discharge associated with industrial activity other than construction at the Site. This includes storm water discharges from dedicated asphalt plants and dedicated concrete plants, that are covered by this permit.

3.4 Pollution Prevention Plan Contents: Controls to Reduce Pollutants

- A. The SWPPP must include a description of all pollution control measures (i.e., BMPs) that will be implemented as part of the construction activity to control pollutants in storm water discharges. For each major activity identified in the Project description, the SWPPP must clearly describe control measures necessary to comply with this permit and applicable laws and regulations, the general sequence during the construction process in which the measures will be implemented, and which Operator is responsible for the control measure's implementation.
- B. The SWPPP must include a description of interim and permanent stabilization practices for the Site, including a schedule of when the practices will be implemented. Site plans should ensure that existing vegetation is preserved where possible and that disturbed portions of the Site are stabilized. Use of impervious surfaces for stabilization should be avoided.

C. For Sites with storm water discharges to a receiving water that is listed as impaired in South Carolina's 303(d) List of Impaired Waters the following requirements apply:

1. If a TMDL that is applicable to stormwater construction discharges has been established and is in effect, the requirements of Part 1.3.C.4 must be met.
2. If a TMDL has not been established or is not in effect, you must ensure that your SWPPP does not allow storm water discharges that will contribute to the violations of the water quality standards. To accomplish this, you must:
 - a. First determine whether or not your discharge may contain any pollutant that has caused the impairment.
 - b. If your storm water discharges will not contain the pollutant(s) of concern, no additional requirements are necessary.
 - c. If your discharge will contain the pollutant(s) of concern, you must carefully evaluate your selected BMPs and their performance to ensure that stormwater discharges will not contribute to or cause a violation of water quality standards. For Projects that disturb 25 acres or more, your SWPPP must contain a written quantitative and qualitative assessment that the BMPs selected will control your stormwater discharges so that they will not contribute to or cause a violation of water quality standards. For more information on this subject, please see the DHEC publication entitled "Antidegradation for Activities Contributing to NonPoint Source Pollution to Impaired Waters." This publication can be downloaded at the following DHEC WEB site:

www.scdhec.gov/eqc/water/pubs/antidegnps.pdf

3. A copy of the most current 303(d) List of Impaired Waters can be obtained from:

Water Quality Division
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

or it can be downloaded at the following DHEC WEB site:

<http://www.scdhec.gov/water/tmdl/>

D. The following records must be maintained as part of the SWPPP:

1. Dates when major grading activities as identified in Part 3.3.B occur;
2. Dates when construction activities temporarily or permanently cease on a portion of the Site.

Notes: Temporarily ceasing construction means ceasing construction on a portion of the Site for more than 14 days. A portion of the Site, means but is not limited to, portions of the Site with dedicated controls (see also Subpart 3.13.D of this permit); and

3. Dates when stabilization measures are initiated.

Electronic storage of the above mentioned information is acceptable provided that it is referenced in the SWPPP and it is readily available.

- E. The SWPPP must include a description of structural practices: to divert flows from exposed soils; to retain/detain flows; or to otherwise limit runoff and the discharge of pollutants from exposed areas of the Site. Placement of structural practices in floodplains must be in accordance with applicable regulations.
- F. The SWPPP must include a description of all post-construction storm water management measures that will be installed during the construction process to control pollutants in storm water discharges after construction operations have been completed.
- G. Structural measures should be placed on upland soils to the degree practicable. Such measures must be designed and installed in compliance with applicable federal, local, state or tribal requirements.
 - 1. Permanent structural controls can only be placed in Surface Waters of the State (including wetlands and ephemeral and intermittent streams) if the US Army Corps of Engineers issues a permit for the activity under Section 404 of the CWA. When State Navigable Waters may be affected, the SWPPP must include appropriate requirements applicable to State Navigable Waters under SC Regulation 19-450.
 - 2. Temporary structural controls can only be placed in perennial Surface Waters of the State if the US Army Corps of Engineers issues a permit for the activity under Section 404 of the CWA. When State Navigable Waters may be affected, the SWPPP must include appropriate requirements applicable to State Navigable Waters under SC Regulation 19-450. All temporary structural controls placed in perennial streams must be removed after final stabilization has been accomplished.
 - 3. Temporary structural controls may only be placed in ephemeral and intermittent streams when there is no other feasible alternative. All temporary structural controls placed in ephemeral and intermittent streams must be removed after final stabilization has been accomplished. After removal of the temporary structural controls, the ephemeral or intermittent stream must be restored to its original condition.
- H. The SWPPP must describe measures to prevent the discharge of building or other similar materials to Surface Waters of the State, except as authorized by a permit issued under section 404 of the CWA.
- I. The SWPPP must describe measures to minimize, to the extent practicable, off-site vehicle

tracking of sediments onto paved surfaces and the generation of dust.

- J. The SWPPP must include a description of construction and waste materials expected to be stored on-site with updates as appropriate. The SWPPP must also include a description of controls, including storage practices such as rolloff containers, to minimize exposure of the materials to storm water, and spill prevention and response practices.
- K. The SWPPP must include a description of pollutant sources from areas other than construction (including storm water discharges from dedicated asphalt plants and dedicated concrete plants), and a description of controls and measures that will be implemented at those Sites to minimize pollutant discharges. If these areas are located off the construction area on property not owned by the owner of the Project, they can be either included in the SWPPP for the construction Site with the owner of the dedicated facility being a Co-permittee under the construction general permit or the owner of the dedicated facility can obtain: 1) his own construction general permit coverage to build the dedicated facility; and 2) his own coverage under the Stormwater General Permit for Industrial Activity, Permit # SCR000000 or other appropriate permit. The method(s) selected to deal with dedicated facility areas must be addressed in the SWPPP.

3.5 Management of Non-Storm Water Discharges Allowed Under Part 1.3.B

The SWPPP must identify all allowable sources of non-storm water discharges listed in Subpart 1.3.B of this permit, except for flows from fire fighting activities, that are combined with storm water discharges associated with construction activity at the Site. Non-storm water discharges should be eliminated or reduced to the extent feasible. The SWPPP must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge allowed under Part 1.3.B.

3.6 Maintenance of Controls

- A. All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition. If Site inspections required by Subpart 3.10 identify BMPs that are not operating effectively, maintenance must be performed as soon as practical or as reasonably possible and before the next storm event whenever practicable to maintain the continued effectiveness of storm water controls.
- B. If existing BMPs need to be modified or if additional BMPs are necessary to comply with the requirements of this permit and/or SC's Water Quality Standards, implementation must be completed before the next storm event whenever practicable. If implementation before the next storm event is impracticable, the situation must be documented in the SWPPP and alternative BMPs must be implemented as soon as reasonably possible.
- C. Sediment from sediment traps or sedimentation ponds must be removed as indicated in the SWPPP or when the design capacity has been reduced by 50 percent, which ever occurs first.

3.7 Reserved

3.8 Copy of Permit Requirements

Copies of this permit, the signed and certified NOI form that was submitted to DHEC, the Co-permittee certifications required by Subpart 3.2.D, and, if applicable, any local approval must be included in the SWPPP. Also, upon receipt, a copy of the letter from the DHEC authorizing your coverage under this CGP must also be included as a component of the SWPPP.

3.9 Applicable State, Tribal, or Local Programs

The SWPPP must be consistent with all applicable federal, state, tribal, or local requirements for soil and erosion control and storm water management, including updates to the SWPPP as necessary to reflect any revisions to applicable federal, state, tribal, or local requirements for soil and erosion control. Except for Projects exempted from the requirements of SC Regulation 72-300 by Section 72-302 of SC Regulation 72-300, all Projects located outside MS4s must after June 30, 2006 meet the minimum standards and criteria of South Carolina Regulation 72-300.

3.10 Inspections

- A. After construction begins, inspections must be conducted at a minimum in accordance with one of the two schedules listed below and you must specify in your SWPPP which schedule you will be following.
 - 1. At least once every 7 calendar days, or
 - 2. At least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater.
- B. Inspection frequency may be reduced to at least once every month if the entire Site is temporarily stabilized.
- C. The Department on a case-by-case basis may require any permittee who has coverage under this CGP to conduct inspections on a more frequent basis than prescribed in this CGP. Examples include, but are not limited to, permittees who have compliance problems and permittees whose Site's stormwater discharges to environmental sensitive waters (such as waters classified as Trout Waters, Outstanding Resource Waters, Shellfish Harvesting Waters, etc.).
- D. Inspections must be conducted by qualified personnel (provided by the Operator or cooperatively by multiple Operators). For Projects that disturb more than 2 acres, "Qualified personnel" means a person knowledgeable in the principles and practice of erosion and sediment controls who possesses the skills to assess conditions at the construction Site that could impact storm water quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the construction activity. After June 30, 2006, this person must be either the preparer of the SWPPP or an individual who is under the direct supervision of the preparer of the approved SWPPP and who meets the requirements in this paragraph or an individual who has been certified through a Construction Site Inspector Certification Course that has been approved by DHEC. Inspections may also be conducted by a

person with a registration equivalent to the registration of the preparer of the SWPPP and who meets the qualifications of this paragraph or an individual who is under the direct supervision of the person with an equivalent registration and who meets the requirements in this paragraph. For Projects that disturb 2 acres or less, the permittee or his designee may perform these inspections provided the preparer of the SWPPP or someone with a registration equivalent to that of the preparer of the SWPPP explains the SWPPP including implementation along with the inspection requirements to the person who will be conducting the inspections.

- E. Inspections must include all areas of the Site disturbed by construction activity and areas used for storage of materials that are exposed to precipitation. Inspectors must look for evidence of, or the potential for, pollutants entering the storm water conveyance system. Sedimentation and erosion control measures identified in the SWPPP must be observed to ensure proper operation. Discharge locations must be inspected to ascertain whether erosion control measures are effective in preventing violations to SC's Water Quality Standards, where accessible. Where discharge locations are inaccessible, nearby downstream locations must be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the Site must be inspected for evidence of off-site sediment tracking.
- F. Utility line installation, pipeline construction, and other examples of long, narrow, linear construction activities may limit the access of inspection personnel to the areas described in Subpart 3.10.E above. Inspection of these areas could require that vehicles compromise temporarily or even permanently stabilized areas, cause additional disturbance of soils, and increase the potential for erosion. In these circumstances, controls must be inspected on the same frequencies as other construction Projects, but representative inspections may be performed. For representative inspections, personnel must inspect controls along the construction Site for 0.25 mile above and below each access point where a roadway, undisturbed right-of-way, or other similar feature intersects the construction Site and allows access to the areas described above. The conditions of the controls along each inspected 0.25 mile segment may be considered as representative of the condition of controls along that reach extending from the end of the 0.25 mile segment to either the end of the next 0.25 mile inspected segment, or to the end of the Project, whichever occurs first. Representative inspections must include any areas where stormwater discharges to environmental sensitive waters (such as waters classified as Trout Waters, Outstanding Resource Waters, Shellfish Harvesting Waters, etc.).
- G. For each inspection required above, you must complete an inspection report. At a minimum, the inspection report must include:
 - 1. The inspection date;
 - 2. Names, titles, and, if not previously given in an inspection report, the qualifications of personnel making the inspection, unless those qualifications change;
 - 3. Weather information for the period since the last inspection (or since commencement of construction activity if the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether you know if any discharges occurred;

4. Weather information and a description of any discharges occurring at the time of the inspection;
5. Location(s) of discharges of sediment or other pollutants from the Site;
6. Location(s) of BMPs that need maintenance;
7. Location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
8. Location(s) where additional BMPs are needed that did not exist at the time of inspection; and
9. Corrective action required including any changes to the SWPPP necessary and implementation dates.

A record of each inspection and of any actions taken in accordance with this Part must be retained as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The report must be signed in accordance with §122.22 of SC Regulation 61-9 (see Appendix C of this permit).

H. For construction Sites disturbing 10 acres or more, a monthly report must be submitted to DHEC and, if applicable, the appropriate MS4. The report must be signed in accordance with §122.22 of SC Regulation 61-9 (see Appendix C of this permit). In lieu of submitting monthly reports, the reports may be stored electronically in a manner in which DHEC personnel will have access to review this data, such as on a dedicated website that DHEC personnel will have unlimited access to. Other forms of electronic storage of monthly reports may be utilized once arrangements have been made with DHEC. For construction Sites that disturb less than 10 acres, DHEC may require monthly reports to be submitted on either a Project-by-Project basis or Operator-by-Operator basis. If the information required in this Subpart is already included on the inspection forms, only copies of the inspection forms need to be submitted to DHEC. If the information required in this Subpart is not included on the inspection form, then the monthly reports must include, at a minimum, the following additional information:

1. A summary of the results of the inspections conducted during the month;
2. A listing of all deficiencies noted during inspections with the date the deficiency was noted;
3. For each deficiency noted that required corrective action:
 - a. A listing of the name(s), address(es), and telephone number(s) of the party or parties responsible; and
 - b. A statement whether this deficiency was previously listed in a monthly report;
4. A listing of the corrective actions that were taken to remedy any deficiencies noted and the date

the corrective actions were completed;

5. A statement on whether or not the SWPPP was updated to deal with any deficiencies noted; and
 6. A copy of each inspection conducted during the month attached in an appendix to the monthly report.
- I. For construction Sites disturbing 10 acres or more, in addition to the information required in subpart 3.10.H above, the first monthly report submitted after construction has started must include the original and one copy of the Co-permittee and contractor certifications. Subsequent monthly reports on construction Sites that disturb 10 acres or more must include the original and a copy of the certification for the Co-permittees and contractors added after construction has started. For each Co-permittee and contractor certification submitted to the Department, the preparer of the SWPPP or someone with a registration equivalent to that of the preparer of the SWPPP must certify that either an on-site or, when applicable, off-site pre-construction conference was held with the Co-permittee or contractor in accordance with this permit. This certification must give the date of the conference and the responsibilities of each Co-permittee and contractor.
 - J. For construction Sites disturbing less than 10 acres, the Owners/Operators may be required to submit the Co-permittee and contractor certifications on a case-by-case basis. When the Owner/Operator is required to submit the Co-permittee and contractor certifications, the preparer of the SWPPP or someone with a registration equivalent to that of the preparer of the SWPPP must certify that either an on-site or off-site pre-construction conference was held with the Co-permittees and contractors in accordance with this permit. This certification must give the date of the conference and the responsibilities of each Co-permittee and contractor.
 - K. Each monthly report with one copy must be submitted to DHEC on or before the 28th day of the month following the reporting period. For example, the monthly report for July 2006 is due after July 31, 2006 and on or before August 28, 2006.
 - L. Until construction starts, the monthly report may just state that construction activity has not started.
 - M. Monthly reports, when required, must be submitted until the Notice of Termination is submitted to DHEC. When the Notice of Termination is submitted, it must contain a signed statement by the preparer of the SWPPP or a person with a registration equivalent to that of the preparer of the SWPPP that all work was completed to the best of his or her knowledge and belief in accordance with the approved SWPPP and this CGP. For Projects disturbing more than 2 acres, the certifying person's knowledge and belief must be based on the results of the periodic inspections conducted by the preparer of the SWPPP (or a person with an equivalent registration) or by a qualified individual under his or her direct supervision in accordance with this CGP or by an individual certified through a Construction Site Inspector Certification Course that has been approved by DHEC.
 - N. Copies of inspection forms and monthly reports (reports required only if information requested in Part 3.10.H is not included on the inspection form) must be submitted to DHEC at the following address:

Compliance Assurance Division
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

or to a designated DHEC email address, when available.

A copy of the inspection forms or monthly reports must be submitted to the MS4 that receives your stormwater discharges when requested in writing by the MS4.

3.11 Maintaining an Updated Plan

- A. The SWPPP, including the Site map, must be amended whenever there is a change in design, construction, operation, or maintenance at the construction Site that will result in discharges that will cause, have the reasonable potential to cause, or contribute to violations to SC's Water Quality Standards.
- B. The SWPPP must be amended if during inspections or investigations by Site staff, or by local, state, tribal or federal officials, it is determined that the SWPPP is ineffective in either eliminating, when reasonably possible, or significantly minimizing pollutants in storm water discharges from the construction Site.
- C. Based on the results of an inspection, the SWPPP must be modified as necessary to include additional or modified BMPs designed to correct problems identified. Revisions to the SWPPP must be completed within seven (7) calendar days following the inspection. Implementation of these additional or modified BMPs must be accomplished as described in Subpart 3.6.B.
- D. All design modifications of the SWPPP must be made in accordance with Subpart 3.1.A.

3.12 Signature, Plan Review and Making Plans Available

- A. A copy of the SWPPP (including a copy of the permit), NOI, and CGP coverage letter from DHEC must be retained at the construction Site (or other location easily accessible during normal business hours to: DHEC, EPA, tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; and the Operator of a Municipal Separate Storm Sewer System (MS4) receiving discharges from the Site) from the date of commencement of construction activities to the date of final stabilization. If you have day-to-day operational control over SWPPP implementation, you must have a copy of the SWPPP available at a central location on-site for the use of all those identified as having responsibilities under the SWPPP whenever they are on the construction Site. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction Site. For linear construction of roads or utilities (such as roads built by the SC Department of Transportation and utility construction including electrical power lines, gas lines, main sewer trunk lines, and water distribution lines that are not part of a development)

neither of which are a part of a subdivision or other type of development Projects, the updated copies of the approved SWPPP must be sent to the appropriate EQC Regional Office in situations where it is not practical to have the approved SWPPP on location. For SC Department of Transportation Projects where there is no construction trailer on Site, the SWPPP may be kept in the office of the SC DOT resident engineer.

- B. SWPPPs must be made available upon request by EPA; DHEC; a tribal or local agency approving sediment and erosion plans, grading plans, or storm water management plans; local government officials; and the Operator of a Municipal Separate Storm Sewer System (MS4) receiving discharges from the Site to the requestor. The copy of the SWPPP that is required to be kept on-site or locally available must be made available, in its entirety, to DHEC or the EPA staff for review and copying at the time of an on-site inspection.
- C. All SWPPPs must be signed and certified in accordance with §122.22 of SC Regulation 61-9 (see Appendix C of this permit).

3.13 Management Practices

- A. All control measures must be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices. If periodic inspections or other information indicates a control has been used inappropriately, or incorrectly, the Operator must replace or modify the control for Site situations as soon as practicable.
- B. If sediment escapes the construction Site, off-site accumulations of sediment must be removed at a frequency sufficient to minimize off-site impacts unless: access to the off-site property cannot be reasonably obtained from the property owner and DHEC is also unable to get permission for you to access the off-site property; or DHEC agrees that it is appropriate to leave the off-site accumulations in place.
- C. Litter, construction debris, oils, fuels, and building products with significant potential for impact (such as stockpiles of freshly treated lumber) and construction chemicals that could be exposed to storm water must be prevented from becoming a pollutant source in storm water discharges.
- D. Except as provided below, stabilization measures must be initiated as soon as practicable in portions of the Site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the Site has temporarily or permanently ceased.
 - 1. Where stabilization by the 14th day is precluded by snow cover or frozen ground conditions, stabilization measures must be initiated as soon as practicable.
 - 2. Where construction activity on a portion of the Site is temporarily ceased, and earth-disturbing activities will be resumed within 14 days, temporary stabilization measures do not have to be initiated on that portion of the Site.
- E. A combination of sediment and erosion control measures is required to achieve maximum pollutant

removal.

1. **Sediment Basins:** For common drainage locations that serve an area with 10 or more acres disturbed at one time, a temporary (or permanent) sediment basin that provides storage for a calculated volume of runoff from the drainage area from at least a 10-year, 24-hour storm, or equivalent control measures, must be provided where attainable until final stabilization of the Site. Where no such calculation has been performed, a temporary (or permanent) sediment basin providing at least 3,600 cubic feet of storage per acre drained, or equivalent control measures, must be provided where attainable until final stabilization of the Site. When computing the number of acres draining into a common location, it is not necessary to include flows from off-site areas and flows from on-site areas that are either undisturbed or have undergone final stabilization where such flows are diverted around both the disturbed area and the sediment basin. In determining whether installing a sediment basin is attainable, the Operator may consider factors such as Site soils, slope, available area on-site, etc. In any event, the Operator must consider public safety as a design factor for the sediment basin, and alternative sediment controls must be used where Site limitations would preclude a safe design.
 2. For drainage locations that serve 10 or more disturbed acres at one time and where a temporary sediment basin or equivalent controls are not attainable, smaller sediment basins and/or sediment traps should be used. Silt fences, vegetative buffer strips, or a combination of sediment controls that are equivalent to sediment basins and/or sediment traps are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual Site conditions).
 3. For drainage locations serving less than 10 acres, smaller sediment basins and/or sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual Site conditions) of the construction area unless a sediment basin providing storage for a calculated volume of runoff from at least a 10-year, 24-hour storm or at least 3,600 cubic feet of storage per acre drained is provided. If a basin is not provided, each structural control used must be designed to handle the entire drainage area it serves.
 4. The Department may on a case-by-case or watershed-by-watershed basis require the use of a larger storm event and/or a larger storage volume when designing sediment basins.
- F. Velocity dissipation devices must be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

3.14 Documentation of Permit Eligibility Related to Total Maximum Daily Loads That Are Effective and Applicable to Stormwater Construction Discharges

The SWPPP must include documentation supporting a determination of permit eligibility with regard to waters that have a TMDL that is effective and applicable to stormwater construction discharges,

including:

- A. Identification of whether your discharge (construction stormwater) is identified, either specifically or generally, in a TMDL and any associated allocations, requirements, and assumptions identified for your discharge;
- B. Measures taken by you to ensure that your discharge of pollutants from the Site is consistent with the assumptions and requirements contained in the TMDL that is applicable to your stormwater discharge, including any specific wasteload allocation that has been established that would apply to your discharge.

See Subpart 1.3.C.4 for further information on determining permit eligibility related to TMDLs.

PART 4: SPECIAL CONDITIONS, MANAGEMENT PRACTICES AND OTHER NON-NUMERIC LIMITATIONS

4.1 Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the SC Administrative Procedures Act and SC Regulation 61-9 and remain in force and effect. If you were granted permit coverage prior to the expiration date, you will automatically remain covered by the continued permit until the earliest of:

- A. Reissuance or replacement of this permit, at which time you must comply with the conditions of the new permit to maintain authorization to discharge; or
- B. Your submittal of a Notice of Termination; or
- C. Issuance of an individual permit for the Project's discharges; or
- D. A formal permit decision by DHEC to not reissue this general permit, at which time you must seek coverage under an alternative general permit or an individual permit.

4.2 Requiring an Individual Permit or an Alternative General Permit

- A. In accordance with Section 122.28(b)(3) of SC Regulation 61-9, DHEC may require you to apply for and/or obtain an individual NPDES permit. Any interested person may petition DHEC to take action under this paragraph. If DHEC requires you to apply for an individual NPDES permit, DHEC will notify you in writing that a permit application is required. This notification will include a brief statement of the reasons for this decision and an application form. In addition, if you are an existing permittee covered under this permit, the notice will set a deadline to file the application, and will include a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to you, coverage under this general permit will automatically terminate. Applications must be submitted to DHEC at the address given in Subpart 2.4. DHEC may grant additional time to submit the application upon your request. If you are covered under this permit and you fail to submit in a timely manner an individual NPDES

permit application as required by DHEC, then the applicability of this permit to you is automatically terminated at the end of the day specified by DHEC as the deadline for application submittal.

- B. If an alternate general permit that is more appropriate for your construction activity is available, DHEC may grant you coverage under the alternate general permit in lieu of granting you coverage under this general permit. In accordance with applicable state law and regulation, you have a right to appeal the Department's decision.
- C. You may request to be excluded from the coverage of this general permit by applying for an individual permit. In such a case, you must submit an individual application in accordance with the requirements of §122.26(c)(1)(ii) of SC Regulation 61-9, with reasons supporting the request, to:

Storm Water and Agricultural Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

The request may be granted by issuance of an individual permit or an alternative general permit if your reasons are adequate to support the request.

- D. When an individual NPDES permit is issued to you, who are otherwise subject to this permit, or you are authorized to discharge under an alternative NPDES general permit, the applicability of this permit to you is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. If you, who are otherwise subject to this permit, are denied an individual NPDES permit or an alternative NPDES general permit, the applicability of this permit to you is automatically terminated on the date of such denial, unless otherwise specified by DHEC.

4.3 Releases in Excess of Reportable Quantities

- A. You must prevent or minimize the discharge of hazardous substances or oil in storm water discharges from the construction Site in accordance with the SWPPP. This permit does not relieve you of the federal reporting requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 relating to spills or other releases of oils or hazardous substances.
- B. Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117 or 40 CFR Part 302, occurs during a 24-hour period:
 - 1. You must notify the Department's Emergency Response Section at (803) 253-6488 and the National Response Center (NRC) (800) 424-8802 in accordance with the requirements of 40 CFR Part 110, 40 CFR Part 117 and 40 CFR Part 302 as soon as Site staff have knowledge of the discharge; and

2. You must modify the SWPPP as required under Subpart 3.11 within 14 calendar days of knowledge of the release to: provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, you must review your SWPPP to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and you must modify your SWPPP where appropriate.

4.4 Attainment of Water Quality Standards After Authorization

You must select, install, implement and maintain BMPs at your construction Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards. In general your SWPPP developed, implemented, and updated consistent with Part 3.0 is considered as stringent as necessary to ensure that your discharges do not cause or contribute to a violation of any applicable water quality standard.

All written responses required under this part must include a signed certification consistent with §122.22 of SC Regulation 61-9 (see Appendix C of this permit).

PART 5: TERMINATION OF COVERAGE

5.1 Requirements

You may only submit a Notice of Termination (NOT) after one or more of the following conditions have been met:

- A. Final stabilization has been achieved on all portions of the Site for which you are responsible;
- B. Another Operator has assumed control, according to §122.41(l)(3) of SC Regulation 61-9 (see Appendix C of this permit), over all areas of the Site that have not been finally stabilized;
- C. Coverage under an individual or alternative general NPDES permit has been obtained; or
- D. For residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner.

The NOT must be submitted within 30 days of one of the above conditions being met. Authorization to discharge terminates at midnight of the day the NOT is signed.

5.2 Submitting a Notice of Termination

It is your responsibility to submit a complete and accurate Notice of Termination (NOT), using the form (or a photocopy thereof) provided by the Department. The NOT will be made available at our WEB site at:

<http://www.scdhec.net/eqc/admin/html/eqforms.html#Water>

If DHEC notifies dischargers (either directly, by public notice, or by making information available on

the Internet) of other NOT form options (e.g., electronic submission), you may take advantage of those options to satisfy the requirements of Part 5.

The Notice of Termination must include the following information:

1. Your CGP NPDES coverage number for the storm water discharge;
2. The basis for submission of the NOT, including: final stabilization has been achieved on all portions of the Site for which the permittee is responsible; another Operator/permittee has assumed control over all areas of the Site that have not been finally stabilized; coverage under an alternative NPDES permit has been obtained; or, for residential construction only, temporary stabilization has been completed and the residence has been transferred to the homeowner;
3. You, the Operator's name, address, telephone number and your organization's Employer Identification Number (EIN) as established by the U.S. Internal Revenue Service;
4. The name of the Project and address (or a description of location if no street address is available) of the construction Site for which the notification is submitted; and
5. A certification statement, signed and dated by an authorized representative as defined in §122.22 of SC Regulation 61-9 (see Appendix C of this permit) and the name and title of that authorized representative.
6. For Projects disturbing more than 2 acres, a certification statement, signed and dated by the preparer of the SWPPP or other person with a registration equivalent to that of the preparer of the SWPPP, that to the best of his or her knowledge and belief all work was conducted and completed in accordance with the approved SWPPP and this CGP. This certification must be based on the inspections performed in accordance with this Subpart 3.10 of this CGP and must state that any deficiencies that were noted have been corrected.

5.3 Where to Submit

A. All original NOTs must be submitted to DHEC at the following address:

Storm Water and Agricultural Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

And a copy of the NOT to the MS4 that received your stormwater discharges when requested in writing by the MS4.

PART 6: RETENTION OF RECORDS

Copies of the SWPPP and all documentation required by this permit, including records of all data used

to complete the NOI to be covered by this permit, must be retained for at least three years from the date that permit coverage expires or is terminated. This period may be extended by request of DHEC at any time.

PART 7: REOPENER CLAUSE

7.1 Procedures for Modification or Revocation

Permit modification or revocation will be conducted according to §122.62, §122.63, §122.64, and §124.5 of SC Regulation 61-9.

7.2 Water Quality Protection

If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause or contribute to a violation of any applicable water quality standard, you may be required to obtain an individual permit in accordance with Part 4.2 of this permit, the permit may be modified in accordance with Section 122.62 of SC Regulation 61-9 to include different limitations and/or requirements as addressed or your coverage may be terminated in accordance with Section 122.64 of SC Regulation 61-9.

7.3 Timing of Permit Modification

DHEC may elect to modify the permit prior to its expiration (rather than waiting for the new permit cycle) to comply with any new statutory or regulatory requirements, such as for effluent limitation guidelines that may be promulgated in the course of the current permit cycle.

PART 8: STANDARD PERMIT CONDITIONS

South Carolina regulations require that the Standard Conditions provisioned at §122.41 of SC Regulation 61-9 be applied to all NPDES permits. You are required to comply with those Standard Conditions, details of which are provided in Appendix C of this permit, that are applicable to storm water discharges.

APPENDIX A - DEFINITIONS AND ACRONYMS DEFINITIONS

“Best Management Practices” (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to Surface Waters of the State. BMPs also include treatment requirements, operating procedures, and practice to control plant Site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

“Co-Permittee” means a permittee to an NPDES permit that is only responsible for permit conditions relating to the discharge for which it is Operator.

“Commencement of Construction Activities” means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction-related activities (e.g., stockpiling of fill material).

“Control Measure” as used in this permit, refers to any BMP or other method used to prevent or reduce the discharge of pollutants to “Waters of the State”.

“CWA” means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq.

“DHEC” means the South Carolina Department of Health and Environmental Control’s Office of Environmental Quality Control.

“Discharge” when used without qualification means the “discharge of a pollutant.”

“Discharge of Storm Water Associated with Construction Activity” as used in this permit, refers to a discharge of pollutants in storm water from areas where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow area, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located.

“Eligible” means qualified for authorization to discharge storm water under this general permit.

“Facility” or “Activity” means any “point source” or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

“Federal Facility” means any buildings, installations, structures, land, public works, equipment, aircraft, vessels, and other vehicles and property, owned by, or constructed or manufactured for the purpose of leasing to, the Federal government.

“Final Stabilization” means that:

1. All soil disturbing activities at the Site have been completed and either of the two following criteria are met:

- a. A uniform (e.g., evenly distributed, without large bare areas) perennial vegetative cover with a density of 70 percent of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures; or
 - b. Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.
2. When background native vegetation or other appropriate vegetation will cover less than 100 percent of the ground (e.g., arid areas, beaches), the 70 percent coverage criteria is adjusted as follows: if the native vegetation or other appropriate vegetation covers 50 percent of the ground, 70 percent of 50 percent ($0.70 \times 0.50 = 0.35$) would require 35 percent total cover for final stabilization. On a beach with no natural vegetation, no stabilization is required.
 3. For individual lots in residential construction, final stabilization means that either:
 - a. The homebuilder has completed final stabilization as specified above; or
 - b. The homebuilder has established temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for, and benefits of, final stabilization.
 4. For construction Projects on land used for agricultural purposes (e.g., pipelines across crop or range land, staging areas for highway construction, etc.), final stabilization may be accomplished by returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to "Surface Waters of the State," and areas which are not being returned to their preconstruction agricultural use must meet the final stabilization criteria (1) or (2) or (3) above.

"Indian country" is defined at §122.2 of SC Regulation 61-9 to mean:

1. All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
2. All dependent Indian communities with the borders of the United States whether within the originally or subsequently acquired territory thereof, and whether within or without the limits of a state; and
3. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-ways running through the same.

"Large Construction Activity" is the construction industrial activity as defined at §122.26(b)(14)(x) of SC Regulation 61-9 and incorporated here by reference. A large construction activity includes clearing, grading, and excavating resulting in a land disturbance that will disturb equal to or greater than five acres of land or will disturb less than five acres of total land area but is part of a larger common plan of

development or sale that will ultimately disturb equal to or greater than five acres. Large construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the Site.

"Municipal Separate Storm Sewer System" or "MS4" is defined at §122.26(b)(8) of SC Regulation 61-9 to mean a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains):

1. Owned and operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to Surface Waters of the State;
2. Designed or used for collecting or conveying storm water;
3. Which is not a combined sewer; and
4. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at §122.2 of SC Regulation 61-9.

"New Project" means the "commencement of construction activities" occurs after the effective date of this permit.

"Ongoing Project" means the "commencement of construction activities" occurs before the effective date of this permit.

"Operator" for the purpose of this permit and in the context of storm water associated with construction activity, means any party associated with a construction Project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications. Note: A party has "operational control over construction plans and specifications" if they have the authority to prepare or modify such plans and specifications under Subpart 3.1.A; or
2. The party has "operational control over day-to-day activities" at a Project that are necessary to ensure compliance with a SWPPP for the Site or other permit conditions (e.g., they are authorized to direct workers at a Site to carry out activities required by the SWPPP or comply with other permit conditions). This definition is provided to inform permittees of EPA's interpretation of how the regulatory definitions of "Owner or Operator" and "facility or activity" are applied to discharges of storm water associated with construction activity.

"Owner or Operator" means the owner or Operator of any "facility or activity" subject to regulation under the NPDES program. For purposes of this permit, when local governments (counties, cities,

etc.) construct or improve state roads, the owner of these road construction projects during the construction is the local government.

“Permitting Authority” means the United States Environmental Protection Agency, EPA, a Regional Administrator of the Environmental Protection Agency or an authorized representative.

“Person” means any individual, public or private corporation, political subdivision, association, partnership, corporation, municipality, State or Federal agency, industry, copartnership, firm, trust, estate, any other legal entity whatsoever, or an agent or employee thereof.

“Point Source” means 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, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

“Pollutant” is defined at §122.2 of SC Regulation 61-9. A partial listing from this definition includes: dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

“Project” means an undertaking such as, but not limited to, construction of commercial development, residential development, industrial development, roadways, railways, and utility lines.

“Project Area” means:

1. The areas on the construction Site where storm water discharges originate and flow toward the point of discharge into the receiving waters (including areas where excavation, Site development, or other ground disturbance activities occur) and the immediate vicinity. (Example: 1. Where bald eagles nest in a tree that is on or bordering a construction Site and could be disturbed by the construction activity or where grading causes storm water to flow into a small wetland or other habitat that is on the Site that contains listed species.)
2. The areas where storm water discharges flow from the construction Site to the point of discharge into receiving waters. (Example: Where storm water flows into a ditch, swale, or gully that leads to receiving waters and where listed species (such as amphibians) are found in the ditch, swale, or gully.)
3. The areas where storm water from construction activities discharge into receiving waters and the areas in the immediate vicinity of the point of discharge. (Example: Where storm water from construction activities discharges into a stream segment that is known to harbor listed aquatic species.)
4. The areas where storm water BMPs will be constructed and operated, including any areas where storm water flows to and from BMPs. (Example: Where a storm water retention pond would be built.)

5. The areas upstream and /or downstream from construction activities discharges into a stream segment that may be affected by the said discharges. (Example: Where sediment discharged to a receiving stream settles downstream and impacts a breeding area of a listed aquatic species.)

"Receiving water" means the "Waters of the State" as defined in §122.2 of SC Regulation 61-9 into which the regulated storm water discharges.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Site" means the land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Small Construction Activity" is defined under the definition of "Stormwater discharge associated with small construction activity" at §122.26(b)(15) of SC Regulation 61-9 as follows: "Storm water discharge associated with small construction activity means the discharge of storm water from:

- (i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres and, in coastal counties within one-half (1/2) mile of a receiving water body (but not for single-family homes which are not part of a subdivision development), that result in any land disturbance less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. The Department may waive the otherwise applicable requirements in a general permit for a storm water discharge from construction activities that disturb less than five acres where:

(A) The value of the rainfall erosivity factor ("R" in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C 552(a) and 1 CFR part 51. Copies may be obtained from EPA's Water Resource Center, Mail Code RC4100, 401 M St. S.W., Washington, DC 20460. A copy is also available for inspection at the U.S. EPA Water Docket, 401 M Street S.W., Washington, DC. 20460, or the Office of the Federal Register, 800 N. Capitol Street N.W. Suite 700, Washington, DC. An Operator must certify to the Department that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five; or

(B) Storm water controls are not needed based on a "total maximum daily load" (TMDL) approved or established by EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction Sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream

concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. For the purpose of this paragraph, the pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The Operator must certify to the Department that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis.

- (ii) Any other construction activity designated by the Department, or in States with approved NPDES programs either the Department or the EPA Regional Administrator, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States.”

“Storm Water” means storm water runoff, snowmelt runoff, and surface runoff and drainage.

“Storm Water Discharge-Related Activities” as used in this permit, include: activities that cause, contribute to, or result in storm water point source pollutant discharges, including but not limited to: excavation, Site development, grading and other surface disturbance activities; and measures to control storm water including the siting, construction and operation of BMPs to control, reduce or prevent storm water pollution.

“Surface Waters of the State” means “Waters of the State” as defined in §122.2 of SC Regulation 61-9 except for groundwater.

“Total Maximum Daily Load” or “TMDL” means the sum of the individual wasteload allocations (WLAs) for point sources and load allocations (LAs) for nonpoint sources and natural background. If a receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure.

“Waters of the State” is defined in §122.2 of SC Regulation 61-9.

“Wetland” means those 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. Wetlands generally include swamps, marshes, bogs, and similar areas.

ACRONYMS

BMP - Best Management Practices

CGP - Construction General Permit

CFR - Code of Federal Regulations

CWA - Clean Water Act

EPA - United States Environmental Protection Agency

MS4 - Municipal Separate Storm Sewer System

NOI - Notice of Intent

NOT - Notice of Termination

NPDES - National Pollutant Discharge Elimination System

POTW - Publicly Owned Treatment Works

SWPPP - Storm Water Pollution Prevention Plan

TMDL - Total Maximum Daily Load

APPENDIX B - SMALL CONSTRUCTION WAIVERS AND INSTRUCTIONS

These waivers are only available to storm water discharges associated with small construction activities (i.e., 1-5 acres). As the Operator of a small construction activity, you may be able to qualify for a waiver in lieu of needing to obtain coverage under this general permit based on: (A) a low rainfall erosivity factor, (B) a TMDL analysis, or (C) an equivalent analysis that determines allocations for small construction Sites are not needed. Each Operator, otherwise needing permit coverage, must notify DHEC of its intention for a waiver. It is the responsibility of those individuals wishing to obtain a waiver from coverage under this general permit to submit a complete and accurate waiver certification as described below. Where the Operator changes or another is added during the construction Project, the new Operator must also submit a waiver certification to be waived.

A. Rainfall Erosivity Waiver

Under this scenario the small construction Project's rainfall erosivity factor calculation ("R" in the Revised Universal Soil Loss Equation) is less than 5 during the period of construction activity. The Operator must certify to the Permitting Authority that construction activity will occur only when the rainfall erosivity factor is less than 5. The period of construction activity begins at initial earth disturbance and ends with final stabilization. Where vegetation will be used for final stabilization, the date of installation of a stabilization practice that will provide interim non-vegetative stabilization can be used for the end of the construction period, provided the Operator commits (as a condition of waiver eligibility) to periodically inspect and properly maintain the area until the criteria for final stabilization as defined in the construction general permit have been met. If use of this interim stabilization eligibility condition was relied on to qualify for the waiver, signature on the waiver with its certification statement constitutes acceptance of and commitment to complete the final stabilization process. The Operator must submit a waiver certification to DHEC prior to commencing construction activities.

Note: The rainfall erosivity factor "R" is determined in accordance with Chapter 2 of Agriculture Handbook Number 703, Predicting Soil Erosion by Water: A Guide to Conservation Planning With the Revised Universal Soil Loss Equation (RUSLE), pages 21-64, dated January 1997; United States Department of Agriculture (USDA), Agricultural Research Service.

EPA funded a cooperative agreement with Texas A&M University to develop an online rainfall erosivity calculator. You can access the calculator from EPA's website at:

www.epa.gov/npdes/stormwater/cgp

Use of the calculator allows you to determine potential eligibility for the rainfall erosivity waiver. It may also be useful in determining the time periods during which construction activity could be waived from permit coverage. You may find that moving your construction activity by a few weeks or expediting Site stabilization will allow you to qualify for the waiver.

If you are the Operator of the construction activity and eligible for a waiver based on low erosivity potential, you must provide the following information on the waiver certification in order to be waived

from permitting requirements:

1. Name, address and telephone number of the construction Site Operators;
2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction Project or Site;
3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;
4. The rainfall erosivity factor calculation that applies to the active construction phase at your Project Site; and
5. A statement, signed and dated by an authorized representative, as provided in §122.22 of SC Regulation 61-9 (see Appendix C of this permit), that certifies that the construction activity will take place during a period when the value of the rainfall erosivity factor is less than five.

At the time of publication, a Low Erosivity Waiver Form is not available. If EPA or DHEC does create a form, it will be noticed (either directly, by public notice, or by making information available on the Internet at:

www.epa.gov/npdes/stormwater/cgp or <http://www.scdhec.gov/stormwater>

Note: If the R factor is 5 or greater, you cannot apply for the rainfall erosivity waiver, and must apply for permit coverage as per Subpart 2.1 of the construction general permit, unless you qualify for the Water Quality Waiver as described below.

If your small construction Project continues beyond the projected completion date given on the waiver certification, you must recalculate the rainfall erosivity factor for the new Project duration. If the R factor is below five (5), you must update all applicable information on the waiver certification and retain a copy of the revised waiver as part of the Site SWPPP. The new waiver certification must be submitted prior to the projected completion date listed on the original waiver form to assure your exemption from permitting requirements is uninterrupted. If the new R factor is five (5) or above, you must submit an NOI as per Part 2.

B. TMDL Waiver

This waiver is available if a TMDL that addresses the pollutant(s) of concern and has determined that controls on storm water discharges from small construction activity are not needed to protect water quality. The pollutant(s) of concern include sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. Information on TMDLs that have been established is available from EPA online at www.epa.gov/owow/tmdl/ and from DHEC at: www.scdhec.gov/water/tmdl/.

If you are the Operator of the construction activity and eligible for a waiver based on compliance with

a TMDL, you must provide the following information on the Waiver Certification form in order to be waived from permitting requirements:

1. Name, address and telephone number of the construction Site Operator(s);
2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction Project or Site;
3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;
4. The name of the water body(s) that would be receiving storm water discharges from your construction Project;
5. The name and approval date of the TMDL; and
6. A statement, signed and dated by an authorized representative, as provided in §122.22 of SC Regulation 61-9 (see Appendix C of this permit), that certifies that the construction activity will take place and that the storm water discharges will occur, within the drainage area addressed by the TMDL.

C. Equivalent Analysis Waiver

This waiver is available for non-impaired waters only. The Operator can develop an equivalent analysis that determines allocations for his small construction Site for the pollutant(s) of concern or determines that such allocations are not needed to protect water quality. This waiver requires a small construction Operator to develop an equivalent analysis based on existing in-stream concentrations, expected growth in pollutant concentrations from all sources, and a margin of safety.

If you are a construction Operator who wants to use this waiver, you must develop your equivalent analysis and provide the following information to be waived from permitting requirements:

1. Name, address and telephone number of the construction Site Operator(s);
2. Name (or other identifier), address, county or similar governmental subdivision, and latitude/longitude of the construction Project or Site;
3. Estimated construction start and completion (i.e., final stabilization) dates, and total acreage (to the nearest quarter acre) to be disturbed;
4. The name of the water bodies that would be receiving storm water discharges from your construction Project;
5. Your equivalent analysis; and
6. A statement, signed and dated by an authorized representative, as provided in §122.22 of SC

Regulation 61-9 (see Appendix C of this permit), that certifies that the construction activity will take place and that the storm water discharges will occur, within the drainage area addressed by the equivalent analysis.

D. Waiver Deadlines and Submissions

1. Waiver certifications must be submitted prior to commencement of construction activities.
2. If you submit a TMDL or equivalent analysis waiver request, you are not waived until DHEC approves your request. As such, you may not commence construction activities until receipt of approval from DHEC.
3. Late Notifications: Operators are not prohibited from submitting waiver certifications after initiating clearing, grading, excavation activities, or other construction activities. DHEC may take enforcement for any unpermitted discharge or violations of laws or regulations that occur between the time construction commenced and waiver authorization is granted.

Submittal of a waiver certification is an optional alternative to obtaining permit coverage for discharges of storm water associated with small construction activity, provided you qualify for the waiver. Any discharge of storm water associated with small construction activity not covered by either a permit or a waiver may be considered an unpermitted discharge under the Clean Water Act and the SC Pollution Control Act. As mentioned above, DHEC may take enforcement for any unpermitted discharge or violations of laws or regulations that occur between the time construction commenced and either discharge authorization is granted or a complete and accurate waiver certification is submitted. DHEC may notify any Operator covered by a waiver that they must apply for a permit. DHEC may notify any Operator who has been in non-compliance with a waiver that they may no longer use the waiver for future Projects. Any member of the public may petition DHEC to take action under this provision by submitting written notice along with supporting justification.

Complete and accurate Rainfall Erosivity waiver certifications must be sent to the following address:

Storm Water and Agricultural Permitting Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

Complete and accurate TMDL or equivalent analysis waiver requests must be sent to the following address:

Storm Water and Agricultural Permitting Section
Bureau of Water
SC DHEC
2600 Bull Street
Columbia, SC 29201

APPENDIX C – SECTIONS 122.41 AND 122.22 OF SC REGULATION 61-9

Section 122.41 of SC Regulation 61-9.

122.41. Conditions applicable to all permits. The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in section 122.42. All conditions applicable to NPDES permit shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to the federal regulations (or the corresponding approved State regulations) must be given in the permit.

(a) **Duty to comply.** The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Clean Water Act and the Pollution Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. The Department's approval of wastewater facility Plans and Specifications does not relieve the permittee of responsibility to meet permit limits.

(1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

(2) Failure to comply with permit conditions or the provisions of this regulation may subject the permittee to civil penalties under S.C. Code Section 48-1-330 or criminal sanctions under S.C. Code Section 48-1-320. Sanctions for violations of the Federal Clean Water Act may be imposed in accordance with the provisions of 40 CFR Part 122.41(a)(2) and (3).

(3) A person who violates any provision of this regulation, a term, condition or schedule of compliance contained within a valid NPDES permit, or the State law is subject to the actions defined in the State law.

(b) **Duty to reapply.** If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. (But see 122.4(g)(2)).

(c) **Need to halt or reduce activity not a defense.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(d) **Duty to mitigate.** The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(e) **(1) Proper operation and maintenance.** The permittee shall at all times properly operate and maintain in good working order and operate as efficiently as possible all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the

permittee to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes effective performance based on design facility removals, adequate funding, adequate operator staffing and training and also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

(2) The permittee shall develop and maintain at the facility a complete Operations and Maintenance Manual for the waste treatment facilities and/or land application system. The manual shall be made available for on-site review during normal working hours. The manual shall contain operation and maintenance instructions for all equipment and appurtenances associated with the waste treatment facilities and land application system. The manual shall contain a general description of: the treatment process(es), the operational procedures to meet the requirements of (e)(1) above, and the corrective action to be taken should operating difficulties be encountered.

(3)(i) Except as stated in (ii) below, the permittee shall provide for the performance of daily treatment facility inspections by a certified operator of the appropriate grade as defined in the permit for the facility. The inspections shall include, but should not necessarily be limited to, areas which require visual observation to determine efficient operation and for which immediate corrective measures can be taken using the O & M manual as a guide. All inspections shall be recorded and shall include the date, time, and name of the person making the inspection, corrective measures taken, and routine equipment maintenance, repair, or replacement performed. The permittee shall maintain all records of inspections at the permitted facility as required by the permit, and the records shall be made available for on-site review during normal working hours.

(ii) The Department may make exceptions to operating requirements, if stated in the permit, as follows:

(A) Attendance by the certified operator of the appropriate grade ("the operator") is normally required only on days when treatment or discharge occurs.

(B) For performance of daily inspections, permits may allow a reduced grade of operator for limited time periods under specific circumstances when justified by the permittee in a staffing plan and approved by the Department.

(C) Reduced inspection frequency, but in no case less than weekly, may be suitable when specified in the permit, if there is complete telemetry of operating data and there is either a simple treatment system with a low potential for toxicity but requiring pumps or other electrical functions or the ability to stop the discharge for an appropriate period when necessary.

(D) In other circumstances where the permittee demonstrates the capability to evaluate the facility in an alternative manner equivalent to the inspection requirements in subparagraph 3(i).

(E) Any exceptions allowed under (A), (B), (C), and (D) above may be subject to compliance with the permit conditions.

(4) (i) **Purpose.** This regulation establishes rules for governing the operation and maintenance of wastewater sewer systems, including gravity or pressure interceptor sewers. It is the purpose of this rule to establish standards for the management of sewer systems to prevent and/or minimize system failures that would lead to public health or environmental impacts.

(ii) **Authority and applicability.** Under Section 48-1-30 of the Code of Laws of South Carolina (1976 as amended), the Department is authorized to adopt such rules and regulations as may be necessary to implement the Pollution Control Act. This regulation applies to all sewer systems that have been or would be subject to a DHEC construction permit under Regulation 61-67 and whose owner owns or operates the wastewater treatment system to which the sewer discharges and which discharges under NPDES. Nothing in this regulation supersedes a more stringent requirement that may be imposed by sewer system owners that manage wastewater from satellite systems. This regulation (122.41(e)(4)) is effective when published in the State Register.

(iii) **General requirements.** The requirements to properly operate and maintain sewer systems are the responsibility of the system owner. General Standards. The sewer system owner must:

(A) Properly manage, operate, and maintain at all times all parts of its sewer system(s), to include maintaining contractual operation agreements to provide services, if appropriate;

(B) Provide adequate capacity to convey base flows and peak flows for all parts of the sewer system or, if capital improvements are necessary to meet this standard, develop a schedule of short and long term improvements;

(C) Take all reasonable steps to stop and mitigate the impact of releases of wastewater to the environment; and

(D) Notify the Department within 30 days of a proposed change in ownership of a sewer system.

(iv) [Reserved.]

(f) **Permit actions.** This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(g) **Property rights.** This permit does not convey any property rights of any sort, or any exclusive privilege.

(h) **Duty to provide information.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this

permit. The permittee shall also furnish to the Department upon request, copies of records required to be kept by this permit.

(i) **Inspection and entry.** The permittee shall allow the Department, or an authorized representative (including an authorized contractor acting as a representative of the Department), upon presentation of credentials and other documents as may be required by law, to:

(1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

(4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and Pollution Control Act, any substances or parameters at any location.

(j) **Monitoring and records.**

(1) (i) (A) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

(B) Samples shall be reasonably distributed in time, while maintaining representative sampling.

(C) No analysis, which is otherwise valid, shall be terminated for the purpose of preventing the analysis from showing a permit or water quality violation.

(ii) **Flow Measurements.**

(A) Where primary flow meters are required, appropriate flow measurement devices and methods consistent with accepted scientific practices shall be present and used to ensure the accuracy and reliability of measurements of the volume of monitored discharges. The devices shall be installed, calibrated, and maintained to ensure that the accuracy of the measurements is consistent with the accepted capability of that type of device. Devices selected shall be capable of measuring flows with a maximum deviation of not greater than 10 percent from the true discharge rates throughout the range of expected discharge volumes. The primary flow device, where required, must be accessible to the use of a continuous flow recorder.

(B) Where permits require an estimate of flow, the permittee shall maintain at the permitted facility a record of the method(s) used in "estimating" the discharge flow (e.g., pump curves, production charts, water use records) for the outfall(s) designated on limits pages to monitor flow by an estimate.

(C) Records of any necessary calibrations must be kept.

(iii) The Department may designate a single, particular day of the month on which any group of parameters listed in the permit must be sampled. When this requirement is imposed in a permit, the Department may waive or alter compliance with the permit requirement for a specific sampling event for extenuating circumstances.

(iv) The Department may require that a permittee monitor parameters in the stream receiving his permitted discharge as necessary to evaluate the need for and to establish limits and conditions and to insure compliance with water quality standards (i.e., R.61-68).

(2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by R.61-9.503 or R.61-9.504); the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Department at any time.

(3) Records of monitoring information shall include:

- (i) The date, exact place, and time of sampling or measurements;
- (ii) The individual(s) who performed the sampling or measurements;
- (iii) The date(s) analyses were performed;
- (iv) The individual(s) who performed the analyses;
- (v) The analytical techniques or methods used; and
- (vi) The results of such analyses.

(4) Analyses for required monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless other test procedures have been specified in the permit or, in the case of sludge use or disposal, unless otherwise specified in R.61-9.503 or R.61-9.504.

(5) The PCA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$25,000 or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment provided by the Clean Water Act is also by imprisonment of not more than 4 years.

(k) Signatory requirement.

(1) All applications, reports, or information submitted to the Department shall be signed and certified (See section 122.22).

(2) The PCA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$25,000 per violation, or by imprisonment for not more than two years per violation, or by both.

(l) Reporting requirements.

(1) **Planned changes.** The permittee shall give notice to the Department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in section 122.29(b); or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under section 122.42(a)(1).

(iii) The alteration or addition results in a significant change in the permittee's sewage sludge or industrial sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan (included in the NPDES permit directly or by reference);

(2) **Anticipated noncompliance.** The permittee shall give advance notice to the Department of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(3) **Transfers.** This permit is not transferable to any person except after notice to the Department. The Department may require modification or revocation and reissuance of the permit to change the name of permittee and incorporate such other requirements as may be necessary under the Pollution Control Act and the Clean Water Act. (See section 122.61; in some cases, modification or revocation and reissuance is mandatory.)

(4) **Monitoring reports.** Monitoring results shall be reported at the intervals specified in the permit.

(i) Monitoring results must be reported on a Discharge Monitoring Report

(DMR) or forms provided or specified by the Department for reporting results of monitoring of sludge use or disposal practices.

(ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in R.61-9.503 or R.61-9.504, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Department.

(iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Department in the permit.

(5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

(6) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this paragraph.

(A) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See section 122.44(g)).

(B) Any upset which exceeds any effluent limitation in the permit.

(C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Department in the permit to be reported within 24 hours (See section 122.44(g)).

(iii) The Department may waive the written report on a case-by-case basis for reports under paragraph (1)(6)(i) of this section if the oral report has been received within 24 hours.

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (1)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(6) of this section.

(8) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, it shall promptly submit such facts or information.

(m) Bypass.

(1) Definitions.

(i) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraph (m)(3) and (m)(4) of this section.

(3) Notice.

(i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass.

(ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (1)(6) of this section (24-hour notice).

(4) Prohibition of bypass

(i) Bypass is prohibited, and the Department may take enforcement action against a permittee for bypass, unless:

(A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) The permittee submitted notices as required under paragraph (m)(3) of this section.

(ii) The Department may approve an anticipated bypass, after considering its adverse effects, if the Department determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

(n) Upset.

(1) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. A upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(3) Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the cause(s) of the upset;

(ii) The permitted facility was at the time being properly operated; and

(iii) The permittee submitted notice of the upset as required in paragraph (l)(6)(ii)(B) of this section (24 hour notice).

(iv) The permittee complied with any remedial measures required under paragraph (d) of this section.

(4) Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

(o) Misrepresentation of Information.

(1) Any person making application for a NPDES discharge permit or filing any record, report, or other document pursuant to a regulation of the Department, shall certify that all information contained in such document is true. All application facts certified to by the applicant shall be considered valid conditions of the permit issued pursuant to the application.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, or other documents filed with the Department pursuant

to the State law, and the rules and regulations pursuant to that law, shall be deemed to have violated a permit condition and shall be subject to the penalties provided for pursuant to 48-1-320 or 48-1-330.

Section 122.22 of SC Regulation 61-9.

122.22. Signatories to permit applications and reports.

(a) Applications. All permit applications shall be signed as follows:

(1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency or public facility: By either a principal executive officer, mayor, or other duly authorized employee or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency, or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator, Region IV, EPA).

(b) All reports required by permits, and other information requested by the Department, shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having

responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

(3) The written authorization is submitted to the Department.

(c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69-A Hagood Avenue
CHARLESTON, SOUTH CAROLINA 29403-5107

September 9, 2008

COPY

Regulatory Division

RECEIVED

SEP 11 2008

BUREAU OF WATER
WATER QUALITY DIVISION

Mr. George O. Whatley
B.P. Barber & Associates, Inc.
101 Research Drive
P.O. Box 1116
Columbia, South Carolina 29202-1116

Dear Mr. Whatley:

This letter is in response to a Pre-Construction Notification (PCN) dated May 5, 2008, which was received on May 13, 2008. By submittal of the PCN, you requested verification that the proposed project is authorized by a Department of the Army Nationwide Permit.

The PCN contains the following identifying information for this project. The work affecting waters of the United States is part of an overall project known as Site Improvements of Roper Property on Trenholm Road. The project involves impacts to not more than 0.075 acre of waters of the United States, including wetlands. The project is located on the west side of Trenholm Road, in Richland County, South Carolina. The PCN also includes the following supplemental information:

- a. Drawing sheets 1-6 of 6 and titled "Site Improvements of Roper Property on Trenholm Road" and dated September 8, 2008.
- b. A delineation of special aquatic sites (SAC-81-2004-1871-J).

Based on a review of the PCN, including the supplemental information indicated above, it has been determined that the proposed activity will result in minimal individual and cumulative adverse environmental effects and is not contrary to the public interest. Furthermore, the activity meets the terms and conditions of Department of the Army Nationwide Permit(s) #39.

For this authorization to remain valid, the project must comply with the enclosed Nationwide Permit General Conditions, Charleston District Regional Conditions, and the following special conditions:

1. That prior to beginning the authorized work the permittee must obtain and provide the Corps with a copy of all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit). If the permittee fails to obtain the necessary state certifications and/or authorizations prior to beginning work, this will be considered a willful and knowing violation of the Clean Water Act and appropriate enforcement action will be taken.

Pet. Ex. 10

2. That impacts to aquatic areas do not exceed those specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee;

3. That the construction, use, and maintenance of the authorized activity is in accordance with the information given in the PCN, including the supplemental information listed above, and is subject to any conditions or restrictions imposed by this letter;

4. That the permittee shall submit the attached signed compliance certification to the Corps within 30 days following completion of the authorized work and any required mitigation.

5. That all conditions given in the enclosed certification from the S.C. Department of Health and Environmental Control are hereby incorporated as special conditions to this authorization.

This verification is valid until the Nationwide Permits (NWP) expire or for two (2) years, whichever comes first. The time specified for this authorization will remain valid if the Nationwide Permit(s) is reissued without modification, or the activity complies with any subsequent modification; however, the provisions of 33 CFR 330.6(b) will apply if the Nationwide Permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the original terms and conditions. In general, these provisions provide that if the work authorized by this letter has commenced in accordance with the requisite terms and conditions or you, acting in reliance of this Nationwide Permit, have entered into a contract to have the work performed prior to such date, this authorization will remain in effect if the work can be completed within twelve months of the date of the Nationwide Permit's expiration, modification or revocation unless discretionary authority has been exercised in accordance with 33 CFR 330.4(c) or (d).

Your cooperation in the protection and preservation of our navigable waters and natural resources is appreciated. In all future correspondence concerning this matter, please refer to our file number SAC-2004-35601-6NO. A copy of this letter is being forwarded to certain State and/or Federal agencies for their information. If you have any questions concerning this matter, please contact Chip Ridgeway at 803-253-3906.

Respectfully,

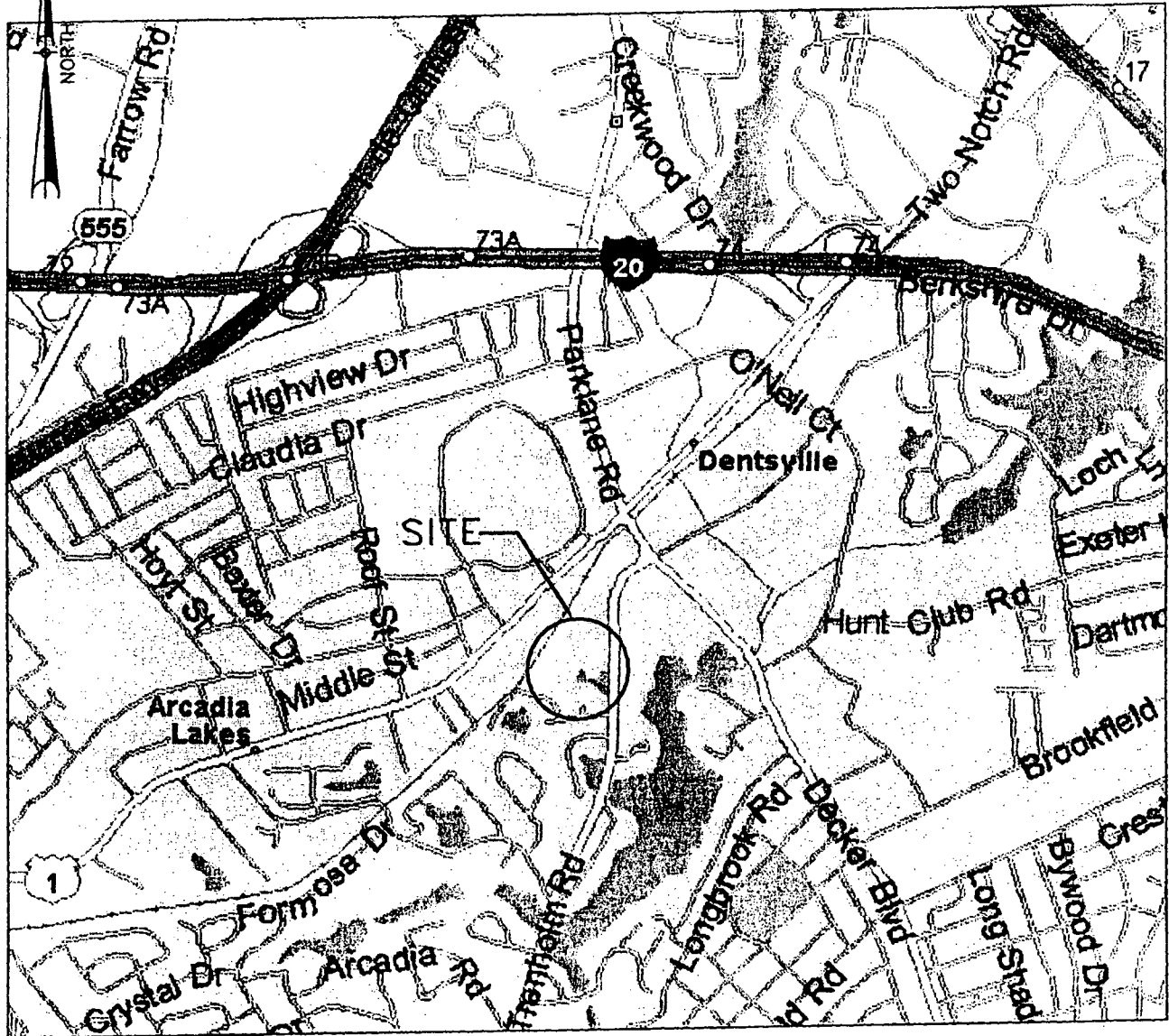
Tina B. Hadden
Chief, Regulatory Division

Enclosures:

Permit Drawings
Charleston District Regional Conditions
Nationwide Permit General Conditions
Compliance Certification Form
Customer Service Survey

Copy Furnished:

S.C. Dept. of Health and Environmental Control
Bureau of Water Pollution Control
Attn: Mr. Chuck Hightower
2600 Bull Street
Columbia, South Carolina 2920



LOCATION MAP

NOT TO SCALE

PERMITTED PLANS

Project Title:

**SITE IMPROVEMENTS TO THE ROPER
PROPERTY ON TRENHOLM ROAD**

Project Location:

RICHLAND COUNTY, S.C.

Applicant:

ESTATES, INC.

SAC-2004-35601

Site Improvements of Roper Property on Trenholm Road

Richland County

September 8, 2008

BPB Project #05216

Page 1 of 6



PERMITTED
PLANS

WETLAND IMPACT

WETLAND
AVOIDANCE AREA

SEABOARD COASTLINE RAILROAD
(100' R/W)

WETLAND IMPACT 2

POND

NORTH TRENHOLM ROAD
(R/W VARIES)

OVERALL SITE PLAN

1" = 150'

Project Title:

**SITE IMPROVEMENTS TO THE ROPER
PROPERTY ON TRENHOLM ROAD**

Project Location:

RICHLAND COUNTY, S.C.

Applicant:

ESTATES, INC.

BPB Project #05216

SAC-2004-35601

Site Improvements of Roper Property on Trenholm Road

Richland County

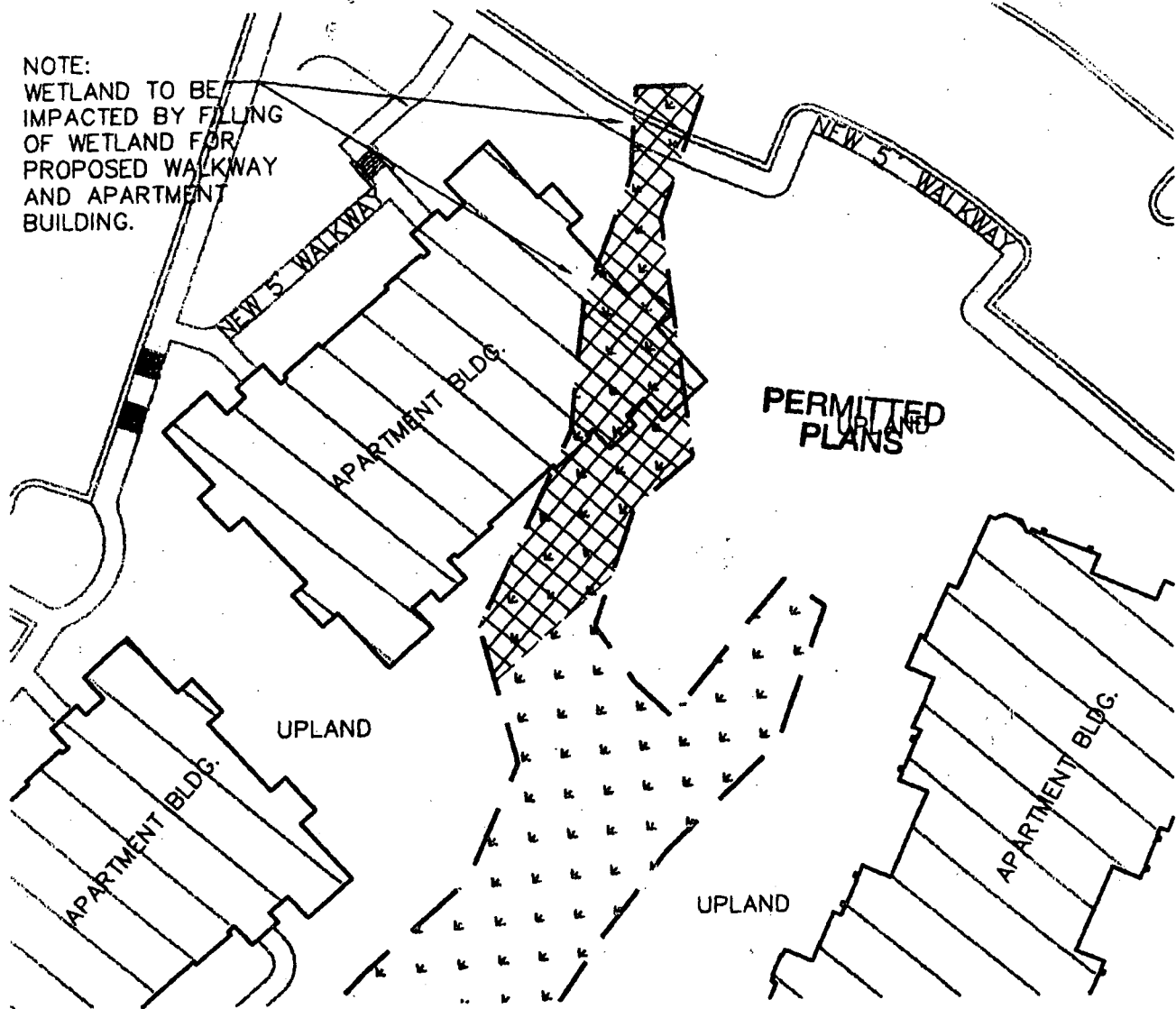
September 8, 2008

Page 2 of 6



LOCATION:
LATITUDE - 34°03'37" N
LONGITUDE - 80°57'33" W

NOTE:
WETLAND TO BE
IMPACTED BY FILLING
OF WETLAND FOR
PROPOSED WALKWAY
AND APARTMENT
BUILDING.

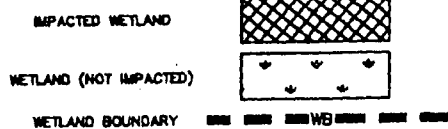


WETLAND IMPACT #1

1" = 40'

TOTAL WETLAND IMPACT = 0.071 ACRES

LEGEND



Project Title:

**SITE IMPROVEMENTS TO THE ROPER
PROPERTY ON TRENHOLM ROAD**

Project Location:

RICHLAND COUNTY, S.C.

Applicant:

ESTATES, INC.

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

Page 3 of 6

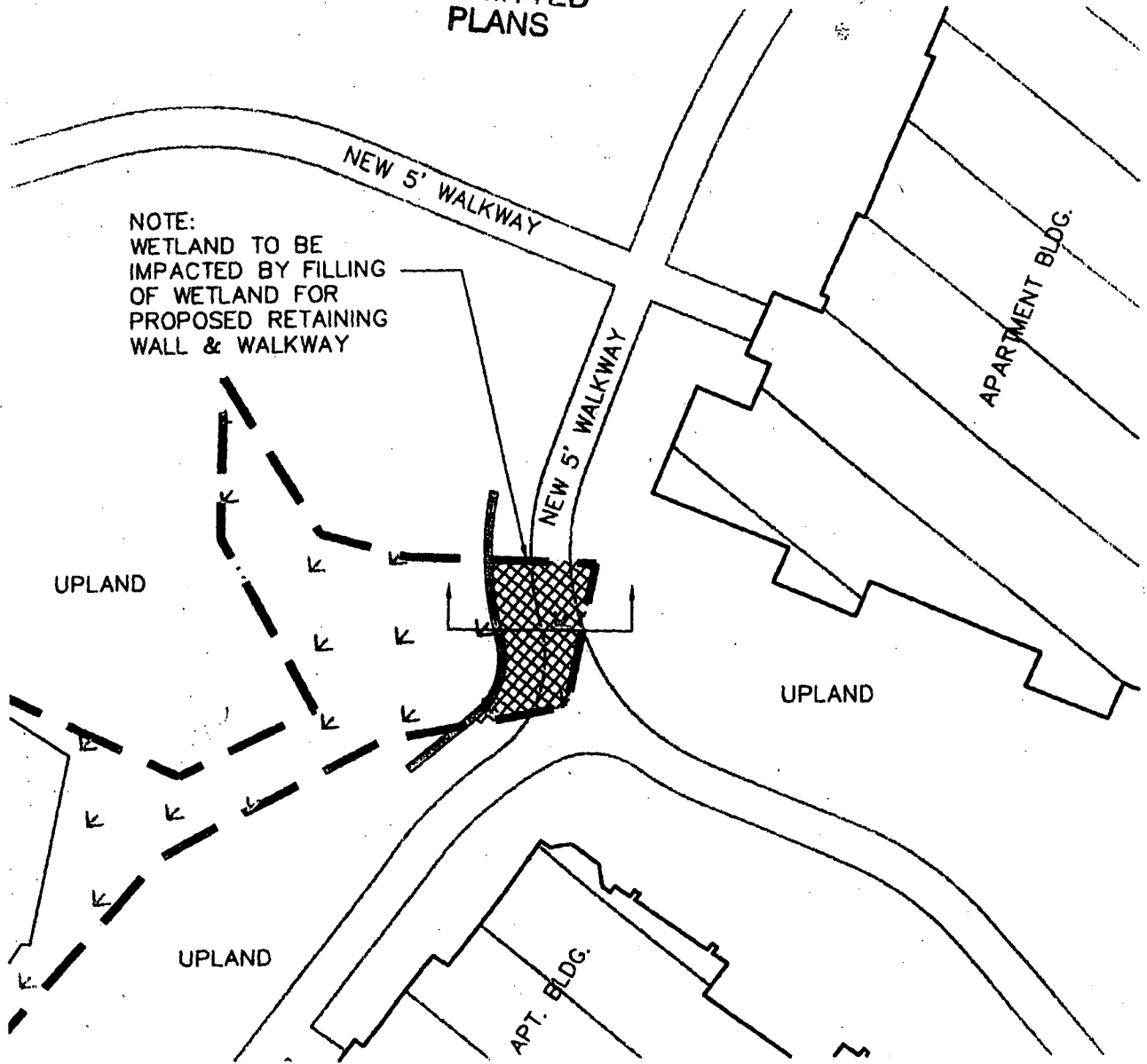
BPB Project #05216



LOCATION:
LATITUDE - 34°03'36" N
LONGITUDE - 80°57'29" W

PERMITTED PLANS

NOTE:
WETLAND TO BE
IMPACTED BY FILLING
OF WETLAND FOR
PROPOSED RETAINING
WALL & WALKWAY



WETLAND IMPACT #2

1" = 20'

TOTAL WETLAND IMPACT = 0.004 ACRES

LEGEND

- IMPACTED WETLAND
- WETLAND (NOT IMPACTED)
- WETLAND BOUNDARY

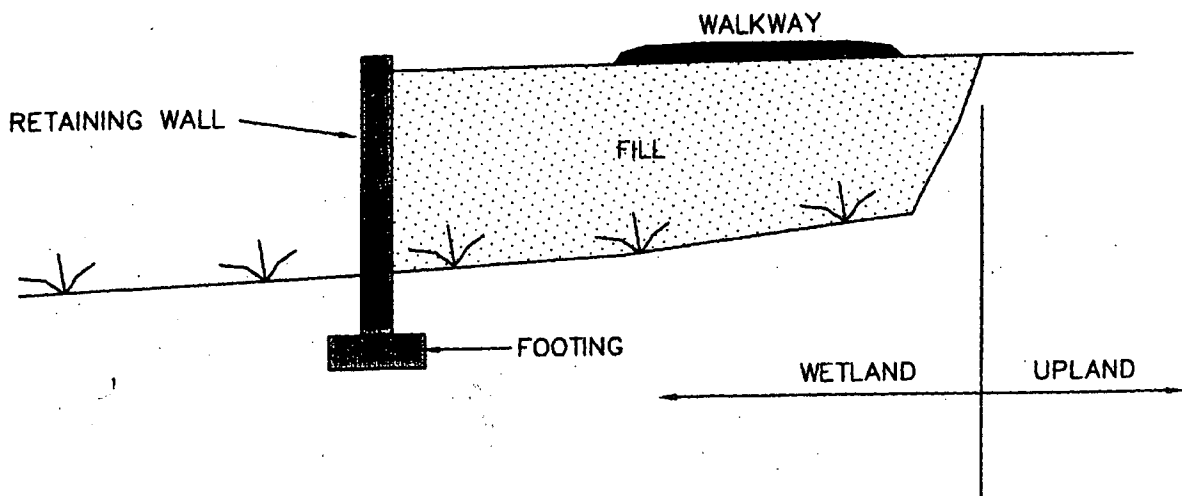
Project Title:
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD
Project Location:
RICHLAND COUNTY, S.C.
Applicant:
ESTATES, INC.

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

BPB Project #05216

N:\Projects\05216\dwg\wetlands\wet.dwg 4/21/2008 11:09:05 AM EDT

PERMITTED PLANS



CROSS SECTION WETLAND IMPACT #2 NOT TO SCALE

Project Title:

**SITE IMPROVEMENTS TO THE ROPER
PROPERTY ON TRENHOLM ROAD**

Project Location:

RICHLAND COUNTY, S.C.

Applicant:

ESTATES INC.

SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

Page 5 of 6

BPB Project #05216

N: \projects\05216\dwg\wetlands\wet.dwg 4/21/2008 11:09:05 AM EDT



LOCATION:
LATITUDE - 34°03'34" N
LONGITUDE - 80°57'30" W

NOTE:
WETLAND TO BE
AVOIDED BY INSTALLING
A BOARDWALK ABOVE
WETLAND

PERMITTED
PLANS

UPLAND

UPLAND

APARTMENT BLDG.

NEW 5' WALKWAY

UPLAND

POND

WETLAND AVOIDANCE AREA

1" = 20'

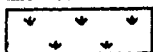
TOTAL WETLAND IMPACT = 0.000 ACRES

LEGEND

BOARDWALK



WETLAND (NOT IMPACTED)



WETLAND BOUNDARY



Project Title:

**SITE IMPROVEMENTS TO THE ROPER
PROPERTY ON TRENHOLM ROAD**

Project Location:

RICHLAND COUNTY, S.C.

Applicant:

ESTATES, INC.

BPB Project #05216

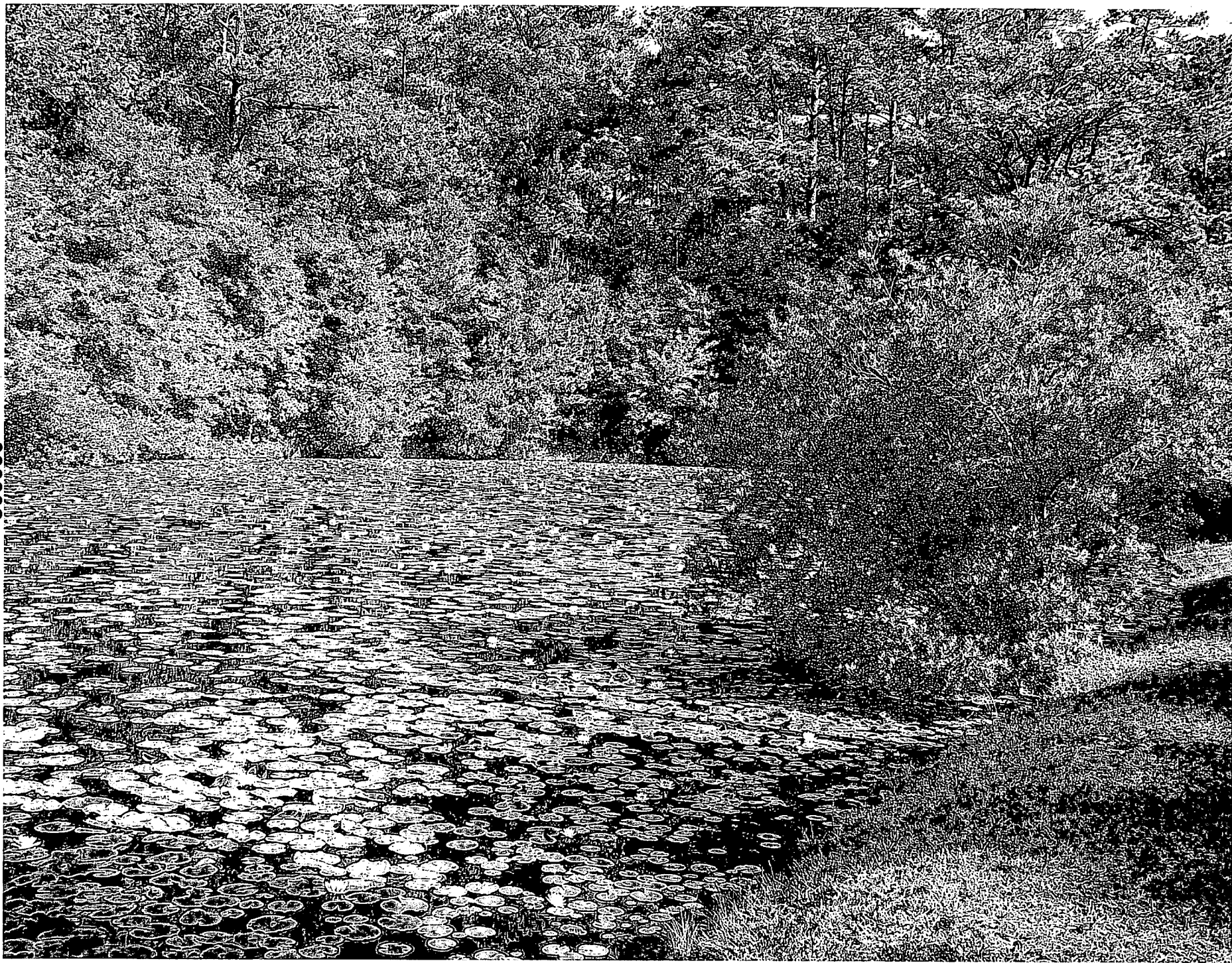
SAC-2004-35601
Site Improvements of Roper Property on Trenholm Road
Richland County
September 8, 2008

Page 6 of 6



11-10-31
006931

990932



Nationwide Permit 401 and CZC General Conditions
Certified May 11, 2007

EXPLANATION, EVALUATION, AND PROPOSED ACTION OF THE NATIONWIDE PERMITS

General Conditions: These conditions apply to all of the nationwide permits (NWP) unless otherwise noted. A project proposed for authorization under a NWP should not be considered unless it meets all of the following general conditions plus any special conditions listed for each NWP.

1. SCDHEC considers a "single and complete project" to mean the overall project proposed or accomplished by a single owner/developer and it includes all land within the project boundary under single ownership. It is not interpreted to mean only the land area directly impacted by each NWP request. Impacts to Geographical Areas of Particular Concern (GAPC) sites or adjacent waterbodies or wetlands resulting from an activity will be considered during the review of these actions.

2. Activities in Outstanding National Resource Waters (ONRW), Outstanding Resource Waters (ORW), Trout Waters (as defined in R. 61-68), springheads or aquatic sites located adjacent to those areas, are not certified.

3. Activities in areas identified by SCDHEC as having impaired uses (as defined by 303(d) of the Clean Water Act) are not certified.

4. All NWP applications must be accompanied by a Corps verified wetland delineation identifying all wetlands (jurisdictional and nonjurisdictional), depressional areas or other special aquatic sites within the project area.

5. For projects requiring fill in wetlands, the applicant must demonstrate that impacts to wetlands have been avoided; unavoidable impacts to wetland areas have been minimized, and provide suitable compensation for any unavoidable wetland impacts. This sequencing should be presented in all permit applications. Additional sequencing regarding appropriate compensation (onsite, within watershed, outside watershed, etc.) must also be demonstrated. Where compensatory mitigation is required, on-site compensatory mitigation, in accordance with the provisions of the S. C. Coastal Zone Management Program in the Coastal Zone, must be pursued if at all possible. Compensatory mitigation must be determined using the Corps Standard Operating Procedure (SOP), where required by the Corps or in a Specific Condition of the 401 or CZC Certification. Compensatory mitigation plans must be included in the application submitted to the Corps by the applicant and in the package copy furnished to SCDHEC by the Corps. Proof of purchase of compensatory mitigation credits or execution of the deed restriction, restrictive covenant, or conservation easement document, if part of the submitted compensatory mitigation plan, must be submitted to both the Corps and SCDHEC prior to commencement of the activity authorized by the permit issued by the Corps. Although the permit may be issued pending resolution of a compensatory mitigation plan, the work authorized by that permit may not commence until the compensatory mitigation plan is approved and finalized, as described above.

6. Activities in the Critical Areas (as defined in 48-39-10, R 30.1(D) and R 30.10) require a direct permit from SCDHEC-OCRM. SCDHEC OCRM's action on direct critical area permits will serve as the consistency determination for the critical area activity.

7. SCDHEC's Emergency Response Team must be contacted immediately in the case of a spill.

Pet. Ex. 23

1 STATE OF SOUTH CAROLINA

2 ADMINISTRATIVE LAW COURT

3
 4 TOWN OF ARCADIA LAKES,
 5 ROBERT L. JACKSON, LINDA
 6 Z. JACKSON, ROBERT E.
 7 WILLIAMS, JR., BARBARA S.
 8 WILLIAMS, ELIZABETH M.
 9 WALKER, LOUIS E. SPRADLIN,
 10 MARY HELEN SPRADLIN, THOMAS
 11 HUTTO UTSEY, TONY SINCLAIR,
 12 AARON SMALL, BETTE SMALL,
 13 GENE F. STARR, M.D., ELAINE
 14 J. STARR, SANFORD T. MARCUS,
 15 RUTH L. MARCUS, and
 16 STEVEN BROWN,

Petitioners,

vs

Case No. 09-ALC-07-0069-CC

12 SOUTH CAROLINA DEPARTMENT OF
 13 HEALTH and ENVIRONMENTAL
 14 CONTROL and ROPER POND, LLC,

Respondents.

15 _____/

16 D E P O S I T I O N

17 WITNESS: RICHARD W. THOMAS, JR.
 18 DATE: Wednesday, August 19, 2009
 19 TIME: 1:55 p.m.
 20 LOCATION: Law Offices of
 21 Nexsen Pruet, LLC
 22 1230 Main Street, Suite 700
 23 Columbia, South Carolina
 24 TAKEN BY: Attorneys for the Respondent(s)
 25 REPORTED BY: SONIA I. MENDEZ,
 Certified Court Reporter

23 COMPUSCRIPTS, INC.
 24 A Full-Service Court-Reporting Agency
 25 Post Office Box 7172
 Columbia, South Carolina 29202
 803.988.0086

Pet. Ex. 27

1 APPEARANCES:

2 ATTORNEYS FOR PETITIONERS:

3 SOUTH CAROLINA ENVIRONMENTAL
LAW PROJECT
4 BY: JAMES S. CHANDLER, JR., ESQ.
430 Highmarket Street
5 Georgetown, South Carolina 29440
Post Office Box 1380
6 Pawleys Island, South Carolina 29585
843.527.0078
7 843.527.0540 Fax
jchandler@scelp.org

8 ATTORNEYS FOR RESPONDENTS:

9 NEXSON PRUET, LLC
10 BY: HENRY BROWN, ESQ.
BY: JOAN W. HARTLEY, ESQ.
11 1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
12 Columbia, South Carolina 29202
803.771.8900
13 803.727.1415 Fax
hbrown@nexsenpruet.com

14 ATTORNEYS FOR SOUTH CAROLINA DEPARTMENT
15 OF HEALTH AND ENVIRONMENTAL CONTROL:

16 OFFICE OF GENERAL COUNSEL
BY: STEPHEN P. HIGHTOWER, ESQ.
17 2600 Bull Street
Columbia, South Carolina 29201
18 803.898.3349
803.898.3367 Fax
19 hightosp@dhec.sc.gov

20 ALSO PRESENT:

21 Teresa Hodge, Roper Pond, LLC
Charles H. Cook, Esq., Town of Arcadia
22 Lakes Attorney

23

24

(INDEX AT REAR OF TRANSCRIPT)

25

1 STIPULATION: It is stipulated by and
2 among Counsel that this deposition is being taken
3 in accordance with the Federal Rules of Civil
4 Procedure; and that the deponent waives reading and
5 signing of this deposition.

6 - - - - -

7 RICHARD W. THOMAS, JR., being
8 first duly sworn, testified as follows:

9 EXAMINATION

10 BY MR. BROWN:

11 Q. Would you state your full name and
12 residence address, please.

13 A. My full name is Richard Warren Thomas,
14 Jr. I reside at 27 Huntwick Court in the Town of
15 Arcadia Lakes.

16 Q. Mr. Thomas, you and I met a little bit
17 before this started. I'm Henry Brown. I work at
18 Nexsen Pruet. I represent Roper Pond, LLC.

19 You understand that you're here for a
20 deposition today in connection with an action
21 before the Administrative Law Court regarding Roper
22 Pond?

23 A. I do.

24 Q. There are a couple of things that I'm
25 supposed to tell you by rule, and let me run

1 through those, if I can. If I ask you a question
2 that doesn't make sense, which is highly probable,
3 or you are confused by anything that I say or any
4 question that I ask, please ask me to clarify it.

5 Under the rules, you are to direct
6 those questions of clarification to me and not to
7 your attorney. So you are always entitled to ask
8 for a clarification, or an explanation, or any
9 further statement as long as you understand my --
10 to the point that you understand my question.

11 Do you understand what I'm asking you
12 to do?

13 A. Yes.

14 Q. If you need to take a break at any
15 time, please tell me. If you need to look at
16 documents in furtherance of your answer, please let
17 me know. I have documents here and I may be able
18 to provide it to you.

19 You are entitled to and I would ask
20 you, if it will help give a complete and full
21 answer, would you refer to documents?

22 A. Yes.

23 Q. Have you ever given a deposition
24 before?

25 A. No, I have not.

1 Q. One of the purposes of this deposition
2 is to create a written record of what we are
3 saying. I will try to make my questions clear.
4 Your answers need to be in "yeses," or "nos," or
5 other means of which it will be clear in writing
6 later what your answer was.

7 In our conversation we can carry on
8 very well with yeses, and uh-huhs, and uh-huhs, and
9 nods of the head, but those will not show up later
10 in a written transcript. So I would ask you, if
11 you would, please answer clearly, affirmatively,
12 and in a matter that will be clear in writing.

13 Would you do that for me?

14 A. Very well.

15 Q. Now, I understand that you are the
16 mayor of the Town of Arcadia Lakes?

17 A. Yes, I am.

18 Q. And I understand that the Town of
19 Arcadia Lakes is a petitioner in the proceeding
20 that we are here to take this deposition regarding.

21 A. That's right.

22 (EXH. 1, Notice, was marked for
23 identification.)

24 Q. Now, we sent your attorney a Notice of
25 Deposition that I want to ask the court reporter to

1 mark as Exhibit 1.

2 Do you have a copy of that already,
3 Mr. Thomas?

4 A. Yes, I do.

5 Q. Just for the record, let me ask you to
6 use -- look at Exhibit 1, and see if it's the same
7 as the copy that you have.

8 A. Yes, it is.

9 Q. For the record and so there will be no
10 confusion, I would ask that you refer to that
11 Exhibit 1 in connection to my questions. And if
12 for any reason you need to look at your copy to
13 refresh your recollection or answer, you're
14 certainly entitled to. But just let me know if you
15 do that.

16 A. Okay.

17 Q. Have you reviewed that deposition
18 notice in connection with the subject matter of
19 what we're talking about today?

20 A. Yes, I have.

21 Q. Do you understand that you are here to
22 testify on behalf of the town in connection with
23 this proceeding?

24 A. Yes, I do.

25 Q. Do you understand that your testimony

1 is to provide answers not limited to your own
2 personal knowledge, but to include knowledge or
3 information available to the town?

4 A. Yes.

5 Q. And have you prepared yourself to give
6 answers on behalf of the town that include
7 information available to the town?

8 A. Yes. And I have taken the liberty of
9 putting some notes together for myself.

10 Q. Okay. Do you have those notes?

11 A. I do.

12 Q. Okay. Do you intend to use those
13 notes in connection with your testimony?

14 A. I do.

15 Q. Could I take a look at them?

16 A. Would you like a copy?

17 Q. Yes, sir, if you could. All right.

18 Do you have an extra copy?

19 A. Yes, I do.

20 MR. BROWN: With your -- I'd like to
21 mark this as Exhibit 2, these notes, if I can.

22 (EXH. 2, Notes, was marked for
23 identification.)

24 BY MR. BROWN:

25 Q. Do we have an extra copy of the notes

1 by any chance, so the witness can use the marked
2 copy?

3 A. Who needs it?

4 Q. Well, I was just going to try to use
5 it as --

6 A. Okay. That's fine. I don't need
7 this. Do I need this?

8 Q. If you refer to a copy -- would you
9 look at the copy that's marked and tell me if
10 that's identical to this --

11 A. Yes, I've prepared it. Yes, sir, it
12 is.

13 Q. For the record then, when you refer to
14 those notes, I'd like for you to refer to what's
15 marked as Exhibit 2.

16 A. Here you go.

17 Q. And if you need to look at any other
18 documents, please do so. It's just that in a week
19 or two from now, we will be confused in the written
20 record if we're not clear as to what you're looking
21 at at the moment.

22 A. Very well.

23 Q. And what you have handed me as
24 Exhibit 2 is an identical copy as what the court
25 reporter marked as Exhibit 2?

1 A. Yes.

2 Q. The other thing I'd ask, and I'll try
3 to do it, is that we not talk over the top of each
4 other because this lady's going to fuss at both of
5 us. She can't write down two people talking at one
6 time.

7 If you can let me finish my questions
8 and then you'll finish your answers and we'll talk
9 separately, she'll have an easier day.

10 A. Okay.

11 Q. Now, what was -- let me go back to
12 Exhibit 1. There are certain categories of subject
13 matters that were to be discussed in the
14 deposition.

15 A. Yes.

16 Q. Do you see those?

17 A. Yes.

18 Q. Are you prepared to give full and
19 complete answers on behalf of the town as to those
20 categories?

21 A. Yes, to the best of my ability.

22 Q. Tell me what you looked at
23 document-wise in preparation for this deposition.
24 Physical documents, what did you look at? What did
25 you read specifically in preparation for this

1 deposition?

2 A. I read your questions. What was
3 written on the deposition of the Town of Arcadia
4 Lakes.

5 Q. Okay. Now, does the town maintain a
6 file specifically in regard to this proceeding?

7 A. The one of the proceeding today?

8 Q. Yes, sir.

9 A. This deposition?

10 Q. No. Well, let me go back. The issue
11 of the development of the Roper Pond property has
12 been around for a couple of years, correct?

13 A. Yes.

14 Q. And the town has taken a position
15 with, not only DHEC, but Richland County or other
16 agencies in regard to whether that project should
17 proceed or not, correct?

18 A. That's correct.

19 Q. From the beginning of the town's
20 opposition to this project, has it maintained a
21 separate repository for documents that pertain to
22 its opposition to this project?

23 A. I believe that is true. I have not
24 gone into the actual town files to verify that, but
25 I believe that we do have a file on that.

1 Q. Who is the -- who personally has
2 maintained that file?

3 A. Our town clerk Ms. Christine Murphy.

4 Q. Has that file been produced to Roper
5 Pond, LLC in connection with this proceeding?

6 A. As far as I know.

7 Q. "Yes," as far as you know, or "no" as
8 far as you know?

9 A. As far as I know, yes. I think y'all
10 asked for that, I believe.

11 Q. Now, have you independently of the
12 file maintained by your clerk, have you personally
13 kept any files or records pertaining to this
14 opposition to this project?

15 A. I've kept all of the files that were
16 given to the County and to Roper, LLC during these
17 proceedings.

18 Q. Do you know if any of the other Town
19 Council, men or women, have kept files pertaining
20 to this proceeding?

21 A. I do not know.

22 Q. Have you investigated to see if they
23 did?

24 A. No, I have not.

25 Q. Are you familiar with what is in the

1 files maintained by the town?

2 A. They should be identical to the files
3 that I have copies of, yes.

4 Q. As far as you know, are there any
5 files or documents pertinent to this proceeding
6 that you have not reviewed at some point in time
7 prior to this deposition?

8 A. Not that I can attest to.

9 Q. And as far as you're concerned, do you
10 understand that when you're answering, you'll be
11 answering on behalf of the town and not just on
12 behalf of Rick Thomas personally?

13 A. Correct.

14 Q. Let's talk about you personally. What
15 is your -- just give me a quick summary of your
16 educational background.

17 A. I have a bachelor's of science in
18 civil engineering, a master of -- master of
19 engineering. I have extensive work in master's of
20 business administration. Did not finish the
21 master's of business administration. I have done
22 extensive marketing work at Columbia University in
23 New York. And I have worked with South Carolina
24 Electric & Gas for going on 35 years in various
25 operations and engineering jobs.

1 Q. All right. Not to be impolite, but
2 what year did you get your civil engineering
3 degree?

4 A. I got my Bachelor of Science degree in
5 1970, and my master's degree in 1997.

6 Q. What institutions did you get your
7 degree in?

8 A. University of South Carolina.

9 Q. Was there a period of time between
10 your degree in '70 and '77 that you were employed?

11 A. The entire time.

12 Q. Who were you working for?

13 A. I worked for Duke Power in 1971. I
14 worked for Wilbur Smith Associates in 1973, and I
15 started working for South Carolina Electric & Gas
16 in June of 1974.

17 Q. You've been with SCE&G since '74?

18 A. That's correct.

19 Q. And you obtained your masters while
20 you were employed by them?

21 A. I went to school at night for seven
22 years. That's correct.

23 Q. Now, your BS in civil engineering, did
24 you have any emphasis or specialty in that degree,
25 any concentration or study within that degree?

1 A. My primary concentration in that
2 degree was in structural and foundation
3 engineering.

4 Q. What about your masters?

5 A. My master's degree was based on
6 structures of mechanics and environmental.

7 Q. Now, when you say "environmental,"
8 help me understand what in detail that involved.

9 A. That entailed work in air and water
10 pollution, and in general environmental.

11 Q. Now, let's go back. You worked for a
12 while at Duke. What was your responsibility there?
13 What did you do for them?

14 A. I was in nuclear plant design at the
15 Duke Plant.

16 Q. Foundation, structure?

17 A. Primarily structural.

18 Q. What facility did you work on?

19 A. I worked on the finals of Oconee and
20 on McGuire Nuclear Station, Lake Norman.

21 Q. And from Duke you went to --

22 A. Wilbur Smith.

23 Q. What did you do for Wilbur Smith?

24 A. I worked in parking garage design.

25 Q. And when you came to Electric & Gas

1 what were your -- you worked as an engineer for
2 Electric & Gas?

3 A. That's correct. I've been in
4 transmission engineering, materials and standards,
5 operations, key account management.

6 Q. Transmission would be -- I assume
7 that's electrical transmission, power transmission?

8 A. I did total design on transmission
9 lines and design, which included environmental
10 necessity, included layout, included surveying,
11 included structural design, included material
12 order, included overseeing construction.

13 Q. All right. It sounds like at some
14 point you went out of the pure practice of
15 engineering and into management.

16 A. Management or into overseeing
17 operations. For instance, when I was general
18 manager of Columbia, I was over engineering for the
19 entire northern division. I was over operations
20 which included every day activities of maintenance
21 design and over customer service, which included
22 all the call centers.

23 Q. Would your management responsibilities
24 include those outside of the discipline of
25 engineering? Is that fair?

1 A. Oh, yeah, all inclusive.

2 Q. What year -- all right. From '74
3 forward, you would have been with Electric & Gas?

4 A. 35 years. That's correct.

5 Q. At what point did you cease to be --
6 and I'll call it -- a pure design engineer? That
7 is designing structures, transmission lines,
8 transmission towers, and then you moved into more
9 of a management activities.

10 When did that occur?

11 A. Somewhere in the early '90s, but
12 during that time you're still overseeing and
13 signing off on the engineering and operations plans,
14 and procedures.

15 Q. So from '74 to the early '90s, you are
16 a practicing engineer designing transmission
17 structures or other physical facility for
18 Electric & Gas?

19 A. That's correct. I still maintain a
20 license to practice engineering in the state of
21 South Carolina.

22 Q. And that license is in the field of
23 civil engineering?

24 A. That's correct.

25 Q. You are a registered professional

1 engineer?

2 A. That's correct.

3 Q. During this time, did you ever seal
4 documents?

5 A. Yes.

6 Q. You sealed the -- were you the
7 engineer in charge, then, on a number of these
8 projects that related to the design of transmission
9 facilities?

10 A. Clarify that.

11 Q. Well, I assume that for a period of
12 time you didn't seal. You worked under the
13 authority of the city engineer.

14 A. Well, there are two different
15 questions here. One, we don't have to seal
16 documents at South Carolina Electric & Gas. I have
17 sealed documents in the outside personal private
18 ward, on the side.

19 Q. Okay.

20 A. So there are two different answers to
21 that one. I don't -- it's not necessary to seal
22 documents at South Carolina Electric & Gas.

23 Q. Well, that's what confused me. You
24 answered yes, that you had sealed documents. And I
25 was curious to what you would have sealed.

1 Now, let me make sure I understand.

2 Do you maintain a business for compensation
3 independent of your employment for South Carolina
4 Electric & Gas?

5 A. Not in the field of engineering.

6 Q. When did you have the occasion to seal
7 engineering drawings independent of your work for
8 Electric & Gas?

9 A. I don't -- I have never had to seal
10 drawings for Electric & Gas, because we don't fall
11 underneath the necessity to seal according to the
12 Registered Engineering Board of South Carolina.

13 Q. Then I may have been confused. Have
14 you personally ever applied your seal to a set of
15 drawings taking for personal and professional
16 responsibility for the contents of those drawings
17 in any capacity?

18 A. Yes.

19 Q. What is that capacity? When?

20 A. I did some -- I performed
21 engineering -- practiced engineering in my spare
22 time during the '70s, and sealed drawings for
23 various clients in the area of structures.

24 Q. You had a business or you worked as an
25 engineer independent of your employment by

1 Electric & Gas?

2 A. That's correct. Outside of the
3 employment.

4 Q. How many years did you do that?

5 A. For about two or three years.

6 Q. What were the kind of structures that
7 you designed that you would have sealed -- you put
8 your personal engineering seal during that time?

9 A. Commercial type buildings and/or water
10 structures, water retention structures.

11 Q. Tell me exactly what you mean by
12 "water retention." Earth and dam?

13 A. No. I developed for some catch basin
14 structures for engineering over in Florence.

15 Q. And who was that?

16 A. Richard Spielman, Jim Helm (phonetic).

17 Q. It was a spillway?

18 A. It was an outward structure for a pond
19 where you have boards. You take the boards out to
20 lower the pond, and you put the boards back in to
21 raise the pound.

22 Q. What other projects did you have
23 outside of that one that you've put your own
24 personal engineering seal on?

25 A. I can't recall any at the present

1 time. That's been many years back.

2 Q. What percentage of your time since
3 1990 has been involved with overseeing -- let me
4 back up and ask this question.

5 Since 1990, have you been an engineer
6 sitting on the board calculating drawings or are
7 you more of an oversight of that activity?

8 A. Primarily oversight, yes.

9 Q. What are the activities that you are
10 providing oversight to in your current capacity?

11 A. In my current capacity, I manage and
12 oversee 50 key accounts for South Carolina
13 Electric & Gas.

14 Q. Does that involve any engineering
15 work?

16 A. Oh, yes. In any capacity between that
17 customer and SCE&G, I'm the primary contact.

18 Q. And the structures that require
19 engineering services, give me some overall
20 description of what they are.

21 A. When?

22 Q. In this current capacity --

23 A. I don't have structural.

24 Q. What are the engineering services that
25 are required in regard to these 50 major accounts?

1 A. An example would be, a customer is
2 coming onto our system and that customer goes
3 through economic development and is at a point of
4 signing a new contract. I would work with economic
5 development to sign a new contract, electric
6 service contract for that customer. And then help
7 coordinate the actual service needs in getting the
8 power to that customer. What his power needs would
9 be, and how his billing would be worked. Those
10 type of things.

11 Q. Tying him into your system?

12 A. Correct.

13 Q. Prior to 1990, did you have those same
14 type of activities?

15 A. Yes. In 1984 -- from 1984 to 1990, I
16 started -- was called -- our department was called
17 industry relation and contracts.

18 Q. And what is involved in that
19 responsibility?

20 A. I managed the top 50 customers
21 underneath the president of the company.

22 Q. By "managing," I assume you're taking
23 on --

24 A. Exactly what I'm doing today.

25 Q. But it involves many phases of work

1 outside of engineering?

2 A. Correct.

3 Q. Customer relations?

4 A. Correct.

5 Q. Billing?

6 A. Correct.

7 Q. Customer happiness?

8 A. Hopefully.

9 Q. Okay. We all hope for that.

10 Have you ever had any -- well, let me
11 back up. Are you familiar with the design prepared
12 by BP Barber for the Roper project -- Roper Pond
13 project?

14 A. I'm fairly familiar with it. I
15 haven't seen the final drawings -- the absolute
16 final drawings, but I've turned -- all that
17 activity has been turned over to our attorney
18 Mr. Chandler.

19 Q. Have you seen the set of drawings upon
20 which DHEC issued its certification letter?

21 A. I have seen those drawings, but I have
22 not studied those drawings.

23 Q. Have you ever, in your professional
24 career, worked on a set of civil drawings similar
25 to the BP Barber drawings at issue?

1 A. Can you clarify the word "similar,"
2 because I've worked with engineering drawings of
3 every which kind. But I mean, that's --

4 Q. All right. Well, let me get you to do
5 this, you have seen those drawings. How would you
6 describe them? Maybe you can tell me what you
7 understand those drawings to be.

8 A. Well, you have plan and profile, and
9 you've got layout, and you've got environmental,
10 and you've got drainage. And you've got -- there
11 are dozens of drawings in that.

12 Q. Okay. They're site drawings?

13 A. Correct.

14 Q. Civil site drawings?

15 A. And some drawings that we were shown
16 actually showed the actual structures and
17 architectural-type drawings.

18 Q. Is it your understanding that the
19 actual structures and the architectural drawings
20 have no bearing on the issues before the
21 Administrative Law Court?

22 A. Ask that question one more time.

23 Q. Is it the Town of Arcadia Lakes
24 contention that there is any aspect of the
25 architectural drawings that you just referred to,

1 that bear upon your position, the town's position,
2 that the permit was improperly issued?

3 A. I still don't understand.

4 Q. You have looked to some extent at the
5 BP Barber drawings, correct?

6 A. That's correct.

7 Q. Would it be fair to say that those
8 drawings, in part, create the system by which
9 stormwater will be collected and disbursed off of
10 the property?

11 A. Correct.

12 Q. Have you in your career ever had any
13 hands on experience, as an engineer, with creating
14 that type of drawing?

15 A. Not to my knowledge.

16 Q. Do you know what calculations are
17 required of a civil engineer in order to determine
18 whether or not his design is adequately managing
19 stormwater off an improved site?

20 A. I'm aware of many of the needs that
21 are required in order to provide stormwater
22 retention and --

23 Q. All right. I understand the needs.
24 What do you call "the needs"? All right. Help me
25 with that. Help me understand your definition of

1 "needs."

2 A. Well, in my studies in graduate school
3 with waste water treatment and disposal, there are
4 certain areas of BOD and oxygen demand, et cetera,
5 that have to be maintained in order to --

6 Q. Aren't the waste water -- isn't the
7 waste water collection system going into the
8 sanitary sewer system and not into Roper Pond? Can
9 we agree on that?

10 A. The sanitary sewer system from --

11 Q. -- that is designed to be constructed
12 on the apartments at Roper Pond, that system will
13 feed into the County wide sanitary sewer system,
14 correct?

15 A. The parts coming out of the individual
16 apartments. Am I clear on that?

17 Q. Do you have an understanding of the
18 sanitary sewer system that is involved in the
19 BP Barber drawings?

20 A. Yes. There are two sets of drawings.
21 One is the run off on the surface, and one is the
22 actual disposal of the water that's coming out of
23 the individual apartment complex.

24 Q. What happens to the water that's
25 coming out of the individual apartment complex?

1 A. It goes into the East Richland County
2 Public Service District.

3 Q. Into their pipes?

4 A. That's correct.

5 Q. Does the Town of Arcadia Lakes contend
6 that there is any error in those drawings that
7 would be a ground to rely upon in having DHEC
8 revoke the permit?

9 A. We had concerns in the very beginning
10 that there was a possible overflow potential, which
11 we have had in our town in the past several years
12 from that very problem.

13 Q. In this proceeding, is the Town of
14 Arcadia Lakes contending that the BP Barber design,
15 as it relates to the sanitary sewer system, is a
16 basis to ask DHEC to revoke the permit?

17 A. In my knowledge, I do not know. I do
18 not know of that, but I would defer that to our
19 attorney, Mr. Chandler, who's provided the filings
20 in this case.

21 Q. Well, assuming that Mr. Chandler won't
22 get to testify and that you're the representative
23 of the town.

24 Are you aware of any information that
25 is available to the town that says there is any

1 problem with the sanitary sewer system designed by
2 BP Barber sufficient to require the revocation of
3 the permit?

4 A. Not to my knowledge.

5 Q. All right. Now, let's step over into
6 the second set of drawings that you described, and
7 that is the BP Barber drawings that collect the
8 stormwater, rain water, and manage it from Roper
9 Pond over into Cary Lake.

10 Is that a fair way to describe it?

11 A. Under North Trenholm Road, yes.

12 Q. Well, one thing -- I'm not trying to
13 pin you down. I'm just trying to make sure that
14 we've got a good system here.

15 A. You're referring to surface water?

16 Q. Yes. I just want to make sure you and
17 I -- when I use terms, I'm using them in the -- my
18 understanding and your understanding are the same.
19 I just want us to first come up with a set of
20 common terms.

21 What is the -- your comfortable
22 description -- what are you comfortable with in
23 describing the BP Barber drawings that are managing
24 the stormwater run off? What's a common word that
25 I can use that will describe that to you?

1 A. Surface water disposal system.

2 Q. And is it in that -- are there
3 problems in that system that the town is asserting
4 as a basis to revoke the permit?

5 A. I'd refer to Mr. Chandler's filings on
6 that. You should have Mr. Chandler's pleadings as
7 to what the actual issues are in the case.

8 Q. Well, we'll go to those, but I've got
9 to get my -- the positions of the town are coming
10 from you. I need to understand what the town knows
11 through you.

12 You understand that, don't you?

13 A. Right. But I'm not a legal expert in
14 this case. That's why we've hired Mr. Chandler to
15 take on the legal aspects of this.

16 Q. I understand. But I'm going to ask
17 you about the factual aspects first, though. And I
18 think I'm entitled to get from you the facts and
19 positions of the Town of Arcadia Lakes.

20 Now, can you give those to me?

21 A. "Water quality is paramount to the
22 citizens of Arcadia Lakes," and I will refer to
23 Exhibit 2. "This is evidenced in our work with
24 Gill Creek Watershed Association, Gill Creek being
25 a threatened waterway, our intergovernmental

1 agreement with Richland County as a co-permittee
2 under NPDES-MS4, our efforts to acquire funding to
3 clean up Cary Lake from past development along
4 Decker Boulevard and Dent School remodeling. And
5 are forming a Citizens of Arcadia Lakes Navy to
6 take on water quality education projects such as
7 marking all the street drains in our town to inform
8 folks that they drain to our lakes and streams."

9 "We are confident, having met with
10 Mr. Chandler, that we have a case. That is why
11 we've put so far a year of our time in this case
12 and our money into hiring Mr. Chandler to fight
13 against the environmental impact this project will
14 produce."

15 Q. Now, are those comments you just read
16 from Exhibit 2?

17 A. That's correct.

18 Q. All right.

19 A. Based on what I believe are violations
20 with regard to this project and plans in its
21 permitting with DHEC and U.S. Corp of Engineers.

22 Q. Now, let me go back then, because I
23 want to try to understand -- I want to go back to
24 your position in this case.

25 Is it your understanding that you will

1 be a witness in this case? Do you understand that
2 you will testify before DHEC -- before the
3 Administrative Law Judge to provide information
4 upon which he will make his decision?

5 A. It's my understanding that everything
6 I say today is being given to the Administrative
7 Law Judge. That's correct.

8 Q. Is there somebody else besides you
9 that knows more about this matter? Let me back up.

10 Is there some representative of the
11 Town of Arcadia Lakes that knows more about this
12 matter than you?

13 A. Is there --

14 Q. Is there another councilman,
15 representative, someone that --

16 A. Not that I know. Not on the council,
17 no.

18 Q. Am I talking to the person who has the
19 best store of knowledge, the best access of
20 knowledge to explain the positions of the Town of
21 Arcadia Lakes?

22 A. I believe I am.

23 Q. Let me find out a little bit more
24 about you. Let's go back to this stormwater run
25 off system that you have looked at in the BP Barber

1 drawings.

2 Q. Have you ever in your engineering
3 career had any professional involvement in the
4 design of a system similar to or the same as
5 depicted on those drawings?

6 A. No.

7 Q. Have you, in your career, ever had any
8 involvement with preparing calculations to
9 determine whether or not the system would meet the
10 requirements of the permit?

11 A. At what time?

12 Q. Mr. Jackson -- Mr. Thomas, do you
13 believe that you are competent as a professional
14 engineer to prepare the BP Barber drawings, and
15 seal them, and present them as your work product?

16 A. No. I don't claim to be a water
17 quality engineer.

18 Q. You would not claim to have expertise
19 in the design of the stormwater surface, water
20 collection system that BP Barber has presented to
21 DHEC?

22 A. I would say that I have the
23 engineering expertise to understand what's been
24 done. But as far as -- like I said earlier, the
25 legal issues here that the town is contending, we

1 have turned over to Mr. Chandler who is the legal
2 expert.^{fr}

3 Q. I want to set aside the legal issues.
4 I want to talk about the BP Barber design.

5 Do I understand you to say that you do
6 not believe you're an expert in regard to the
7 substance of the engineering disciplines reflected
8 in the BP Barber design?

9 A. As I said, I don't claim to be a water
10 quality engineer.

11 Q. Would you hold yourself out as
12 competent to prepare, and present, and seal
13 drawings similar to what BP Barber has presented to
14 DHEC in this case?

15 A. If I had the time to study and develop
16 said drawings, I would be capable of doing that.

17 Q. But as we sit here today, you have not
18 taken the time to develop that expertise, have you?

19 A. That is not part of my career.

20 Q. All right. I'm just trying to
21 understand what your -- what you know and what is
22 your area of expertise as we sit here today.

23 If I understand your testimony, you do
24 not contend you're an expert -- or you agree you
25 are not an expert in the field of engineering

1 reflected by the BP Barber drawings?

2 A. I don't contend to be. NO, I don't.

3 Q. All right. Now, you have stated that
4 the town's positions are those that have been
5 expressed by Mr. Chandler in his legal documents.

6 Is that a fair description?

7 A. We have been in consultation with
8 Mr. Chandler and with others in this matter, and we
9 are confident that we have a case.

10 Q. Okay. I understand that. What I want
11 to find out is what that case is composed of.

12 Now, do I understand your position
13 correctly to be that this town is asking DHEC to
14 revoke the permit that was issued on December 15th?

15 A. I'll defer that to Mr. Chandler. To
16 me, that's a legal issue and I --

17 Q. Do you know --

18 A. -- I don't claim to have any legal
19 expertise.

20 Q. Do you know today what the town is
21 asking the Administrative Law Judge to do in this
22 case?

23 A. Yes. It's in the pleadings. You have
24 a copy of the pleadings.

25 Q. Let me hand you these.

1 MR. BROWN: Do I need to give you a
2 copy?

3 MR. CHANDLER: What is that?

4 MR. BROWN: I believe that's your --
5 look at that. That's your complaint and
6 attachments. If I can impose on you to help me
7 make sure I've got the right --

8 (EXH. 3, Request for Hearing, was
9 marked for identification.)

10 BY MR. BROWN:

11 Q. Have you looked at Exhibit 3?

12 A. Yes, I have.

13 Q. What do you understand Exhibit 3 to
14 be?

15 A. Exhibit 3 is a Request for a Contested
16 Case Hearing.

17 Q. And this is on behalf of the Town of
18 Arcadia Lakes?

19 A. And other petitioners.

20 Q. But it is on behalf of the Town of
21 Arcadia Lakes as well as the other petitioners,
22 correct?

23 A. As far as I understand, yes.

24 Q. Am I correct to understand that the
25 sum total of all relief you're asking for from the

1 Administrative Law Court is as expressed in
2 Exhibit 3?

3 A. I'd have to defer that answer to
4 Mr. Jimmy Chandler who's our attorney.

5 Q. As of today, have you evaluated and
6 determined from Mr. Chandler what the relief is
7 that you're asking the court to award you?

8 A. It's here in the filings. Yes. It's
9 right here in the file.

10 Q. Do you know of any relief that you're
11 asking for other than as is contained in Exhibit 3?

12 A. Not that I know of, but I defer that
13 answer to Mr. Chandler.

14 Q. Well, I can't take Mr. Chandler's
15 deposition.

16 A. I understand.

17 Q. All right. Now, if I limit my
18 questioning to what is contained in Exhibit 3, am I
19 going to learn from you all of the contentions of
20 the Town of Arcadia Lakes that you are going to
21 present to the Administrative Law Judge?

22 A. Can I ask you to repeat your question
23 one more time?

24 Q. Is Exhibit 3 a complete statement of
25 the relief that the Town of Arcadia Lakes is asking

1 the Administrative Law Court to award it?

2 A. To the best of my knowledge, yes.

3 Q. Is Exhibit 3 a complete statement of
4 the basis or contentions upon which you ask that
5 relief to be awarded?

6 A. To the best of my knowledge, yes.

7 Q. Okay. Now, I understand that there's
8 a gentleman who is an expert in biology or some
9 field from the University of North Carolina who has
10 been retained in this case.

11 Am I describing him correctly? Do you
12 know who I'm talking about?

13 A. I do.

14 Q. What's his name?

15 A. I refer to Mr. Chandler. He did all
16 the hiring there.

17 Q. Had you ever heard of that gentleman
18 before Mr. Chandler hired him?

19 A. No.

20 Q. Have you ever spoken with him?

21 A. I saw him at the pond one day when he
22 was taking samples.

23 Q. Outside of that contact, have you ever
24 spoken with him?

25 A. No.

1 Q. Has anyone else on behalf of the Town
2 of Arcadia Lakes ever spoken with that gentleman?

3 A. Mr. Chandler.

4 Q. Outside of your legal counsel?

5 A. Not that I know of.

6 Q. As far as you know, the sole contact
7 between the Town of Arcadia Lakes and the gentleman
8 from North Carolina -- the University of North
9 Carolina has been the simple conversation you had
10 out at the pond one day in the past?

11 A. That's correct.

12 Q. What did you talk to him about?

13 A. He was out there taking samples. We
14 were talking about trying to get his equipment
15 working properly.

16 Q. Do you know what he was engaged to do
17 by Mr. Chandler?

18 A. He was engaged to determine the
19 viability of the Lily Pad point.

20 Q. And "viability" meaning what?

21 A. Ecosystem, the life.

22 Q. Now, is that something you asked
23 Mr. Chandler to investigate? "You" being the Town
24 of Arcadia Lakes.

25 A. We asked Mr. Chandler to investigate

1 anything and everything he thought necessary in
2 order to apply these documents.

3 Q. So there was no specific request by
4 the Town of Arcadia Lakes to have someone evaluate
5 the viability of the Roper Pond?

6 A. There was a specific request by the
7 Town of Arcadia Lakes to have expert testimony to
8 the water -- water quality, and to the potential
9 detriment to the town that this project may incur.

10 Q. Outside of the gentleman from the
11 University of North Carolina, are you aware of any
12 other expert who has been retained to appear and
13 present positions on behalf of the Town of Arcadia
14 Lakes?

15 A. Yes, there's another witness.

16 Q. Who is that?

17 A. A gentleman, I believe, from the
18 University of South Carolina.

19 Q. And what is his -- what is the
20 substance of his evaluation?

21 A. I would defer that to Mr. Chandler.

22 Q. Have you ever spoken to him?

23 A. No, I have not.

24 Q. Have you ever seen any reports he
25 prepared?

1 A. No, I have not.

2 Q. Do you have any idea what he might
3 testify to?

4 A. I only have what I understand he may
5 testify to.

6 Q. All right. What is your
7 understanding?

8 A. He may testify to the environmental
9 impact on the Gill Creek Watershed from the Roper
10 Pond project.

11 Q. And do you know this gentleman's name?

12 A. No, I do not.

13 Q. Do you know when he was retained?

14 A. He was retained just recently.

15 Q. Give me "recently" in the terms of
16 days and weeks prior to today.

17 A. In the last several weeks.

18 Q. What is his compensation arrangement
19 with the town?

20 A. He's working with Mr. Chandler. He
21 would be paid for through Environmental Law
22 Practice.

23 Q. I assume you're going to reimburse
24 Mr. Chandler for those fees?

25 A. That's correct.

1 Q. Do you have any idea what your
2 obligation may be?

3 A. Not at this point. No, sir.

4 Q. Do you have any idea what your
5 financial obligation is to the professor from the
6 University of North Carolina?

7 A. I have not seen the final tally there.

8 Q. Have you seen a partial tally?

9 A. No, I have not.

10 Q. Do I understand that the gentleman
11 from North Carolina is also retained directly by
12 Mr. Chandler?

13 A. That's my understanding.

14 Q. Are you aware of any agreement
15 directly between the University of North Carolina
16 professor and the Town of Arcadia Lakes?

17 A. No.

18 Q. Has the Town of Arcadia Lakes directly
19 hired anyone to assist it in this case?

20 A. Mr. Chandler.

21 Q. Other than Mr. Chandler.

22 A. No, not to my knowledge.

23 Q. All right. Could I ask you -- let's
24 do a little bit more background.

25 Now, in substance, what is the town's

1 position as to the detriment it will sustain if the
2 project goes forward as permitted by DHEC? Let me
3 ask you this question.

4 Can you tell that to me without having
5 to read your notes or Mr. Chandler's pleading?

6 A. I'd rather refer to my notes because
7 that way I won't miss anything.

8 Q. Do you have any understanding of it
9 without referring to your notes?

10 A. An understanding of --

11 Q. What is the town's position as to the
12 detriment the town will sustain if the project
13 proceeds under the permit as issued?

14 A. Yes.

15 Q. What is that detriment?

16 A. The detriment is potential harm to the
17 water flowing through the project under North
18 Trenholm Road, and into Cary Lake, and through the
19 Gill Creek Flood Plain, and eventually into the
20 Congaree River. Harm to the aesthetic interest of
21 the Town of Arcadia Lakes being that the project is
22 surrounded on three sides by the town.

23 As an example, the Eco-Healthy Lily
24 Pond will be changed into a stormwater impoundment.

25 Q. All right.

1 A. It could potentially do harm to the
2 environmental interest of the town, seeing as its
3 seven lakes are a vital part of our identity. Our
4 town motto is Seven Lakes - One Town. We as a town
5 do not believe that the County or DHEC will fully
6 protect us from the environmental impact this
7 project will produce both during and after
8 construction.

9 Q. All right.

10 A. "The lack of environmental oversight
11 and checks evidenced when Decker Boulevard was
12 developed and Dent Middle School was remodeled
13 leaving Cary Lake Association with tens of
14 thousands of dollars of clean up are examples that
15 back up our concerns."

16 That's straight out of document
17 Number 2.

18 Q. Okay. Now, when you prepared document
19 Number 2, where did you get the information you put
20 in Exhibit 2?

21 A. From my head and from my experience in
22 having worked with this project since 2003.

23 Q. All right. Let's talk about these.
24 Now, the potential harm of water under Trenholm
25 Road into Cary Lake, that's what I wrote down real

1 quickly as you were talking.

2 Did I write that down correctly?

3 A. The potential harm from run off water
4 leaving the project as currently designed going
5 underneath Trenholm Road, goes directly into Cary
6 Lake.

7 Q. That's one of the deficiencies you see
8 with the project as permitted; is that correct?

9 A. I said that is a potential.

10 Q. Potential, all right.

11 Now, does Roper Pond drain into any
12 body of water other than Cary Lake?

13 A. As part of that flood plain, it goes
14 straight underneath Trenholm Road into Cary Lake.

15 Q. Does it drain into any other body of
16 water other than Cary Lake?

17 A. Not to my knowledge.

18 Q. What part of Cary Lake is it within
19 the boundaries of the Town of Arcadia Lakes?

20 A. Please repeat that.

21 Q. What part -- let me ask you this, who
22 owns the lake bottom to Cary Lake?

23 A. The lake association which is made up
24 of 40 to 43 members of the Cary Lake Association,
25 which are property owners that surround the lake.

1 Q. The town has no ownership interest in
2 the lake bottom, does it?

3 A. The town does not have any ownership
4 in that lake.

5 Q. Are there any residence of Arcadia
6 Lakes who also own a portion of the lake bottom on
7 Cary Lake?

8 A. To my knowledge, there are many
9 people. The Town of Arcadia Lakes -- Cary Lake is
10 in the Town of Arcadia Lakes.

11 Q. Are there parts of Cary Lake that are
12 not within the town?

13 A. That's correct. There are two to five
14 lots on the other side of the lake back behind Pep
15 Boys that are not in the town.

16 Q. But they are part of the Cary Lake
17 Homeowners' Association?

18 A. That's correct.

19 Q. And where does Cary Lake empty?

20 A. Cary Lake empties down into Forest
21 Lake.

22 Q. Is that water in any way -- Is Forest
23 Lake in any way in the Town of Arcadia Lakes?

24 A. No, it is not. Not that I know of,
25 but it's part of the Gill Creek Flood Plain.

1 Q. But does the water that goes into Cary
2 Lake go into any of the other lakes within the Town
3 of Arcadia Lakes?

4 A. No. It is the bottom lake. It is the
5 final lake that all the rest of the six drain to.

6 Q. So the only lake within the Town of
7 Arcadia Lakes that will be affected by any drainage
8 from Roper Pond is Cary Lake?

9 A. To the best of my knowledge, that's
10 correct.

11 Q. And Roper Pond today drains into Cary
12 Lake, doesn't it?

13 A. That's correct.

14 Q. Do you know of any study that has been
15 made that tells or defines the impact of the
16 drainage from Roper Pond into Cary Lake as of
17 today?

18 A. I know that the Gill Creek Flood Plain
19 Association has done many studies in the area that
20 take into account Cary Lake and the water
21 associated with it. I know that the County and the
22 Cary Lake Association are in the process of trying
23 to work together in order to clean up Cary Lake
24 from the damage that's been caused due to
25 development.

1 Q. If I look at those studies, won't I
2 see considerable discussion of the run off into
3 Cary Lake from areas other than Roper Pond?

4 A. Probably, I would --

5 Q. You've read those, haven't you? Have
6 you read those other studies that you've just
7 referred to?

8 A. I have not read the studies.

9 Q. Then how do you know what's in them?

10 A. I know what's been asked for, and I
11 know what the clean opportunities are. I know what
12 the clean up problems are. One does not have to
13 read the documents from cover to cover in order to
14 understand that studies have been made in order to
15 come to those conclusions.

16 Q. But isn't it well known that Cary
17 Lake's problems come from run offs from many areas
18 other than run off that might come from Roper Pond?
19 Now, that's a given, isn't it?

20 A. I would say that's a true statement.
21 And what we as a town want to do is eliminate the
22 possibility of any further damage to Cary Lake
23 brought about by the development of Roper project.

24 Q. How much money is in the town's budget
25 for this fiscal year to spend on clean up of Cary

1 Lake?

2 A. The Town of Arcadia Lakes is not
3 responsible for the clean up of Cary Lake. I
4 mentioned -- I told you before that Cary Lake is
5 owned and operated by the lake owners' association.
6 It's their responsibility.

7 Q. You have no legal obligation to assist
8 in any clean up effort of Cary Lake, do you?

9 A. As far as the NPDES is concerned --
10 and I'd have to go back and study that -- but I
11 know we are responsible for the water that flows
12 into Cary Lake as well as out through our NPDES
13 rules and regs.

14 Q. But that water flows in from where
15 outside of Roper Pond? What sources feed Cary Lake
16 other than Roper Pond?

17 A. Well, we have several other lakes that
18 feed into Cary Lake.

19 Q. And Roper Pond will not feed into any
20 of those lakes, will it?

21 A. No.

22 Q. Those other lakes have contributed to
23 the current condition of Cary Lake, correct?

24 A. That's correct.

25 Q. If the HOA came to the Town of Arcadia

1 Lakes today for money to assist in the clean up of
2 Cary Lake, what obligation, if any, does the town
3 have to present them with money?

4 A. None.

5 Q. Have you ever had any legal obligation
6 to pay for any clean up of Cary Lake?

7 A. Not to my knowledge.

8 Q. If the dam fails, will the Town of
9 Arcadia Lakes have any responsibility to pay for
10 repairing the dam?

11 A. What dam?

12 Q. Is there a dam on Cary Lake, or does
13 it feed naturally?

14 A. That's correct. Yes. There's a dam
15 on the lower end.

16 Q. If the dam on the lower end needs
17 repair, will the Town of Arcadia Lakes have any
18 obligation to fund that repair?

19 A. No. At least not to my knowledge.

20 Q. Is there any plan by the town to
21 undertake that responsibility?

22 A. No.

23 Q. If Cary Lake Homeowners' Association
24 came to the town for money to participate in the
25 clean up, would the town deny that request?

1 A. We'd have to study, at that time, to
2 see what benefits there were to the town as a
3 whole.

4 Q. But at this point in time, you have no
5 plans to participate?

6 A. I haven't been presented with a plan,
7 so I can't answer that question.

8 Q. You've never had in your budget any
9 money to participate in any clean up of Cary Lake,
10 have you?

11 A. Not to my knowledge.

12 Q. Does the town have in its budget any
13 money to participate in the clean up of any of the
14 other lakes in its territory?

15 A. Not to my knowledge.

16 Q. Has the Town of Arcadia Lakes ever
17 spent any money to clean up or maintain any of the
18 seven lakes within its district?

19 A. Not that I know of during my tenure.

20 Q. How long has your tenure been?

21 A. I've been mayor for two terms and I
22 was on council for several terms before that. So
23 12, 13 years.

24 Q. To your knowledge, the Town of Arcadia
25 Lakes has never spent any money to clean up or

1 maintain any of the seven lakes within its
2 boundaries?

3 A. Not to my knowledge.

4 Q. When you say "potential harm," is it
5 the town's position that it cannot predict any harm
6 other than through the use of a potential? Why do
7 you use the word "potential" in your description of
8 any harm that may result from this project?

9 A. Because the -- from my -- from the
10 town's standpoint, the lack of environmental
11 oversight and checks evidenced by what's happened
12 on Decker Boulevard and in the Dent School
13 remodeling has left Cary Lake with a
14 multi-thousands of dollars worth of clean up, which
15 brings major concerns to us as we move forward with
16 other projects.

17 Q. Weren't those events totally
18 unassociated with the Roper Pond property?

19 A. They're not associated with Roper
20 Pond, but they're associated with what happens in
21 Cary Lake.

22 Q. I'm talking about what happens in
23 Roper Pond. The fact that someone in a totally
24 different area may have mismanaged their project
25 and put refuge into Cary Lake, are you saying that

1 that is a predictor of the same event happening at
2 Roper Pond?

3 A. What I said was, the potential was
4 there.

5 Q. That's simply a possibility, isn't it?

6 A. It's a potential.

7 Q. It is not something that you can say
8 is probably going to happen, is it?

9 A. That's to be determined.

10 Q. You have no basis to say that there is
11 a probability of any harm coming from this project,
12 do you?

13 A. With the current plan, yes, I do.

14 Q. All right. Let's talk about that.
15 Tell me -- well, let me back up. The current plan.

16 Tell me what in the current plan you
17 think presents a possibility or probability of harm
18 to Cary Lake.

19 A. I outlined those before. It will
20 possibly do harm to the water flowing through the
21 project and under North Trenholm Road into Cary
22 Lake.

23 Q. What is the deficiency in the
24 BP Barber drawings that may lead to that
25 possibility?

1 A. They're outlined in our petition.

2 Q. Point them out to me.

3 A. You want me to read you the document?

4 Q. No, sir. I want to know what the
5 town's --

6 A. I'll defer that to Mr. Chandler
7 because he's the legal expert.

8 Q. He is not my witness, Mr. Thomas. You
9 are my witness and you are the town.

10 Tell me what facts the town has as we
11 sit here today that allows you to opine that
12 there's a possibility of harm if the BP Barber plan
13 is implemented.

14 A. Based on what we have been told and
15 led to believe by Mr. Chandler, who is the expert
16 in the legal side of this, there are violations in
17 this plan with regard to the project. The plans
18 and its permitting with DHEC and the U.S. Corp of
19 Engineers.

20 Q. I want you to step aside and put aside
21 anything Mr. Chandler may have told you. In the
22 absence of Mr. Chandler's comments, is the town
23 aware of any fact upon which it could base an
24 opinion that there is a deficiency in the BP Barber
25 drawings permitted by DHEC?

1 A. We have hired Mr. Chandler as our
2 spokesman on the legal issues in this case. We
3 believe the case has merit.

4 Q. Step aside what Mr. Chandler tells
5 you -- if Mr. Chandler becomes a witness, we'll
6 deal with this case differently.

7 What information does the Town of
8 Arcadia Lakes have that, outside of Mr. Chandler's
9 comments to you, leads you to the conclusion that
10 there are deficiencies in the BP Barber design
11 approved by DHEC?

12 A. We lean on Mr. Chandler's filings and
13 his documentation as the basis for our --

14 Q. Is Mr. Chandler's complaint the sole
15 source of facts, for the Town of Arcadia Lakes, for
16 it to present a position that the BP Barber
17 drawings are in some way insufficient?

18 A. I can repeat. Mr. Chandler's
19 pleadings and his filings speak to the case that
20 the town and the petitioners -- not speaking for
21 them, but as far as the town is concerned -- where
22 we are in our position on this project.

23 Q. Can you provide an answer to my
24 question without referring to what Mr. Chandler,
25 your attorney, may have told you or what you read

1 in his pleading?

2 A.* Explain that. I don't understand your
3 question.

4 Q. Mr. Thomas --

5 A. That's a very broad question to me
6 being an engineer.

7 Q. Okay. Well, let's go back. The Town
8 of Arcadia Lakes has asked the Administrative Law
9 Court to revoke the permit for the Roper Pond
10 project.

11 Do you understand that?

12 A. That's correct.

13 Q. Do you understand that there has to be
14 some factual basis or testimony upon which the
15 judge reaches that conclusion and awards you that
16 relief?

17 A. That's correct. That has been
18 outlined by Mr. Chandler in his pleadings and in
19 his filings.

20 Q. Did you provide -- did the Town of
21 Arcadia Lakes provide Mr. Chandler any information,
22 facts, documents upon which he prepared those
23 pleadings?

24 A. Yes, we did. And you have copies of
25 all of those. Everything that was provided to the

1 County and everything that was provided in our
2 entire process over the last year, you have copies
3 of.

4 Q. Now, can you, as a representative of
5 the Town of Arcadia Lakes, articulate for me what
6 those facts are that says or leads to a conclusion
7 that the BP Barber drawings are deficient?

8 A. I prefer, as I said, to defer that
9 to the pleadings and the filings that
10 Mr. Chandler's put forth to the court.

11 Q. Can I take your answer to be that the
12 Town of Arcadia Lakes has no testimony to offer
13 outside of physical documents to support the
14 allegations in its complaint, Exhibit 3?

15 A. You'd have to give me the legal
16 definition of some of the --

17 Q. Mr. Thomas, I'm asking you -- you know
18 what facts are.

19 A. Yes.

20 Q. You are an engineer. You rely on
21 facts every day, don't you?

22 A. Yes.

23 Q. You rely on calculations all the time,
24 correct?

25 A. Yes.

1 Q. You're trained to do calculations?

2 A. Yes.

3 Q. You said you have reviewed the

4 BP Barber drawings, correct?

5 A. I said I've had an overview of them.

6 Q. Is that overview not sufficient for
7 you to arrive at any conclusions as to its -- their
8 acceptability?

9 A. I believe that the points that have
10 been brought up by Mr. Chandler in this case, in
11 his filings and in his documentation is the
12 position of the town.

13 Q. Okay. Now, what I am trying to find
14 out is what the town has -- let's go to his
15 pleadings. Point to me in the pleadings,
16 Exhibit 3, the positions that Mr. Chandler has
17 asserted that the town also asserts are its
18 positions.

19 A. You want me to read you this document?

20 Q. No, sir. I want you to go and show me
21 where these positions are stated in Mr. Chandler's
22 document.

23 A. Sir, if you want me -- you want me to
24 sit here and read how many pages we have here?

25 Q. No, sir. I don't want you to read

1 those. Listen to the question.

2 You have told me that the town's
3 position, as to what is wrong with the BP Barber
4 drawings, are as set forth in Mr. Chandler's
5 document, correct?

6 A. I said what's wrong with the BP Barber
7 plan -- are you referring to the documents as
8 "plan"?

9 Q. What is the Town of Arcadia Lakes
10 saying is deficient?

11 A. They're right here in this Request for
12 Contested Case Hearing.

13 Q. Okay. Do you say the BP Barber
14 documents are deficient?

15 A. I defer that to Mr. Chandler, because
16 he's our attorney.

17 Q. Does the town have any knowledge,
18 independent of Mr. Chandler, as to whether or not
19 the BP Barber documents are deficient or
20 satisfactory?

21 A. Clarification, are you asking me, do
22 we have anything else outside of this document that
23 we are presenting?

24 Q. Do you have any evidence, facts,
25 testimony upon which you can -- the town can point

1 to that says, These documents are deficient in this
2 matter?

3 A. I still don't -- I'm sorry. I'm
4 sorry --

5 Q. Where --

6 A. -- Mr. Brown, I don't understand your
7 question.

8 Q. Where in Exhibit 3 are the statements
9 by Mr. Chandler that say what is wrong with the
10 BP Barber documents?

11 A. His grounds for appeal on page 3. I
12 mean, we can read them. There's 3, 4, 5, 6.
13 There's page 7. There's page 8. "Standing,"
14 there's Standing on page 9. Relief requested,
15 page 9, 10. I mean --

16 Q. Does the town have any idea,
17 independent of Mr. Chandler, whether or not the BP
18 drawings are sufficient for DHEC to have issued a
19 permit?

20 A. Outside of what Mr. Chandler has
21 filed, the town has no other pleading.

22 Q. I'm not talking about the pleading,
23 facts.

24 A. Not that I'm aware of.

25 Q. Okay. Are you familiar with the

1 allegations that there's been a miscalculation of
2 the particle size in terms of BP Barber's
3 engineering drawings?

4 A. When was this brought up?

5 Q. Would you look at page 8 of the
6 pleading, please.

7 A. Okay.

8 Q. Paragraph J.

9 A. Okay.

10 Q. The approved -- are you there?

11 A. Page 8.

12 Q. Paragraph J. Do you see that?

13 A. Yes. "The approval permit violates
14 Regulation 61-9 in the Department." As I said, I
15 am not an attorney. Therefore, I do not -- I don't
16 claim to be an expert on the law and what's
17 required. That's why we hired Mr. Chandler.

18 Q. All right. Mr. Thomas, the statement
19 in J is that the plans -- "the Department gave
20 approval to plans that include an arbitrary
21 proposed particle size distribution in the
22 calculations."

23 A. "Used by the design engineer for
24 post-development stormwater runoff," yes.

25 Q. Do you see that?

1 A. Yes, I do.

2 Q. I assume that you are asserting that
3 that's something wrong with the plans?

4 A. If Mr. Chandler says that's something
5 wrong, then I agree with Mr. Chandler.

6 Q. What information did Mr. Chandler rely
7 upon to come to that conclusion?

8 A. You'd have to talk to Mr. Chandler,
9 because I do not know.

10 Q. Do you know of any witness on behalf
11 of the Town of Arcadia Lakes, outside of
12 Mr. Chandler, who can tell me how that conclusion
13 was arrived at?

14 A. Not to my knowledge.

15 Q. K says, "The approved permit violates
16 Regulation 61-9, 61-68, and 61-101 in that it fails
17 to take into account a number of significant water
18 quality problems associated with the high density
19 design of the project proposed for this site."

20 Do you see that?

21 A. Yes.

22 Q. Can you tell me what are the
23 significant water quality problems that were not
24 taken into account?

25 A. I defer to Mr. Chandler.

1 Q. Do you know of any witness on the
2 behalf of the Town of Arcadia Lakes who can provide
3 that information other than Mr. Chandler?

4 A. Not to my specific knowledge, no.

5 Q. Do you know if the gentleman from USC
6 has been hired to provide that testimony?

7 A. I do not know that.

8 Q. Do you know if the gentleman from UNC
9 has been hired to provide that testimony?

10 A. You'd have to refer to Mr. Chandler.

11 Q. Okay. Can I accept that your answer
12 would be the same if we went through all the other
13 allegations made by Mr. Chandler? You're not aware
14 of any evidence or testimony the town has to
15 support the conclusions that have been made by
16 Mr. Chandler?

17 A. I am not aware of --

18 Q. We've been through two of the
19 allegations --

20 A. Ask that question one more time.

21 Q. We went through J and K on page 8 and
22 you've stated as to each one of those, as far as
23 you knew, the town had no testimony to offer to
24 support the conclusions, allegations made by
25 Mr. Chandler.

1 Do you recall that?

2 A. Correct.

3 Q. Are there any other statements by
4 Mr. Chandler in this pleading that you can provide
5 information, facts, or a source of facts and
6 information, upon which Mr. Chandler used to arrive
7 at these pleading conclusions?

8 A. Not to my knowledge.

9 Q. Would your answer then be the same as
10 to all of these other allegations?

11 A. As far as I can tell, yes.

12 Q. Did Mr. Chandler tell you who he
13 relied upon to arrive at these conclusions?

14 A. I do not remember having any specific
15 conversations with him about that.

16 MR. BROWN: We've been going about an
17 hour and a half. Do you want to take a quick break
18 to get a drink of water? Let's take a quick break.

19 MR. CHANDLER: All right.

20 (A recess was taken from 3:10 p.m. to
21 3:18 p.m.)

22 BY MR. BROWN:

23 Q. Going back -- trying to circle back
24 around. If I understand what you told me, there
25 will be no financial impact on the Town of Arcadia

1 Lakes based upon this project and whether it goes
2 well or doesn't go well.

3 Is that fair to say?

4 A. That would be hard to determine,
5 because -- let's look at the NPDES. The town is
6 responsible for what comes into the town and what
7 leaves the town as far as water quality.

8 If the water quality coming into the
9 town is not regulated by the town and we allow it
10 to flow through the town on into, let's say, the
11 lower lakes, into Forest Lake or Lake Katherine,
12 then the way I understand the NPDES, we would then
13 be responsible. Therefore, we could -- it could
14 result in financial and/or litigation for the
15 mitigation of that damage. Whatever that would be.

16 Q. Outside of that possibility, would you
17 agree with me that there's no financial impact on
18 the town whether the project goes well or doesn't
19 go well?

20 A. You mean to the actual budget of the
21 town?

22 Q. Yes, sir.

23 A. We're referring to the town's budget.
24 Is that what we're referring to?

25 Q. Yes, sir. The Town of Arcadia.

1 A. I don't see -- I don't anticipate any,
2 no.

3 Q. Now, you already have problems with
4 the water flowing into Cary Lake today, don't you?

5 A. That's correct.

6 Q. Some of the other projects you've
7 talked about.

8 A. We are managing those individually.

9 Q. Have you incurred any fines or
10 problems under the NPDES as a result of those
11 problems?

12 A. No. The County has incurred some
13 fines from EPA based on their handling of some of
14 the problems in Gill Creek.

15 Q. But as I understand, the Town of
16 Arcadia Lakes has not incurred any fines or
17 financial consequences?

18 A. Not that I'm aware of. We have an
19 intergovernmental agreement with the County. And
20 the County, therefore, is responsible for
21 maintaining our NPDES, MS4 requirements to the EPA
22 entity.

23 Q. Water has been going from Roper Pond
24 into Cary Lake for quite a long time, hasn't it?

25 A. I would imagine. It's a spring fed

1 area. So, you know, that entire area is a
2 multitude of springs and water. So I would imagine
3 it has been flowing through there.

4 Q. Do you know whether that pond was dug
5 or occurred naturally?

6 A. I do not know. I know the pond has
7 been there as long as I've been alive. I've been
8 aware of it.

9 Q. When did you move into your home
10 address?

11 A. I moved into Arcadia Lakes in 1981,
12 but I was aware of the pond for many years before
13 that because we used to travel out North Trenholm
14 when I was a kid. And the overpass going over the
15 railroad was right there. Pass the pond.

16 Q. But whether there are parts of the
17 pond that may have been created by digging or
18 whether the whole pond was naturally created, is
19 something you don't know about one way or the
20 other?

21 A. I'm not privy to that information at
22 this time.

23 Q. Have you ever been cited prior to
24 today for any deficiency or problem with the water
25 coming out of Roper Pond?

1 A. Not to my knowledge.

2 Q. In the absence of financial impact to
3 the town, would it be fair to say that the town's
4 interest in this project lies with the aesthetics
5 and not in terms of money?

6 A. I don't you -- that question is
7 several parts. Please repeat that.

8 Q. I assume the town is taking money that
9 it's raised from taxpayers or raised in some form
10 or fashion in paying Mr. Chandler.

11 A. Yes. The town's matching citizen's
12 contributions to pay Mr. Chandler.

13 Q. I assume the town -- you and the town
14 council authorized that expenditure?

15 A. That's correct.

16 Q. And if you authorized that expenditure
17 out of town funds, I would think that you can
18 conclude that the town has an interest separate and
19 apart from its citizens?

20 A. The town has an interest in the water
21 traveling into Cary Lake from whatever source that
22 may be.

23 Q. Well, aren't the vast majority of the
24 citizens of Arcadia Lakes unaffected by whether
25 this property is developed into apartments, or town

1 homes, or residences?

2 A. I wouldn't be able to answer that
3 question. I know that the majority of the citizens
4 of the town object to the project the way it's
5 currently designed.

6 Q. Well, they may have objections for
7 personal reasons. They may have objections for
8 other reasons.

9 But is there any financial impact to
10 any citizen of the town that you are aware of?

11 A. You mean out-of-pocket today cost?

12 Q. Yes, sir.

13 A. Not that I know of, out-of-pocket
14 today costs.

15 Q. Would it be appropriate for the town
16 to spend its revenues for the benefit of a limited
17 number of citizens, because of their own personal
18 objections to the project?

19 A. Repeat that question, please.

20 Q. As mayor, is it appropriate for the
21 city to spend its funds for the benefit of a
22 limited number of citizens, who may have a personal
23 stake, in the outcome of this project?

24 A. That would have to be determined by
25 council and by a vote of council whether it would

1 be appropriate or not, because the council would
2 have to decide that.

3 Q. Was that a factor to the council when
4 it voted to share the cost of opposing this
5 project?

6 A. Was what a fact?

7 Q. Assisting individuals in their
8 personal opposition to the project.

9 A. Not to my knowledge.

10 Q. Then would the town's interest in this
11 proceeding and opposing this proceeding, be limited
12 to the impact on the town, separate and apart from
13 any 1, 2, or 10 individual citizens?

14 A. And I outlined those in my Exhibit 2
15 under Number 4 that I've stated twice before.

16 "We believe that this project's
17 current design and plan will do harm to water
18 flowing through the project into Cary Lake and on
19 into Gill Creek Flood Plain, harm to aesthetic
20 interest of the Town of Arcadia Lakes, and harm to
21 the environmental interest of the town as our
22 identity is Seven Lakes - One Town. We as a town
23 do not believe that the County or DHEC fully
24 protected us from the environmental impact this
25 project will produce during and after

1 construction."

2 Q. What is the basis for the town's
3 belief that DHEC has not fully protected it in
4 regard to this project?

5 A. What is the basis? Say that one more
6 time.

7 Q. You just read a statement that you,
8 the town, did not believe that DHEC would fully
9 protect it from the impact of this project.

10 Is that correct?

11 A. Right. And I gave you examples before
12 of the things that bring those concerns to light.
13 One is the detriment to Cary Lake brought about by
14 the Decker Boulevard development and the Dent
15 Middle School remodeling, and their effects on Cary
16 Lake that were caused by those projects. Those two
17 examples.

18 Q. Set aside what happened in some other
19 project unassociated with this one. What is the
20 basis, the objective factual basis, for the town's
21 belief that DHEC will not protect it from similar
22 circumstances?

23 A. I've just given you the examples.

24 Q. Other than those two examples, is
25 there any objective factual basis for the town's

1 conclusion that DHEC will not act to protect its
2 interest?

3 A. The ones that I would state would be
4 the ones that Mr. Chandler brought out in his
5 testimony -- in his pleading. His pleading. In
6 his filings.

7 Q. Outside of Mr. Chandler's filings and
8 outside of these examples you gave with Dent Middle
9 School, what facts or objective basis, if any, does
10 the town have to conclude that it will not be
11 protected by DHEC in the execution of the work
12 that's been permitted?

13 A. I would -- I do not know of any at
14 this time.

15 Q. Now, the town was opposing this
16 project before the DHEC permit was issued, correct?

17 A. The town was opposing this project on
18 several issues --

19 Q. All right. Tell me what they are.

20 A. -- before County.

21 Q. I understand. Would you agree with me
22 that what the County did in permitting this project
23 is not at issue in this Administrative Law
24 proceeding?

25 A. I have to go back and think about all

1 of the issues that were presented before County and
2 what was not presented before County. State that
3 question one more time for me please, sir.

4 Q. Do you have an understanding of what
5 the issues are in the Administrative Law proceeding
6 that this deposition is being taken in regard to?

7 A. Yes. They have to do with what
8 Mr. Chandler has filed with the Administrative Law
9 Judge.

10 Q. Are you able to give me an answer to
11 my question without referring to Mr. Chandler?

12 A. Mr. Chandler is the legal
13 representative for this case. I'm here to give you
14 my opinion on what I believe the town's position
15 is.

16 Q. All right. Now, what is the town's
17 position on the issues that are involved in this
18 proceeding?

19 A. The issues that the town has in this
20 proceeding are outlined by Mr. Chandler's in --

21 Q. As the representative of the town
22 who's been involved in this since 2003, can you
23 tell me today, of your own knowledge, what the
24 issues are in this proceeding without reading what
25 Mr. Chandler wrote?

1 A. What's in the filings? I mean,
2 that -- I don't understand what you're asking me to
3 tell you. I'm sorry, I don't understand what
4 you're asking me to tell you.

5 Q. Do you know what relief you're asking
6 before -- asking the Administrative Law Court for
7 in the proceeding that is going on right now,
8 without looking at what Mr. Chandler wrote?

9 A. But it's all right there. I mean --

10 Q. Do you know personally what the relief
11 is you're asking the Administrative Law Court for?
12 What is that relief? Without reading what
13 Mr. Chandler wrote, do you know?

14 A. I cannot quote you line and paragraph.

15 Q. I'm not asking you to quote it. I'm
16 asking you to give me your personal understanding
17 of it. As the representative of the town who's
18 prepared to come and answer questions --

19 A. Mr. Chandler --

20 Q. Would you let me finish the question?

21 A. Certainly.

22 Q. Can you give me your personal
23 understanding of what relief you have asked for
24 from the Administrative Law Judge in this
25 proceeding?

1 A. It's my understanding that we have
2 asked the Administrative Law Judge to overturn the
3 permit that was issued to Roper Pond, LLC by DHEC.

4 Q. Okay. Now, do you understand why that
5 permit was improperly issued and the grounds upon
6 which you're asking the Administrative Law Court to
7 rely in revoking that permit?

8 A. We rely on the information given to us
9 and presented to us by our attorney, Mr. Chandler,
10 in conference with him, and in his knowledge of
11 the --

12 Q. Okay. Can you -- has he relayed that
13 to you personally?

14 A. As you read through this, yes. I
15 mean, if you read through this, you know exactly
16 what we're talking about. I mean, like I said --

17 Q. Have you had conversations with
18 Mr. Chandler about the claims in this case outside
19 of what you read in Exhibit 3?

20 MR. CHANDLER: To the extent that
21 you're asking for attorney-client privileged
22 information, I want to make it clear that there's
23 an objection to that.

24 MR. BROWN: I understand.

25 BY MR. BROWN:

1 Q. All I'm asking you -- I'm not asking
2 you to reveal the substance of your discussions.

3 MR. BROWN: Although, I will say,
4 Jimmy, he's about turned you into a witness. And
5 I'm not sure what to do about it yet. So far he's
6 the only witness he's got. You are.

7 BY MR. BROWN:

8 Q. Now, without revealing the substance
9 of the discussions, have you had conversations, yes
10 or no, with Mr. Chandler in which he described to
11 you what is the basis for asking the Administrative
12 Law Judge to give you the relief you've asked for?

13 A. Yes. And they're outlined in this
14 document.

15 Q. Okay. Not legal advice. Has he
16 outlined to you what are the deficiencies upon
17 which you will base your case before the
18 Administrative Law Judge?

19 A. He's indicated that they are in this
20 document.

21 Q. Do you have any knowledge of what the
22 claims before the Administrative Law Judge are,
23 other than reading what is in Exhibit 3? And by
24 "you" I mean the town.

25 A. Not to my knowledge. I don't know of

1 anything else besides this.

2 Q. And to the town's knowledge, it knows
3 nothing outside of what Mr. Chandler has written?

4 A. As to?

5 Q. The reasons why the Administrative Law
6 Court should set aside the permit.

7 A. These are the reasons.

8 Q. Okay. And beyond what is written on
9 that paper, the town has no testimony, evidence, or
10 comments to add, correct?

11 A. Other than what I presented today.

12 Q. Well, what have you presented today
13 other than reference to Mr. Chandler?

14 A. I presented you with --

15 Q. Exhibit 2?

16 A. Exhibit 2.

17 Q. All right. Outside of Exhibit 2 and
18 Mr. Chandler's writing, is that the sum total of
19 the town's facts and evidence to support the
20 complaint?

21 A. To the best of my knowledge.

22 Q. Best of your knowledge, yes?

23 A. Yes.

24 Q. Now, let's go back to the town's
25 opposition to the project that preexisted this

1 specific proceeding before the Administrative Law
2 Court.

3 Am I correct that individuals and the
4 town both opposed the project prior to the specific
5 permit that is being contested in the proceeding
6 today?

7 A. We took several concerns before the
8 County and before the County Zoning and Board of
9 Appeals -- I'm sorry -- Board of Appeals for major
10 concerns that we had in the project.

11 Q. Now, when we're talking about "we,"
12 was there a committee of individuals, a loose
13 committee, organization, I don't know what the word,
14 is, was there a collection of individuals that
15 cooperatively worked together to oppose this
16 project?

17 A. There were town's people that put
18 their heads together to come up with what we
19 presented to the County, and y'all have copies of
20 those. And those are the proceedings that we had
21 before Richland County Board of Appeals.

22 Q. Approximately how long ago did that
23 organized opposition to this project begin?

24 A. A year.

25 Q. One year?

1 A. It was about three days before we
2 found out that the project was a go, and that was
3 about a week before the -- what we understood was
4 the final -- final hearing before the Board of
5 Review with the County.

6 Q. Now, let me make sure I understand.
7 The Board of Review for the County, are you talking
8 about a zoning proceeding?

9 A. No. The zoning was -- the zoning was
10 redone back in the early -- in 2003, 2004.

11 Q. What is the specific proceeding that
12 you referred to before the County about a year ago?

13 A. When Roper Pond, LLC went through the
14 County to get all of the necessary check-offs for
15 their project and the design thereof before it went
16 DHEC.

17 Q. Is it your testimony that there was no
18 organized resistance to the project until a few
19 days prior to that proceeding?

20 A. That's correct. About a week to ten
21 days.

22 Q. Who organized the group?

23 A. That's hard. Who organized it? It
24 was an assorted number of people that were in -- I
25 don't know if there's any one particular

1 individual, but there's a considerable number of
2 property owners that came together that had been
3 approached. Back in the early '80s, Roper --
4 Mr. Mundy and Mr. Walker had come before town
5 council asking to be annexed -- have the property
6 annexed into the town.

7 Q. When was this?

8 A. This is back in 2003, 2004, when the
9 original project had come about. And the town
10 indicated at the time that we did not -- at that
11 time it was planned as a condo complex. About, I
12 think, 85, 86 condos where it would transition from
13 single family patio homes next to Kaminer Station,
14 and then progress up and transition into high-rise
15 high-end condos on the north side of the property.
16 And they asked to be annexed.

17 And we indicated at that time that we
18 didn't have a zoning for that in the town. That
19 they would have to go before County Council to get
20 the property rezoned and have the plans approved.
21 And once approved, we'd look at it again. And
22 possibly we could grandfather them in as to
23 whatever they got approved by the County, because
24 they were going in for a rezoning.

25 At that time, you know, there was --

1 there were a large number of folks that live in
2 Kaminer Station and around the area, around Cary
3 Lake, et cetera, that were involved in those
4 presentations that Roper Pond made to the town, to
5 the town council. And then we met next door in
6 Mr. Doug Mark's house. And Mr. Mundy and, I
7 believe, a couple of other folks from Roper Pond
8 were there. And then they earlier met with the
9 town at our Town Hall and they had come to council.

10 That was back in '84. So there was --
11 there was a group of folks that were involved in
12 that project and the development thereof starting
13 in the very beginning. Then over the next several
14 years, on a monthly basis, I'd try to get in touch
15 with Mr. Walker and Mr. Mundy to find out what the
16 status was in order to give an update to our
17 council at our monthly council meetings. And most
18 of the time the issues were that they were very
19 busy developing property in Charleston, and didn't
20 have time to get back to the Roper development.

21 And then within about a week of the
22 meeting before County Council, we found out by -- I
23 don't even remember. It wasn't from -- it wasn't
24 from Estates Management, but was from the County.
25 They notified us that there was a hearing and that

1 the property had been rezoned multifamily. And
2 that Roper Pond had come in with a different plan
3 for 200-plus apartments.

4 And then being told that at that last
5 moment right before, the folks that had been
6 involved in the original presentation of the plan
7 by Roper Pond -- I mean, by Estates Management,
8 came together to try to discuss what the issues
9 were. What was going on and trying to find out
10 information on it. Many of these folks. It just
11 evolved into a group that went down to the County
12 and listened to what the County was presented and
13 tried to get as much information as we could. And
14 then moved forward into what the individual
15 concerns were.

16 Of course, individuals then come to
17 me, as the mayor, with their individual concerns
18 and then we try to put those together and document
19 those and took them to the County. And what issues
20 we had, we went to the appeals board for the County
21 and had hearings there, which they heard and then
22 progressed onto DHEC.

23 Q. All right. If I understand then, the
24 organized -- the organization of the group that
25 banded together to oppose the project, that was

1 motivated by learning that it was an apartment
2 project?

3 A. Well, that group -- that same -- that
4 group of individuals, town folks, and lake
5 association folks, and Kaminer Station folks had
6 been involved since the very beginning. Since the
7 project was presented to us by Mr. Mundy back in
8 the early '80s. Therefore, yes, everyone was
9 concerned about what was going to be put in their
10 backyards, because many of these folks back up to
11 the development.

12 Q. Well, I thought I understood you to
13 tell me right before you started your discussion,
14 that the organized resistance began about a week
15 before the hearing before the County?

16 A. I said that the group of people came
17 together about a week, once the County notified us
18 by mail that there was a hearing and offered -- and
19 we got letters, it's my understanding, if I can
20 remember back because it's been over a year.
21 Almost a year. The County sent us individual
22 letters to everybody that was attached to the
23 project, physically, property.

24 And therefore all the individuals that
25 were attached started asking questions. And then

1 that kind of just brought everything together as to
2 what the issues were, what the concerns were, what
3 the project was going to be, how it was going to
4 be. Mr. Mundy with his son and one other came to
5 Town Council and made a presentation on the new
6 project.

7 Q. Which Town Council?

8 A. Arcadia Lakes Town Council. And then
9 that brought even more questions up, and there was
10 a huge number of folks there at that meeting and
11 that -- a group from that meeting then led into
12 kind of a group that put together their issues and
13 concerns that were taken before County.

14 Q. All right. I've heard a lot of stuff
15 and I just want to go back and make sure I got it
16 right. Somewhere in 2003, 2004, Mr. Mundy
17 approached you about annexing the Roper Pond
18 property. And the proposed projects were patio
19 homes next to Kaminer Station, moving over into
20 condominiums.

21 A. It was a transition from patio, zero
22 lot line type of structures, to high-rise on the
23 opposite side of the Roper property.

24 Q. And he asked y'all to annex that
25 into --

1 A. He wanted to see if there was an
2 opportunity for them to annex into the town at that
3 time with that project. Because as I explained
4 earlier, the town surrounds three sides. There's a
5 railroad on one side of the Roper property and the
6 town is on the other three sides. And they asked
7 to be annex -- what were the conditions or what was
8 the opportunity to be annexed into the town.

9 Q. And your comment was that there was a
10 problem with annexing that project because the
11 zoning didn't allow for it?

12 A. We didn't have a multifamily zoning in
13 the town at that time. So what we advised him to
14 do was to go form a PUD, planned urban development,
15 take it before the County, get the plan approved,
16 because they weren't literally in the County, they
17 were not in an incorporated area. And once they
18 got it approved, we could look at the possibility
19 of grandfathering them into the town, i.e. annexing
20 them in, under their new plan.

21 Q. All right. Arcadia Lakes has its own
22 zoning ordinance administered by its own zoning
23 board?

24 A. That's correct.

25 Q. Why did you not suggest that he make

1 an appeal to your zoning board?

2 A. It was easier -- we thought it was
3 easier for them to do it the other way. I don't
4 remember what the context was then.

5 Q. Were you concerned that the citizens
6 would oppose that kind of zoning?

7 A. No. As a matter of fact from the
8 condo standpoint, out of the 15 or 20 small zero
9 lot line patio homes, we had as many as 10 that
10 were spoken for by town's people that wanted to
11 retire and no longer do yard work and still be in
12 the town.

13 Our town is a very close town. We
14 have almost 900 residents and we are a very, very
15 close nit town. People don't want to move out of
16 the town once they move in.

17 There are a lot of amenities in the
18 town that are very, very good. For instance,
19 there's no taxes. We don't have any town taxes.
20 We deal off of County taxes, revenue sharing,
21 franchise fees, business licenses. Those type of
22 things. We run the town off of a very lean budget.

23 Q. So you, for whatever reason, suggested
24 that rather than annexing him in and changing your
25 zoning --

1 A. We couldn't do that. It was my
2 understanding at that time that that was not an
3 option.

4 Q. For what reason?

5 A. If we annexed him in, then he would be
6 annexed in as the existing zoning. And he didn't
7 want the existing zoning, which was residential,
8 light commercial. He wanted multifamily.

9 Q. So to solve that you suggested he get
10 the County to change it, and then you can bring him
11 in, grandfather him in, or bring him in subject to
12 that zoning?

13 A. Correct.

14 Q. And you thought that would work?

15 A. With the plans that he had then,
16 everyone was very much in favor of those. The
17 plans were very high-end condos, low density, a lot
18 of amenities, and fit in with the -- --

19 Q. Understanding that we're talking
20 hindsight, but the feeling at the time was that if
21 he had gone forward with that project of patio
22 homes to condominiums, it would have been supported
23 by the town and you could have brought it in,
24 annexed it in, subject to the County zoning?

25 A. -- with the plans that were presented

1 to us at that time, we did not have any major
2 problems with those plans at that time that I can
3 recall.

4 Q. You would have recommended bringing it
5 into the city by annexation?

6 A. Correct.

7 Q. And you had citizens in the town who
8 were in favor of it and who actually wanted to live
9 in the patio homes?

10 A. That's correct.

11 Q. Is it fair to say then, that the
12 city's -- town's opposition is because of the
13 change to apartments?

14 A. The town's opposition is laid out in
15 the documents that are presented here in this case
16 before the Administrative Law Judge. The town's
17 concerns were taken up -- there were other concerns
18 that were brought up and then later dismissed when
19 we took them up for the appeals before the County.

20 Q. Now, the town was opposing the project
21 well before DHEC acted to issue the permit,
22 correct?

23 A. The town was -- had concerns on the
24 plan and the actual design that we took before the
25 County. And those -- I mean, the County documents

1 are there. I mean, we laid those out. There's a
2 multitude of those.

3 MR. BROWN: Mark that as the next
4 exhibit.

5 Jim, do you need a copy of that?

6 (EXH. 4, E-mail, was marked for
7 identification.)

8 MR. CHANDLER: I don't know what it
9 is.

10 MR. BROWN: It's a -- let Mr. Chandler
11 look at it.

12 THE WITNESS: (Complies.)

13 MR. CHANDLER: This is something that
14 came from the e-mail --

15 MS. HARTLEY: That's a SCANA
16 production.

17 MR. CHANDLER: All right. I've got it
18 at least in a PDF format in the computer.

19 MR. BROWN: I think I have another
20 copy in here if you need one to look at.

21 MR. CHANDLER: Can we take just a
22 minute to talk about this?

23 MR. BROWN: You want to talk with
24 Mr. Charlie?

25 MR. CHANDLER: Yeah.

1 MR. BROWN: Okay. That's fine.

2 You're entitled to do that.

3 (A recess was taken from 3:55 p.m. to
4 4:59 p.m.)

5 MR. CHANDLER: Let me just say, what
6 this represents is an e-mail that was sent from
7 Mr. Thomas to the town attorney. The address in
8 this, unda8@aol.com, is the address of Charles
9 Cook, the town attorney.

10 We realize that this was produced by
11 SCANA as part of a subpoena. But in terms of
12 something that becomes attached to -- or admissible
13 into evidence, we want to assert attorney-client
14 privilege to this document. It was part of legal
15 advice that was sought from the town's attorney.

16 MR. BROWN: Okay. Can we do this --
17 Jim, let's talk about this in the absence of the
18 witness in case we do go further with it.

19 MR. CHANDLER: Okay.

20 MR. BROWN: Because I think it would
21 be appropriate for him not to be a part of this
22 discussion about the privilege.

23 Is that acceptable?

24 MR. CHANDLER: Yeah.

25 MR. BROWN: Mr. Thomas, could I ask

1 you to give us an opportunity to talk?

2 THE WITNESS: You want me to leave the
3 room, is that what you're asking?

4 MR. BROWN: Yes, sir.

5 (The witness exits the room.)

6 MR. BROWN: Joan just advised me of
7 that outside part of this. I understand and I
8 accept that and you're entitled to assert the
9 privilege and make an objection as to its use at
10 trial. But I think the next question is, are you
11 instructing him not to answer any questions?

12 MR. COOK: Speaking in candor, it's
13 not -- my recollection of what happened is that we
14 were having a meeting, I think, in October, and so
15 I believe he worked on his ideas of what had been
16 talked about in a prudence meeting or whatever.
17 And he said, Well, I'm going to send that to you
18 and look at it, and he did. And I think I sort of
19 reconstructed it, used my ideas.

20 My recollection of it is, there is an
21 -- I would think that it had been furnished to you.
22 There's no reason not to. The minutes of the
23 meeting in October. Our resolution that went to
24 planning.

25 MR. BROWN: Okay. Maybe I don't have

1 that resolution or I've overlooked it. My next
2 question is, I was going to ask you, did this get
3 sent -- I don't have a signed copy. Was this
4 eventually sent to the Town Council and whether
5 this was sent or not, did this reflect the views of
6 the town as of this point in time?

7 MR. COOK: I want to see that
8 (indicating) by the other. I'm really working
9 from -- it seems like a long time ago, but
10 generally speaking the resolution -- that resulted
11 in a resolution that went to the Town Council as --

12 MS. HARTLEY: It did.

13 MR. BROWN: Do we have that
14 resolution?

15 MS. HARTLEY: I'll get it. And the
16 substance of it was basically the same. You just
17 added the whereas.

18 MR. COOK: I'll clean it up a little
19 bit. My point was that that particular document as
20 such never went to the planning council. It was
21 just, so far as I know, from Rick to me, and the
22 idea -- I said, I'll work on something for the --

23 MR. BROWN: Okay. Well, let's do
24 this, one, just to reserve our position, I don't
25 know that this involves legal advice or its content

1 is such that it does entitle you to exercise the
2 privilege. You're certainly entitled to assert it.
3 You're certainly entitled to assert that it's not
4 admissible later.

5 MR. COOK: Just for conversation,
6 there might be somethings that would be asserted
7 but I'm not so sure that I'm as -- I don't want to
8 waive the circumstance.

9 MR. BROWN: I understand.

10 MR. COOK: It seems to me that if you
11 have the actual resolution that was adopted, that's
12 more appropriate. I'm giving you the
13 information -- I'm giving you my best --

14 MR. BROWN: I understand. I don't
15 know that I have that resolution.

16 MR. COOK: I don't know why we
17 wouldn't want him not to respond to you on the
18 generalities of it, but I don't have that good
19 enough a memory. And if I go back, I know that --
20 you know that often when you get something from
21 people, you do a lot of crafting about what's going
22 to be adopted as the Town Council.

23 MS. HARTLEY: I think the purpose that
24 Henry was going to use it for, but I could be
25 wrong, was as a statement of the town's position.

1 Not the fact that it became a resolution, but that
2 those -- that's an expression of the town's
3 position at that time.

4 MR. COOK: That to me would be a
5 little unfair because a town's position takes
6 place, not because the mayor or one particular
7 person is trying to get something done, it's when
8 it's adopted.

9 MR. BROWN: I understand. That was
10 the purpose of the questioning. It is to find out
11 what was done with it.

12 MR. COOK: I think that came to me and
13 I think for good, fair, and indifferent, I drew up
14 a resolution. And I think the town adopted it.

15 MR. BROWN: Well, can we get both of
16 them? I don't think I have the resolution. If we
17 can put our hands on the resolution --

18 MR. CHANDLER: I don't know whether
19 we -- I don't remember seeing that resolution. I
20 don't have a present memory of that. If we didn't
21 produce it earlier, we certainly can produce the
22 resolution. But I just don't have a present memory
23 of whether we did or not.

24 MS. HARTLEY: I don't know that we
25 had -- I think we do -- maybe we got another

1 production. I know that when the SCANA -- response
2 to the subpoena from SCANA, what we probably have
3 was Charlie's last iteration of it unsigned.

4 MR. COOK: Now there were several.

5 MS. HARTLEY: Right. I remember it
6 being several exchanges.

7 MR. COOK: I think I formatted it so
8 that it could be certified by the mayor and the
9 clerk, and then it would go as a formal document.

10 MS. HARTLEY: I think I have that too.

11 MR. BROWN: Well, let's do this, let
12 me make this suggestion --

13 MS. HARTLEY: Yeah. That's what I
14 keep thinking. I've seen it too without a
15 letterhead. Do you want me to go --

16 MR. BROWN: Yeah. Let's go get the
17 resolution, because that would resolve --

18 MR. COOK: I appreciate that.

19 MR. BROWN: What I would suggest is,
20 one, that we advise Mr. Thomas, so that he's not
21 taken unfair advantage of, that the position taken
22 by council is that this document was amended and a
23 formal resolution was issued. And what actually
24 went out on behalf of the town is a resolution that
25 he does not have before him.

1 I'm perfectly comfortable and think
2 that he's entitled to take the position that this
3 is privileged, and any further questions and
4 answers are subject to being pulled from the
5 deposition based on what the judge might rule on
6 whether or not it's attorney-client privilege.

7 But the main thing I want to talk to
8 him about is, this is more of a refresh your
9 recollection document as opposed to saying
10 you're -- you have bought every statement in here.
11 Because I was trying to get into it without the
12 document, what was the town's opposition to the
13 project. And this seems to tell me what his
14 thinking was, if not the formal position of the
15 town. I'm not going to ask him for any legal
16 advice. I'm not entitled to that.

17 As a means of refreshing his
18 recollection, is a basis to ask him what his
19 thinking as mayor was and the positions they were
20 taking as a means of providing him information to
21 assist his testimony.

22 MR. COOK: It's appropriate to
23 recognize that, here again, acting as mayor
24 contemplates that that was after discussion with
25 full council.

1 MR. BROWN: Certainly.

2 MR. COOK: And that otherwise it might
3 not necessarily be on behalf of the town.

4 MR. BROWN: And I think I can state
5 that, and you can correct it if I don't state it
6 correctly, that I'm not presenting this to him as
7 the official position of the town unless he says it
8 is. And that we believe there's a resolution
9 submitted, that was the official position of the
10 town.

11 But I do want to be able to ask him
12 about his thinking and the council's thinking in
13 the basis for their opposition. And I think this
14 is a statement of his thinking at this time that
15 I'm entitled to examine him about. Not necessarily
16 a position of the town, but he wrote this. What
17 his thinking was as mayor that may not have turned
18 into the official position, but I do think I'm
19 entitled to ask him those questions. And then if
20 we put our hands on the resolution, then that will
21 stand for what the town actually said.

22 MR. COOK: And I think that we're
23 simply leaving it on the bench as to whether or not
24 we would use attorney-client privilege.

25 MR. BROWN: You preserve your rights.

1 MR. CHANDLER: If y'all stipulate we
2 reserve our rights -- I don't want to direct him
3 not to answer, because obviously some of these
4 things that he thought was private got stored on a
5 hard drive at SCANA.

6 Do you know who Felicia Turner is?

7 MR. BROWN: That's our secretary. It
8 came to us on a disk. And so when it prints out at
9 her workstation --

10 MR. COOK: As soon as I saw that it
11 was directed to me, I've got some modifications on
12 what came about. I think I've told it straight as
13 I can remember.

14 MR. BROWN: I'll accept that. When I
15 looked at it, I had no idea who "unda8" was.

16 MR. CHANDLER: I understand that. So
17 we're basically going to do some testimony subject
18 to the objection, but we're not instructing him not
19 to answer.

20 MR. BROWN: That's fine. And I will
21 state and I agree that you preserve all of your
22 rights to claim attorney-client privilege.

23 MR. COOK: And you will let him know
24 that it came --

25 MR. BROWN: That you believe there's a

1 resolution.

2 MR. CHANDLER: I'll restate it to him
3 if you think it's wrong.

4 MR. BROWN: All right.

5 MR. COOK: You'll inform him that he
6 sent that to me for my consideration?

7 MR. BROWN: That's fine, okay.

8 MR. CHANDLER: Do we need to wait on
9 Joan?

10 MR. BROWN: No. Let's just go ahead.

11 MR. CHANDLER: Okay.

12 (The witness enters the room.)

13 BY MR. BROWN:

14 Q. Mr. Thomas, thank you for
15 accommodating us in that fashion. Let me make a
16 statement to you about the substance of what we
17 talked about, and Mr. Cook and Mr. Chandler are
18 going to correct me if I misstate anything.

19 I want you to understand so that
20 you're not -- that I don't take advantage of a bad
21 recollection, what the status in the discussion of
22 this document that I've just handed you is. And it
23 is Exhibit 4.

24 MR. CHANDLER: Right.

25 MR. BROWN: Could he have Exhibit 4

1 back in front of him?

2 MR. CHANDLER: Right. This is
3 Exhibit 4.

4 BY MR. BROWN:

5 Q. Mr. Thomas, you have in front of you
6 Exhibit 4.

7 A. Okay.

8 Q. Let me make this statement to you.

9 This document was produced pursuant to a subpoena
10 at SCANA. And it appears to be something you
11 prepared while you were at your desk at SCANA.

12 A. Correct.

13 Q. It is Mr. Cook's understanding and
14 recollection that you sent this to him for review,
15 and that very likely, probably, this document was
16 marked up, and revised, and this document was not
17 sent out or adopted as the official position of the
18 town. And that there may have been conversations
19 between you and Mr. Cook about this document that I
20 am not entitled and do not want you to tell me any
21 conversations you had with Mr. Cook.

22 I do want to ask you about this
23 document. If not the official position, the
24 comments that you made in this letter and what your
25 thinking as mayor was during this time frame.

1 Again, I reiterate that I do not want you to tell
2 me anything Mr. Cook might have told you or any
3 legal advice involved in the communication.

4 I can state that we have agreed that
5 the attorneys preserve all objections on
6 attorney-client from the point of my handing you
7 that document forward, to object to the use of the
8 document or any questions and answers.

9 MR. BROWN: Subject to that, if I have
10 stated that correctly, let me proceed with the
11 questions. And if any question comes up that you
12 think is a problem, I would certainly expect you to
13 state your objection and we'll deal with it.

14 MR. COOK: Mr. Brown, may we also
15 advise him that I had formulated from this
16 document, my recollection, a resolution adopted by
17 the full board that evening, but not this document.

18 MR. BROWN: Right. And we're trying
19 to put our hands on that resolution.

20 So Mr. Cook's recollection is that
21 this was not the formal position of the town, but a
22 later document was prepared that may have gone out
23 as the position of the town. But that's something
24 we're trying to confirm.

25 Is that --

1 MR. COOK: Correct.

2 BY MR. BROWN:

3 Q. Do you understand what I've told you?

4 A. Yes.

5 Q. Subject to those objections and that
6 understanding, let me then ask you about Exhibit 4.

7 Now, let me also tell you this, the
8 name Felicia Turner, up there on top of the first
9 page of Exhibit 4, is a secretary in our office.
10 And all that tells you is that she printed it off a
11 disk sitting at her desk.

12 A. Okay.

13 Q. That would not have been on the
14 document that you prepared. So don't let that
15 confuse you as to where that came from. The rest
16 of the document, I believe, is as printed off the
17 disk sent to us in response to the subpoena.

18 A. Okay.

19 Q. Having said that, is the substance of
20 Exhibit 4 something that you personally prepared?
21 The sentences on Exhibit 4, did you draft them
22 yourself?

23 A. I believe that I did prepare this.

24 Q. And what was the purpose of preparing
25 it?

1 A. To my best knowledge, the purpose of
2 preparing this was when we went before the planning
3 commission of Richland County to present our case
4 from the town.

5 Q. All right. Now understanding that
6 Mr. Cook recalls that he reviewed it and may have
7 changed it, aside from what the town may have
8 officially adopted as the town's position, does
9 Exhibit 4 reflect your thinking as mayor as of
10 October 2nd, 2008?

11 A. I do not recall this as being the
12 total concerns of the town at that time. There
13 were possibly other concerns too due to security,
14 lighting, several other issues that came up that we
15 brought before the County. This planning
16 commission.

17 Q. Understanding that this is not a total
18 statement of concerns. Is this an accurate
19 statement of the concerns as they are included in
20 the document? To the extent that you have dealt
21 with a concern in this document, does it reflect
22 your thinking as mayor as of October 2nd, 2008?

23 A. I would have to agree with that since
24 this document was prepared by me.

25 Q. What motivated your concern over

1 individual unit owners' property values? Why were
2 you asking Richland County to take that into
3 account at that point in time?

4 A. To the best of my knowledge, if I can
5 remember back, the residents of the town were
6 concerned about the potential adverse effect to
7 property values in the immediate vicinity due to
8 the way the project was designed. Plus reading on
9 down, add to that the environmental aspect of it.
10 And that's why we had asked the County to do -- and
11 we had asked them to do an economic impact study to
12 determine the loss of property values to our homes
13 in the adjacent Kaminer Station Subdivision.

14 Q. During this time period, wasn't the
15 sentiment of the individuals and the town to
16 completely stop this project as an apartment
17 project?

18 A. I don't know that that's a true
19 statement. The majority of the concern was, one,
20 the density of the project based on what had been
21 presented back in the early '80s.

22 Q. Early '80s?

23 A. I mean, late 2004.

24 The original project of the density of
25 89 or however many units there were there versus

1 204. It was the density. It was the security
2 issues of having a transient population versus a
3 homeowner type situation where you have people that
4 actually own their condos. Where you have -- there
5 were lighting issues there due to the number of
6 parked cars that would be aimed at the subdivision,
7 Kaminer Station. And there were several other
8 issues there that they felt -- and I can't recall
9 all of them.

10 One was the potential for the sewer
11 system to be able to handle an additional 204 units
12 when we were having problems with this. There was
13 concern about the ingress and egress right there at
14 Dent Middle School on an already overloaded
15 Trenholm Road early in the morning. Being able to
16 get out. The safety of that. There were concerns,
17 as I said, about safety. As far as who lives
18 there, who doesn't live there, having a transient
19 population next door.

20 There were concerns -- those were
21 additional concerns that were presented before the
22 council, County Council.

23 Q. The concerns you described, all of
24 those concerns are created by the change from the
25 patio homes/condominiums to apartment projects,

1 correct?

2 A. By the change in design and density.

3 I'd say density and the potential problems that

4 that density could cause to traffic, to safety,

5 to --

6 Q. Well, you told me you thought the

7 patio home condominium would have been well

8 received by the town, correct?

9 A. Well, I would imagine, yes, because

10 there were as many as eight or nine that were in a

11 position that wanted to buy one. And I being one

12 of them. I wanted to buy one of the patio homes.

13 Q. You were one of the ten?

14 A. I was one of the ten.

15 Q. If the density of this apartment

16 project was the same as the patio

17 homes/condominiums, would there have been no

18 opposition at this point in time in October?

19 A. I can't answer that question.

20 Q. Is it possible there would have been

21 no opposition?

22 A. There's a possibility that there would

23 not have been no opposition.

24 Q. What I seem to hear you say is that

25 the organized opposition began when you learned

1 that it was an apartment project and not the town
2 homes, correct?

3 A. Well, the concerns started because no
4 one knew what was entailed in the project. Because
5 they had been told one thing and then we were
6 handed something else. And nobody knew what that
7 other project was until Mr. Mundy and Mr. Walker
8 and Mr. Mundy's son and one other, I think -- I
9 don't know if Mr. Walker was there. They came and
10 presented this new plan to Town Council.

11 Q. On October 2nd you know that it's a
12 204 unit apartment project, don't you?

13 A. Yes., Yes.

14 Q. What you were shown in October 2nd,
15 2008, is pretty much the same project they got
16 permitted by DHEC in December, correct?

17 A. I would imagine it'd be probably
18 pretty close to the same, because we mentioned the
19 environmental problems here.

20 Q. Are the environmental problems Roper
21 Pond?

22 A. The environmental problems the way I
23 see the issues that are stated by Mr. Chandler are
24 part of the problem, yes.

25 Q. Well, on October 2nd, when you

1 prepared that letter expressing your thoughts as
2 mayor, you had not seen Mr. Chandler's pleading,
3 had you?

4 A. No. And they had not presented a case
5 that they were going to muck out Roper Pond either.
6 That didn't come until after -- my understanding --
7 until after DHEC issued the permit, then they
8 decided that they were going to muck out the pond.

9 Q. Where do you get that understanding?

10 A. I get that understanding from looking
11 at the time line.

12 Q. What time line?

13 A. I met -- we met right down the hall
14 here with Mr. Mundy's son and Mr. Walker on
15 December the 22nd last year, and that's when we
16 discovered that they were going to have to muck out
17 the pond because it was not deep enough to handle
18 the first flush requirements.

19 Q. And if it handles the first flush
20 requirements after digging it out, why is there a
21 problem?

22 A. The water -- my understanding is what
23 the state -- because the water's of the state and
24 that's also wetlands. And if it's wetlands, then
25 they don't have -- they didn't have the permit.

1 Mr. Chandler goes through that. The
2 permit; -- the original permit that DHEC or the
3 original permit to the Corp of Engineers didn't
4 outline mucking out the pond.

5 Q. Did the original plan submitted to
6 DHEC show the lowering of the elevations in the
7 pond?

8 A. Yes.

9 Q. Now, how were they going to lower the
10 elevations without digging it out?

11 A. The way I understand it from my
12 meeting of December 22nd was that they did not
13 realize the pond was that shallow and that they
14 were, therefore, going -- it did not have that much
15 free board. They were going to have to go back and
16 muck out the pond in order to make it work as a
17 retention pond.

18 Q. Do you know of your own knowledge or
19 does the town know of its own knowledge that that
20 is a violation of any standard or regulation?

21 A. To my knowledge of what has been
22 explained to me, without having a permit to disturb
23 wetlands that's a violation. That's my
24 understanding.

25 Q. Explained to you by who?

1 A. Explained to me by my education and by
2 my knowledge of NPDES and by my knowledge of
3 environmental's.

4 Q. And if that has been permitted and
5 approved by DHEC, what basis do you have to contend
6 that that's inappropriate?

7 A. That's outlined in the filing.

8 Q. All right. My questions from now on
9 are going to be exclusive of what Mr. Chandler, as
10 your attorney, has told you. I want to know what
11 knowledge you have exclusive of Mr. Chandler. Any
12 question I ask you about what the town knows or you
13 know is intended to exclude what Mr. Chandler
14 knows.

15 Is that fair?

16 A. Okay.

17 Q. I would like for you to excise out of
18 your memory and your answers information obtained
19 solely from your attorney.

20 Can we do that?

21 A. If at all possible, it's very hard to
22 tell you what I didn't know at any particular time.

23 Q. To the best of your ability, would you
24 give me answers --

25 A. To the best of my ability, I'm going

1 to give the honest answer to your question. I'm
2 under oath to do that.

3 Q. And the question is going to be
4 exclusive of what Mr. Chandler told you. So if you
5 give me an honest answer, it will exclude
6 Mr. Chandler's information.

7 Is that fair?

8 A. I would say it's fair as long as you
9 don't ask me questions that are already covered in
10 Mr. Chandler's filings.

11 Q. I'm going to ask you for the town's
12 knowledge and information.

13 A. All right. To the best of my
14 knowledge, I'll give you what I understand.

15 Q. All right. As of October 2nd, 2008,
16 had you retained Mr. Chandler?

17 A. No, not to my knowledge.

18 Q. When you wrote the memo expressing
19 your thoughts as mayor of the Town of Arcadia
20 Lakes, the October 2nd memo, what were you
21 encompassing within the phrase "environmental
22 concerns"?

23 A. My environmental concerns were at that
24 time my understanding that they were lowering the
25 water in the pond. And that by lower the water in

1 the pond, that that would impact the surrounding
2 wetlands which would then be dried up by them
3 lowering the pond.

4 Q. So on October 2nd, 2008, you were
5 aware that they were lowering the water in the
6 pond, correct?

7 A. I was aware that they wanted to lower
8 the water in the pond. They had made that before
9 council, correct.

10 Q. How were they going to lower the water
11 in the pond on October 2nd, 2008, without digging
12 it out?

13 A. My understanding was that they were
14 going to drop the outlet structure in order to
15 accommodate that.

16 Q. Now, let me go back to the issue of
17 depressed property values. Who first raised that
18 to the town as a concern?

19 A. I do not recall exactly who raised
20 that question.

21 Q. Did you have a concern about that
22 issue as mayor prior to it being brought to you by
23 any individual in the town?

24 A. Did I in my role --

25 Q. Yes. In your role as mayor, were you,

1 at this point in time, as of October 2nd --

2 A. I would say I did, because I stated
3 here that we wanted them to do an economic impact
4 study to determine the loss, if any, to homes in
5 the area due to the development.

6 Q. What was your basis for thinking that
7 the County would have an obligation to do that?

8 A. You have to go in and read the County
9 regulations on their reasoning behind rezoning the
10 property multifamily for apartments and approving
11 that project.

12 Q. Is it your understanding that their
13 regulations require them to take into account
14 depression of property values as a result of the
15 projects they approve?

16 A. It's my understanding that they are
17 supposed to -- they should take into account the
18 surrounding area and how it blends with what
19 project is being developed in that particular piece
20 of property. That's the way I understand it. I've
21 got to go back and read the actual documentation
22 from the County, but the County regulations on
23 zoning stipulates that very carefully.

24 Q. To your knowledge, do the County
25 regulations on zoning specifically refer to the

1 depression of property values as a consideration in
2 approving a project?

3 A. I don't remember that. I'd have to go
4 back and read that particular case in there.

5 Q. As of October 2nd, was one of your
6 reasons for opposing this project as mayor of the
7 Town of Arcadia Lakes, the potential for individual
8 unit owners to have their property values
9 depressed?

10 A. Yes. That was one of the reasons we
11 wanted an economic study done to determine that.

12 Q. Is that one of the reasons you wanted
13 to stop this project?

14 A. That was one of the reasons for our
15 opposition to the project as it was presented.

16 Q. And do I understand you to say that as
17 it was presented, the primary concern was the
18 additional density over and above what was
19 presented to you in 2004?

20 A. No. It was also the economic impact.
21 It was also the character of the neighborhood.

22 Q. Well, you did not oppose the
23 townhouses, patio homes, condominiums, correct?
24 You personally wanted to buy one.

25 A. True.

1 Q. What factor, other than the density of
2 the apartments, led you to believe there would be a
3 depression of economic value for certain homeowners
4 in Arcadia Lakes?

5 A. Safety to you, to the transient nature
6 of the folks renting the property, light intrusion
7 into the actual property adjoined, potential
8 overflow of the sewer system due to the fact -- did
9 it actually -- was it sized properly to handle an
10 additional 204 units. I mean, the town only has
11 890 people living in the town. You're adding
12 another 4-500 residents to the system, traffic.
13 All those had -- all those come together -- all of
14 that has to do with the density.

15 Q. All of those factors arise out of the
16 increased density, right?

17 A. That's the way I see it.

18 Q. Okay. Now, sitting here today, can
19 you tell me any reason why the sewer system is
20 inadequate and will cause overflows or fail to
21 function?

22 A. It was a concern of ours because we
23 have had overflows in the sewer system in our town
24 in the recent past.

25 Q. Aside from a concern, can you tell me

1 today of any information anybody's given you,
2 including Mr. Chandler --

3 A. We've been --

4 Q. Let me finish the question. Has
5 anybody, including Mr. Chandler, suggested to you,
6 as we sit here today, that it is a probability that
7 the sewer system as designed will not function?

8 A. We've been given assurance by East
9 Richland County Public Service District that the
10 sewer system will handle the project.

11 Q. Okay. Is that concern, then, off the
12 table in terms of your opposition to this project?

13 A. Yes.

14 Q. Okay. Are you today opposing this
15 project or opposing this permit because of concerns
16 over depression of property values?

17 A. No.

18 Q. Why? What is causing you to drop that
19 concern?

20 A. It's not in our pleadings.

21 Q. Is that, though, still a motivation
22 for asking Mr. Chandler to oppose it? I understand
23 that it's not in your pleadings, but is that still
24 a motivation today as it was in October?

25 A. That is not the case that's being

1 presented to the Administrative Law Judge from the
2 town today.

3 Q. I understand that. But you hired
4 Mr. Chandler and asked him simply to oppose the
5 permit, correct? You didn't tell him -- you left
6 it up to him to hire the experts, correct?

7 A. We hired him to look at the evidence,
8 look at the permits and determine what we -- what
9 needed to be in the request for the contested
10 hearing.

11 Q. In October of 2008, one of your
12 motivations, as the town, to oppose the project as
13 apartments, was your concern over the depression of
14 property values. Isn't that apparent?

15 A. In October of 2008, yes, it was. I
16 mean, it's in document Exhibit 4.

17 Q. And the project that's going forward
18 today is the same as the project that was going
19 forward in October, correct?

20 A. Yes. This was all going before the
21 Richland County Planning Commission. This was our
22 appeals before them to have them look into these to
23 determine if these were issues that we -- that
24 would change the design of the project.

25 Q. Are you then giving up, or waiving, or

1 abandoning depression of property values as an
2 issue to present to the Administrative Law Judge in
3 regard to this permit?

4 A. If they are not in the filing that
5 Mr. Chandler has, then I would say that's a true
6 statement.

7 Q. Okay. The town is not -- as far as
8 the positions in this case, the town is not going
9 to assert depression of property values, or the
10 density of this project, or any of those other
11 issues in its opposition to the permit issued by
12 DHEC.

13 Is that true?

14 A. No.

15 Q. What's untrue about that?

16 A. Density, density has -- we believe
17 density has a lot to do and everything to do with
18 many of the environmental problems that we're --

19 Q. How does density impact the validity
20 of the BP Barber design from managing the
21 stormwater run off?

22 A. From an engineering standpoint, if
23 there was less density, there would be more soil to
24 absorb rain water. There would be more area to put
25 in a real detention pond and build a real detention

1 pond and leave the existing pond the way it is.

2 Q. That's purely hypothetical, isn't it?

3 A. Not as an engineer. I see that as a
4 reality.

5 Q. Do you know that the plan of lower
6 density for town homes and condominiums would have
7 less paved area, or less roof surface, less
8 impervious area than the project that is currently
9 being proposed?

10 A. If you took the project that is
11 currently proposed and you took several of those
12 buildings out of the plan and put in grass or
13 planted material, it goes without question that
14 that would be more --

15 Q. What basis do you have -- does the
16 city have today to say that the BP Barber plan will
17 not handle the impervious surface that exists on
18 this project today?

19 A. It's in the filings.

20 Q. Outside of Mr. Chandler's filings.

21 A. They're in the filings.

22 Q. Outside of Mr. Chandler's filings,
23 what basis does the Town of Arcadia Lakes have to
24 assert that the BP Barber plan is inadequate to
25 handle the surface run off?

1 A. You're taking out the environmental
2 issue?

3 Q. I'm taking out information that
4 Mr. Chandler has proposed to you.

5 A. I don't know -- this is our -- what
6 Mr. Chandler's presented to you is our case today.

7 Q. Another way of saying it is, outside
8 of what Mr. Chandler has written down in Exhibit 3,
9 the town has no information to present to the
10 Administrative Law Court to establish that the
11 BP Barber plan is inadequate to handle the surface
12 run off.

13 A. Correct.

14 (EXH. 5, E-mail, was marked for
15 identification.)

16 Q. Bear with me a minute. Here is
17 Exhibit 5.

18 Is that an e-mail that you authored,
19 Mr. Thomas?

20 A. As far as I know it is.

21 Q. All right.

22 A. December the 17th.

23 Q. That is after DHEC has issued the
24 certification on the general permit on
25 December 15th; is that correct?

1 A. If it was December 15th, then yeah.

2 This is December 17th.

3 Q. What does the text of your letter say?

4 What does the text of your e-mail say? Just read

5 it for me.

6 A. "We have until December 30th, 15 days,

7 to file an appeal to DHEC board."

8 Q. What has happened that you're going to

9 be appealing?

10 A. We needed to get our hands on the

11 actual plans so that we could study the plans.

12 From what I can understand here, "We need to review

13 the approval and the revised plans to determine if

14 we have a reason or cause to appeal to the board.

15 And if not, we'll send a blanket appeal. We need

16 to get our hands on the plans."

17 Q. As of December 17th, Mr. Thomas, you

18 had no idea whether or not the BP Barber plans were

19 correct or not; isn't that right, the town?

20 A. I don't know that that's correct or

21 not. I said that we need to review the approved

22 and the revised plans.

23 Q. Well, Mr. Chandler provided you his

24 advice and his complaint after December 17th,

25 didn't he?

1 A. That's been established. We didn't
2 hire Mr. Chandler until later.

3 Q. We established that the town has no
4 knowledge of what's wrong with those plans outside
5 of what Mr. Chandler told you, correct?

6 A. On December 17th, we didn't have any
7 idea what the final plans were because we hadn't
8 seen the final plans that came out of DHEC.

9 Q. Therefore, you had no idea whether
10 those plans were right, wrong, or indifferent, did
11 you?

12 A. Well, we only had so many days to
13 appeal it. That's why we had to get the plans in
14 order to determine if there was an appeal.

15 Q. But on December 17th, you had no idea
16 whether the plans were sufficient or not. You just
17 knew that DHEC had allowed it to go forward.

18 A. We need to review the approval and the
19 revised plans to determine if we have a reason or
20 cause to appeal to the board.

21 Q. Indicating -- meaning very clearly,
22 you did not know whether you had any grounds to
23 appeal or not on December 17th, did you?

24 A. We didn't have any idea based on
25 the -- what had been approved. We didn't know what

1 had been approved. We weren't privy to that, so we
2 were trying to find the plans to do that.

3 Q. And whether those plans were adequate
4 to handle the stormwater run off on the Roper Pond
5 project, you had no idea whether they would or
6 would not, did you?

7 A. Not until we saw the final plans.

8 Q. And whether they would or would not,
9 you didn't know that until Mr. Chandler gave you
10 his pleading either, did you? You told me that the
11 sole knowledge possessed by the Town of Arcadia
12 Lakes to conclude that these plans are defective
13 comes from Mr. Chandler's pleading.

14 Now, you've told me that 50 times,
15 haven't you?

16 A. That the --

17 Q. The town's sole knowledge that there
18 are potential deficiencies with the BP Barber plans
19 comes exclusively from Mr. Chandler. Now, you've
20 told me that at least 50 times, haven't you?

21 A. I'm still misplaced on your question.

22 Q. Have you told me repeatedly that the
23 town's only knowledge of any potential deficiencies
24 with the BP Barber plans comes from Mr. Chandler?

25 MR. CHANDLER: You know, I've sat

1 here -- I'm going to object to the form of the
2 question.

3 MR. BROWN: All right. We'll move
4 pass it.

5 MR. CHANDLER: That question has been
6 asked so many times, and it tries to misstate the
7 facts that have been put on the table.

8 MR. BROWN: All right. I'll move pass
9 that. I'll move pass that.

10 BY MR. BROWN:

11 Q. What is the next to last sentence on
12 your December 17th memo? Would you read it.

13 A: The next to the last sentence?

14 Q. Where you say you want to stop that
15 the project. Would you read that sentence for me,
16 please.

17 A. "Let me know where you think we can go
18 to delay or stop this project."

19 Q. Your intent as of December 17th was to
20 stop the project by any means you could come up
21 with, correct?

22 A. Until we could see what the approved
23 plans were from DHEC and the actual revised plans
24 from BP Barber. There's only a certain window of
25 time that you have to look at those types of things

1 and to make an appeal, if an appeal is available.

2 Q. Is there a difference to you,
3 Mr. Thomas, as an engineer, between assessing
4 whether BP Barber's stormwater management plan
5 works or not and stopping the whole project?

6 A. Yes.

7 Q. There is a difference, correct?

8 A. Yeah.

9 Q. If you could simply correct
10 Mr. -- BP Barber's deficiencies, would you then be
11 happy? Would you withdraw your opposition?

12 A. Then or now?

13 Q. Now.

14 A. If we can sit down and come to some
15 clear understanding of what is in here and what
16 needs to be done, yes.

17 Q. Why were you motivated on
18 December 17th to stop the project as opposed to
19 determining what may or may not be wrong with the
20 BP Barber plans?

21 A. Because we only had so many days to
22 file an appeal after the decision in order to take
23 it to the board. And then once the board --
24 there's a time line there.

25 Q. I understand. What was your

1 motivation for wanting to stop the entire project
2 as of December 17th?

3 A. To determine what was actually being
4 proposed and what was being planned in the final
5 plans. I've already said that three times.

6 Q. Were you, at that point in time,
7 hoping to stop the project permanently as an
8 apartment project?

9 A. Not to my knowledge.

10 Q. Were any citizens of the town hoping
11 to stop the project permanently as an apartment
12 project?

13 A. I would imagine there are some that
14 would love to stop the project, but that's outside
15 my -- you'd have to talk with them.

16 Q. Did you ever express to anyone your
17 view, either personally or as the mayor, that you
18 wanted to stop the project entirely as an apartment
19 project?

20 A. No. As a matter of fact, I had a
21 telephone conversation with Mr. Walker, after our
22 meeting on December the 22nd, and he and I just
23 talked, after our meeting down the hall, and I
24 explained to him -- I said, This -- we're not
25 trying to stop the project because the project will

1 eventually go through. But we will not -- as a
2 town, it's my responsibility to make sure that
3 every environmental dot -- the "I" is dotted and the
4 "T" is crossed. And if you want to go talk to
5 Mr. Joe Walker, he's the one that made the call to
6 me.

7 Q. Outside of your conversation with
8 Mr. Walker, have you ever stated to anyone, either
9 personally or as mayor of the town, that you wanted
10 to stop the entire project by any means possible?

11 A. I don't remember having that
12 conversation.

13 MR. CHANDLER: Henry, are you going to
14 be going a whole lot longer?

15 MR. BROWN: No.

16 MR. CHANDLER: If you're going to be
17 going a lot longer, I think we need to take a
18 break.

19 MR. COOK: I'd appreciate a little
20 break.

21 MR. BROWN: All right. Let's take a
22 little break. I think that I'm about done, but let
23 me talk to my lawyer.

24 (A recess was taken from 4:52 p.m. to
25 5:01 p.m.)

1 (EXH. 6, Letter, was marked for
2 identification.)

3 BY MR. BROWN:

4 Q. Mr. Thomas, are you ready to start
5 back?

6 A. Yes, sir.

7 Q. I've handed you what's been marked as
8 Exhibit 6. Is that the resolution that went out as
9 the official position of the Town of Arcadia Lakes?

10 A. To the Richland County Planning
11 Commission, yes.

12 Q. And that is the work product that you
13 commenced with your October 2nd, 2008, letter?

14 A. Best of my knowledge, since it flows
15 and it's the same date, I would say yes.

16 Q. As far as we know today, and subject
17 to correction, this Exhibit 6 is something that was
18 sent to the Richland County Planning Commission as
19 the town's official position in regard to this
20 project?

21 A. At that time, yes.

22 Q. And to your knowledge, does it express
23 the sentiments and beliefs of the town at that
24 point in time?

25 A. At that point in time, yes.

1 Q. Now, why do you qualify it as to "at
2 that point in time"? What may have changed?

3 A. The issues that we brought before the
4 planning commission. An example would be, that the
5 development was substantially out of character for
6 the entire town, its neighborhood, contiguous
7 community, and intended zoning use as originally
8 presented. That's straight out of the County
9 regulations as to rezoning and how they -- and what
10 they should have considered in the rezoning of this
11 property at the time. Therefore, we were
12 presenting it to them as our case -- as a part of
13 our case.

14 Q. All right. And the planning
15 commission, obviously, disagreed with you because
16 they allowed the project to proceed?

17 A. Correct.

18 Q. Do you still think that that's a
19 consideration that is meritorious and the project
20 does not comply in that fashion?

21 A. What the town would think -- I mean,
22 what -- the issue was discarded by the planning
23 commission. Therefore, it can no longer be
24 considered an issue.

25 Q. Well, if sitting here today, the

1 planning commission said, I will give you a second
2 bite at the apple. Would you today assert that as
3 a ground to deny the project going forward?

4 A. I'd have to take that up with my
5 constituents.

6 Q. How about you personally as mayor;
7 would you still promote that as a reason to stop
8 the project?

9 A. I can't really answer that.

10 Q. Well, you held that opinion on
11 October 2nd, 2008, did you?

12 A. This was the culmination of what came
13 out of our meetings with our -- with my
14 constituents and what they believed were issues and
15 the issues that they wanted me to present as the
16 mayor to the planning commission.

17 Q. Did you agree with those positions?

18 A. Sure, I do, because I signed it.

19 Q. Do you today still believe that is a
20 valid position to present in opposition to the
21 project?

22 A. It has no merit anymore because the
23 planning commission said no.

24 Q. Well, I understand it has no effect on
25 the planning commission's decision. But do you

1 today believe that is a valid concern and a problem
2 with this project proceeding?

3 A. I'll refer back to our filings with
4 the Administrative Law Judge and Mr. Chandler as to
5 where we stand today.

6 Q. Okay. Mr. Thomas, I think I've asked
7 you this before, but as the town fully produced all
8 documents or other information responsive to the
9 request and relevant to this proceeding?

10 A. To the best of my knowledge, because
11 everything -- everything that I went back and
12 looked through were documents that were -- I
13 personally had given to Estates Management when we
14 went before the County and et cetera. So I do not
15 personally know of anything else today that has not
16 been presented to Roper Pond, LLC.

17 Q. To the best of your knowledge, the
18 town has made full production of all the
19 information you know about?

20 A. To the best of my knowledge.

21 Q. Yes?

22 A. Yes.

23 MR. BROWN: Okay. Thank you. That's
24 all I have.

25 MR. CHANDLER: Okay. I don't have any

1 questions.

2 MR. BROWN: Mr. Thomas, thank you very
3 much.

4 MS. HARTLEY: No, not yet.

5 MR. BROWN: Oh, I'm sorry.

6 EXAMINATION

7 BY MR. HIGHTOWER:

8 Q. Mr. Thomas, you stated that you are
9 concerned about whether or not the department
10 adequately reviewed the -- let's see -- the phrase
11 that you said was "the surface water disposal
12 system." I believe that was the term that you
13 agreed would stand in for BP Barber's drawings,
14 correct?

15 Do you remember that?

16 A. That was the terminology that we used
17 as -- other than water produced by the actual units
18 themselves flowing to East Richland County Public
19 Service System.

20 Q. Now, you have stated that the town as
21 a concern about those documents; is that correct?

22 A. The town?

23 Q. The plan that the department --

24 A. And those concerns are stated in
25 Mr. Chandler's filings.

1 Q. Has the town retained any person to
2 review those documents?

3 A. Other than Mr. Chandler?

4 Q. Yes. Someone with an engineering
5 degree and is a licensed engineer.

6 A. Define retained, because we put
7 before -- Mr. Hill, Mr. Danny Hill is a neighbor of
8 mine. Mr. Danny Hill is a -- he designs sewer
9 systems, and he's a neighbor in my town.

10 Q. Mr. Hill, do you -- is Mr. Hill going
11 to be called as a witness in this case?

12 A. Not to my knowledge. And he has not
13 asked for any compensation for anything that he's
14 looked into.

15 Q. Has he provided you with any opinions
16 on those documents?

17 A. Yes.

18 Q. Can you state what those opinions are?

19 A. The opinions that he had in the very
20 beginning was he brought up the question about the
21 sewer system and its adequacy to handle the actual
22 sewer system going into the East Richland County
23 Public Service District. Or you're talking about
24 surface water?

25 Q. Okay. I'm talking about surface

1 water. I am not talking about waste water
2 disposal. I'm talking about surface water run off,
3 stormwater run off?

4 A. He looked at the -- he walked over the
5 property along our property line and gave us some
6 idea on where the water was coming from and where
7 it was being drained from.

8 Q. Did he review the -- I'm going to use
9 that term again -- the surface water disposal
10 system documents?

11 A. The DHEC -- the drawings that were
12 provided to DHEC?

13 Q. Yes.

14 A. To the best of my knowledge, he did
15 review -- did look over those drawings.

16 Q. He did review those. And what did he
17 tell you?

18 A. I don't recall the conversations that
19 we had. I don't remember basic conversations that
20 I have.

21 Q. Did he identify any problems with
22 those documents with regard to surface water run
23 off?

24 A. Best of my knowledge, the only
25 concerns that I can remember he and I discussing

1 were the fact that the pond was spring fed and
2 lowering the pond level may or may not have any
3 real impact on its ability to hold water. And the
4 concerns that we all had about the potential
5 overflowing of Trenholm Road during major storm
6 situations. Other than that, I can't remember
7 anything else being brought up.

8 Q. So except for this resident, Mr. Hill,
9 is it your testimony that no one has looked at the
10 surface water disposal system documents, the ones
11 that the department DHEC approved and is the
12 subject of this contested case proceeding, to
13 determine whether or not there is some problem with
14 them?

15 A. Well, it's right in this e-mail on
16 here. Mr. Brian Bates, who's also a neighbor, he
17 and I were the two individuals that actually put
18 together the NPDES for the town, along with other
19 expert folks, in order to save the town the dollars
20 of having to go out and hire consultants to do
21 that.

22 Q. So you're stating that this other
23 person -- what's that person's name?

24 A. He's right on this e-mail on Exhibit
25 Number 5, Mr. Brian Bates.

1 Q. Okay. And you're stating that
2 Mr. Bates reviewed the documents and rendered an
3 opinion, an expert opinion on them?

4 A. As far as I remember, yes.

5 Q. And what was that opinion?

6 A. From what I can remember, the major
7 concerns that he had was the ability of the
8 property or the containment system to handle first
9 flush. And he had met with myself and when we
10 talked with Jill Stuart at DHEC.

11 Q. You talked to Ms. Stuart at DHEC?

12 A. Yes. Because we had to get her -- get
13 information from her. She's a public official and
14 we went to various public officials in order to try
15 to get as much information as we could on the
16 project, how it was designed and how it would
17 affect our town.

18 Q. What is Mr. Bates educational
19 qualifications to be an expert?

20 A. Mr. Bates is a water quality engineer.

21 Q. He's a registered engineer in South
22 Carolina?

23 A. That's correct.

24 Q. A water quality engineer?

25 A. He works for Wilbur Associates. You'd

1 have to talk to Mr. Bates. I don't know what his
2 total education is. I do know he's an expert on
3 NPDES.

4 Q. Has Mr. Bates put any of his
5 conclusions or opinions down in writing?

6 A. Only what you see here. That I can --
7 I don't remember him putting anything in writing.
8 If it is, I don't have a copy of it.

9 Q. Okay.

10 A. Most of the conversations I ever had
11 with him were just pure conversations or with him
12 arranging for us to talk with the right folks.

13 Q. Is it -- to the best of the town's
14 knowledge, is there any plan to have Mr. Bates
15 testify at the hearing in this matter?

16 A. Not to my knowledge.

17 Q. Except for Mr. Bates, has anybody else
18 reviewed the plan and has rendered some opinion?

19 A. Well, I indicated earlier Mr. Hill.

20 Q. Right, but Mr. Hill was the waste
21 water --

22 A. They were the two engineers that had
23 looked at it.

24 Q. And neither one of them is going to be
25 called as a witness in this case; is that correct?

1 A. Not that I know of.

2 Q. Okay. And neither one has put any
3 opinions down in writing --

4 A. Not that I'm aware of.

5 Q. -- whether on a computer, or paper, or
6 whatever?

7 A. Not that I'm aware of.

8 Q. And except for conversations with you,
9 have they spoken to any other town official?

10 A. If they happened to be in the actual
11 meetings with us in the town -- because we have
12 town meetings, called town meetings for the
13 residents to come and talk about the issues. If
14 they were there, then they would have voiced their
15 opinions in those meetings.

16 Q. With regard to the first flush
17 concern, does Mr. Bates still have a concern about
18 that?

19 A. I don't know. You'd have to discuss
20 that with Mr. Bates.

21 Q. He has not voiced any other concerns
22 to you other than the first flush?

23 A. I'm not -- I don't remember any at
24 this time.

25 MR. HIGHTOWER: Okay. No further

1 questions.

2 MR. BROWN: Nothing, none.

3 MR. CHANDLER: No questions.

4 (The deposition concluded at

5 5:16 p.m.)

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CERTIFICATE OF REPORTER

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4 I, Sonia I. Mendez, Court Reporter and Notary
5 Public for the State of South Carolina at Large, do
6 hereby certify:

7 That the foregoing deposition was taken before
8 me on the date and at the time and location stated
9 on Page 1 of this transcript; that the deponent was
10 duly sworn to testify to the truth, the whole truth
11 and nothing but the truth; that the testimony of
12 the deponent and all objections made at the time of
13 the examination were recorded stenographically by
14 me and were thereafter transcribed; that the
15 foregoing deposition as typed is a true, accurate
16 and complete record of objections made at the time
17 of the examination to the best of my ability.

18 I further certify that I am neither related to
19 nor counsel for any party to the cause pending or
20 interested in the events thereof.

21 Witness my hand, I have hereunto affixed my
22 official seal this 24th day of August 2009, at
23 Columbia, Richland County, South Carolina.

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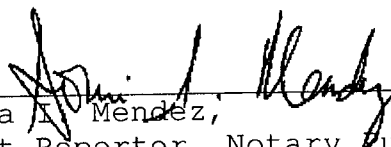
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Sonia I. Mendez,
Court Reporter, Notary Public
State of South Carolina
at Large.
My Commission expires
March 23, 2017.

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I N D E X

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Page

4 Stipulation

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5 EXAMINATION

BY MR. BROWN

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BY MR. HIGHTOWER

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7 Certificate of Reporter

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E X H I B I T S

10 Respondent's

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Notice of Rule 30(B)(6) Deposition
Of the Town of Arcadia Lakes

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12

2

Two Page Note Sheet by Richard W.
Thomas, Jr.

7

13

14 3

Request For Contested Case Hearing

34

15 4

E-mail dated 10-2-2008 from Richard
W. Thomas, Jr., to Unda8@aol.com,
Bates Number SCANA - 0511 and 0512

87

16

17 5

E-mail dated 12-17-2008 from Richard
W. Thomas, Jr., to Brain Bates,
Bates Number SCANA - 0874 to 0877

118

18

19 6

Letter dated 10-2-2008 from Richard
W. Thomas, Jr., to The Richland
County Planning Commission, Bates
Number PET - 0166 and 0167

126

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I N D E X

Page

Stipulation

3

EXAMINATION

BY MR. BROWN

3

BY MR. HIGHTOWER

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Certificate of Reporter

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E X H I B I T S

Respondent's

1 Notice of Rule 30(B)(6) Deposition
Of the Town of Arcadia Lakes

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County Planning Commission, Bates
Number PET - 0166 and 0167

126

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Town of Arcadia Lakes, Robert L. Jackson,
Linda Z. Jackson, Robert E. Williams, Barbara
S. Williams, Elizabeth M. Walker, Louis E.
Spradlin, Mary Helen Spradlin, Thomas Hutto
Utsey, Tony Sinclair, Aaron Small, Bette
Small, Gene F. Starr, M.D., Elaine J. Starr,
Sanford T. Marcus, Ruth L. Marcus, and
Steven Brown,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Roper Pond, LLC,

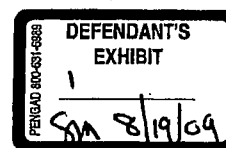
Respondents.

Docket No. 09-ALC-07-0069-CC

**NOTICE OF RULE 30(B)(6)
DEPOSITION OF THE TOWN OF
ARCADIA LAKES**

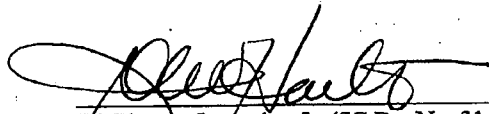
**TO: JAMES S. CHANDLER, JR., ESQUIRE, AND AMY E. ARMSTRONG, ESQUIRE,
ATTORNEYS FOR PETITIONERS, AND STEPHEN P. HIGHTOWER,
ESQUIRE, AND ROGER HALL, ESQUIRE, ATTORNEYS FOR RESPONDENT
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL:**

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 21 of the Rules of Procedures for the Administrative Law Court and Rule 30(b)(6) of the South Carolina Rules of Civil Procedure, the attorneys for the Respondent Roper Pond, LLC will take the deposition of the Town of Arcadia on Wednesday, August 19, 2009, at 1:30 p.m., at the offices of Nexsen Pruet, LLC, 1230 Main Street, Suite 700, Columbia, South Carolina 29201, upon oral examination before a Notary Public or before some other official authorized by the law of this State to take depositions. The oral examination will continue until completed. The Town of Arcadia Lakes shall designate one or more managing agents, officials, administrators or other representatives who can testify on its behalf concerning the following matters:



1. Public access and use of Cary Lake by citizens of the Town of Arcadia Lakes.
2. Actual or threatened harm from the activities authorized under the 2006 NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities ("General Permit") for land-disturbing activities on 9.6 acres in association with construction of a multi-family residential housing development to be located off Trenholm Road in Richland County ("Proposed Project").
3. Communications with representatives of state and local agencies and state and local elected officials regarding the Proposed Project.
4. The specific manner in which the land-disturbing activities authorized under the General Permit will violate the terms and conditions of the General Permit and/or DHEC Regulations.

The deposition is being taken for pre-hearing discovery, for use at the hearing on the merits, and for any such other purposes as may be permitted by law. You are invited to attend and take such part as is fit and proper.



W. Thomas Lavender, Jr. (SC Bar No. 3143)
Joan W. Hartley (SC Bar No. 72735)
NEXSEN PRUET, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
Columbia, South Carolina 29202
803.771.8900

Attorneys for Respondent
Roper Pond, LLC

July 29, 2009
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Town of Arcadia Lakes, Robert L. Jackson,
Linda Z. Jackson, Robert E. Williams, Barbara
S. Williams, Elizabeth M. Walker, Louis E.
Spradlin, Mary Helen Spradlin, Thomas Hutto
Utsey, Tony Sinclair, Aaron Small, Bette
Small, Gene F. Starr, M.D., Elaine J. Starr,
Sanford T. Marcus, Ruth L. Marcus, and
Steven Brown,

Petitioners,

vs.

South Carolina Department of Health and
Environmental Control and Roper Pond, LLC,

Respondents.

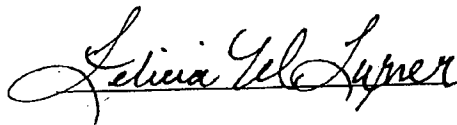
Docket No. 09-ALC-07-0069-CC

CERTIFICATE OF SERVICE

This is to certify that Notice of Rule 30(b)(6) Deposition of the Town of Arcadia
Lakes and Notice of Deposition of Seth Reice, Ph.D., have been served on the counsel of
record by placing the same in the United States mail, first class postage prepaid, addressed to the
following as shown below this 29th day of July, 2009:

Stephen P. Hightower, Esquire
Roger Hall, Esquire
South Carolina Department of
Health and Environmental Control
2600 Bull Street
Columbia, SC 29201

James S. Chandler, Jr., Esquire
Amy E. Armstrong, Esquire
P.O. Box 1380
Pawleys Island, SC 29585



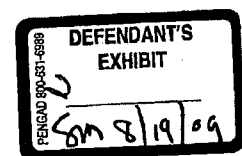
A. I am here as a spokesman for and Mayor of, the Town of Arcadia Lakes and its citizens per vote of our town council. If I don't know the answer to one or more of your questions, I will let you know what I believe the town's position is and will defer till a later time when I can get you an answer. As a point of information, I am a registered engineer in the state of SC and had a major part in writing the Town's NPDES permit to DEHEC and our NPDES – MS4 Intergovernmental agreement with Richland County.

B.1. Cary Lake is one of seven lakes in our town. Cary Lake has 40-43 members in its association. Our lakes are all private and owned and maintained by their respective associations made up of the property owners surrounding the lakes.

2. As to actual or threatened harm or legal violations in this case, we hired Mr. Chandler as our attorney to handle this case. I am not a legal expert on the issues in this case. Please refer to Mr. Chandler's filings. You should have Mr. Chandler's pleadings as to what the issues are in this case. We are confident that we have a case and that is why we have put, so far, a year of our time into this case and our money into hiring Mr. Chandler to fight against the environmental impact this project will produce. Based on what I believe, there are violations with regard to the project and plans and its permitting with DEHEC and the US Corp. of Engineers. Water quality is paramount to the citizens of Arcadia Lakes. This is evidenced in our work with the Gill Creek Watershed Association (a threatened waterway), our intergovernmental agreement with Richland County as a Co-permittee under NPDES – MS4 rules and regulations, our efforts to acquire funding to clean up Cary Lake from past development along Decker Blvd. and Dent School Remodeling and our forming a citizens Arcadia Lakes Navy to take on water quality education projects such as marking all the street drains in our town to inform folks that they drain to our lakes and streams.

3. We contacted anyone and everyone we could to get help on this project: We have the right to communication with elected State officials and public officials. Communication was had with:

Senator Joel Lourie, Rep. Joan Brady, SCDOT, DEHEC, County Council, County personnel



4. We believe that this project as currently designed and planned will do:

a. Harm to water flowing through the project, under N. Trenholm Rd and into Cary Lake on through the Gills Creek Flood Plain and eventually into the Congaree River.

b. Harm to the esthetic interest of the Town of Arcadia Lakes being that this project is surrounded on three sides by the Town. As an example: The Beautiful Eco-Healthy Lilly Pad Pond will be changed into a storm water impoundment.

c. Harm to the environmental interest of the Town, seeing as our seven lakes are a vital part of our identity "*Seven Lakes - One Town.*" We as a town do not believe that the County or DEHEC will fully protect us from the environmental impact this project will produce both during and after construction.

The lack of environmental oversight and checks evidenced when Decker Blvd was developed and Dent Middle School was remodeled, leaving the Carey Lake Association with 10s of thousands of dollars of cleanup, are examples that back up our concerns.



Richard W. Thomas, Jr.
MAYOR

27 Huntwick Court
Columbia, SC 29206
H: (803) 787-1725
O: (803) 782-2272
rwtomasjr@sc.rr.com

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Docket No. 09-ALC-07-____-CC

REQUEST FOR CONTESTED CASE HEARING

TO: THE ADMINISTRATIVE LAW COURT AND THE RESPONDENTS:

Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Jr.,

In support of this request the Petitioners submit the following:

THE PETITIONERS

1. The Town of Arcadia Lakes is a municipality organized and existing under the laws of the State of South Carolina. The Town is located around a series of lakes within the Gills Creek watershed, and these lakes are very important to the quality of life of the citizens of the Town.

2. Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Jr., Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown are citizens and residents of the Town of Arcadia Lakes in Richland County, South Carolina; they own property on or near the lakes in the area, and they use and enjoy these lakes for a variety of recreational, environmental and aesthetic purposes.

THE PROJECT AND RESOURCES AT ISSUE

3. Roper Pond, LLC, is the entity that submitted an application for storm water permits and approvals for the construction of a project known as Roper Pond Apartments.

4. Representatives of Roper Pond, LLC, have stated that they plan to construct a high density apartment complex on a tract of land consisting of approximately 12.75 acres lying immediately adjacent to the Town of Arcadia Lakes.

5. The project includes a number of alterations to a pond lying on the property. The pond is a part of the Gills Creek watershed and drains into Cary Lake, a lake within the watershed lying within the town limits of the Town of Arcadia Lakes. The proposed alterations include filling of portions of the pond and wetlands at the edges of the pond and the excavation of a substantial portion of the pond to convert the pond from a productive shallow picturesque lily-pad pond into a typical unsightly and unproductive storm water retention basin.

6. The pond proposed for alterations presently functions as a significant bird habitat and a highly productive wetland providing significant public benefits in filtration of storm waters and improving the quality of waters within the Gills Creek basin.

7. The Gills Creek basin is currently listed as an impaired waterway under Section 303(d) of the federal Clean Water Act, and significant efforts are being made to improve the waters of the Gills Creek watershed and to remedy the problems that have impaired this watershed. Activities such as filling and excavating functional ponds in this watershed will only add to the water quality problems within the Gills Creek watershed.

THE AGENCY PROCEEDING

8. The DHEC staff decision to issue the certification and permit was made on December 15, 2008. The Petitioners filed a timely request for a final review conference before the DHEC Board, but the Board did not conduct a final review conference. Copies of the staff decision and the letter stating that the Board will not conduct a review conference are attached hereto.

GROUND FOR APPEAL

9. The Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Jr., Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown are informed and believe that the permit, certification and approvals were issued in violation of DHEC Regulations 61-9, 61-68 and 61-101, in the following respects:

A. Upon information and belief, Roper Pond, LLC, submitted incorrect and incomplete information to DHEC. Roper Pond, LLC's Stormwater Pollution Prevention Plan

(SWPPP) is deficient and DHEC should not have issued a Construction NPDES Permit for this site:

(1) There are significant defects in the construction and post construction portions of Roper's SWPPP. The silt fence shown on drawing C2 is placed inside the Wetlands Buffer, too close to the wetlands, and in some areas through the wetlands. The Wetlands Buffer area must remain undisturbed to be effective.

(2) The September 2, 2008 Richland County conditional approval states that the maximum driveway width be 24 feet. The Roper drawing C4 shows a 26 foot width. This adds significant impervious area which would cause additional stormwater runoff and additional pollutants. The County conditional approval requires "Preservation of trees in the green area next to the pond." Based on the existing condition shown on drawing C1 and the Site Planting Plan, it appears that no trees are being preserved in the green area around the pond. Grubbing existing trees in the area around the pond defeats the usefulness of a Wetlands Buffer and will cause sediment to enter the pond.

(3) Roper Pond, LLC's documents note that zinc is a problem in Cary Lake, but incorrectly states that no zinc will come from its development. It is well documented that zinc is discharged from roof drains of large buildings and from large parking lot areas.

(4) DHEC is not authorized to issue an NPDES Construction Permit where such construction or post construction condition would "cause or contribute" to impairment of the receiving water body, unless, the MS4 is in compliance with its Stormwater Management Plan (SWMP). On its website, Richland County states, "Q. Why is Richland County proposing new stormwater regulations, to include buffers? A. Because Richland County is in violation of

the clean water act and has been cited by DHEC....And as a result of this violation, we have agreed to change our regulations to address the cited deficiencies. These changes would help Richland County improve the water quality in our community for our residents." Therefore DHEC cannot issue a new construction permit until the County adopts and applies the improved ordinance.

(5) Roper Pond, LLC's calculated trapping efficiency for the post construction water quality devices (i.e., Best Management Practices (BMPs)) is flawed. First, the calculations do not properly and adequately address capture of the "first flush" stormwater runoff volume that would come from the site; and thus, the devices are not of adequate size to capture what is documented to be the most significant portion of a runoff event for transporting pollutants to the receiving water. Second, Roper Pond, LLC, assumes an even distribution of particles, 20% for each of the five particle sizes. This assumed particle distribution is incorrect and yields an inaccurate and incorrect particle trapping efficiency for these BMPs. Also, no oil and grease trapping efficiency was calculated. Leaking vehicle crankcase and transmission oils in parking lots would contain and transport zinc if not properly captured. DHEC should not have approved the Construction NPDES Permit because of these significant deficiencies.

B. The Petitioners are informed and believe that Roper Pond, LLC, submitted materially incorrect information and omitted material information in its submissions to Richland County, DHEC, and the Corps:

(1) In its pre-construction notification to the Corps, Roper Pond, LLC, failed to make it clear that it intended to construct a residential development. Roper requested a Nationwide 39 permit for a commercial development, based on filling of not more than 0.075

acres of wetlands. If a Nationwide Permit had been applicable here, Roper should have applied for a Nationwide 29 permit for residential development. Accordingly, DHEC erroneously issued a 401 water quality certification for this project, and then compounded the error by relying on the water quality certification in approving the project's storm water plan and permit.

(2) Roper Pond, LLC, however, should have applied for an Individual 404 Permit. Roper Pond, LLC, told the Corps it would only impact 0.075 acres of wetlands, but failed to advise the Corps that its design called for dredging the existing Roper Pond nor that it intended to lower the existing pond water level by 3.5 feet. The stream thread of Roper Pond exceeds 350 feet. For any stream alteration exceeding 299 feet, one must apply for an Individual 404 Permit. If Roper Pond, LLC, had properly applied for an Individual Permit, DHEC would have had to evaluate and determine whether to issue a 401 water quality Certification for this permit. DHEC would have also been required to place the project on public notice and provide an opportunity for public comments and appeal. Additionally, the Corps would have had to place the project on public notice.

(3) Roper Pond, LLC's proposed permanent lowering of the pond water level by 3.5 feet, would cause a significantly larger area of wetlands to be impacted than what Roper submitted. Sidecasting and incidental fallback of dredged material would cause the filling of some of the wetland ribbon around the pond, access of equipment into and out of the pond area would fill wetlands, and draining of wetlands, by permanently lowering the pond elevation, would have the equivalent effect of filling ribbon wetlands around the pond and in the larger wetland area upgradient of the pond. Therefore, Roper misled the Corps and both DHEC and the public were denied opportunities to participate regarding water quality by Roper's incorrect and

incomplete application.

C. The impacts of this project were considered by DHEC in a piecemeal fashion and instead should have been considered as part of the comprehensive review required by DHEC Regulation 61-101.

D. The approvals and permit were issued in reliance upon a Nationwide Permit issued by the US Army Corps of Engineers that does not authorize the types of alterations to the pond and wetlands that Roper Pond, LLC, propose to make on this site.

E. The approvals and permit were issued in reliance upon a DHEC 401 Water Quality Certification that was issued without any public notice or opportunity for public comment prior to the issuance of the storm water approvals; the DHEC 401 Water Quality Certification was erroneously issued for a Nationwide Permit under the Clean Water Act Section 404 program administered by the US Army Corps of Engineers that does not authorize the types of alterations to the pond and wetlands that Roper Pond, LLC, propose to make on this site. DHEC failed to make a comprehensive review of the project when it certified the Nationwide Permit approval; the project also violates DHEC water quality certification rules in that:

(1) the project would permanently alter the aquatic ecosystem in the vicinity of the project such that its functions and values would be eliminated or impaired, in violation of DHEC Regulation 61-101.F.5.(a) ;

(2) there are feasible alternatives to the activity, which would reduce adverse consequences on water quality and classified uses, and therefore the approval of this project violates DHEC Regulation 61-101.F.5(b);

(3) the proposed activity adversely impacts special or unique habitats, in

violation of DHEC Regulation 61-101.F.5.(d).

F. The project proposes to fill and make significant alterations to a water of the State, and to convert a naturalized water of the State into a storm water retention pond instead of retaining the storm water within upland constructed retention areas; this proposal violates DHEC Regulations 61-9 and 61-68;

G. The project calls for lowering the water level in order to provide storm water retention capacity, but the Department failed to take into account the fact that lowering the water level, which would be accomplished by excavating the bottom level of the pond, will result in the drainage of wetlands associated with the pond, altering the hydrology of those wetlands and causing additional adverse impacts to these wetlands, all in violation of DHEC Regulations 61-9 and 61-101.

H. The issuance of a 401 water quality certification without first providing public notice and opportunity for public comment violated the rights of the Petitioners to due process of law under Article I, Section 22 of the South Carolina Constitution.

I. The approved permit violates Regulation 61-9 in that the plans fail to control the first flush volumes and thus this project would have significant impacts upon water quality both within the existing pond and downstream portions of the Gills Creek watershed.

J. The approved permit violates Regulation 61-9 in that the Department gave approval to plans that include an arbitrary proposed particle size distribution in the calculations used by the design engineer for post-development storm water runoff.

K. The approved permit violates Regulations 61-9, 61-68, and 61-101 in that it fails to take into account a number of significant water quality problems associated with the high

density design of the project proposed for this site.

STANDING

10. The Town of Arcadia Lakes has its own "MS4" stormwater permit program, and the implementation of this program will be negatively affected by the proposed alterations of Roper Pond. The Roper Pond project will also have adverse impacts on the Town's efforts to improve water quality in Cary Lakes and other waters within its jurisdiction.

11. Citizens of the Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Jr., Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown use and enjoy the ponds and waters of the Gills Creek watershed, including the pond on the subject property and areas downstream that will be adversely impacted by this project, for a variety of recreational, environmental, and aesthetic purposes.

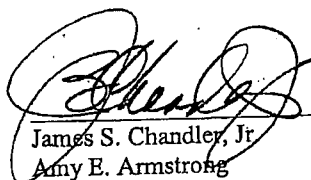
12. As a direct and proximate result of the violations set forth above, the Citizens of the Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Jr., Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown will suffer harm to their recreational, environmental, aesthetic and other interests.

RELIEF REQUESTED

WHEREFORE, Town of Arcadia Lakes, Robert L. Jackson, Linda Z. Jackson, Robert E. Williams, Jr., Barbara S. Williams, Elizabeth M. Walker, Louis E. Spradlin, Mary Helen

Spradlin, Thomas Hutto Utsey, Tony Sinclair, Aaron Small, Bette Small, Gene F. Starr, M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L. Marcus, and Steven Brown request that the Administrative Law Court conduct a contested case hearing and thereafter issue an order reversing the proposed decision to issue the permit and approvals and granting such other and further relief as the Court may deem just and appropriate.

Respectfully submitted,



James S. Chandler, Jr.
Amy E. Armstrong

**SOUTH CAROLINA ENVIRONMENTAL LAW
PROJECT**

Mailing address: Post Office Box 1380
Pawleys Island, SC 29585
Office address: 430 Highmarket Street
Georgetown, SC 29440
Telephone (843) 527-0078
FAX (843) 527-0540

Attorneys for the Petitioners

Georgetown, South Carolina

February 16, 2009



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

December 15, 2008

BOB MUNDY
ROPER POND LLC
1401 MAIN ST STE 650
COLUMBIA SC 29201

RE: ROPER POND APARTMENTS, Richland County
File number: 40-08-09-08

Dear Bob Mundy:

The Department of Health and Environmental Control (Department or DHEC) has approved the Stormwater Pollution Prevention Plan (SWPPP) for the referenced project on December 15, 2008. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities SCR100000 (2006 CGP), this project has been granted coverage under the 2006 CGP. This project's general permit coverage number is SCR10J889. The total disturbed area for this site is 9.6 acres. This NPDES coverage expires on 12/15/2013; 5 years from the date of issuance.

The inspections for this site must be performed by qualified personnel who meets the requirements list in Section 3.10.D of the 2006 CGP. Qualified personnel must be one of the following:

1. SWPPP preparer
2. Person under direct supervision of SWPPP preparer
3. Person who has been certified through a Construction Site Inspector Certification Course that has been approved by DHEC (see our website for a list of approved courses)
4. Person with registration equivalent of SWPPP preparer
5. Person under direct supervision of person with registration equivalent to SWPPP preparer

An as-built survey, signed and sealed by a S.C. Licensed Land Surveyor, should be submitted for the 1 structure(s) on this site. The survey(s) should show grades, contours, and depths for all structures and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the structure(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the project's S.C. Registered Engineer indicating that the structure, as built, will function as shown in approved calculations. A new analysis of the structure (routing) may be necessary. The as-built survey and/ or analysis must be accepted by the Department before a Notice of Termination (NOT) can be submitted.

"Because this project impacts waters of the U.S./ State, make sure you obtain all necessary permits and certifications from USACOE and SC DHEC 401 Water Quality Certification, Standards, i Section before land-disturbing activities begin in those areas.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-5132 • www.scdhec.gov

The 2006 CGP can be downloaded at the following website:

<http://www.scdhec.gov/environment/water/docs/finalcgp.pdf> or you may request a copy from us via email (stormwatercgp@dhec.sc.gov). You are responsible for ensuring your contractor(s) complies with the approved SWPPP and the minimum requirements of the 2006 CGP. Also, you are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991 (1991 Act) and the Federal Clean Water Act (CWA).

You must notify this DHEC EQC Regional Office prior to starting any land-disturbing activity. The address and telephone number of the EQC office are as follows:

Columbia EQC Office
BUILDING 5 PO BOX 156
STATE PARK SC 29147-0156
803-896-0620

You should be aware that this approval is only applicable for the SWPPP that was submitted for this project. Any additional construction or land disturbing activity beyond the scope of the approved plans is not authorized. Any future work for this project not shown on the stamped, approved plans will require that you submit another site plan for review and approval. All major modifications require review and approval by the Department. Minor modifications to the approved SWPPP may be made by the SWPPP preparer and do not require review and approval by the Department; these changes should be signed and dated by the SWPPP preparer. If you have a question about whether a modification is major or minor, contact the Stormwater Permitting Section at (803) 898-4300.

Three (3) sets of stamped, approved plans are being provided to your engineer. A copy of the stamped, approved SWPPP (including a copy the 2006 CGP and signed co-permittee and contractor certifications), NOI, and CGP coverage letter from DHEC must be retained at the construction site (or accessible within 30 minutes during normal business hours) from the date of commencement of construction activities to the date of final stabilization. A copy of the stamped, approved SWPPP must be available at a central location on-site for the use of all those identified as having responsibilities under the SWPPP whenever they are on the construction site. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site.

All contractors who will conduct land-disturbing activities at the site must sign a certification statement as a co-permittee or as a contractor who is not a co-permittee. You are responsible for any contractor who is not a permittee. You are also responsible for listing all contractors in the SWPPP and for holding a pre-construction conference with each co-permittee and contractor who is not a co-permittee before they can conduct land-disturbing activity at the site.

The Department may conduct periodic inspections of your site. Any violations found during these inspections may result in enforcement action. Failure to comply with the approved SWPPP or the minimum requirements of the 2006 CGP, 1991 Act, or CWA may subject you to applicable penalties.

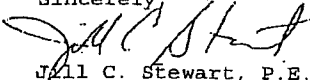
This NPDES coverage should be terminated by the permittee when one of the conditions listed in Section 5.1 of the 2006 CGP has been met. You must submit a Notice of Termination (NOT) to cancel your NPDES coverage under the 2006 CGP. Please see section 5.1 of the 2006 CGP for more information about termination of coverage.

You are responsible for obtaining any other federal, state, or local permit that may be required for this project. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

Please see the enclosed "Notice of Appeal Procedure" document for information about the procedures for appealing this NPDES coverage. Also, see the enclosed document from the S.C. DHEC Compliance Assurance Division detailing some of the compliance requirements of the 2006 CGP.

If you have any questions or cannot access the referenced websites, please call me at 803-898-0439.

Sincerely,



Jill C. Stewart, P.E.
Stormwater Permitting Section

CC: James M Futter-BP BARBER & ASSOCIATES INC
Region 3, Columbia EQC Office



Notice of Intent (NOI) for Stormwater Discharges from
Large and Small Construction Activities,
NPDES General Permit SCR100000

For official use only

File number: 40-08-09-08

Permit number: SCR10J889

Submission package complete: _____

Public Notice Start Date (OCRM only): _____

For official use only

SOUTH CAROLINA
DEPT OF HEALTH AND ENVIRONMENTAL CONTROL
ENVIRONMENTAL QUALITY CONTROL
STORMWATER PERMITTING SECTION
APPROVED - FOR CONSTRUCTION ONLY

DHEC PERMIT #: SCR10J889

FILE #: 40-08-09-08

DATE ISSUED: 12/15/08

BY: [Signature]

Submission of an NOI constitutes notice that the entity identified in Section I intends to be authorized under SCR100000. Instructions on page 5.

Date: 11/05/2008

Project/ Site Name: Roper Pond Apartments

County: Richland

Do you want this project to be considered for the Expedited Review Program (ERP)? ☐ Yes ☒ No (See instructions.)

If yes, is the design of this project above regulatory requirements or Low Impact Development? ☐ Yes ☐ No

I. Project Information

Project Owner/ Operator (Company or person): Roper Pond LLC

Company EIN: 20-0806299

Phone: 803-779-1400

Fax: 803-765-9427

Mailing Address: 1407 Main St., Suite 650

City: Columbia

State: SC

Zip: 29201

Permit Contact (if owner is company): Bob Mundy

Phone: _____

Mailing Address: _____

City: _____

State: _____

Zip: _____

Email address (optional): _____

II. Property Information

A. Site Location (street address, nearest intersection, etc.): 6837 North Trenholm Rd.

City/ Town (if in limits): _____

Latitude: 34° 3' 35" N Longitude: -80° 57' 30" W

Tax map # (list all): R16907-01-04

B. Property Owner: _____

Phone: _____

Mailing Address: _____

City: _____

State: _____

Zip: _____

III. Site Information

A. Disturbed area (to the nearest tenth of an acre): 9.6 acres Total area: 12.8 acres

B. Is this project part of a Larger Common Plan for Development or Sale (LCP)? ☐ Yes ☒ No

LCP/ Overall Development Name: _____

Check here if this is the first phase. ☐

Previous state permit/ file number: _____

Previous NPDES coverage number: SCR10 ☐ ☐ ☐ ☐

C. Start Date (MM/DD/YYYY): 07/28/2008

Completion Date: 07/28/2009

D. Is this site located on Indian Lands? ☐ Yes ☒ No

If yes, name of reservation. _____

E. Type of Activity (check one):

☐ Institutional

☐ Residential: Single-family

☐ Commercial

☐ Industrial

☐ Linear

☒ Residential: Multi-family

☐ Multi-use (Commercial & Residential)

☐ Other: _____

☐ Other: _____

☐ Site Preparation (No new impervious)

F. Are there any flooding problems downstream of or adjacent to this site? ☐ Yes ☒ No

G. Has S.C. DHEC issued a Notice to Comply or Notice of Violation for this site or LCP? ☐ Yes ☒ No

H. Is any part of the property located inside an MS4 or urbanized area? ☒ Yes ☐ No

If yes, list the MS4 operator or urbanized area name. Richland County

I. List all state and federal environmental permits or approvals applied for or obtained for this site (e.g., RCRA).

IV. Waterbody Information

A. Nearest receiving waterbody(s) [RWB]: Cary's Lake

Distance to nearest RWB (feet): 550

Classification of nearest RWB: FW

Next/Nearest named RWB: Jackson Creek

B. 1. Waters of the U.S./ State	On the site?	Delineated/ Identified?	Impacts?	Amount of impacts
a. Jurisdictional wetlands	☒ Yes ☐ No	☒ Yes ☐ No	☒ Yes ☐ No	<u>0.075</u> Ac
b. Non-jurisdictional wetlands	☐ Yes ☒ No	☐ Yes ☒ No	☐ Yes ☒ No	_____ Ac
c. Other Water(s) List: Pond	☒ Yes ☐ No	☒ Yes ☐ No	☐ Yes ☒ No	_____ Ac _____ Feet

2. If yes for impacts in B.1, describe each impact and activity, and list all permits (e.g., USACOE Nationwide permit, DHEC General Permit) and certifications that have been applied for or obtained for each impact.
USACOE Nationwide Permit

C. Impaired Waterbodies (See instructions.)

List the nearest DHEC water quality monitoring station(s) [WQMS(s)] to which construction stormwater (SW) discharges will drain and the corresponding waterbody(s). SC-C0068 Waterbody(s): Forest Lake

1. Is this WQMS(s) listed on the most current 303(d) List for Impaired Waters? ☒ Yes ☐ No
 - a. If yes for 1, list the impairment(s), zinc
 - b. If yes for 1, will the site's construction SW discharges contain any pollutant(s) causing the impairment(s)?
☐ Yes ☒ No
 - c. If yes for b, list the impairment(s) affected by the pollutant(s) referenced in b.
 - d. If yes for b, will use of the proposed BMPs ensure that the site's discharges will not contribute to or cause further water quality standard violations for the impairment(s) listed in c? ☐ Yes ☐ No
 2. Has a TMDL(s) been developed for this WQMS(s)? ☐ Yes ☒ No
 - a. If yes for 2, list the impairment(s).
 - b. If yes for 2, has the standard been attained for all impairment(s)? ☐ Yes ☐ No
 - c. If no for b, will the site's construction SW discharges contain any pollutant(s) causing the impairment(s)?
☐ Yes ☐ No
 - d. If yes for c, are your discharges consistent with the assumptions and requirements of the TMDL(s)?
☐ Yes ☐ No
- D. 1. Are S.C. Navigable Waters (SCNW) on the site? ☐ Yes ☒ No
 - a. If yes for 1, list the name of the SCNW:
 - b. If yes for 1, will any construction activities cross over or occur in, under, or through the SCNW? ☐ Yes ☐ No
 - c. If yes for b, then describe activities.
 - d. If yes for b, are the activities in SCNW covered under a DHEC General Permit or other DHEC permit?
☐ Yes ☐ No
 - e. If no for d, has an SCNW permit been applied for or issued for the site?
☐ Yes, for all activities ☐ Yes, for some activities ☐ No
 - f. If yes for d or e, list permit number(s) and corresponding activities.

V. Operator Information

- A. SWPPP Preparer: James M. Futter S.C. Registration #: 8367
Company/ Firm: BP Barber S.C. COA #:
Mailing Address: P.O. Box 1116 City: Columbia State: SC Zip: 29203
Phone: (Day) 803-254-4400 (Mobile) (Fax)
Email address (optional): jfutter@bpbarber.com
- B. Operator of Day-to-Day Site Activities [ODSA] (Company or person):
Mailing Address: City: State: Zip:
Phone: Fax: Phone:
- Site Contact (If ODSA is company): Phone:

VI. Signatures and Certifications: DO NOT SIGN IN BLACK INK!

- A. One copy of the SWPPP, all specifications and supporting calculations, forms, and reports are herewith submitted and made a part of this application. I have placed my signature and seal on the design documents submitted signifying that I accept responsibility for the design of the system. Further, I certify to the best of my knowledge and belief that the design is consistent with the requirements of Title 48, Chapter 14 of the Code of Laws of SC, 1976 as amended, pursuant to Regulation 72-300 et seq., and in accordance with the terms and conditions of SCR100000. (This should be person identified in Section V.A.)
Check one: ☐ Engineer ☐ Tier B Surveyor ☐ Landscape Architect

James M. Futter

Printed name of SWPPP Preparer

Signature of SWPPP Preparer

8367

S.C. Registration #

- B. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I hereby certify that all land-disturbing construction and associated activity pertaining to this site shall be accomplished pursuant to and in keeping with the terms and conditions of the approved plans and SCR100000. I also certify that a responsible person will be assigned to the project for day-to-day control. I hereby grant authorization to the to S.C. Department of Health and Environmental Control (DHEC) and/or the local implementing agency the right of access to the site at all times for the purpose of on site inspections during the course of construction and to perform maintenance inspections following the completion of the land-disturbing activity. (See Section 122.22 of S.C. Reg. 61-9 for signatory authority information.)

Bob Mundy

Printed name of Project Owner/Operator

Signature of Project Owner/Operator

Date

11/5/08

BOARD:
Paul C. Aughery, III
Chairman
Edwin H. Cooper, III
Vice Chairman
Steven G. Kliner
Secretary



C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment.

BOARD:
Henry C. Scott
M. David Mitchell, MD
Glenn A. McCall
Coleman E. Buckhouse, MD

S.C. Board of Health and Environmental Control; Telephone (803) 898-3309 Fax: (803) 898-3393

January 14, 2009

U.S. Mail - CERTIFIED - Return Receipt

91 7106 2133 3935 6630 6871

Richard W. Thomas, Jr.
Mayor of Arcadia Lakes
6626A Arcadia Woods Road
Columbia, SC 29206

Via Interagency Mail Delivery
Stephen P. Hightower, Esquire
SCDHEC - Office of General Counsel
2600 Bull Street
Columbia, SC 29201

RE: Docket No. 08-RFR-148 - Request review of staff decision dated December 15, 2008, to grant approval of the Stormwater Pollution Prevention Plan for Roper Pond Apartments under NPDES General Permit for Storm Water Discharge from Large and Small Construction Activities. Project coverage number is SCR10J889.

The S.C. Board of Health and Environmental Control decided on January 8, 2009, not to conduct a Final Review Conference on the above-referenced matter.

S.C. Code Section 44-1-60(F), 2006 Act No. 387, Section 48, provides, "If a final review conference is not conducted within sixty days, the department decision becomes the final agency decision, and an applicant, permittee, licensee, or affected person may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act, within thirty days after the deadline for the final review conference."

A request for a contested case hearing before the Administrative Law Court (ALC) must be filed in accordance with the Rules of the ALC, including payment of the ALC's filing fee, at the following address:

Clerk's Office
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton St., Suite 224
Columbia, SC 29201

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-3432 • www.scdhec.gov

The ALC's Notice of Request for Contested Case Hearing form and the Rules of the ALC can be found at the ALC's website: <http://www.scale.net>. Further information on filing a request for a contested case hearing before the ALC may be obtained by calling the Clerk's Office at the Administrative Law Court (803-734-0550).

If a party files a request for a contested case hearing with the ALC, the party must serve a copy of the request on DHEC and any other parties at the same time the request is filed with the ALC. A copy of the request for a contested case hearing must be delivered or mailed to DHEC at the address at the top of this memorandum.

Sincerely,



Lisa Lucas Longshore
Clerk

The above information on filing a request for a contested case hearing before the Administrative Law Court is provided as a courtesy; parties before the ALC are responsible for complying with all applicable requirements of the Court.

OCG # 20027

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Town of Arcadia Lakes, Robert L. Jackson, Linda)
Z. Jackson, Robert E. Williams, Jr., Barbara S.)
Williams, Elizabeth M. Walker, Louis E. Spradlin,)
Mary Hejen Spradlin, Thomas Hutto Utsey, Tony)
Sinclair, Aaron Small, Bette Small, Gene F. Starr,)
M.D., Elaine J. Starr, Sanford T. Marcus, Ruth L.)
Marcus, and Steven Brown,)

Petitioners,)

vs.)

Roper Pond, LLC, and South Carolina Department)
of Health and Environmental Control,)

Respondents.)

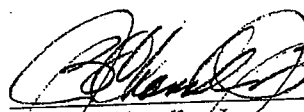
Docket No. 09-ALC-07-____-CC

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of the Request for Contested Case Hearing in this matter upon counsel for agency and the permittee, by placing same in the United States Mail, First Class Postage Prepaid, addressed to:

Bob Mundy
Roper Pond, LLC
1401 Main Street, Suite 650
Columbia, SC 29201

Carl Roberts, Esquire
DHEC General Counsel
2600 Bull Street
Columbia, SC 29201


James S. Chandler, Jr.
Attorney for the Appellants

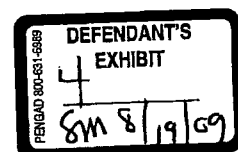
Georgetown, South Carolina

February 16, 2009

Turner, Felicia W.

From: THOMAS, RICHARD W JR
Sent: Thursday, October 02, 2008 11:05 AM
To: Unda8@aol.com
Subject: Town Resolution
Categories: Green Category
Attachments: Town Opposition Ltr to County 10-2-08.docx

CC,
See attached
RT



SCANA - 0511

6/15/2009

October 2, 2008

To: The Richland County Planning Commission

Subject: Concerning the Roper Pond Development Plans Before the Commission

We, the Town Council of the Town of Arcadia Lakes, believe that the type of development proposed by Estates Management for the Roper Pond Property is totally out of character for the entire neighborhood and contradicts the purposes of the Land Development ordinances of the county.

We the Town Council of Arcadia Lakes hereby unanimously vote to express our opposition to this project.

We also unanimously ask that the Planning Commission of Richland County require an economic impact study be performed to determine the loss of property value to the homes in the adjacent Kaminer Station Subdivision, Town of Arcadia Lakes and homes directly across Trenholm Road due to 204 apartments being constructed in a single family, owner occupied, and neighborhood?

We also unanimously request that because the Town of Arcadia Lakes is a co-permittee with Richland County as an NPDES Phase 1 permittee, and, that because Roper Pond and the wetlands of this planned development property are a part of the Gills Creek Flood Plain, and, that because the State of South Carolina and EPA has designated the Gills Creek Flood Plain as *impaired waters*, that Richland County pay the required special attention over and above their current standards to protect the wetlands of these impaired waters.

Respectfully Submitted this 2nd day of October, 2008.

Richard W. Thomas, Jr.

Mayor

SCANA - 0512

Turner, Felicia W.

From: THOMAS, RICHARD W JR
Sent: Wednesday, December 17, 2008 12:02 PM
To: Bates, Brian
Cc: rwthomasjr@sc.rr.com; LlnBobJack@aol.com; Daniel B. Hill
Subject: Roper Pond Apartments

Categories: Green Category
Attachments: RoperPondApproval.PDF



RoperPondApproval
.PDF (395 KB)...

Brian,

We have until December 30 (15 days) to file an appeal to the DEHEC Board. We need to review the approval and the revised plans to determine if we have a reason or cause to appeal to the Board, and if not, can we still send in a blanket appeal to the DEHEC Board and delay the actual decision for 60 days. We need to get our hands on the plans.

Joel Lourie and John Hardee will be approaching SCDOT to hold up on their review until You, Me and Danny can meet with them. We (the three of us) need to express our engineering concerns about the outfall pipe size and condition, the potential overflow of Trenholm Road during storms and the use of the road R/W for the Roper Pond dam when the pond will be lowered to facilitate quantity collection/flow and damage to the road/Dam can take place due to the constant rising and falling of the water level in the pond and it's affect on the water flow net through the road subsurface and the potential damage to the Pond side of the road due to erosion and possible surface failure.

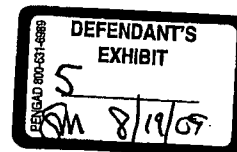
Let me know where you think we can go to delay and/or stop this project.

Thanks,
RT

Rick,
Attached is the approval letter for the Roper Pond Apartments project. The official time clock for appeals will begin tomorrow when the approval letter is mailed to the applicant. Page 4 of the attached document outlines the appeal procedures, including time clocks. If you have any additional questions, please let me know.

Thanks,

Jill C. Stewart, P.E.
Manager, Stormwater Permitting Section
Bureau of Water
(803)898-0439





C. Earl Hunter, Commissioner

Promoting and protecting the health of the public and the environment

December 15, 2008

BOB MUNDY
ROPER POND LLC
1401 MAIN ST STE 650
COLUMBIA SC 29201

RE: ROPER POND APARTMENTS, Richland County
File number: 40-08-09-08

Dear Bob Mundy:

The Department of Health and Environmental Control (Department or DHEC) has approved the Stormwater Pollution Prevention Plan (SWPPP) for the referenced project on **December 15, 2008**. Based on your submission of the Notice of Intent (NOI) and in accordance with the NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities SCR100000 (2006 CGP), this project has been granted coverage under the 2006 CGP. This project's general permit coverage number is **SCR10J889**. The total disturbed area for this site is **9.6 acres**. This NPDES coverage expires on **12/15/2013**, 5 years from the date of issuance.

The inspections for this site must be performed by qualified personnel who meets the requirements list in Section 3.10.D of the 2006 CGP. Qualified personnel must be one of the following:

1. SWPPP preparer
2. Person under direct supervision of SWPPP preparer
3. Person who has been certified through a Construction Site Inspector Certification Course that has been approved by DHEC (see our website for a list of approved courses)
4. Person with registration equivalent of SWPPP preparer
5. Person under direct supervision of person with registration equivalent to SWPPP preparer

An as-built survey, signed and sealed by a S.C. Licensed Land Surveyor, should be submitted for the 1 structure(s) on this site. The survey(s) should show grades, contours, and depths for all structures and should include the elevations and dimensions of all outlet structures, including but not limited to pipes, orifices, risers, weirs, and emergency spillways. A statement signed by the project's S.C. Registered Engineer indicating that the structure(s) was installed and is operating as shown on approved plans and in approved calculations is required. If the elevations or dimensions of the structures listed above do not match those used in the approved plans, provide a certification statement signed by the project's S.C. Registered Engineer indicating that the structure, as built, will function as shown in approved calculations. A new analysis of the structure (routing) may be necessary. The as-built survey and/ or analysis must be accepted by the Department before a Notice of Termination (NOT) can be submitted.

"Because this project impacts waters of the U.S./ State, make sure you obtain all necessary permits and certifications from USACOE and SC DHEC 401 Water Quality Certification, Standards, i Section before land-disturbing activities begin in those areas.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
2600 Bull Street • Columbia, SC 29201 • Phone: (803) 898-9132 • www.scdhec.gov

SCANA - 0875

The 2006 CGP can be downloaded at the following website:
<http://www.scdhec.gov/environment/water/docs/finalcgp.pdf> or you may request a copy from us via email (stormwatercgp@dhec.sc.gov). You are responsible for ensuring your contractor(s) complies with the approved SWPPP and the minimum requirements of the 2006 CGP. Also, you are responsible for overall compliance with the Storm Water Management and Sediment Reduction Act of 1991 (1991 Act) and the Federal Clean Water Act (CWA).

You must notify this DHEC EQC Regional Office prior to starting any land-disturbing activity. The address and telephone number of the EQC office are as follows:

Columbia EQC Office
BUILDING 5 PO BOX 156
STATE PARK SC 29147-0156
803-896-0620

You should be aware that this approval is only applicable for the SWPPP that was submitted for this project. Any additional construction or land disturbing activity beyond the scope of the approved plans is not authorized. Any future work for this project not shown on the stamped, approved plans will require that you submit another site plan for review and approval. All major modifications require review and approval by the Department. Minor modifications to the approved SWPPP may be made by the SWPPP preparer and do not require review and approval by the Department; these changes should be signed and dated by the SWPPP preparer. If you have a question about whether a modification is major or minor, contact the Stormwater Permitting Section at (803) 898-4300.

Three (3) sets of stamped, approved plans are being provided to your engineer. A copy of the stamped, approved SWPPP (including a copy the 2006 CGP and signed co-permittee and contractor certifications), NOI, and CGP coverage letter from DHEC must be retained at the construction site (or accessible within 30 minutes during normal business hours) from the date of commencement of construction activities to the date of final stabilization. A copy of the stamped, approved SWPPP must be available at a central location on-site for the use of all those identified as having responsibilities under the SWPPP whenever they are on the construction site. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the plan's location must be posted near the main entrance at the construction site.

All contractors who will conduct land-disturbing activities at the site must sign a certification statement as a co-permittee or as a contractor who is not a co-permittee. You are responsible for any contractor who is not a permittee. You are also responsible for listing all contractors in the SWPPP and for holding a pre-construction conference with each co-permittee and contractor who is not a co-permittee before they can conduct land-disturbing activity at the site.

The Department may conduct periodic inspections of your site. Any violations found during these inspections may result in enforcement action. Failure to comply with the approved SWPPP or the minimum requirements of the 2006 CGP, 1991 Act, or CWA may subject you to applicable penalties.

SCANA - 0876

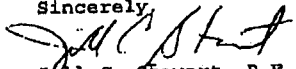
This NPDES coverage should be terminated by the permittee when one of the conditions listed in Section 5.1 of the 2006 CGP has been met. You must submit a Notice of Termination (NOT) to cancel your NPDES coverage under the 2006 CGP. Please see section 5.1 of the 2006 CGP for more information about termination of coverage.

You are responsible for obtaining any other federal, state, or local permit that may be required for this project. Please note we have not sent a copy of this letter to any county or city building official. You must send a copy of this letter to these agencies, if necessary.

Please see the enclosed "Notice of Appeal Procedure" document for information about the procedures for appealing this NPDES coverage. Also, see the enclosed document from the S.C. DHEC Compliance Assurance Division detailing some of the compliance requirements of the 2006 CGP.

If you have any questions or cannot access the referenced websites, please call me at 803-898-0439.

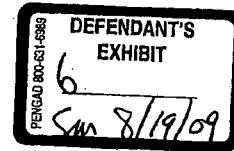
Sincerely,



Jill C. Stewart, P.E.
Stormwater Permitting Section

CC: James M Futter-BP BARBER & ASSOCIATES INC
Region 3, Columbia EQC Office

SCANA - 0877



TOWN COUNCIL
Richard W. Thomas, Jr., Mayor
Merrelle W. Harris
Bob Bishop
Rusty Onley
Michael N. Smith

October 2, 2008

TOWN CLERK
Christine W. Murphy

To: The Richland County Planning Commission

Subject: Resolution Adopted unanimously by the Mayor and Town Council of the Town of Arcadia Lakes at the duly called town council meeting of October 2, 2008, regarding the Roper Pond Development Plans submitted by the Planning Development Committee to the Commission.

RESOLUTION BY MAYOR AND COUNCIL OF THE TOWN OF
ARCADIA LAKES TO RICHLAND COUNTY
PLANNING COMMISSION

WHEREAS, the Mayor and Town Council of the Town of Arcadia Lakes, are informed and believe that the development proposal submitted by Estates Management, Inc. for the Roper Pond LLC (Property development for multifamily high density apartments) is substantially out of character and totally incongruous for the entire town, its neighborhoods, contiguous community and the intended zoning use as originally presented, and thereby contradicts the purposes of the Land Development ordinances of the county; and

WHEREAS, We the Mayor and Town Council of the Town of Arcadia Lakes hereby unanimously vote to express our opposition to this project as being in conflict with required law and regulations; and

WHEREAS, the Mayor and Town Council of The Town of Arcadia Lakes, acting for and on behalf of its citizens, respectfully requests that the Planning Commission of Richland County require an economic impact study be performed to determine the loss of property value to the homes in the adjacent Kaminer Station Subdivision, and homes directly affected across Trenholm Road and by adjacent nearby lakes, due to the proposed 204 apartments, including excessive paving and attendant building to be constructed in predominantly owner occupied neighborhoods and community of single family dwellings; and

PET - 0166

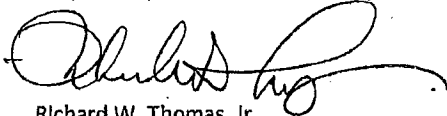
WHEREAS, because the Town of Arcadia Lakes is a co-permittee with Richland County as an NPDES Phase 1 permittee, and, that Roper Pond and the wetlands of this planned development property are a part of the Gills Creek Flood Plain, and, that because the State of South Carolina and the Environmental Protection Agency (EPA) has designated the Gills Creek Flood Plain as *impaired waters*, Richland County must provide and give the required due diligence and special attention over and above existing zoning standards to protect the wetlands of these impaired waters.

NOW THEREFORE, BE IT RESOLVED, that the foregoing premises are incorporated herein to this resolution and are directed to be presented to the Richland County Planning Commission by the Mayor of Town of Arcadia Lakes.

RESOLVED FURTHER, the MAYOR is authorized to present more detailed evidence to the Planning Commission at its October 6, 2008 meeting together with this resolution passed hereby.

ADOPTED UNANIMOUSLY by the Mayor and Council of the Town of Arcadia Lakes, South Carolina at its duly called monthly meeting October 2, 2008.

Respectfully Submitted this 2nd day of October, 2008.



Richard W. Thomas, Jr.

Mayor

PET - 0167

CHECK REQUEST

NEXSEN PRUET
P.O. DRAWER 2426
COLUMBIA, SC 29202

DATE: 5/16/18

PAYABLE TO: Henry Brown

CLIENT EXPENSE	FILE NO.	AMOUNT
DESCRIPTION OF EXPENSE		\$
		\$
		\$

CLIENT DEV.	EDUCATION	PROFESSIONAL DEV.	OTHER	AMOUNT
PRACTICE GROUP EXPENSE				
Construction Practice Group Meeting - H. Brown, S. Rabon, J. Davidson, G. Placone				\$ 44.88
5/16/18 at the M. Vista to discuss Construction PG issues				\$
WHICH MEMBER(S) BUDGET SHOULD BE CHARGED?				

PLEASE LIST THE NAMES OF ATTENDEES, CLIENT OR BUSINESS INVOLVED AS WELL AS THE DATE, PLACE AND PURPOSE OF THE MEETING

FIRM EXPENSE		AMOUNT
G/L CODE	DESCRIPTION	\$
		\$
		\$
		\$
		\$
		\$
TOTAL AMOUNT OF CHECK		\$ 44.88

REQUESTED BY Susan Dunbar TKPR# 2735

AUTHORIZING SIGNATURE _____ TKPR# _____

INTEROFFICE CHECK ☒ OR MAIL CHECK _____

DELIVER TO _____ FLOOR _____

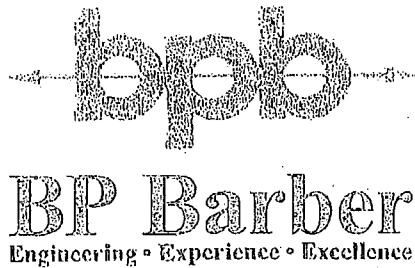
INVOICE ATTACHED: Y ☒ N _____

IF NOT WHY? _____

COLUMBIA ☒ CHARLESTON _____
GREENVILLE _____ CHARLOTTE _____
MYRTLE BEACH _____ HILTON HEAD _____
RALEIGH _____

GBO _____

Rogers Pond Ex 6



May 5, 2008

Mr. Colton Bowles, Watershed Manager
U.S. Army Corps of Engineers, Northwest Branch
865 Strom Thurmond Federal Building, Room B1
1835 Assembly Street
Columbia, SC 29201

RE: Site Improvements to the Roper
Property on Trenholm Road
BP Barber Project No. 05216

Dear Mr. Bowles:

The referenced project is being submitted on behalf of Estates, Inc. for construction of a multifamily apartment development. This project was previously submitted to your office by WPC of Charleston, SC in August of 2007. The Owner elected to retain BP Barber to complete Engineering and Environmental services when WPC's project manager resigned. I contacted the Northwest Branch in March of 2008 to determine the status of the project. I was informed that WPC's submittal was incomplete and WPC had not answered requests from your office for additional information. I informed your office that Estates, Inc. had retained BP Barber and that we would resubmit this project. A Jurisdictional Determination was already issued for the site. I obtained the Jurisdictional determination from the Owner. A copy is attached for your use.

Avoidance and Minimization:

WPC's submittal was for total impacts of .099 acre. We have redesigned the project and were able to reduce impacts to .075 acre. This was accomplished by designing retaining walls, repositioning proposed buildings, reducing building size and designing a boardwalk which allows foot traffic to pass over a wetland area rather than impacting the wetland. The 0.075 acre of impacts are associated with fill for buildings and sidewalks where avoidance was not possible. The 0.075 acres of impacts represent less than one half of one percent of the 1.80 acres of wetlands or other Waters of the US that occur onsite. Best management practices will be implemented to ensure that construction activities do not impact those jurisdictional areas which lie outside of the permitted impact areas.

Mr. Colton Bowles
May 5, 2008
Page 2 of 2

Endangered Species:

A Biological assessment is attached as a part of this submittal.

Cultural Resources:

BP Barber researched this property to determine if there are known onsite cultural resources. According to records at the SC Department of Archives & History and according to records at the SC Institute of Archaeology, there are no known eligible sites.

As agent for Estates, Inc., we request that you review this project for coverage
under a Nationwide Permit. If you have questions or if you require additional
information, please do not hesitate to contact me.

Very truly yours,

BP Barber

George O. Whalley
Senior Design Associate

GOW/mm

Enclosures

Joint Federal and State Application Form For Activities Affecting Waters of the United States or Critical Areas of the State of South Carolina	This Space for Official Use Only. Application # _____ Date Received: _____ Project Manager: _____
Authority: 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 409, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 42-39-10 et. seq of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both the Federal and/or State permit(s). Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.	
1. Applicant's Name. Estates, Inc.	4. Agent's Name (an agent is not required). BP Barber, ATTN: George Whitley
2. Applicant's Address. PO Box 11739 Columbia, SC 29250	5. Agent's Address. P.O. Box 1116 Columbia, SC 29202-1116
3. Applicant's Contact Number (include area code). Residence: Business: (803) 765-9318 FAX: (803) 795-9427	6. Agent's Contact Number (include area code). Residence: Business: (803) 254-4400 FAX: (803) 771-6676
7. Project Title. Site improvements to Roper property on Trenholm Road	9. Project Location. West side of Trenholm Road, 0.30 South of Decker Blvd. Street Address: County: Richland
8. Nearest Waterbody to project site (if known). Roper Pond	Latitude: 34°-03'-37" N Longitude: 80°-57'-33" W
10. Directions to the Site (attach additional sheets if needed). From Columbia Northwest Branch, follow Assembly Street for 0.22 miles South to Taylor Street. Follow Taylor Street East for 3.92 miles to Trenholm Road. Follow Trenholm Road North for 2.94 miles. The site is on the West side of the roadway.	
11. Description of the Overall Project and of Each Activity In or Affecting U. S. Waters or State critical areas (attach additional sheets if needed). The overall project consists of a new multi-family housing development (apartments) on a 12.75 acre tract of land. Activities include fill of Jurisdictional areas for buildings and sidewalks.	
12. Overall Project Purpose and the Basic Purpose of Each Activity In or Affecting U. S. Waters (attach additional sheets if needed). The overall project purpose is to provide housing in the area. There are 2 activities impacting U.S. waters as follows: 1) Construction of a retaining wall and fill for a sidewalk. 2) Fill for an apartment building and sidewalk.	

13. Type and Quantity of Materials To Be Discharged.

Dirt or Topsoil: 260 cy
 Clean Sand: _____ cy
 Mud: _____ cy
 Clay: _____ cy
 Gravel, Rock, or Stone: _____ cy
 Concrete: 27 cy
 Other (describe): _____ cy
 TOTAL: 287 cy

14. Type and Quantity of Impacts to U. S. Waters (including wetlands).

Filling: 0.075 ☒ acres ☐ sq. ft. 287 cy
 Backfill & Bedding: _____ ☐ acres ☐ sq. ft. _____ cy
 Landclearing: _____ ☐ acres ☐ sq. ft. _____ cy
 Dredging or Excavation: _____ ☐ acres ☐ sq. ft. _____ cy
 Flooding: _____ ☐ acres ☐ sq. ft. _____ cy
 Draining: _____ ☐ acres ☐ sq. ft. _____ cy
 Shielding: _____ ☐ acres ☐ sq. ft. _____ cy
 TOTALS: 0.075 ☒ acres ☐ sq. ft. 287 cy

15. Names and Addresses of All Adjoining Property Owners (attach additional sheets if needed).

See Attached

16. Has any portion of the work already commenced? If yes, describe all work that has been done and the dates of this work.

No

17. List all Certifications, Approvals, and Denials received from Federal, State, or Local Agencies for work described in this application.

None

18. Authorization of Agent. I hereby authorize the agent whose name is given in block number 4 of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application.

Applicant's Signature

Date

19. Certification. Application is hereby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant.

Applicant's Signature

Date

Agent's Signature

Date

The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 4 and 18 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any matter within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

Submit the completed application form with the required drawings and all supporting information as indicated below.

Send all original application materials to:
 U. S. Army Corps of Engineers
 Charleston District, Regulatory Branch
 P. O. Box 919, Attn: CESAC-CC-P
 Charleston, South Carolina 29402
 (803) 727-4330

Send one complete copy to:
 S. C. Dept. of Health & Environmental Control
 Office of Ocean and Coastal Resource Management
 1302 McMillan Avenue, Suite 400
 Charleston, South Carolina 29405
 (803) 744-6800

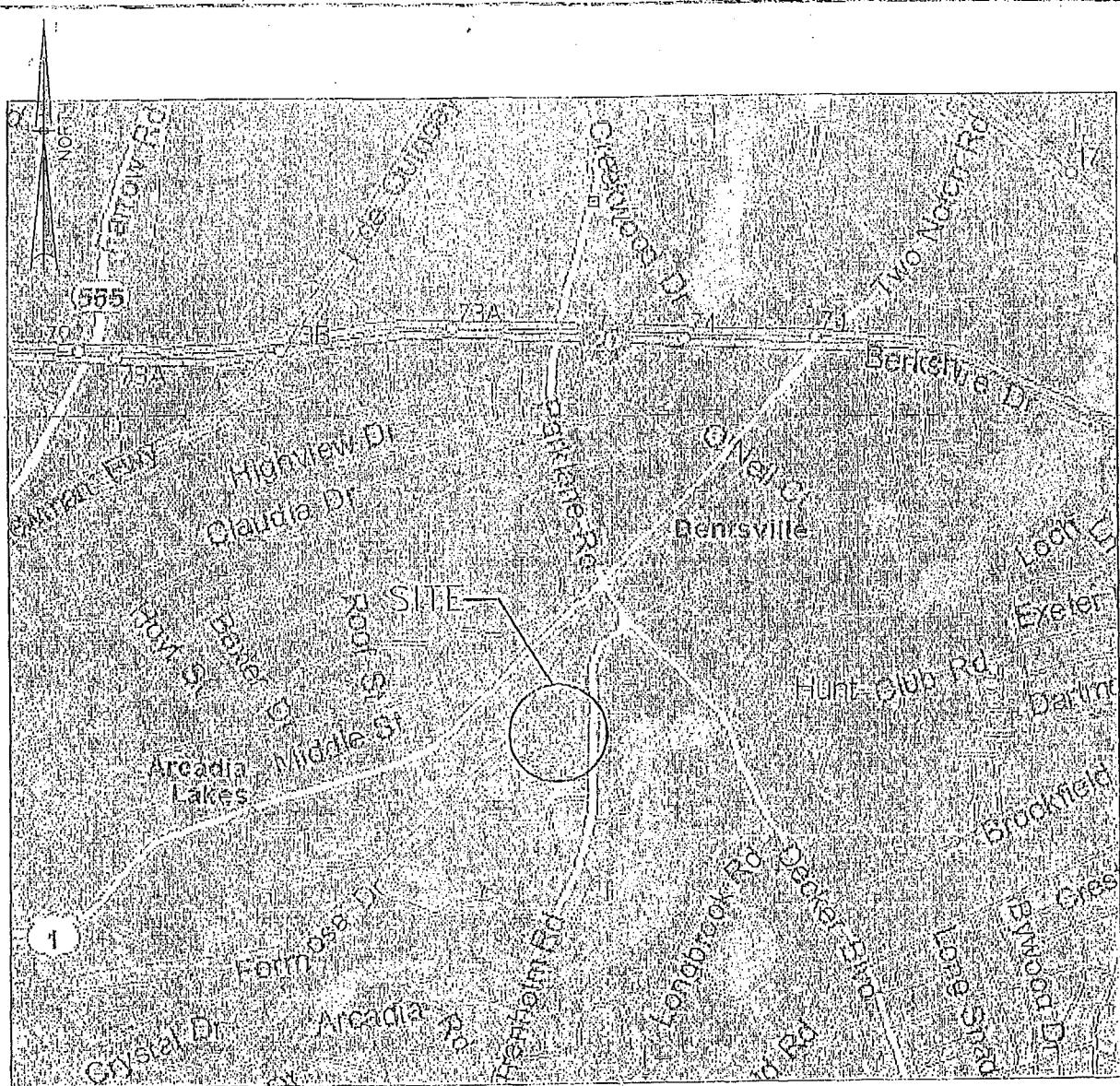
Send one complete copy to:
 S. C. Dept. of Health & Environmental Control
 Office of Environmental Quality Control
 2600 Ball Street
 Columbia, South Carolina 29201
 (803) 734-6300

Revision August 1996

ADJOINING PROPERTY OWNERS

- ✓ Thomas H. & Margaret Utsey
35 Huntwick Ct
Columbia, SC 29206
- ✗ Janet B. Shuffler
31 Huntwick Ct
Columbia, SC 29206
- ✗ Larry & Sheila Brody Cooke
23 Huntwick Ct
Columbia, SC 29206
- ✓ William A. & Jill B. Sinclair
19 Huntwick Ct
Columbia, SC 29206
- ✓ Elizabeth M. Walker
40 Leawood Ct
Columbia, SC 29206
- ✓ Robert E., Jr. & Barbara S. Williams
6737 Kaminer Dr.
Columbia, SC 29206
- ✗ G. Carter Ellis & Joan T. Fraley
2309 Shull Fork Rd.
Gilbert, SC 29054
- ✗ Thomas W. & Kimberly Shields
39 Huntwick Ct
Columbia, SC 29206
- ✓ Aaron R. & Betty H. Small
33 Leawood Ct.
Columbia, SC 29206
- ✗ Emma Jo & Murray Davis
20 Leawood Ct.
Columbia, SC 29206

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LOCATION MAP

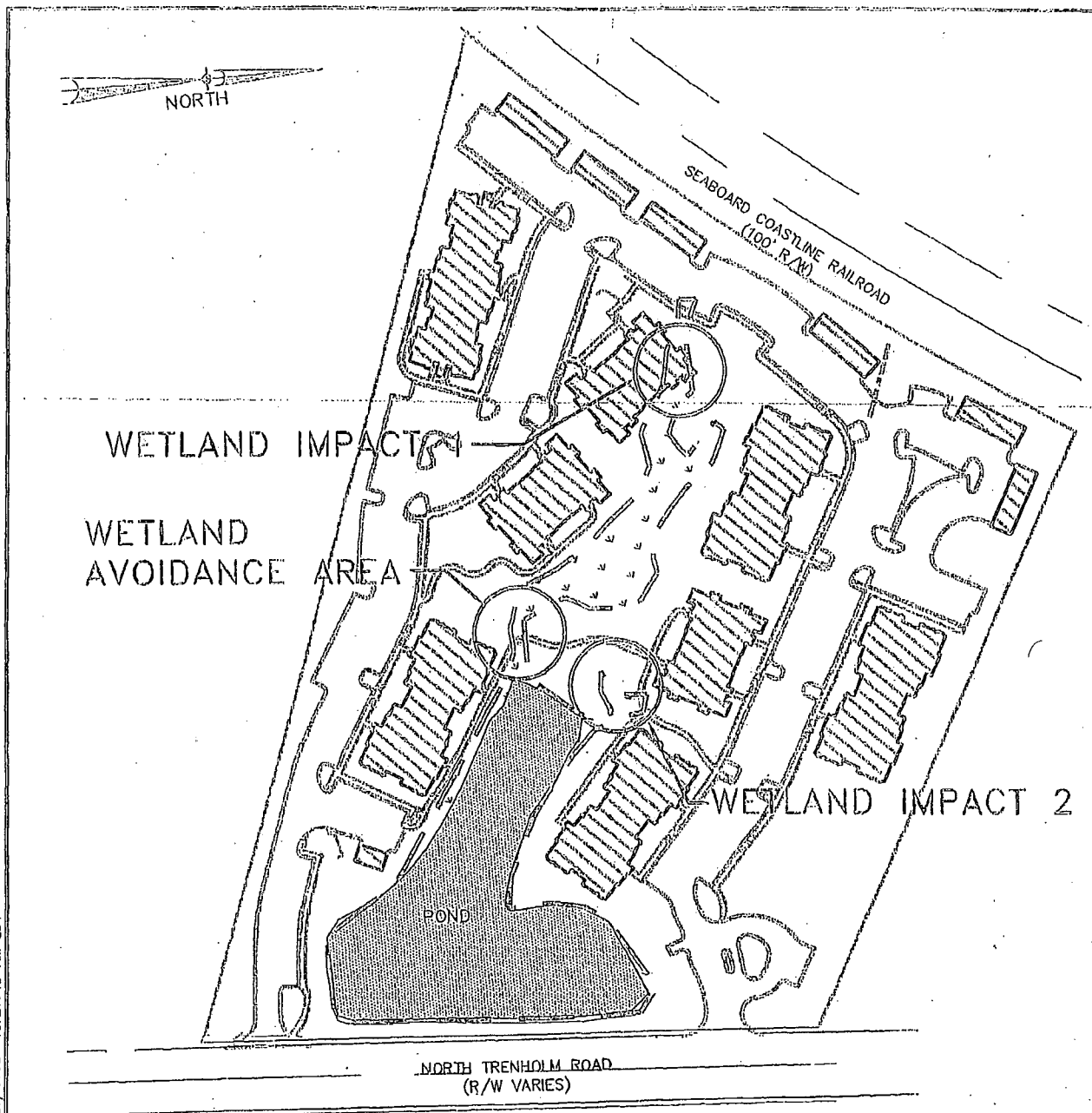
NOT TO SCALE

Project Title:	
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD	
Project Location:	
RICHLAND COUNTY, S.C.	
Applicant:	
ESTATES, INC.	
Authorized Agent:	
DP BARBER Alt: George Whitley	
Drawing Scale:	Date:
AS SHOWN	APRIL 2008
Application #:	Sheet of

Revisions	
Date	Initials

BPD Project #05216

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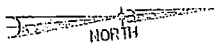
OVERALL SITE PLAN

1" = 150'

BPB Project #05216

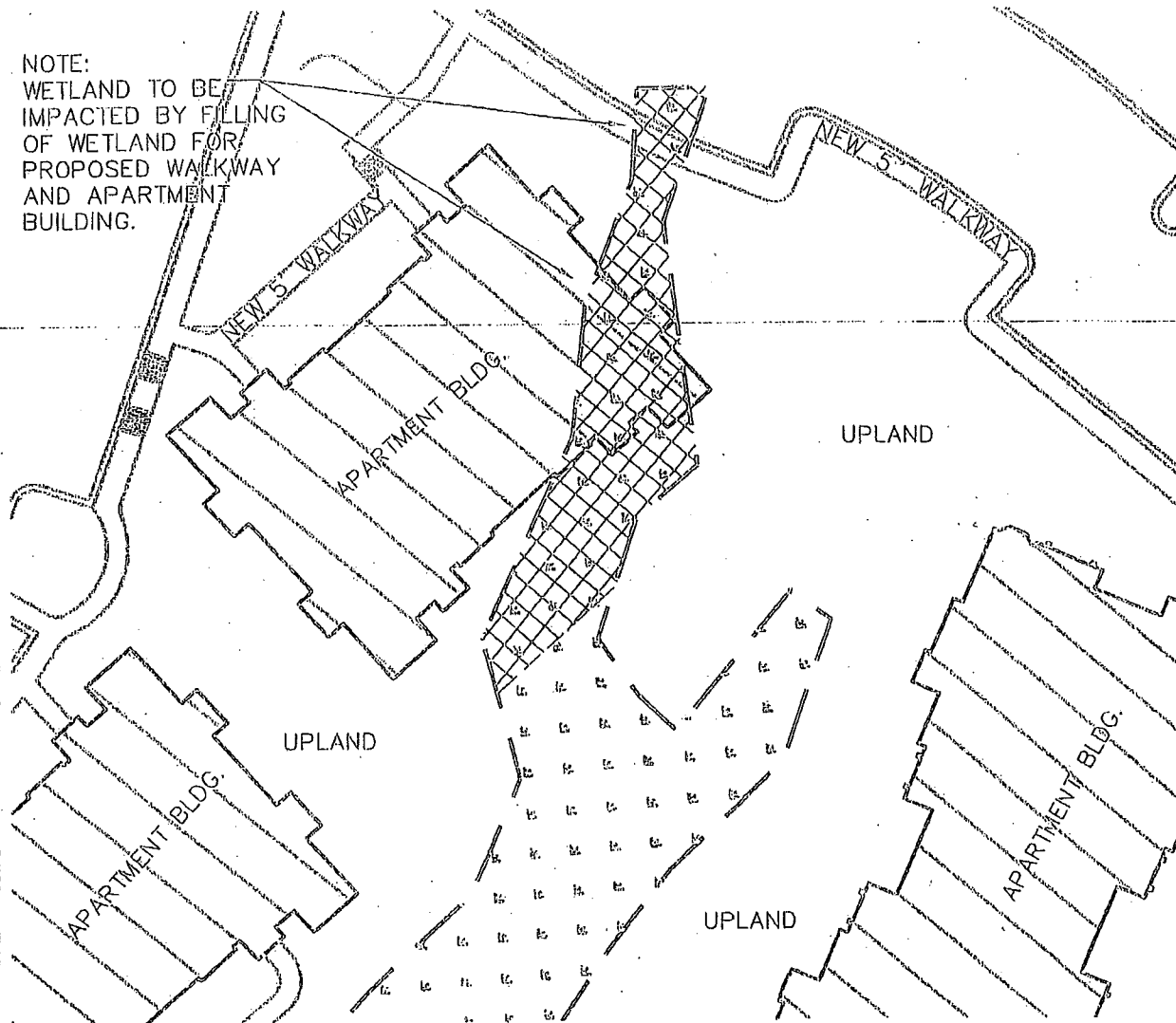
Revisions	
Date	Initials

Project Title: SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD	
Project Location: RICHLAND COUNTY, S.C.	
Applicant: ESTATES, INC.	
Authorized Agent: BP BARBER Attn: George Whatley	
Drawing Scale: AS SHOWN	Date: APRIL 2008
Application #:	Sheet of



LOCATION:
 LATITUDE -- 34°03'37" N
 LONGITUDE -- 80°57'33" W

NOTE:
 WETLAND TO BE
 IMPACTED BY FILLING
 OF WETLAND FOR
 PROPOSED WALKWAY
 AND APARTMENT
 BUILDING.

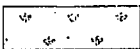
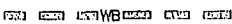


WETLAND IMPACT #1

1" = 40'

TOTAL WETLAND IMPACT = 0.071 ACRES

LEGEND

- IMPACTED WETLAND 
- WETLAND (NOT IMPACTED) 
- WETLAND BOUNDARY 

Project Title:	
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD	
Project Location:	
RICHLAND COUNTY, S.C.	
Applicant:	
ESTATES, INC.	
Authorized Agent:	
BP BARBER Attn: George Whitley	
Drawing Scale:	Date:
AS SHOWN	APRIL 2008
Application #:	Sheet of

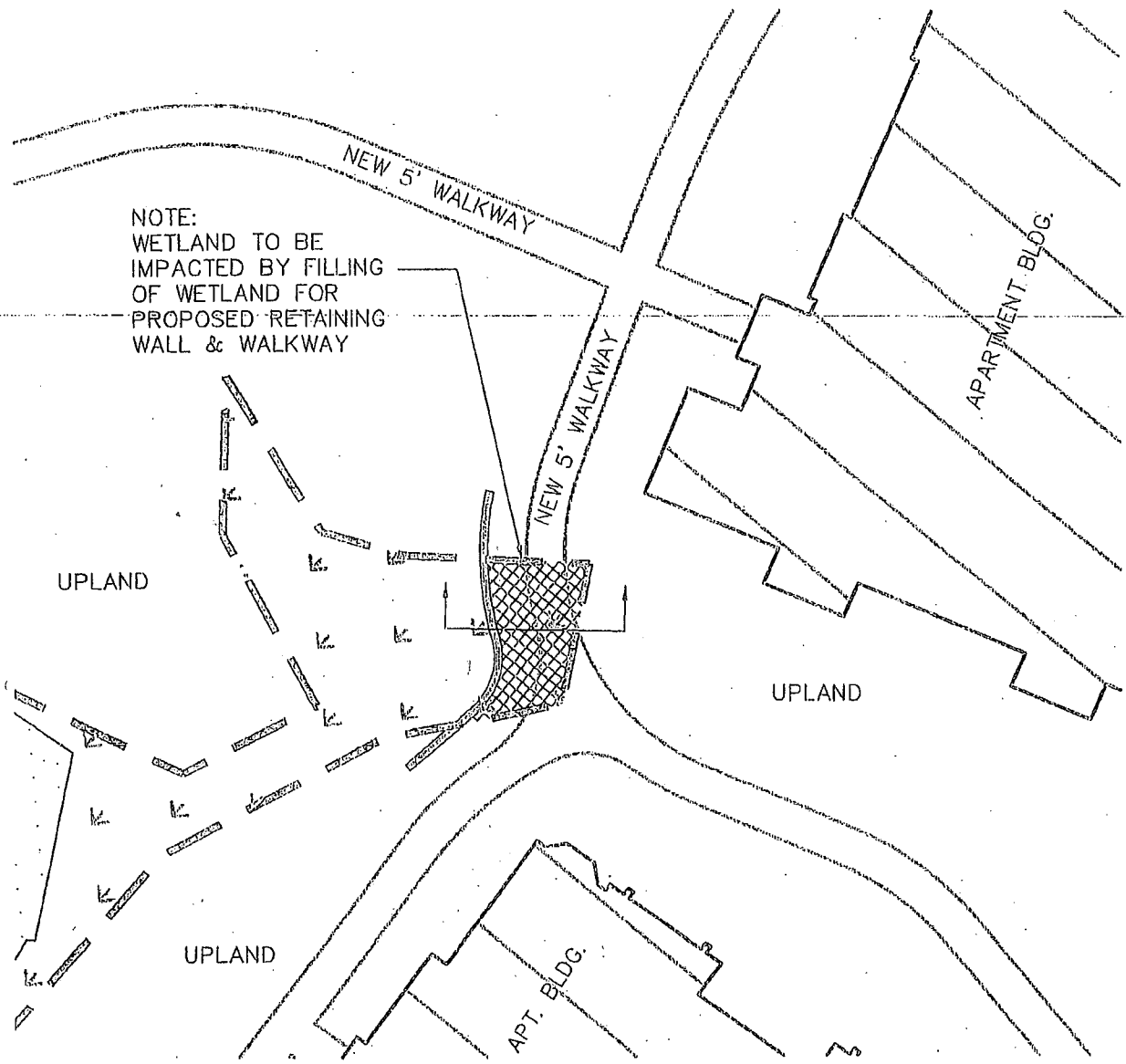
Revisions	
Date	Initials

BPB Project #05216

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LOCATION:
 LATITUDE - 34°03'36" N
 LONGITUDE - 80°57'29" W



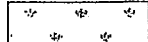
NOTE:
 WETLAND TO BE
 IMPACTED BY FILLING
 OF WETLAND FOR
 PROPOSED RETAINING
 WALL & WALKWAY

WETLAND IMPACT #2

1" = 20'

TOTAL WETLAND IMPACT = 0.004 ACRES

LEGEND

- IMPACTED WETLAND 
- WETLAND (NOT IMPACTED) 
- WETLAND BOUNDARY 

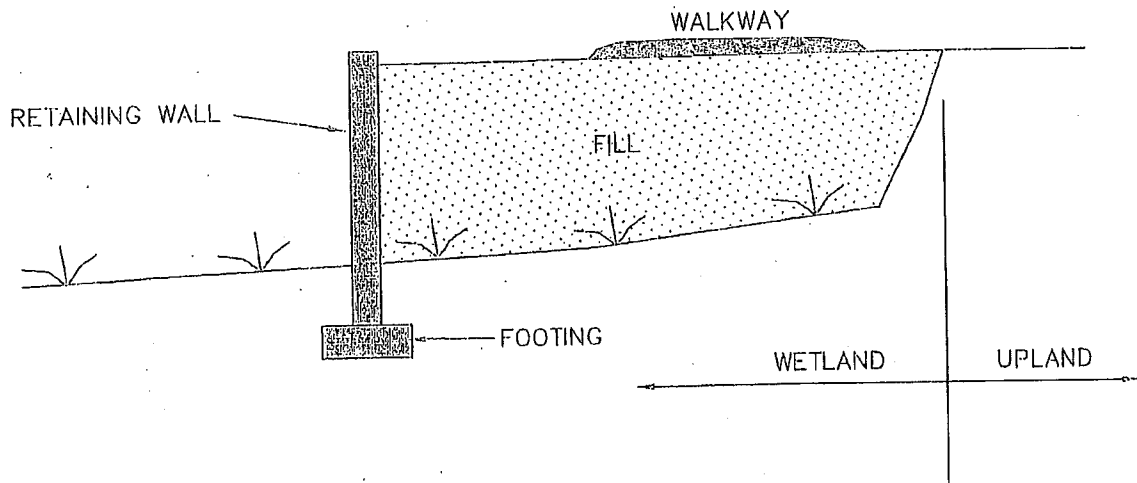
Revisions	Date	Initials

Project Title: SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD	
Project Location: RICHLAND COUNTY, S.C.	
Applicant: ESTATES, INC.	
Authorized Agent: BP BARBER Attn: George Whatley	
Drawing Scale: AS SHOWN	Date: APRIL 2008
Application #:	Sheet of

BPB Project #05216

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CROSS SECTION
WETLAND IMPACT #2
NOT TO SCALE

Project Title:	
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD	
Project Location:	
RICHLAND COUNTY, S.C.	
Applicant:	
ESTATES, INC.	
Authorized Agent: DP BARBER Attn: George Whatley	
Drawing Scale:	AS SHOWN
Date:	APRIL 2008
Application #:	Sheet of

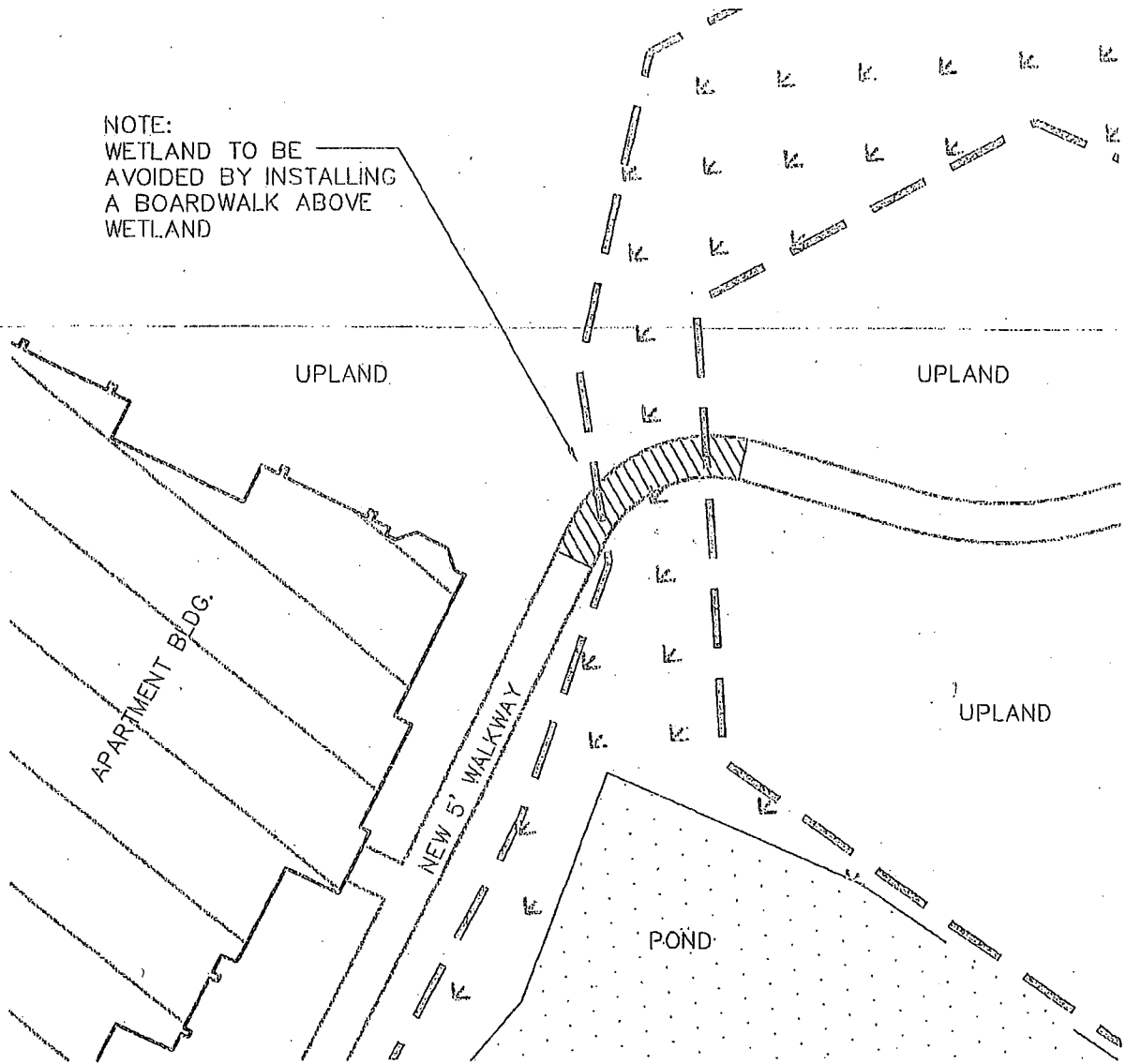
Revisions	
Date	Initials

BPB Project #05216



LOCATION:
LATITUDE - 34°03'34" N
LONGITUDE - 80°57'30" W

NOTE:
WETLAND TO BE
AVOIDED BY INSTALLING
A BOARDWALK ABOVE
WETLAND



WETLAND AVOIDANCE AREA

1" = 20'

TOTAL WETLAND IMPACT = 0.000 ACRES

LEGEND

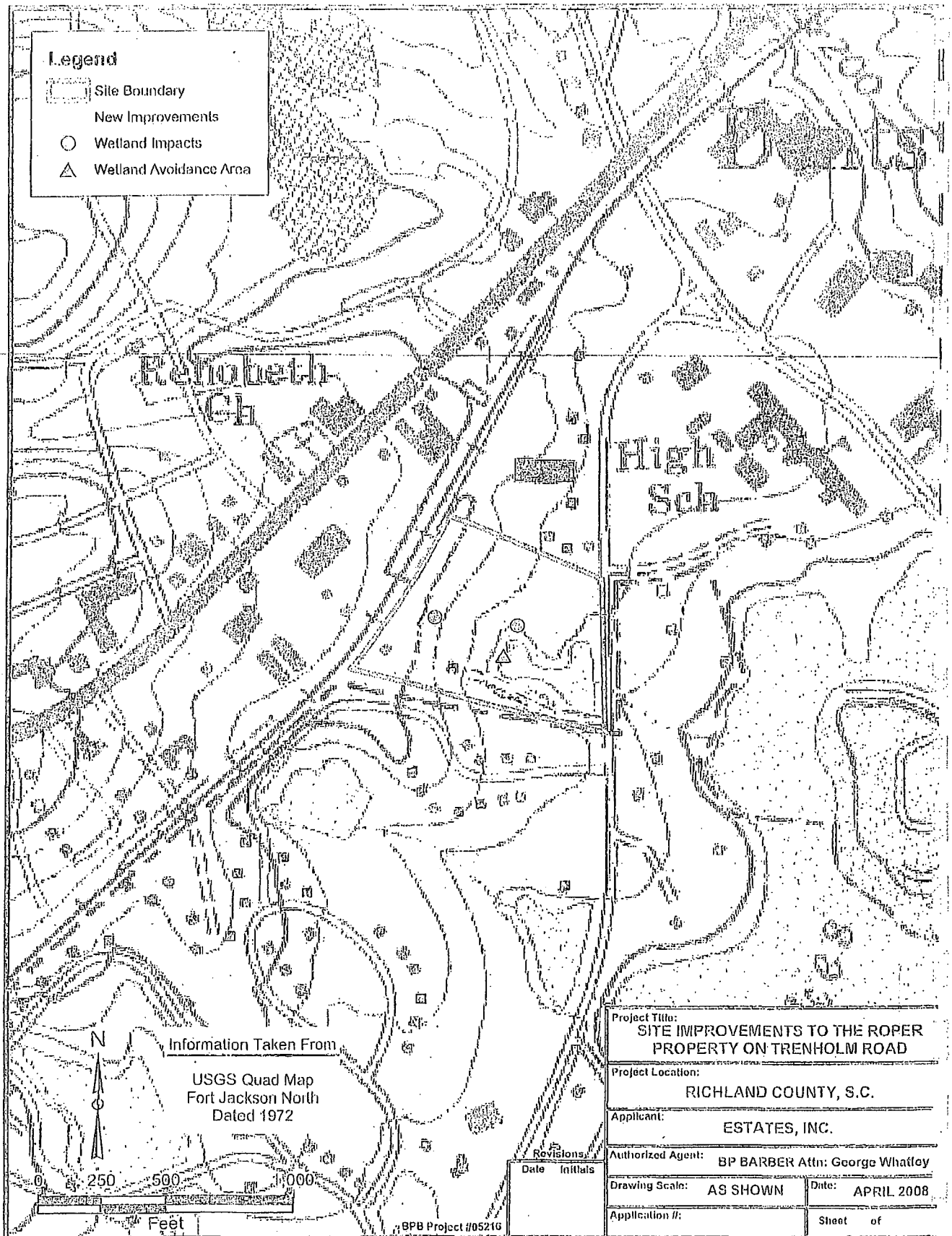
- BOARDWALK
- WETLAND (NOT IMPACTED)
- WETLAND BOUNDARY

Revisions	
Date	Initials

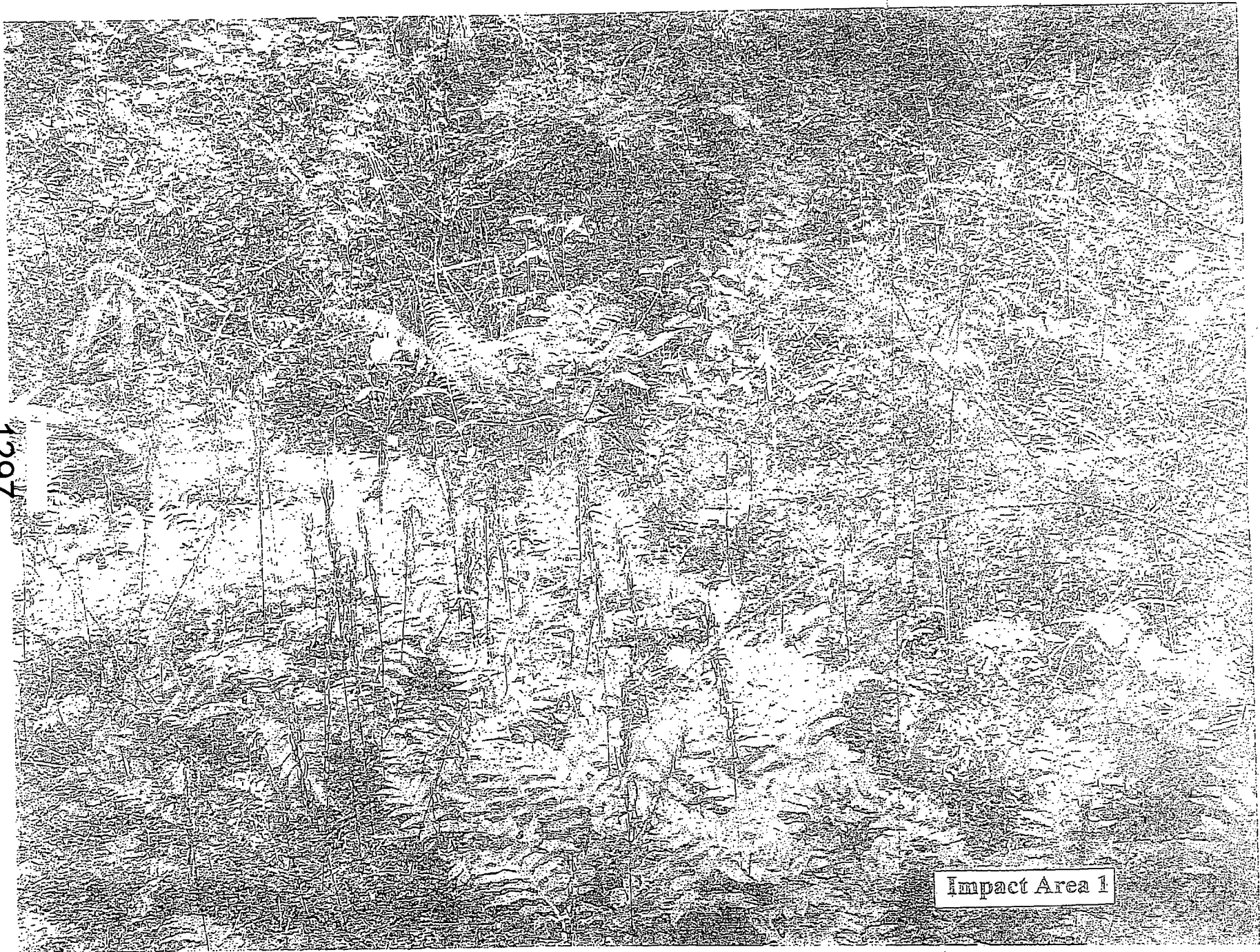
Project Title: SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD	
Project Location: RICHLAND COUNTY, S.C.	
Applicant: ESTATES, INC.	
Authorized Agent: BP BARBER Attn: George Whatley	
Drawing Scale: AS SHOWN	Date: APRIL 2008
Application #:	Sheet of

BPB Project #05216

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1297



Impact Area 1

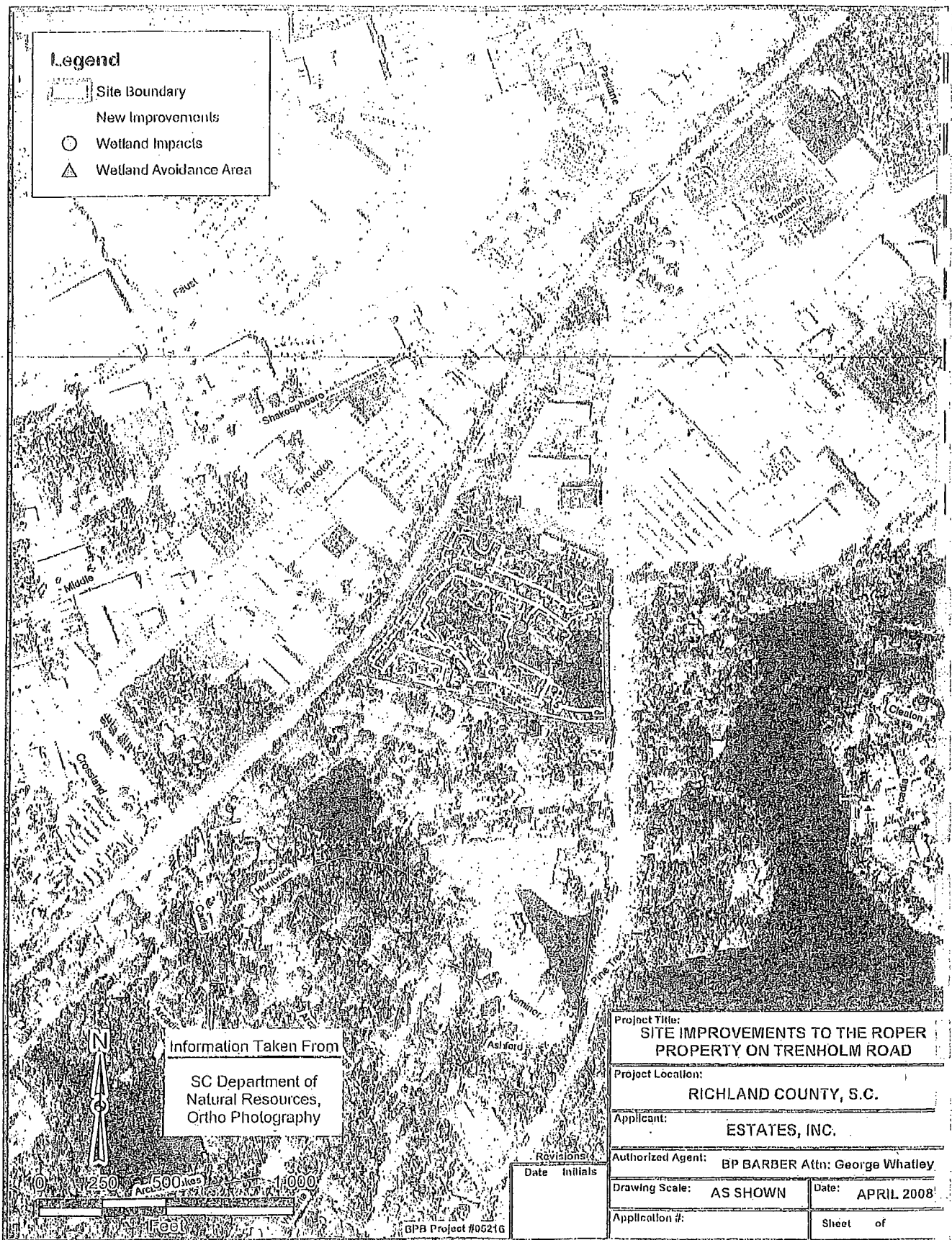
1298

Impact Area 2

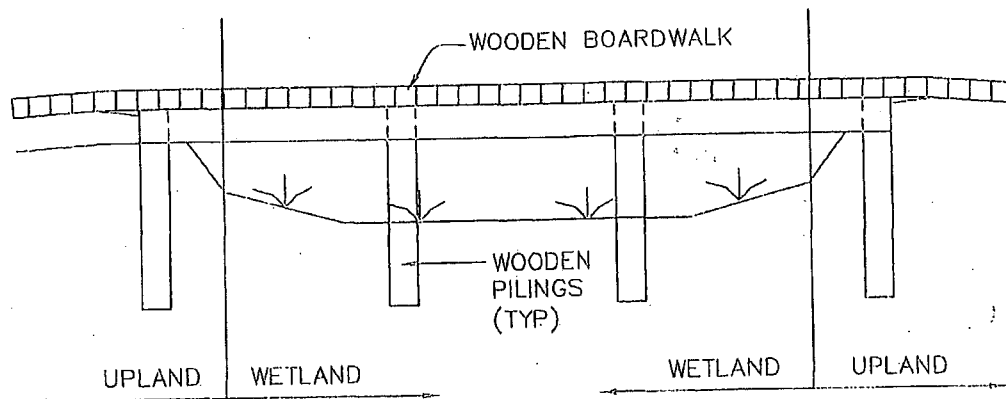
1299



Wetland Avoidance Area
Replace Boardwalk Over Wetland



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CROSS SECTION
WETLAND AVOIDANCE AREA
NOT TO SCALE

Project Title:	
SITE IMPROVEMENTS TO THE ROPER PROPERTY ON TRENHOLM ROAD	
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Date:	APRIL 2008

Revisions	
Date	Initials

BPB Project #05216

Report on Biology and Water Chemistry of Roper Pond, Arcadia Lakes, SC

By

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Chapel Hill, NC 27599-3280

On June 3, 2009 I visited and sampled the pond at the proposed Roper Apartments in Arcadia Lakes, SC.

Visual Examination: The pond is covered in water lilies from bank to bank. This indicates the general shallowness of the pond, since water lilies rarely colonize ponds deeper than 4 meters. The visual impression of the thousands of blooms is very beautiful.

Water Chemistry: Four sets of water samples were taken. The water has very low turbidity and is quite clear. The roots of the lilies have stabilized the pond sediments. Dissolved oxygen was in the low normal range (6.5 ppm). pH was slightly acidic (6.5-6.8) where neutral is 7.0. Conductivity was very low (indicating low concentrations of metals) and ranged from 0.12-0.14 micromhos. Salinity was zero.

Benthic Samples: Six Eckman Dredge samples of the pond bottom were collected and preserved in 70% Ethyl alcohol. Each sample was 6" x 6" (232.26 cm²). Samples were taken from 2-6 m from the shoreline.

All samples were transported back to my laboratory in Chapel Hill (244 Wilson Hall). They were washed through a #60 Tyler Series (250 micron opening), flushed into finger bowls and hand picked by me at 6.4 magnification using a Wild dissecting microscope. The data are presented on the next page.

Ecological Assessment of the Pond Fauna

This is a healthy pond. The presence of caddisflies, abundant damselflies (they were flying everywhere) dragonflies and amphipods all signal a healthy functioning ecological system. The water chemistry data also indicate a healthy pond ecosystem.

Projected Consequences of the Proposed Dredging of this Pond:

The proposed dredging of this pond will simply destroy the ecosystem that is now present. The increased depth of the pond will make it impossible for the water lilies to persist. The inevitable sedimentation will make the pond uninhabitable for the fish population now present. The dredging activity will cover the pond bottom with an extensive layer of mud, resulting in the destruction of the benthic community reported here.

Roper Pond Ex. 12

Results of Benthic Samples

Sample P1:

- 1 Progomphus obscurus (dragonfly)
- 1 Ophigomphus sp. (dragonfly)
- 2 Hydracarina (water mites)
- 47 Chironomidae (Diptera)

Sample P2:

- 1 Zygopteran (mayfly)
- 1 Hyaella azteca (amphipod)
- 8 Chironomidae (Diptera)

Sample P3: Bottle broke

Sample P4:

- 1 Hyaella azteca (amphipod)
- 1 unknown clear cased Chironomidae
- 17 Chironomidae

Sample P5:

- 2 Polycentropus (caddisfly)
- 6 Chironomidae

Sample P6:

- 1 Lexingtonia (freshwater clam)
- 2 Polycentropus (caddisfly)
- 28 Hyaella azteca (amphipod)
- 25 Chironomidae

Fishes: One each of the Carolina Redhorse (Moxostoma anisurum) and the Golden Redhorse (Moxostoma erythrurum) were collected. These were juvenile fishes. Fish were very abundant in the shallow water.

Notes: Chironomidae are fly larvae (Diptera) and constitute the base of the food chain for the Odonata and Tricoptera. They are very abundant. Identification to the Chironomidae to species requires mounting each individual and is very time consuming. That is why I took them no further. In particular samples, the amphipod, Hyaella azteca is very abundant. This animal is a feeder on bacteria and algae in the pond.