



May 2, 2013

***SENT VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
& VIA FACSIMILE***

Honorable James Rhodes, Mayor
City of Rochelle
410 Stephens Street
P.O. Box 156
Rochelle, Georgia 31079
(229) 365-2245 Fax

Re: Notice Of Intent To File Citizen Suit Under The Clean Water Act
NPDES Permit No. GA0024244 And Associated Sanitary Sewer Collection
System

Dear Mayor Rhodes:

On behalf of Mr. John Jackson, Ms. Hattie McBurrows, Ms. Sittie Butts, Mr. Rufus Howard, Mr. Robert Ferguson, Mr. James Woods, Mr. Thomas Ferguson, Ms. Johnnie Armstrong, and Mr. Eddie Coney, this letter informs you that the City of Rochelle has continued to fail to obtain NPDES permits as required by section 1342 of the Clean Water Act, 33 U.S.C. §1251 et seq. (1972), for structures owned and operated by the City of Rochelle as part of its Sanitary Sewer Collection System that discharge pollutants into a ditch on the north side of Rochelle, GA, and for the ditch itself, which flows into Mill Creek, a tributary of the Alapaha River. In addition, the City has violated and continues to violate its NPDES permit (NPDES Permit No. GA0024244) by failing to report and monitor spills in the sanitary sewer system in compliance with Part II(A)(11) of its permit, allowing bypassing around its Northwest Sewage Pond in violation of Part II(A)(8) of its permit, and allowing adverse impacts to human health and the environment in violation of Part II(A)(10) of its permit. These violations continue to reoccur at intermittent intervals every three to four months, depending on rainfall. Pursuant to section 1365(b)(1)(a) of the Clean Water Act, this letter serves as notice that if the above violations are not remedied within sixty days, the parties listed above intend to file a citizen suit under section 1365(a)(1) of the Clean Water Act to enjoin these unlawful discharges and violations and for the imposition of civil penalties, attorney's fees and litigation costs as appropriate.

BACKGROUND

In Rochelle's African-American community on the north side of the railroad tracks, raw sewage has backed up into residents' homes and yards for decades. The city's sewage conveyance pipes, which date back to the 1940's, are subject to repeated blockages and infiltration by stormwater, which cause raw sewage to back up in the outdated system. Raw

sewage periodically flows up into residents' bathtub and shower drains and even their toilets. Because the raw sewage backs up inside homes and to mitigate their damages, the residents are forced to remove the clean out plugs on their sewage connections and allow the sewage to spill into their yards. Much of the untreated sewage flows into the streets and to the ditch along the north side of town which discharges to Mill Creek.

The residents have to shovel and bury the remaining fecal matter, toilet paper and other noxious debris left in their yards after these overflows, which have taken place every three to four months for decades. In addition, sewage flows out of manholes, broken pipes and lift stations into the ditch along the north side of Rochelle and out to Mill Creek. The raw sewage poses a public health threat to the community, emits foul odors which constitute a public and private nuisance, and contaminates the environment. The City of Rochelle has maintained and improved its sewage conveyance system in the white neighborhoods of the city, south of the railroad tracks, so that this problem is largely isolated on the north side of town.

Mill Creek, which eventually flows to the Suwanee River, is on the receiving end of all these violations. Once a favored fishing stream used by people in the neighborhood, it is now so foul it is no longer used at all.

REQUIREMENT OF THE CLEAN WATER ACT

Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source to waters of the United States except in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit. The Clean Water Act defines a "point source" as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, [or] container from which pollutants are or may be discharged." 33 U.S.C. § 1362(4).

Section 505 allows citizens to enforce the act to ensure compliance with its provisions. 33 U.S.C. § 1365. In addition to attorney's fees and litigation costs, civil penalties up to \$37,500 per day for each violation may be imposed. 33 U.S.C. § 1319(d) and 40 C.F.R. § 19 and § 19.4 Table 1 (or as otherwise provided by federal regulations).

FAILURE TO OBTAIN A PERMIT

A. Failure to Obtain Permits for City Structures Constituting Point Sources

The City of Rochelle owns and operates structures associated with its Sanitary Sewer Collection System on the north side of town which continue to illegally discharge raw sewage into Mill Creek. The City has failed to obtain NPDES permits for these structures. The structures include, but are not limited to, the two manholes at the dead end of Jackson Street, the manhole behind the house located at 629 Lee Street, and the broken pipe on Sook Road next to the lift station (near the corner of Gin House Rd.) These structures discharge raw sewage into

the ditch on the north side of town¹ approximately every three to four months, depending on rainfall. This raw sewage is an unpermitted discharge and adds pollutants to Mill Creek in at least the following respects: the water is high in fecal coliform, turbidity, and color and low in dissolved oxygen. It contains chlorides, total dissolved solids, un-ionized ammonia, phosphorus, nitrates, nutrients, coliforms, has high biological oxygen demand, and high Total Suspended Solids. Major discharges from these structures have taken place in the last five years (and prior to that) during periods of heavy or sustained rain, approximately every three to four months and are continuing and ongoing. Recent unpermitted discharges from these structures occurred daily from March 1, 2013 through March 6, 2013; intermittently from March 7, 2013 through March 25, 2013; and daily from March 26, 2013 until at least March 27, 2013. As these are not authorized outfalls in the City's NPDES permit for the Northwest Sewage Pond, these discharges also constitute violations of the City's permit. *See* NPDES Permit GA0024244 at Part II(B)(1) ("Any permit noncompliance is a violation of the Federal Act, State Act, and the State Rules....")

B. Failure to Obtain a Permit for the Northern Ditch

The City of Rochelle is continuing the illegal discharge of pollutants into the waters of Mill Creek through a ditch running along the north side of the City of Rochelle without a NPDES permit. This ditch is identified as the circled area in Attachment A. Raw sewage is discharged into this ditch during heavy or sustained rainfall through various points along the City of Rochelle's sewage system, including from the manholes, broken pipes and lift stations described above. In addition, this ditch receives raw sewage that washes off the yards of local residents who are forced to release the sewage in their yard in order to mitigate the damage that would occur if the sewage entered their homes. This raw sewage is an unpermitted discharge and adds pollutants to Mill Creek in at least the following respects: the water is high in fecal coliform, turbidity, and color and low in dissolved oxygen. It contains chlorides, total dissolved solids, un-ionized ammonia, phosphorus, nitrates, nutrients, coliforms, has high biological oxygen demand, and high Total Suspended Solids. These discharges are continuing and ongoing during and after any heavy or sustained rain event. Major discharges from this ditch have taken place in the last five years (and prior to that) during periods of heavy or sustained rain, approximately every three to four months, and are continuing and ongoing. Recent unpermitted discharges from this ditch occurred daily from March 1, 2013 through March 6, 2013; intermittently from March 7, 2013 through March 25, 2013; and daily from March 26, 2013 until at least March 27, 2013. As this ditch is not an identified outfall in the City's NPDES permit for the Northwest Sewage Pond, these discharges also constitute violations of the City's permit. *See* NPDES Permit GA0024244 at Part II(B)(1) ("Any permit noncompliance is a violation of the Federal Act, State Act, and the State Rules....")

PERMIT VIOLATIONS

¹ Attached to this letter as "Attachment A" is a USGS map depicting Mill Creek and the City of Rochelle. The northern ditch referred to throughout this letter is circled in red. A Google Earth image with green pin markers indicating known sewage structures that discharge raw sewage is also attached as "Attachment B."

A. Failure to Report and Monitor Spills

The City of Rochelle has failed to report and monitor spills as required by its permit, NPDES Permit GA0024244 at Part II(A)(11), at the following locations: the ditch identified in Attachment A; the sanitary sewage structures on the north side of town including the manholes at the end of Jackson Street, the manhole located behind the house at 629 Lee Street, the broken pipe located at the corner of Sook Road and Gin House Road (near the lift station); and at residences² throughout the north side of Rochelle, including but not limited to, 1004 Gordon Street, 555 King Avenue, 423 Mills Street, the residences along Jackson Street, and the residences and businesses along Railroad Avenue³. The City has failed to notify the Georgia Environmental Protection Division of these spills, report the spills to local health departments, post notice of the spills, report the spills to local media, submit a written report, notify nearby public water sources and monitor the receiving waters. These spills are continuing and have occurred every three to four months, depending on rainfall for the last 5 years (and decades before). They constitute both “spills” and “major spills” as defined in the permit, as they discharge raw sewage into Mill Creek, a water of the United States. *Id.* Recent spills from these locations occurred daily from March 1, 2013 through March 6, 2013; intermittently from March 7, 2013 through March 25, 2013; and daily from March 26, 2013 until at least March 27, 2013.

B. Allowance of Illegal Bypasses of the Permitted Ponds

The City of Rochelle has violated its NPDES permit by illegally bypassing its Northwest Sewage Pond through discharges to the ditch on the north side of town and through structures related to its Sanitary Sewer Collection System throughout the north side (including the Jackson Street and Lee Street manholes discussed above and the broken pipe at the Sook Road lift station). These discharges are not directed to the Northwest Sewage Pond but instead, directed to Mill Creek. NPDES Permit No. GA0024244 prohibits bypassing of wastewater around permitted treatment works and requires the permittee to “operate the facility and the sewer system to minimize discharge of pollutants from ...bypasses.” Permit at Part II(A)(8). The permittee is also required to “maintain and operate efficiently all treatment or control facilities and related equipment installed or used by the permittee to achieve compliance with this permit.” Permit at Part II(A)(1). Further, any such bypasses must be reported. Permit at Part II(A)(8). The City has violated these provisions of its permits by bypassing the Northwest Sewage Pond, failing to properly operate and maintain its sewage system, and failing to report bypasses. These violations have occurred every three to four months, depending on rain, for the past five years

² Attached to this letter as “Attachment C” is a Google Earth Image of the City of Rochelle. The orange pin markers identify known areas where sewage is discharged into the homes and yards of area residents and businesses.

³ Some of these businesses have installed flapper valve systems in an effort to mitigate damages and to keep sewage from backing into their buildings. While these flapper valves have helped prevent the entry of sewage in recent years, bathrooms remain inoperable during times of system failure, sometimes for days. In addition, the City has sought to have these valve systems removed, which would again expose these businesses to the raw sewage backups that plagued them for so many years.

(and decades before) and are continuing. Recent bypasses from the ditch and structures occurred daily from March 1, 2013 through March 6, 2013; intermittently from March 7, 2013 through March 25, 2013; and daily from March 26, 2013 until at least March 27, 2013.

In addition, the City is aware that residents and businesses on the north side of town have repeatedly suffered sewage back ups of raw sewage into their homes and buildings. In order to mitigate the damage to their homes, the residents remove the cleanout plugs on the sewage pipes near their homes to release backed up sewage into their yards. This sewage washes from yards and streets into the ditch on the north side of town and discharges into Mill Creek. The backups occur at residences throughout the north side of Rochelle, including but not limited to, 1004 Gordon Street, 555 King Avenue, 423 Mills Street, the residences along Jackson Street, and the residences and businesses along Railroad Avenue. The City is aware of these discharges, has failed, and continues to fail to upgrade its sewer system to prevent the frequent infiltration of sewage into residents' homes and yards. In essence, the City has impliedly authorized these discharges, which constitute a bypass of the City's Northwest Sewage Pond. These bypasses and the failure to properly operate and maintain its sewer system is a violation of the City's NPDES permit. NPDES Permit No. GA0024244 at Part II(A)(1) & (A)(8). Bypasses have occurred every three to four months, depending on rain for the past five years (and decades before) and are continuing. The City has again failed to report these bypasses in violation of Part II(A)(8) of its permit. Recent bypasses from these residences and businesses occurred daily from March 1, 2013 through March 6, 2013; intermittently from March 7, 2013 through March 25, 2013; and daily from March 26, 2013 until at least March 27, 2013.

C. Allowance of Adverse Affects on Human Health and the Environment

According to EPA⁴, raw sewage contains microbial pathogens (including bacteria, viruses and parasites) and toxics. Common pathogenic bacteria present in sewage include *Campylobacter*, *Pathogenic E.coli*, *Salmonella*, *S. typhi*, *Shigella*, *Vibrio cholera*, *Vibrio non-cholera*, and *Yersinia*. These bacteria can cause gastroenteritis, salmonellosis, typhoid fever, shigellosis, cholera, and yersinosis, which produce heavy diarrhea and/or vomiting. Common viruses present in sewage include adenovirus, astrovirus, noraviruses, echovirus, enterovirus, reovirus, and rotavirus. These viruses can lead to gastroenteritis, heart anomalies, aseptic meningitis, polio and respiratory infection. Common parasitic protozoa present in sewage include *cryptosporidium*, *entamoeba*, and *giardia* which cause mild to severe diarrhea. Exposure to sewage discharges from land-based sewage spills most commonly results in exposure through dermal contact. The illnesses are similar to those associated with exposure through drinking or swimming in contaminated water but may also include sickness from inhaling microbial pathogens. One such discharge occurring in Ocoee, Florida resulted in 39 documented cases of hepatitis A.

Because of the City's continued allowance of sewage spills and overflows, the residents of Rochelle's northern neighborhoods have been exposed to these dangerous contaminants. In

⁴ See EPA's Report to Congress: Impacts and Control of CSOs and SSOs, pp. 6-3 to 6-4, 6-14 August 2004 available at http://cfpub.epa.gov/npdes/cso/cpolicy_report2004.cfm

fact, testing for fecal coliform in the backyard of 555 King Street showed levels 47 times higher than what EPA considers safe. See 40 C.F.R. § 503.32.

Part II(A)(10) of Rochelle’s permit requires that the City “take all reasonable steps to minimize or prevent any discharge or sludge disposal which might adversely affect human health or the environment.” NPDES Permit No. GA0024244 at Part II(A)(10). The City has violated this provision every three to four months, depending on rain, for the last five years (and decades before) by allowing residents on the north side of town to be repeatedly exposed to raw sewage in their yards, in city streets and in ditches around town, including at the structures, ditch and residential locations discussed *supra*. Recent violations resulted from the discharges occurring daily from March 1, 2013 through March 6, 2013; intermittently from March 7, 2013 through March 25, 2013; and daily from March 26, 2013 until at least March 27, 2013.

In addition, the City has violated this provision by failing to take reasonable measures to upgrade its Sanitary Sewer Collection System on the north side of town to prevent exposure to raw sewage. These discharges endanger Mill Creek and waters downstream with excess pollutants and fecal material. Exposure to raw sewage has not ceased and the City is allowing these adverse affects to continue.

PERSONS RESPONSIBLE FOR THE SPILL

The City of Rochelle owns, operates and/or maintains the ditch and structures in its Sanitary Sewer Collection System, including those identified above, and is the NPDES permit holder for the Northwest Sewage Pond

PERSONS GIVING NOTICE

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If you have any questions, or wish to discuss this matter please contact me at the office number below.

Sincerely,



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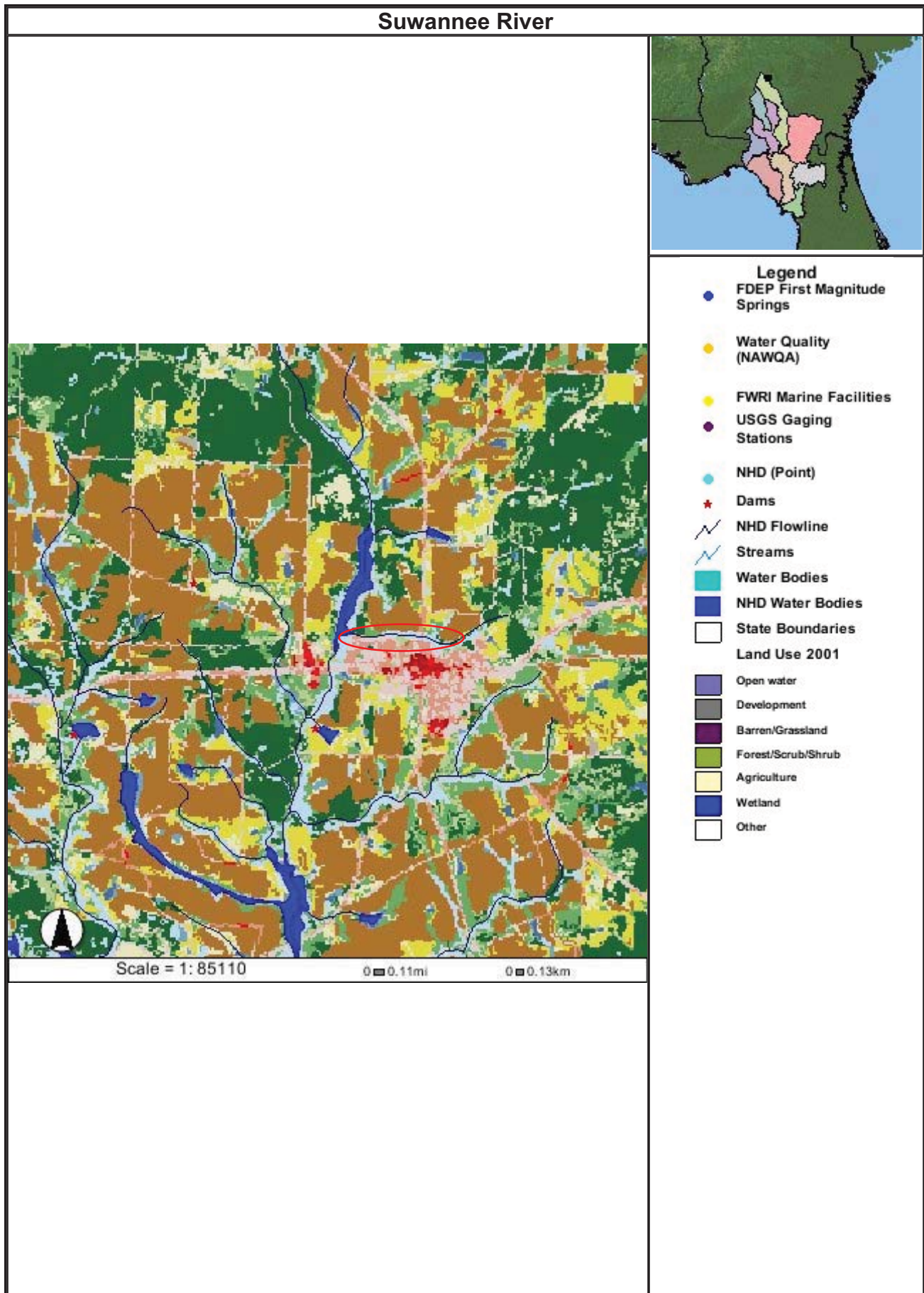
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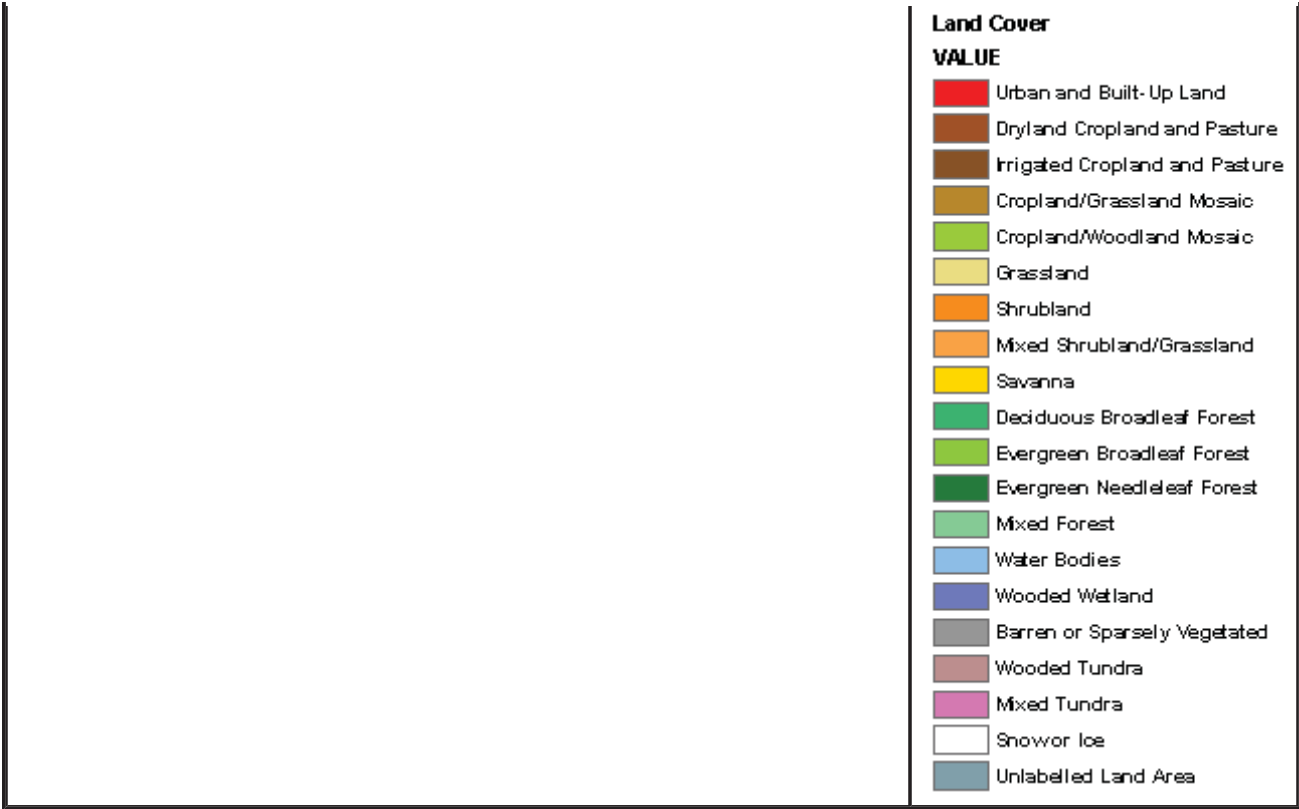
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Attachment A -- Location of Northern Ditch





**Attachment B -- Location of Known
City Structures Discharging Sewage**



Image USDA Farm Service Agency
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**Attachment C -- Location of
Known Residences and
Businesses Where Sewage
Is Discharged**

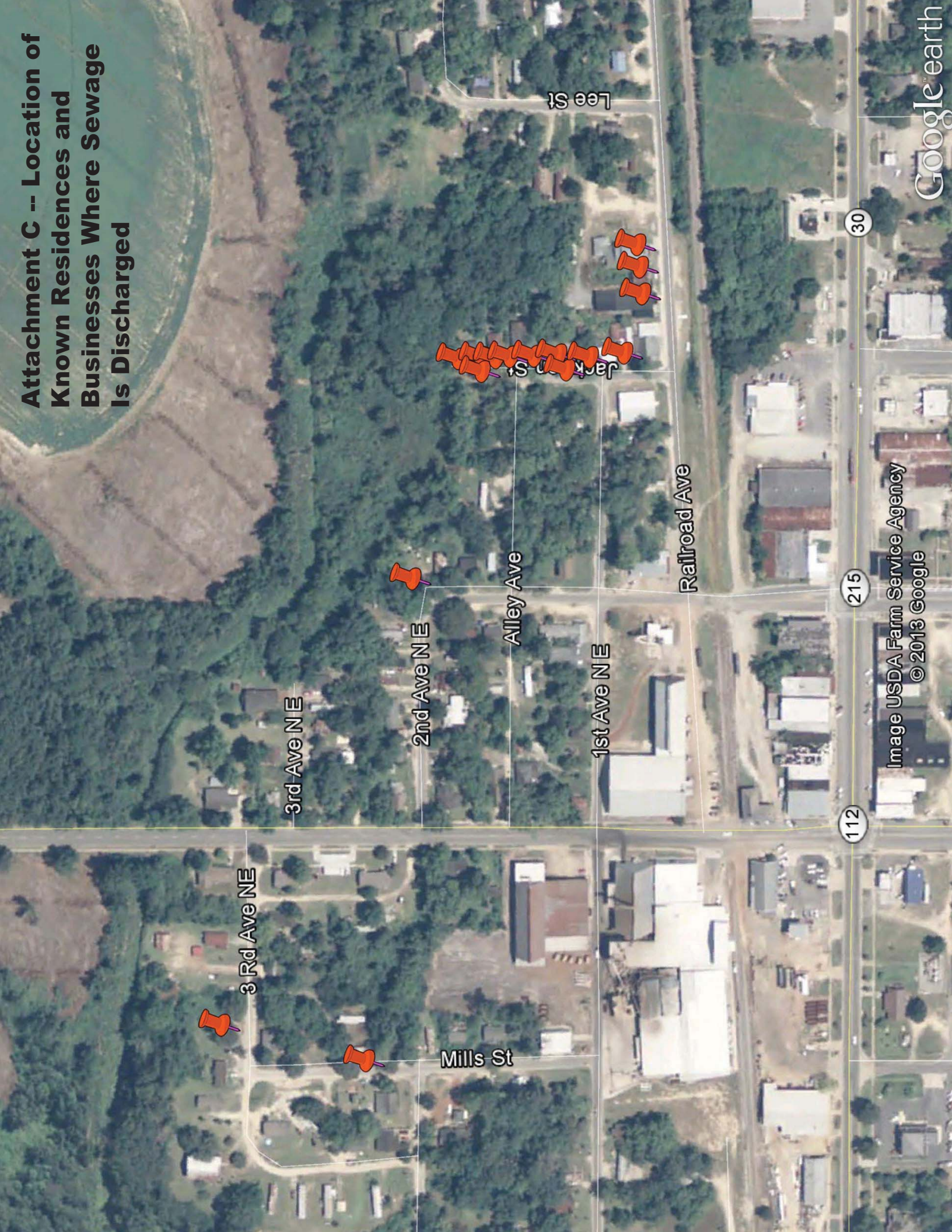


Image USDA Farm Service Agency
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Google earth