UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	**ADMINSTRATIVE**
	)	**COMPLIANCE ORDER**
Pine Hope, LLC	)	**ON CONSENT**
Cordesville, South Carolina	)	
	)	**Docket No: CWA-04-2021-0505**
	)	
RESPONDENT	)	
	)	

I. Statutory Authority

1. Section 309(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(a), provides that, whenever the U.S. Environmental Protection Agency ("EPA") finds that any person is in violation of any condition or limitation which implements, *inter alia*, Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344, the EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that the EPA determines to be reasonable.

2. The following Findings of Fact and Determinations of Law are made and this Administrative Compliance Order on Consent ("AOC") is issued pursuant to the authority vested in EPA by Section 309(a) of the CWA, 33 U.S.C. § 1319(a), as amended. The authority to issue this AOC has been delegated from the Administrator of the EPA to the Regional Administrator of the EPA, Region 4. The Regional Administrator has further delegated this authority to the Director of the Enforcement and Compliance Assurance Division, EPA, Region 4.

II. EPA's Findings of Fact and Determinations of Law

3. This AOC pertains to the unauthorized deposition of dredged and/or fill material into jurisdictional waters of the United States while excavating ditches, installing drainage structures, and raising roads. Unauthorized impacts at Pine Hope Plantation include mechanical land clearing, ditching with side cast of dredged and/or fill material, the deposition of fill material on approximately 3 acres of wetlands, and excavation of approximately 1,300 linear feet of Mary Ann Branch ("Discharge Area"), tributary to Bullhead Run which is tributary to Wadboo Creek which confluences with the Cooper River. Pine Hope Plantation is an approximately 1,300-acre parcel located at 200 Pine Hope Lane, near Cordesville, Berkeley County, South Carolina, 33.168° north latitude and 79.905° west longitude, as depicted on Exhibit A, attached hereto ("Pine Hope Plantation," or "Site").

4. On September 9, 2014, the United States Army Corps of Engineers (Corps) issued a warning letter to Pine Hope, LLC.

5. On November 21, 2017, the Corps conducted a site investigation of Pine Hope Plantation and cited issues with CWA section 404(f) and documented discharges of dredged and/or fill material into waters of the United States.

6. On October 16, 2019, the EPA conducted a site inspection on Pine Hope Plantation and confirmed that unpermitted discharges of dredged and/or fill material occurred in waters of the United States.

7. Pine Hope, LLC, ("Respondent"), is a company duly organized under the laws of the State of South Carolina and, as such, is a person within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

8. Respondent at all times relevant to this AOC, was the owner and/or operator of Pine Hope Plantation.

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

10. Commencing on or about September 4, 2014, to the present, Respondent, and/or those acting on behalf of the Respondent, discharged dredged and/or fill material into approximately 3 acres of wetlands on the Site and excavated approximately 1,300 linear feet of Mary Ann Branch using track hoes and bulldozers during unauthorized activities associated with the construction of drainage structures. To date, the unauthorized dredged and/or fill material remains in waters of the United States.

11. Respondent's unauthorized activities impacted approximately 1,300 linear feet of Mary Ann Branch and approximately 3 acres of wetlands that are adjacent to Mary Ann Branch. Mary Ann Branch is tributary to Bullhead Run, Bullhead Run is a perennial tributary to Wadboo Creek, Wadboo Creek is a perennial tributary of the Cooper River which is a navigable water of the United States.

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

13. The bulldozers and track hoes employed by the Respondent to deposit the dredged and/or fill material at the Discharge Area are "point sources" as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

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

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

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

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

18. At no time during the discharge of dredged and/or fill material into the Discharge Area from September 4, 2014, to the present, did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the discharge of dredged and/or fill material by Respondent. Each discharge by the Respondent of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

19. Each day the material discharged by the Respondent remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

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

III. Agreement On Consent

Based on the foregoing **FINDINGS OF FACT AND DETERMINATIONS OF LAW** and under the authority of Section 309(a) of the CWA, (33 U.S.C. §1319(a)), THE RESPONDENT HEREBY AGREES AND CONSENTS TO THE PROVISIONS OF THE PARAGRAPHS BELOW.

21. Within 90 days of the Effective Date, the Respondent agrees to implement the following actions to restore and mitigate the unauthorized impacts to the Discharge Area:

a. Respondent shall construct one cross-drain as indicated on Exhibit B in the common fire-line road in accordance with the South Carolina Forestry BMP Manual to help accomplish the goal of maintaining hydrology in the wetland system.
b. Respondent shall install a ditch plug at the location proposed and approximately located in Exhibit B to help accomplish the goal of maintaining hydrology in the wetland system.
c. Respondent shall place or install a permanent riser board in the outlet control structure located at the head of Mary Ann Branch (Exhibit C) to maintain water levels at the high-water mark/elevation in the upstream impoundment to help accomplish the goal of maintaining hydrology in the wetland system.

22. Respondent shall ensure that the integrity of items a – c above are maintained and protected.

23. Within 30 days of completion the Respondent shall submit a report regarding items a – c in paragraph 21 to EPA that includes:

1. Date of completion; and

2. Color photographs of the completed activities.

24. Any documentation required to be submitted in this agreement shall be mailed to the following address:

Chris Parker
U.S. Environmental Protection Agency
Enforcement and Compliance Assurance Division
Waterways and Wetlands Enforcement Section, 15th Floor
Sam Nunn Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

IV. General Provisions

25. The provisions of this AOC shall apply to and be binding upon the Respondent, its employees, contractors, successors, and assigns.

26. If the Site is transferred prior to completion of the requirements of this AOC, such transfer will not absolve the Respondent from the responsibility of implementing and completing the obligations under this AOC or ensuring that these requirements have been met. Completion of the requirements of this AOC will remain the responsibility of the Respondent.

27. This AOC is not and shall not be construed to be a permit under the CWA or its implementing regulations. This AOC does not exempt the Respondent from compliance with, or the requirements to obtain, any city, county, or state permits or authorizations before proceeding with the restoration activities.

28. Respondent acknowledges the jurisdiction of EPA to issue this AOC.

29. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent(s) may have with respect to any issue of fact or law set forth in this AOC, including, but not limited to, any right of judicial review of this AOC under the Administrative Procedure Act 5 U.S.C. §§ 701-706.

30. This AOC does not constitute a waiver, suspension, or modification of the terms and conditions of the CWA or its implementing regulations. Issuance of or compliance with this AOC does not relieve the Respondent from responsibility to comply with all requirements of the CWA, its implementing regulations, and any legal order issued under the CWA or its regulations.

31. Issuance of this AOC shall not be deemed an election by EPA to forego any Administrative, Civil, or Criminal action to seek penalties, fines, or other appropriate relief under the CWA for the violations set forth in the Findings.

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32. Failure to comply with the terms of this AOC may result in your liability for statutory civil penalties under Section 309(d) of the Act, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Should EPA commence an action seeking penalties for violations of this AOC, a United States District Court may impose civil penalties if the court determines that Respondent has violated the CWA and failed to comply with the terms of the AOC.

V. Effective Date

33. This AOC shall become effective upon the Respondent's receipt of the signed AOC.

VI. Termination

34. This AOC shall be terminated after Respondent submits to the EPA the completion report and the EPA notifies Respondent that it concurs, which shall not be unreasonably withheld or delayed, that completion of corrective measures identified in paragraph 21 above have been satisfied.

FOR THE RESPONDENT:

_____ Date: _____

Mr. Henry Brown
Pine Hope, LLC

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

_____ Date: _____

Carol L. Kemker
Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency
Region 4

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