Message

From: Wetherington, Michele [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=72F68AFD3CA140CFB8E6B77A0DE014F5-WETHERINGTON, MICHELE]
Sent: 10/10/2019 7:50:44 PM
To: Wylie, Mike [wylie.mike@epa.gov]
Subject: FW: Pine Hope Plantation Site Visit [IWOV-NPCHAR1.FID1058209]

Confirmed for the 16th 0800.

Michele

From: Shahid, Mary D. <MShahid@nexsenpruet.com>
Sent: Thursday, October 10, 2019 12:19 PM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>
Cc: Henry E Brown J[Ex. 6 Personal Privacy (PP)]
Subject: RE: Pine Hope Plantation Site Visit [IWOV-NPCHAR1.FID1058209]

Thank you Michele.

From: Wetherington, Michele <Wetherington.Michele@epa.gov>
Sent: Wednesday, October 9, 2019 6:18 PM
To: Shahid, Mary D. <MShahid@nexsenpruet.com>
Cc: Henry E Brown J[Ex. 6 Personal Privacy (PP)]
Subject: RE: Pine Hope Plantation Site Visit [IWOV-NPCHAR1.FID1058209]

{EXTERNAL EMAIL}

Mary,

EPA will be on site October 16th, and plans to arrive at 8:00am. Attending for EPA will be three wetlands staff and myself. See you next Wednesday.

Thanks,

Michele

Michele Wetherington
Associate Regional Counsel
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From: Shahid, Mary D. <MShahid@nexsenpruet.com>
Sent: Tuesday, October 8, 2019 11:41 AM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>
Cc: Henry E Brown Jr < Ex. 6 Personal Privacy (PP)
Subject: RE: Pine Hope Plantation Site Visit [IWOV-NPCHAR1.FID1058209]

Michele – Mr. Brown and I are available October 15th, from noon until end of day and all day October 16th. In previous investigative site visits by the Corps, the inspection took a few hours. Therefore, we are anticipating that EPA's investigation can be completed within a day. We are consenting to providing access to EPA personnel to inspect the area depicted in the aerial imagery that you provided described as "Area of Interest – Pine Hope Plantation." We do not believe that the inspection should require two days and are not consenting, at this time, to a multi-day inspection. I will be present along with Mr. Brown and possibly his son. We may also consult with the S. C. Forestry Commission to see if any of their staff can be present. Can you let me know who will be attending on behalf of the EPA?

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From: Wetherington, Michele <Wetherington.Michele@epa.gov>
Sent: Wednesday, October 2, 2019 2:00 PM
To: Shahid, Mary D. <MShahid@nexsenpruet.com>
Cc: Henry E Brown Jr Ex. 6 Personal Privacy (PP)
Subject: Re: Pine Hope Plantation Site Visit [IWOV-NPCHAR1.FID1058209]

{EXTERNAL EMAIL}

Mary,

Under the CWA regarding section 404, the Corps and the EPA share enforcement authority. The EPA has an MOA with the Corps on what cases will generally be handled by each Agency, but a case at the Corps may be referred to the EPA, as this case was. EPA has all information from the Corps and the US Attorney's office to date. EPA is taking the lead on enforcement moving forward. Often times, the Corps staff may continue to

work with EPA staff as needed or required. EPA is trying to work with Mr. Brown to see potential violations first hand. EPA will be enforcing any CWA violations.
Attached, please see an aerial image of the area EPA is concerned about and plans to visit. Beyond what we have already talked about regarding ditches plus this image area, EPA's site visit would provide any more specificity that you are asking for. EPA's enforcement authority allows site inspection to determine violations, which is where we currently are in this case. We prefer to reach an agreed upon date for entry, and thank you for your cooperation on this matter.
Please let me know if you have any more questions.

thanks,

Michele

Michele Wetherington

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From: Shahid, Mary D. <MShahid@nexsenpruet.com>
Sent: Tuesday, October 1, 2019 12:02 PM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>
Cc: Henry E Brown Jr Ex. 6 Personal Privacy (PP)
Subject: RE: Pine Hope Plantation Site Visit [IWOV-NPCHAR1.FID1058209]

Michele: Mr. Brown is copied on this response. Before consenting to the EPA's request to inspect Pine Hope Plantation, Mr. Brown would request information as to how the EPA became involved in this matter. Was it at the request of the U. S. Attorney's office (South Carolina) or of the Charleston District Corps of Engineers? And, does EPA know the current position of these two entities regarding their previous investigation at Pine Hope Plantation? We believe Mr. Brown is entitled to know the status of these other investigations and whether or not EPA's current interest in Pine Hope Plantation is because of contact with either the U. S. Attorney's office or the Charleston District Corps. If EPA's involvement is because of either of these two entities, then we are entitled to know these entities' position regarding their earlier investigations. Moreover, having authorized two prior site visits for these entities, we are not likely to agree to a third if EPA is simply enforcing the concerns of the Corps or the U. S. Attorney.

If EPA's concerns are independent of the Corps and the U. S. Attorney, then we are requesting specific information identifying those concerns. You mentioned the silviculture ditches. Can you send me aerial imagery or any other information you may have identifying the specific ditches? We would consent to a site inspection but would limit it to the specific concerns identified by EPA. Pine Hope Planation is approximately 1000 acres of timberland. We are not consenting to inspection of the entirety of the acreage – only specific areas to be identified in advance by the EPA for our review and consideration.

Thank you.

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From: Wetherington, Michele <Wetherington.Michele@epa.gov>
Sent: Monday, September 30, 2019 10:00 AM
To: Shahid, Mary D. <MShahid@nexsenpruet.com>
Subject: RE: Pine Hope Plantation Site Visit [IWOV-NPCHAR1.FID1058209]

{EXTERNAL EMAIL}

Hi Mary,

I'm checking in with you from when we last spoke on the phone, regarding availability for October 15 – 18. Have you heard back from Mr. Brown?

Thanks,

Michele

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From: Shahid, Mary D. <MShahid@nexsenpruet.com>
Sent: Thursday, September 19, 2019 2:05 PM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>
Cc: Henry E Brown Jr < Ex. 6 Personal Privacy (PP) >
Subject: Pine Hope Plantation Site Visit [IWOV-NPCHAR1.FID1058209]

Michele: I'm copying my client, Henry Brown, on this response. I apologize that I didn't get back with you last week. I was able to speak with Mr. Brown this week and he is very upset about this request. By way of background, the Charleston District initiated action against Mr. Brown in 2014. A copy of the letter from the Charleston District is attached. Upon receipt of that letter Mr. Brown invited staff from the Charleston District to inspect Pine Hill Plantation and the site visit occurred on November 5, 2014. Mr. Brown heard nothing more from the Corps following the site visit until two and half years later, in March of 2017. The Corps referred the matter to the U. S. Attorney's office in Columbia, S. C. Mr. Brown received the attached letter from Brook Andrews on September 5, 2017. I responded on behalf of Mr. Brown by letter dated October 13, 2017, attached. We mutually agreed to a second site visit on November 21, 2017. We met with the Charleston District following the site visit on December 14, 2017. The Corps requested that certain measures be taken, which we agreed to by letter dated January 25, 2018. Mr. Andrews notified us by letter dated April 6, 2018 that Mr. Brown provide voluntary onsite restoration and mitigation. We replied on May 21, 2018 (attached) and asked the U. S. Attorney's office to recognize the existing buffering and preservation in place, along with volunteering additional BMPS. WE RECEIVED NOTHING BACK FROM THE U. S. ATTORNEY'S OFFICE OR FROM THE CORPS. This matter was unattended to for 16 months – and then I received your email.

Pine Hill Plantation is a tree farm. The attached photograph is a letter that Mr. Brown received from the EPA in 1989 when he sought confirmation regarding his forestry activities. All activities conducted at Pine Hill facilitate silviculture. Mr. Brown has consulted with multiple registered foresters regarding his operations. Herb Nicholson from the South Carolina Forestry Commission inspected Pine Hill, with the Corps of Engineers, and essentially confirmed that the activities were consistent with forestry operations.

Mr. Brown has cooperated fully with all investigative agencies in this matter. He has offered to take measures that were suggested by the Corps of Engineers. No one has given him the courtesy of a response to his offers to install pipes and a ditch plug (1/25/18 letter) and installation of additional pipes (5/21/18 letter) even though these offers were based on remediation measures suggested by the Corps. He has authorized two site visits. Importantly both the Corps and the DOJ insisted that Mr. Brown hire an environmental consultant – which he did. He retained Mac Baughman, registered forester and environmental consultant, and he heeded all of Mr. Baughman's advice. Mr. Baughman's services were expensive and despite insisting that a consultant be retained, both the Corps and the DOJ ignored Mr. Baughman's opinions and suggestions. Please note that Mr. Brown was a young man of 79 when this investigation started. He is now 85 years old and believed that after sixteen months of silence from the U. S. Attorney and the Corps that this matter was resolved and he could put this behind him and enjoy what time he has left.

Before consenting to a third site visit it would be helpful to know what the EPA's concerns are and whether the proposals made to date in the attached exchange of correspondence are sufficient to relieve those concerns. Thank you for your consideration of the information provided and I look forward to speaking to you at your convenience.

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From: Wetherington, Michele <Wetherington.Michele@epa.gov>
Sent: Thursday, September 19, 2019 12:52 PM
To: Shahid, Mary D. <MShahid@nexsenpruet.com>
Subject: RE: Pine Hope Plantation Site Visit

{EXTERNAL EMAIL}

Hi Mary,

Have you been able to confirm the dates with Mr. Brown and your consultant? Our inspector has little flexibility with his schedule, so I am hopeful that you have.

Thanks,

Michele

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From: Shahid, Mary D. <MShahid@nexsenpruet.com>
Sent: Tuesday, September 10, 2019 2:55 PM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>
Subject: RE: Pine Hope Plantation Site Visit

Thanks Michele. I'm in the process of trying to contact Mr. Brown and our forestry consultant to determine availability. Those dates work for me. I'll get back to you by the end of the week.

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From: Wetherington, Michele <Wetherington.Michele@epa.gov>
Sent: Monday, September 9, 2019 1:59 PM
To: Shahid, Mary D. <MShahid@nexsenpruet.com>
Subject: Pine Hope Plantation Site Visit

{EXTERNAL EMAIL}

Dear Ms. Shahid,

I hope you are doing well. I am an attorney at EPA Region 4. The Army Corps of Engineers forwarded Mr. Brown's alleged CWA violations to EPA last month. The EPA would like to conduct a site inspection and discuss with your client some potential CWA issues we have reviewed on Pine Hope Plantation. I am writing to request EPA access to your client's property, Mr. Henry Brown's Pine Hope Plantation near Vanilla Bay in Berkley County, South Carolina.

The EPA has identified the week of October 15 to 18 as available dates to meet with you and your client. We hope to meet on Tuesday afternoon after lunch and wrap up by Wednesday. If beginning on Tuesday will not work, then Thursday and Friday are also suitable dates for EPA to meet with you and your client. Will you please confirm that we will be able to meet on Tuesday October 15? I plan on accompanying EPA field staff to the Site and look forward to meeting you.

Thanks,

Michele

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