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

JAN 11 2013

CERTIFIED MAIL 7012 1010 0001 8097 3246
RETURN RECEIPT REQUESTED

Mr. William Penny, Esq.
401 Commerce Street, Suite 800
Nashville, Tennessee 37219

RE: Administrative Compliance Order on Consent
Docket No. CWA-04-2013-5753

Dear Mr. Penny:

Enclosed please find an executed copy of the above-referenced Administrative Compliance Order on Consent (AOC) Docket No. CWA-04-2013-5753. This AOC requires your client to apply to the U.S. Army Corps of Engineers for authorization under Nationwide Permit 32, to include mitigation in the form of onsite dam removal, stream restoration and stream preservation. The U.S. Environmental Protection Agency, Region 4 has retained the original copy for our enforcement files.

Thank you for you and your client's cooperation in this matter. If you have any questions regarding this AOC, please contact Ms. Mara Lindsley at (404) 562-9296.

Sincerely,

James D. Giattina
Director
Water Protection Division

Enclosures

cc: Ms. Amy Robinson
U.S. Army Corps of Engineers, Nashville District

Ms. Mary Jennings
U.S. Fish & Wildlife Service, Cookeville, Tennessee

Mr. Robert Baker
Tennessee Department of Environment and Conservation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:	)	
	)	**ADMINISTRATIVE**
Randall Stutts	)	**COMPLIANCE ORDER**
Kingston Springs, Tennessee	)	**ON CONSENT**
	)	
	)	
RESPONDENT.	)	**Docket No.: CWA-04-2013-5753**
	)	

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, EPA may issue an order requiring such person to comply with such condition or limitation, and shall specify a time for compliance that 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 Water Protection Division, EPA, Region 4.

II. Findings of Fact and Determinations of Law

For the purposes of this AOC, Respondent admits the jurisdictional allegations set out below and neither admits nor denies EPA's findings of fact set out below:

3. This AOC pertains to the deposition of dredged and/or fill material into jurisdictional wetlands and waters of the United States, including construction of an earthen dam and impoundment of 1,375 linear feet of an unnamed tributary to the Harpeth River, located at 36°7'43.188"N latitude and 87°8'39.5168"W longitude ("Discharge Area") (See Exhibits A and B). The deposition of dredged and/or fill material occurred during the construction of a 5.2 acre lake for the stated purposes of emergency water supply and recreation.

4. In July 2007, Mr. Randall Stutts ("Respondent") was issued a citation by the Tennessee Wildlife Resources Agency for impounding an unnamed tributary to the Harpeth River without a permit.

5. In August 2007, Respondent was issued a Notice of Violation by the Tennessee Department of Environment and Conservation for the above listed impoundment.

6. In December 2007, the U.S. Army Corps of Engineers, Nashville District ("COE") received a 404 permit application seeking after-the-fact authorization for the unpermitted impoundment.

7. On January 28, 2008, the COE conducted inspections of the subject property to determine compliance with Section 404 of the CWA, 33 U.S.C. § 1344.

8. On May 19, 2010 the COE referred the enforcement case against Respondent to EPA in accordance with a 1989 Memorandum of Understanding between the COE and EPA concerning federal enforcement for section 404 of the CWA, 33 U.S.C. § 1344.

9. On July 16, 2010, EPA issued an Administrative Compliance Order (Docket No. CWA-04-2010-5800) and 308 Information Request.

10. Respondent is a person within the definition set forth under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. Respondent at all times relevant to this AOC, was the owner and/or operator of the Site located at 1850 Highway 70E in the city of Kingston Springs, Cheatham County, Tennessee (the "Site") that contained the Discharge Area.

12. 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.

13. Commencing on or about June 2007 to present, Respondent, and/or those acting on behalf of Respondent, discharged dredged and/or fill material into a tributary on the Site using earth moving machinery, during unauthorized activities associated with the construction of a 5.2 acre lake. To date, the unauthorized dredge and/or fill material remains in waters of the United States.

14. Respondent's unauthorized activities impacted approximately 1,375 linear feet of an unnamed perennial tributary to the Harpeth River, a navigable-in-fact water of the United States.

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

16. The earth moving machinery 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).

17. 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.

18. 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).

19. 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.

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

21. At no time during the discharge of dredged and/or fill material into the Discharge Area from June 2007 to 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).

22. 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.

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

III. Order 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 DIRECTOR HEREBY ORDERS AND THE RESPONDENT HEREBY AGREES AND CONSENTS TO THE PROVISIONS OF THE PARAGRAPHS BELOW.

24.

a. Within 30 days of the effective date of this AOC, Respondent shall apply to the COE for authorization under Nationwide Permit 32 ("NWP 32"), found at 72 Federal Register 11092 (March 12, 2007), for impacts to 1,375 linear feet of an unnamed perennial tributary to the Harpeth River. Respondent shall comply with all requirements and conditions of the NWP 32, including, but not limited to the implementation of the "Final Mitigation Plan in Compliance with Nationwide #32," which is specifically incorporated herein by reference (See Exhibit C), or as otherwise required by the COE during the NWP 32 permitting process.

b. Respondent shall provide to EPA proof of coverage under NWP 32 within 10 days of receipt of such coverage from the COE.

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

Ms. Mara Lindsley
U.S. Environmental Protection Agency
Atlanta Federal Center/Region 4
Wetlands Enforcement Section, 15th Floor
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

IV. General Provisions

26. The provisions of this AOC shall apply to and be binding upon the Respondent, or his agents, servants, employees, successors, and assigns.

27. 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.

28. 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.

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

30. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which the Respondent 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.

31. 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 Act or its regulations.

32. 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.

33. 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

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

FOR THE RESPONDENT:

Mr. Randall Stutts

Date: 12-31-12

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

James D. Giattina
Director
Water Protection Division

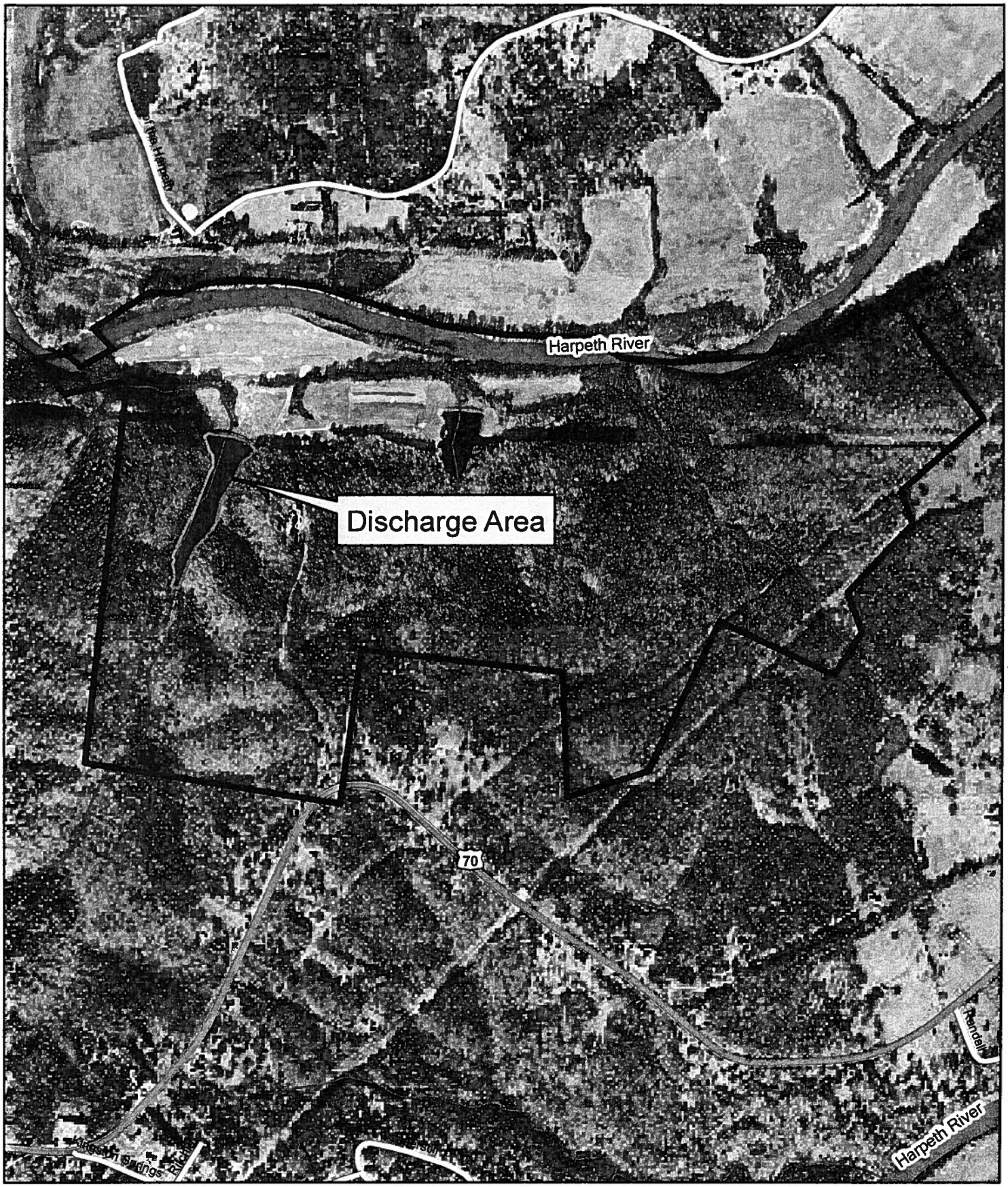
Date: JAN 11 2013

N

Randall Stutts

0 0.5 1 2 Miles

Exhibit A



N

Randall Stutts

0 210420 840 Feet

Exhibit B