8	I				
	1				
	1				
	2				
	3				
	4				
	5				
	6				
	7				
12	8	UNITED STATES ENVIRONMENTAL PROTECTION AGENCY			
	9	In the matter of: )			
	0	) Docket No. CWA-10-2003-0056			
	.1	Fairbanks, Alaska,   )     )   COMPLIANCE ORDER			
	2	Respondent. )			
	3				
	4	The following FINDINGS AND CONCLUSIONS are made and ORDER issued pursuant to			
1	.5	the authority vested in the Administrator of the United States Environmental Protection Agency			
1	16 ("EPA") by Sections 308 and 309 of the Clean Water Act ("the Act"), 33 U.S.C. §§ 1318 a				
1	7	This authority has been delegated to the Regional Administrator, Region 10, and has been			
1	8	redelegated to the undersigned Director of the Office of Ecosystems and Communities.			
1	9				
2	20	I. FINDINGS AND CONCLUSIONS			
2	21	1.1 Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants			
2	22	into waters of the United States by any person, except as authorized by a permit issued pursuant to			
2	23	Section 402 or 404 of the Act, 33 U.S.C. § 1342 or 1344. Each discharge of pollutants from a point			
2	24	source that is not authorized by such a permit constitutes a violation of Section 301(a) of the Act,			
2	25	33 U.S.C. § 1311(a).			
2	26	1.2 Stanley Pieniazek, ("Respondent") is an individual and therefore a "person" within			
2	27	the meaning of Sections 301(a) and 502(5) of the Act, 33 U.S.C. §§ 1311(a) and 1362(5).			
2	28	LIC ENTRONE THE DESIGNATION			
		COMPLIANCE ORDER - 1U.S. ENVIRONMENTAL PROTECTION AGENCYDocket No. CWA-10-2003-00561200 Sixth AvenueSeattle, Washington 98101(206) 553-1037			

1.3 Respondent owns, possesses, and/or controls property in the Fairbanks North Star
 2 Borough, Alaska known as Lot 13 of the Ballaine Lake Subdivision, Section 31, Township 1 North,
 3 Range 1 West, Fairbanks Meridian. Lot 13 is approximately 0.19 acres in size and is hereinafter
 4 referred to as the "Site."

5 1.4 The Site is comprised in its entirety of open water and wetlands meeting the three
6 criteria for jurisdictional wetlands in the 1987 "Federal Manual for Identifying and Delineating
7 Jurisdictional Wetlands." The Site's open water and wetlands complex are hydrologically connected
8 and adjacent to an unnamed creek which is a tributary of Noyes Slough. Noyes Slough is a
9 navigable-in-fact waterbody and contributes its flow through the Chena, Tanana, and Yukon Rivers
10 to the Bering Sea. The Bering Sea is subject to the ebb and flow of the tide.

1.5 The Site's open water and wetlands are "waters of the United States" within the
 meaning of 33 C.F.R. § 328.3(a) and 40 C.F.R. § 232.2 and therefore are "navigable waters" within
 the meaning of CWA Section 502(7), 33 U.S.C. 1362(7).

14 1.6 Beginning in the summer of 1999 and continuing to the present day, Respondent has,
15 at various times and at various locations within the Site, directed the operation of certain
16 earthmoving equipment which was used to discharge gravel, dirt, sand, sod, and other materials into
17 approximately 0.13 acres of jurisdictional open water and wetlands at the Site.

18 1.7 As of the effective date of this ORDER, the gravel, dirt, sand, sod, and other materials
19 referenced in Paragraph 1.6 above remain in place.

1.8 The gravel, dirt, sand, sod, and other materials referenced in Paragraph 1.6 above
constitute "fill material" and/or "dredged material" within the meaning of 40 C.F.R. § 232.2 and
"pollutant[s]" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6), and 40 C.F.R.
§ 232.2.

1.9 Each piece of earthmoving equipment referenced in Paragraph 1.6 above is a "point
source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

26

27

28

COMPLIANCE ORDER - 2 Docket No. CWA-10-2003-0056 U.S. ENVIRONMENTAL PROTECTION AGENCY 1200 Sixth Avenue Seattle, Washington 98101 (206) 553-1037

1	1.10 By	causing such dredged or fill material to enter waters of the United States,			
2	Respondent has engaged in the "discharge of pollutants" from a point source within the meaning of				
3	Sections 301(a) an	nd 502(12) of the Act, 33 U.S.C. §§ 1311(a) and 1362(12).			
4	1.11 Re	spondent's discharge of pollutants is not authorized by any permit issued pursuant			
5	to Section 402 or	404 of the Act, 33 U.S.C. § 1342 or 1344.			
6	1.12 Re	spondent's discharge of pollutants into waters of the United States without a permit			
7	under the Act has placed Respondent in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).				
8	1.13 The	ese FINDINGS AND CONCLUSIONS, and the ORDER which follows, have been			
9	made after consultation and coordination with the United States Army, Corps of Engineers, Alaska				
10	District.				
11		II. ORDER			
12	2.1 Ba	sed upon the foregoing FINDINGS AND CONCLUSIONS, and pursuant to			
13	Sections 308 and 309(a) of the Act, 33 U.S.C. §§ 1318 and 1319(a), it is hereby ORDERED as				
14	follows.				
15	2.2 Re	spondent shall immediately terminate all discharges of dredged or fill material to			
16	waters of the United States now and in the future without prior authorization by a valid permit issued				
17	by the United States Army Corps of Engineers pursuant to Section 404 of the CWA.				
18	2.3 Re	spondent shall implement the "Restoration Work Plan" to remove unauthorized			
19	dredged or fill material at the Site and restore the affected aquatic areas. This Restoration Work Plan				
20	is incorporated by reference and attached hereto as Attachment 1.				
21	2.4 Re	spondent shall implement the Restoration Work Plan in accordance with the			
22	following schedule:				
23	a.	Initiate restoration actions no later than June 15, 2003;			
24	b.	Complete all removal and restoration activities within 45 days of the initiation of the work;			
25					
26	c.	Provide photographs of the Site to EPA after completion of the Restoration Work Plan to verify that all elements of the plan have been implemented.			
27					
28	а. Тар	U.S. ENVIRONMENTAL PROTECTION AGENCY			
	COMPLIANCE ORDER - 3 Docket No. CWA-10-2003-0056 COMPLIANCE ORDER - 3 Docket No. CWA-10-2003-0056				

Respondent shall inform EPA in writing of his intent to comply with this ORDER 2.5 1 2 within five days of receipt of this ORDER.

2.6

3

4

5

6

Respondent shall provide verbal notification to the contact listed in Paragraph 2.10 below no less than seven days prior to commencement of any removal and restoration activities. Respondent shall also provide verbal notification to the contact listed in Paragraph 2.10 below upon completion of the work required by this ORDER.

2.7 Respondent shall provide and/or obtain access to the Site and any off-property areas 7 to which access is necessary to implement this ORDER and shall provide access to all records and 8 documentation related to the conditions at the Site and the removal and restoration activities 9 conducted pursuant to this ORDER. Such access shall be provided to EPA employees and 10 11 representatives. These individuals shall be permitted to move freely at the Site and appropriate offproperty areas in order to conduct actions which EPA determines to be necessary. 12

Failure to timely and appropriately implement to EPA's satisfaction any element of 2.8 13 14 the Restoration Work Plan shall be deemed a violation of this ORDER.

15 2.9 EPA encourages Respondent to engage in informal discussions on the terms and requirements of this ORDER upon receipt. Such discussions should address any allegations herein 16 which Respondent believes are inaccurate or requirements which may not be attainable and the 17 18 reasons therefor. Alternatives to attain the objectives of this ORDER may be proposed. If acceptable to EPA, such proposals may be incorporated into amendments to this ORDER, at the 19 discretion of EPA. 20

21

22

23

24

25

27

28

All submissions required by this ORDER shall be sent to: 2.10

> Steven Roy, § 404 Enforcement Coordinator U.S. Environmental Protection Agency Region 10, ECO-083 1200 Sixth Avenue Seattle, Washington 98101 Phone: 206-553-6221 Fax: 206-553-1775

26

2.11 This ORDER shall become effective on the date it is signed.

**COMPLIANCE ORDER - 4** Docket No. CWA-10-2003-0056

U.S. ENVIRONMENTAL PROTECTION AGENCY 1200 Sixth Avenue Seattle, Washington 98101 (206) 553-1037

1	
1	III. SANCTIONS
2	3.1 Notice is hereby given that violation of, or failure to comply with, the foregoing
3	ORDER may subject Respondent to: (1) civil penalties of up to \$27,500 per day of violation
4	pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and 40 C.F.R. Part 19; or (2)
5	administrative penalties of up to \$11,000 per day for each violation, pursuant to Section 309(g) of
6	the Act, 33 U.S.C. § 1319(g), and 40 C.F.R. Part 19.
7	3.2 Nothing in this ORDER shall be construed to relieve Respondent of any applicable
8	requirements of federal, state, or local law. EPA reserves the right to take enforcement action as
9	authorized by law for any violation of this ORDER, and for any future or past violation of any permit
10	issued pursuant to the Act or of any other applicable legal requirements, including, but not limited to,
11	the violations identified in Part I of this ORDER.
12	
13	Dated this 15 day of April, 2003
14	
15	Michelle PIRZADEH, Acting Director
16	Office of Ecosystems and Communities
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	U.S. Environmental Protection Agency
	COMPLIANCE ORDER - 5 Docket No. CWA-10-2003-0056 COMPLIANCE ORDER - 5 Docket No. CWA-10-2003-0056 CWA-10-2005 CWA-1

1

## **ATTACHMENT 1**

# **RESTORATION WORK PLAN**

RESTORATION WORK PLAN FOR THE STANLEY PIENIAZEK PROPERTY

Lot 13 of the Ballaine Lake Subdivision Section 31, Township 1 North, Range 1 West, Fairbanks Meridian Fairbanks, Alaska

> Stanley Pieniazek P.O. Box 81756 Fairbanks, Alaska 99708-1756

#### EPA DOCKET NO. CWA-10-2003-0056

#### I. INTRODUCTION

Stanley Pieniazek ("Respondent") is directed to implement this Restoration Work Plan for the above-described property ("the Site") as required in Section II of the Compliance Order ("Order"). The purpose of this restoration is to maintain and restore the natural condition of wetlands (including hydrological connections) and to minimize erosion and sedimentation.

### II. RESTORATION WORK PLAN

To mitigate the impacts associated with the unauthorized discharge of dredged and fill material into waters of the United States, including wetlands, Respondent shall:

(1) in accordance with Attachment 2 (Fill Removal and Footprint Specifications) remove all dredged and fill material (including soil, sand, gravel, sod, and sidecast materials) at the Site with the exception of:

(a) the existing culverted driveway (30' long x 12' wide x 3' high);

(b) the existing cabin pad (20' x 25' x 3'); and

(c) the materials associated with excavation and backfill of a trench for a septic line (approximately  $30' \log x 2'$  wide x 4' deep).

Restoration Work Plan Docket No. CWA-10-2003-0056 Stanley Pieniazek Fairbanks, Alaska (2) reestablish the grade at the Site to the previous elevations of the surrounding landscape. To the maximum extent practicable, the wetlands shall be restored to the original ground elevations/contours.

(3) revegetate the disturbed areas of the Site using plant species that occur adjacent to the areas of disturbance. If no suitable planting materials are available onsite, Respondent must obtain them from an appropriate offsite source from the same geographic and climatic area as the Site.

(4) conduct follow-up monitoring and inspections to demonstrate the effectiveness of the wetlands restoration work. Monitoring shall focus on the reestablishment of vegetation of the area and shall occur at least twice per year, by June 15 and again by September 15. Monitoring shall include photographs to document the percent vegetation regeneration using photo points along a fixed transect. A performance standard of 75% revegetation cover at the end of the 2005 growing season will constitute success. Corrective actions must be implemented as soon as practicable once it appears that the wetlands restoration work may not meet the success criteria at the end of the 2005 growing season. Such corrective actions may include, for example, additional manual planting and/or reseeding of native vegetation from the local climatic and geographic area.

The earthmoving equipment used to conduct the removal, regrading, and restoration activities described above must represent the least environmentally damaging method (e.g., minimize compaction and damage to vegetation). Respondent must employ best management practices ("BMPs") during the removal, regrading, and restoration work to minimize sedimentation of receiving waters. BMPs may include, for example, silt fences, and/or hay bales.

Respondent must initiate the removal, regrading, and restoration activities described above no later than June 15, 2003. The work required by Nos. 1-3 above must be completed no later than 45 days after initiation of the work. The monitoring and corrective actions described in No. 4 above shall continue for at least three years after completion of the work.

#### III. REPORTING REQUIREMENTS

No later than October 15<sup>th</sup> on each of the next three years (2003, 2004, 2005), Respondent shall submit to EPA for review and approval an Annual Monitoring Report prepared to document through photography and narrative description the: (a) densities and percent revegetation; and (b) types of vegetation (species) established. Each Annual Monitoring Report shall include a narrative description of any additional work and/or activities that have been implemented as a contingency for failure to meet the established performance standards after the three years of monitoring.

#### IV. SUBMISSION AND NOTIFICATION

All submissions and notifications to the EPA required under this Compliance Order and Work Plan shall be addressed to:

Restoration Work Plan Docket No. CWA-10-2003-0056 Stanley Pieniazek Fairbanks, Alaska Steven Roy, § 404 Enforcement Coordinator U.S. Environmental Protection Agency Region 10, ECO-083 1200 Sixth Avenue Seattle, WA 98101

In addition, correspondence to the EPA may be made to the person identified above by:

telephone: (206) 553-6221 facsimile: (206) 553-1775 electronic mail: roy.steve@epa.gov

Restoration Work Plan Docket No. CWA-10-2003-0056

Stanley Pieniazek Fairbanks, Alaska

3

### **ATTACHMENT 2**

# SITE MAP

FILL REMOVAL AND FOOTPRINT SPECIFICATIONS FOR THE STANLEY PIENIAZEK PROPERTY

Lot 13 of the Ballaine Lake Subdivision Section 31, Township 1 North, Range 1 West, Fairbanks Meridian Fairbanks, Alaska

Not to Scale C -Fill to be Removed c Fill to be Retained - 0 O O ò B ð Ò C ð d ò D C i Ċ O O ð Ó O. õ ĉ, D ø Colvert 22' 1049 Gravel Pad 18" diame 20'x 25' x 3' 7. à 0 0 G in Ô Gravel Driveway 30'x12'x3' - 0. 12" diam. culvert 1-12-1

Restoration Work Plan Docket No. CWA-10-2003-0056

Stanley Pieniazek Fairbanks, Alaska