



REGION 3

PHILADELPHIA, PA 19103

FILED

Jul 30, 2024

10:43 am

**U.S. EPA REGION 3
HEARING CLERK**

In The Matter of:

Sun Tall Pines Harbor RV, LLC
27777 Franklin Road
Suite 300
Southfield, Michigan, 48034.

Respondent.

Property Located At:

8107 Tall Pines Lane
Temperanceville, Virginia 23442.

Proceeding Under Section 309(a) of the Clean
Water Act, 33 U.S.C. § 1319(a)

ADMINISTRATIVE ORDER ON CONSENT

U.S. EPA Docket No. CWA-03-2024-0067DW

I. STATUTORY AUTHORITY

1. This Administrative Order for Compliance (“Order”) is issued under the authority vested in the United States Environmental Protection Agency (“EPA”) by Section 309(a) of the Clean Water Act, 33 U.S.C. § 1319(a) (“CWA” or “Act”). The Administrator has delegated this authority to the Regional Administrator of EPA, Region 3, who in turn has re-delegated it to the Director of the Enforcement & Compliance Assurance Division.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

2. Sun Tall Pines Harbor, RV, LLC, a corporation incorporated in the State of Michigan, (“Respondent”) is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).
3. Respondent is the owner and/or operator of the property located at 8107 Tall Pines Lane, Temperanceville, Virginia 23442, Accomack County Tax Map # 24-A-129, and Parcel 02400A000012900 (“the Site”), depicted in Exhibit A (Site Map).
4. Respondent operates a campground at the Site, depicted in Exhibit A (Site Map).

5. The northernmost boundary of the Site is the Pocomoke Sound, a traditional navigable water. The Site contains wetlands that abut and have a continuous surface connection to the Pocomoke Sound. The Pocomoke Sound and the abutting wetlands complex are “waters of the United States” within the meaning of Section 502(7) of the CWA, 33 U.S.C. § 1362(7).
6. The discharge of fill and/or dredged material into or onto waters of the United States without a permit from the United States Army Corps of Engineers (“Corps”) pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of the CWA.
7. Since at least November 3, 2021, Respondent, or persons acting on behalf of Respondent, have, on an ongoing basis, operated equipment that discharged dredged and/or fill material to waters of the United States at the Site without authorization from the Corps.
8. EPA conducted an inspection on April 5, 2023, and observed that Respondent had discharged fill material to approximately 2.5 acres of waters of the United States at the Site. The approximate locations of the discharges are shown in Exhibit A (Site Map).
9. On January 31, 2024, EPA issued Respondent a Notice of Violations and Opportunity to Confer (NOPVOC).
10. Section 301(a) of the CWA, 33 U.S.C. §1311(a), prohibits any person from discharging dredged and/or fill material from a point source to “waters of the United States” except in compliance with a permit issued by the Corps under Section 404 of the CWA, 33 U.S.C. § 1344.
11. The term “fill material,” within the meaning of 40 C.F.R. § 232.2, includes any pollutant which replaces portions of “waters of the United States” with dry land or which changes the bottom elevation of a water body for any purpose.
12. The term “discharge of fill material,” within the meaning of 40 C.F.R. § 232.2, includes “[p]lacement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States.”
13. The term “discharge of dredged material,” within the meaning of 40 C.F.R. § 232.2, includes the “addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States.”
14. The equipment referenced in Paragraph 7 above, from which the dredged and/or fill material was discharged to waters of the United States on the Site, constitutes a “point source” within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

15. The adding of fill and/or dredged material since at least November 3, 2021, into waters of the United States on the Site constitutes a “discharge of a pollutant” within the meaning of Sections 502(16) and 502(12) of the CWA, 33 U.S.C. § 1362(16) and § 1362(12).
16. At no time during the discharge of dredged and/or fill material into waters of the United States at the Site did the Respondent have a permit from the Corps as required by Section 404 of the CWA, 33 U.S.C. § 1344.
17. Since at least November 3, 2021, Respondent has violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging dredged and/or fill material to the “waters of the United States” from a point source without authorization.

III. ORDER FOR COMPLIANCE

Therefore, the Respondent is hereby ORDERED, and Respondent CONSENTS, pursuant to Section 309(a) of the CWA, 33 U.S.C. § 1319(a), to do the following:

18. Cease and desist all discharges to waters of the United States at the Site, including filling, clearing, and grading except in compliance with a CWA Section 404 or 402 permit or in accordance with the plans submitted and approved pursuant to this Order.
19. Restoration and Mitigation Plan. Within sixty (60) calendar days of the Effective Date of this Order, Respondent shall submit via email to EPA a detailed “Restoration and Mitigation Plan” developed by a qualified professional trained in wetland and stream restoration work to return the Site to compliance with the CWA. Unless otherwise approved by the EPA, the Restoration and Mitigation Plan shall include the following elements. Failure to include any of the following elements will be considered a violation of this Order:
 - a. A written description of the actions to be taken to remove the dredged and fill material and restore the waters of the United States on the Site, specifically, the waters of the United States described above, and depicted in Exhibit A (Site Map). Restoration shall be to the approximate pre-disturbance grade and conditions, including the identification of an upland disposal area where the material removed from the wetlands will be placed. The written description must:
 - i. Account for permanent stabilization of the Site.

- ii. Include a planting plan to revegetate the wetlands once the fill material is removed that utilizes species native to Virginia and includes a seed mix and woody vegetation. It should account for decompaction of the soil and the potential need for soil amendments, if necessary, to allow for successful reestablishment of a hydrophytic vegetative community.
 - iii. Incorporate measurable, quantitative performance criteria consistent with pre-disturbance conditions utilizing an appropriate reference.
 - iv. Include provisions for post-restoration monitoring with an adaptive management plan designed to document the progress toward attainment of the performance criteria for a period of time consistent with the monitoring period.
- 20. After review of the Restoration and Mitigation Plan specified in Paragraph 19 (Restoration and Mitigation Plan), EPA will either: a) approve the Plan, in whole or in part; b) approve the Plan upon specified conditions; c) modify the Plan to correct any deficiencies; d) disapprove the Plan, in whole or in part; or e) any combination of the above.
- 21. If EPA disapproves all or part of the Restoration and Mitigation Plan, Respondent shall, within thirty (30) calendar days of receipt of EPA's disapproval, correct the deficiencies and resubmit the Plan for approval. If the Plan is not approved as provided in this Order, EPA retains the right to order restoration in accordance with a plan to be developed by EPA.
- 22. Following EPA's approval of the Restoration and Mitigation Plan (either with or without conditions or modifications required by EPA), Respondent shall implement the restoration work identified in the Plan, as approved or modified by EPA, as provided below. All restoration work shall be completed within the schedule of work in the Restoration Plan to be approved by EPA.
- 23. No later than twenty (20) calendar days after the completion of the restoration activities, Respondent shall submit a certification to EPA, which will include the language set forth in Paragraph 30 (Certification), certifying that the work described in the approved Restoration Plan has been completed.
- 24. Respondent shall monitor the restored area at the Site for a period of no less than ten (10) years to ensure the objective of restoring impacted aquatic resources. Respondent shall conduct monitoring events at the Site twice per year, once in the spring and once in the fall, and submit to EPA a monitoring report at the address listed in Paragraph 29 (Correspondence), including the language set forth in Paragraph 30 (Certification), by December 31st of the monitoring year.

25. EPA shall review each monitoring report to determine whether the restoration efforts undertaken by Respondents have been successful. Responsibility to complete the required restoration as set forth in the approved Restoration and Mitigation Plan will not be considered fulfilled until Respondents have demonstrated project success and have received written verification of that success from EPA.
26. EPA shall terminate the order once all conditions in the Restoration and Mitigation Plan have been met, written verification has been provided, and the monitoring period specified in Paragraph 24 has elapsed. Any modifications to this order or the Restoration and Mitigation Plan may be made only upon written approval by the EPA.
27. Respondent shall not discharge any dredged or fill material into the waters of the United States except in compliance with a permit issued pursuant to Section 404 of the CWA, or in accordance with the plans submitted and approved pursuant to this Order.
28. Respondent's failure to complete the work in a manner consistent with this Order and the approved Restoration and Mitigation Plan shall be deemed a violation of this Order.
29. Correspondence. All correspondence related to this Order shall be sent electronically to:

Robert George
Enforcement Inspector
Enforcement & Compliance Assurance Division
United States Environmental Protection Agency, Region 3
george.robert@epa.gov

and

Attention: Lauren Zarrillo
Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency, Region 3
R3_ORC_mailbox@epa.gov

IV. GENERAL PROVISIONS

30. Certification. The following certification must accompany each submission by the Respondent pursuant to this Order and must be signed by a Representative of the Respondent authorized to sign on behalf of the Respondent:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Signed:

Title:

Date:

31. Respondent's compliance with the terms of this Order shall not relieve Respondent of their obligation to comply with all applicable provisions of the CWA or any other Federal, Commonwealth or local law or regulation. Issuance of this Order is not an election by EPA to forego any civil or criminal action otherwise authorized by the Clean Water Act. EPA reserves the right to seek any remedy available under the law that it deems appropriate to the violations described herein. Compliance with this Order shall not be a defense to any action commenced pursuant to such authorities.
32. Violation of the terms of this Order may result in further EPA enforcement action including, but not limited to, imposition of administrative penalties, pursuant to 33 U.S.C. § 1319(g) as modified by the Debt Collection Procedures Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and/or initiation of judicial proceedings that allow for civil penalties of up to \$53,484 per day for each day of violation that occurs, and/or for the criminal sanctions of imprisonment and fines of up to \$25,000 per day, 33 U.S.C. § 1319(c).

33. The provisions of this Order shall apply to and be binding upon the Respondent and their officers, directors, employees, contractors, agents, trustees, successors and assigns of Respondent.
34. Respondent shall allow EPA personnel on the Site for the purpose of inspecting work performed pursuant to this Order upon reasonable notice. EPA reserves all existing inspection authority otherwise available to EPA pursuant to Section 308 of the CWA, 33 U.S.C. § 1318, or pursuant to any other statute or law.
35. Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.

VII. EFFECTIVE DATE

36. The effective date of this Order shall be the date of receipt of the executed document by Respondent via overnight delivery of a fully executed copy of this Order. Respondent shall confirm such date to EPA in writing at george.robert@epa.gov.

VII. TAX IDENTIFICATION

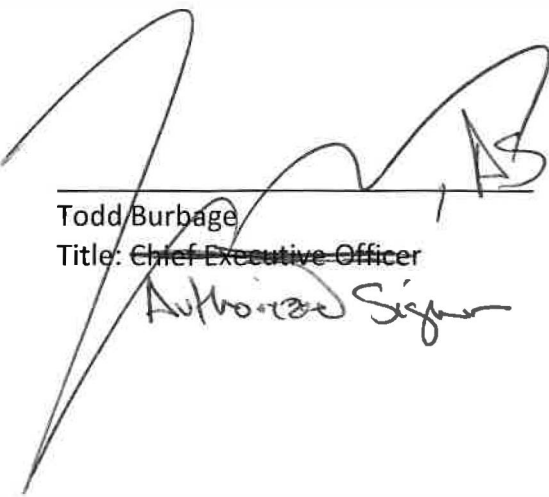
37. For purposes of the identification requirement in Section 162(f)(2)(A)(ii) of the Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), and 26 C.F.R. § 162-21(b)(2), performance of the activities in Section III (Order for Compliance), Paragraphs 18-36 is restitution, remediation, or required to come into compliance with the law.
38. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e., a copy of IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number ("TIN"), as described below, may subject Respondent to a penalty, per 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with

sufficient information to enable it to fulfill these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to EPA’s Cincinnati Finance Center at **henderson.jessica@epa.gov**, within 30 days after the effective date of this Order, and EPA recommends encrypting IRS Form W-9 email correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it has applied for a TIN and that TIN has not been issued to Respondent within 30 days after the effective date of this Order, then Respondent, using the same email address identified in the preceding sub-paragraph, shall further:
 - i. notify EPA’s Cincinnati Finance Center of this fact, via email, within 60 days after the effective date of this Order; and
 - ii. provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via email, within five (5) days of Respondent’s issuance and receipt of the TIN.

ON BEHALF OF RESPONDENT SUN TALL PINES HARBOR RV, LLC

Date: 6-21-24



Todd Burbage

Title: ~~Chief Executive Officer~~

Authorized Signer

ON BEHALF OF THE COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

Karen Melvin, Director
[digitally signed and dated]
Enforcement & Compliance Assurance Division
U.S. EPA, Region 3

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 3
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
Sun Tall Pines Harbor RV, LLC	:	U.S. EPA Docket No. CWA-03-2024-0067DW
27777 Franklin Road	:	
Suite 300	:	ADMINISTRATIVE ORDER ON CONSENT
Southfield, Michigan, 48034.	:	PURSUANT TO SECTION 309(a) OF THE CLEAN
	:	WATER ACT, 33 U.S.C. § 1319(a).
Respondent.	:	
	:	
Property Located At:	:	
	:	
8107 Tall Pines Lane,	:	
Temperanceville, Virginia 23442.	:	

CERTIFICATE OF SERVICE

I certify that the foregoing Administrative Order on Consent was filed with the EPA Region 3 Regional Hearing Clerk on the date that has been electronically stamped on the Administrative Order on Consent. I further certify that on the date set forth below, I caused to be served a true and correct copy of the foregoing Administrative Order on Consent to each of the following persons, in the manner specified below, at the following addresses:

Copies served via email [**via UPS and email for orders requiring personal service**] to:

Mr. Todd Burbage, Chief Executive Officer
Sun Tall Pines Harbor RV, LLC
d/b/a Sun Outdoors Chesapeake Bay
8107 Tall Pines Lane
Temperanceville, VA 23442
tburbage@bwdc.com

Copies served via email to:

Lauren J. Zarrillo
Assistant Regional Counsel
U.S. EPA, Region 3
zarrillo.lauren@epa.gov

Robert George
Enforcement Inspector
U.S. EPA, Region 3
george.robert@epa.gov

[Digital Signature and Date]
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 3