

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

IN THE MATTER OF)

Navisun LLC)
18 Shipyard Drive, Suite 2A)
Hingham, MA 02043)

Respondent)

Proceeding under Section 309(g))
of the Clean Water Act,)
33 U.S.C. § 1319(g))
_____)

DOCKET NO: CWA-01-2024-0001

ADMINISTRATIVE CONSENT
AGREEMENT AND FINAL ORDER

1. The Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region 1 (“EPA”) enters into this Consent Agreement and Final Order (“CAFO”) with Navisun LLC. (“Navisun” or “Respondent”), under authority Section 309(g) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g), and in accordance with applicable delegations and 40 C.F.R. §§ 22.13(b) and 22.18 of EPA’s *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination, or Suspension of Permits* (“*Consolidated Rules*”), for the purpose of resolving alleged violations of Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a).

2. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), EPA has notified the Commonwealth of Massachusetts this action.

General Allegations

3. The CWA is designed to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

4. To accomplish the objectives of the CWA, Section 301(a) of the CWA, 33 U.S.C.

§ 1311(a), prohibits the discharge of pollutants by any person except in compliance with a permit issued pursuant to Section 402 or 404 of the CWA, 33 U.S.C. §§ 1342 or 1344, and EPA's implementing regulations, found at 40 C.F.R. Part 122.

5. Section 502(5) of the CWA, 33 U.S.C. § 1362(5), defines "person" to include "an individual, corporation, partnership, [or] association."

6. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

7. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), defines "pollutant" to include, among other things, industrial, municipal, and agricultural waste discharged into water.

8. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines "point source" to include "any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged."

9. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines "navigable waters" as "the waters of the United States, including the territorial seas."

10. Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes the Administrator of EPA to require the owner or operator of any point source to provide such information as the Administrator may reasonably need to carry out the objectives of the CWA, including, among other things, the development and issuance of NPDES permits under Section 402 of the CWA, 33 U.S.C. § 1342.

11. Pursuant to Sections 308 and 402 of the CWA, 33 U.S.C. §§ 1318 and 1342, EPA promulgated stormwater discharge regulations at 40 C.F.R. § 122.26.

12. 40 C.F.R. § 122.26(b)(13) defines "stormwater" to include stormwater runoff, snow melt runoff, and surface runoff and drainage.

13. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), authorizes EPA to issue NPDES permits for the discharge of pollutants into navigable waters in compliance with the CWA.

14. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and implementing regulation 40 C.F.R. § 122.26(a)(1)(ii) require stormwater discharges associated with industrial activity to be authorized by a NPDES permit.

15. 40 C.F.R. § 122.26(c)(1) provides that dischargers of stormwater associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a general permit.

16. Pursuant to 40 CFR 122.26(b)(14)(x), stormwater discharges associated with industrial activity includes stormwater discharges associated with construction activity, including clearing, grading and excavation of five acres or more of total land area.

17. On January 18, 2022, EPA issued the Construction General Permit (“CGP”) for stormwater discharges, which became effective on February 17, 2022. The CGP contains conditions designed to ensure the implementation of best practices to prevent the stormwater discharge of pollutants.

Findings of Violation

18. Respondent is a Delaware corporation registered to do business in Massachusetts, with a principal office located at 18 Shipyard Drive, Hingham, Massachusetts. Respondent is a “person” within the meaning of 502(5) of the CWA, 33 U.S.C. § 1362(5), and 40 C.F.R. § 112.2.

19. Respondent is the developer of a solar photovoltaic array project located at 550 Main Street in the Town of Acushnet, Massachusetts (“the Site”). Respondent cleared approximately 16 acres of land to construct its project.

20. Since at least December 2022, Respondent has conducted “industrial activity,” within the meaning of 40 C.F.R. § 122.26(b)(14)(x) at the Facility.

21. Respondent submitted a Notice of Intent to EPA on October 4, 2022, certifying the Site's eligibility for coverage under the CGP, which became effective on October 18, 2022 (NPDES Permit No. MAR1004AX).

22. Stormwater from the Site associated with industrial activity discharges to adjacent ponds and an unnamed stream with surface water connections to the Acushnet River.

23. The ponds, unnamed stream and Acushnet River are waters of the U.S.

24. On December 18, 2022, the Acushnet Conservation Commission ("the Commission") issued an enforcement order to Respondent for the uncontrolled discharge of stormwater from the Site containing high levels of sediment into adjacent ponds with surface water connections to the Acushnet River occurring in December 2022.

25. These discharges were in violation of Parts 2.1 and 2.1.4 and of the CGP.

26. On May 2, 2023, a conservation agent from the Commission inspected the Site and documented that Respondent had failed to implement and/or maintain ground stabilization measures over large areas of the Facility.

27. These deficiencies are violations of Part 2.2.14 of the CGP.

28. By failing to comply with the term and conditions of the CGP as described above, Respondent's discharges of stormwater from the Site violated Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

Consent Agreement

29. EPA and Respondent agree that settlement of this cause of action is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter. Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

30. Consistent with 40 C.F.R. § 22.18(b)(2), Respondent admits the jurisdictional allegations set forth in this CAFO, and neither admits nor denies the factual or non-jurisdictional allegations set forth in this CAFO.

31. Respondent waives the right to a hearing under Section 309(g)(2)(B) and CWA, 33 U.S.C. § 1319(g)(2)(B), and to any appeal of the Final Order in this matter under Sections 309(g)(8)(B) of the CWA, 33 U.S.C. § 1319(g)(8)(B).

32. EPA proposes, and Respondent consents to, the assessment of a civil penalty of \$25,000 for all violations alleged in this CAFO.

33. Respondent shall pay the total penalty of \$25,000 within 10 calendar days of the date this CAFO becomes final.

34. In agreeing to the penalty set forth in paragraphs 32 and 33 EPA has taken into account the statutory penalty factors at Section 309(g)(3) CWA, 33 U.S.C. § 1319(g)(3). The payment shall be remitted as follows:

If remitted by regular U.S. mail:

U.S. EPA / Fines and Penalties
Cincinnati Finance Center
P.O. Box 979078
St. Louis, Missouri 63197-9000

If remitted by any overnight commercial carrier:

U.S. Environmental Protection Agency
Government Lockbox 979078
3180 Rider Trail S.
Earth City, MO 63045

If remitted by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City using the following information:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33

33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

35. At the time of payment, Respondent shall simultaneously send notice of the payments or copies of the check to:

Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code 4-MO)
Boston, MA 02109-3912

and

Jaegun Lee
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (Mail Code 4-WD)
Boston, MA 02109-3912

36. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), a failure by Respondent to pay the penalty assessed by this CAFO in full by its due date shall subject Respondent to a civil action to collect the assessed penalty, plus interest at the prevailing rates, from the date this Consent Agreement becomes final. The rate of interest assessed shall be at the rate set forth in 31 C.F.R. § 901.9(b), promulgated under 31 U.S.C. § 3717. Any person who fails to pay on a timely basis the amount of an assessed penalty shall be required to pay, in addition to such amount and interest, attorney's fees, costs for collection proceedings, and a quarterly non-penalty payment for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's penalties and nonpayment penalties that are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

General Provisions

37. The provisions of this CAFO shall apply to, and be binding on, Respondent, and Respondent's officers, directors, and successors or assigns. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use those payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

38. This CAFO does not constitute a waiver, suspension, or modification of the requirements of the CWA or any regulations or permits promulgated thereunder. Payment of the penalty pursuant to this CAFO resolves only Respondent's liability for federal civil penalties for the violations and facts alleged herein through the effective date of this CAFO.

39. This CAFO in no way relieves Respondent or its employees of any criminal liability, and EPA reserves all its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to undertake any action against Respondent in response to conditions which may present an imminent and substantial endangerment to the public health, welfare, or the environment.

40. Nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this CAFO or of the statutes and regulations upon which this CAFO is based, or for Respondent's violation of any applicable provision of law.

41. Except as described in paragraph 36 above, the parties shall bear their own costs and fees in this action, including attorney's fees, and specifically waive any right to recover such

costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

42. Respondent's obligations under the CAFO shall end when it has paid in full the scheduled civil penalty, and any interest or nonpayment penalties, and submitted the documentation required by this CAFO.

43. The terms, conditions, and requirements of this CAFO may not be modified or amended except upon the written agreement of all parties, and approval of the Regional Administrator or his or her properly authorized delegee.

44. Each undersigned representative of the parties to this Consent Agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

45. Respondent agrees to acceptance of the Complainant's: i. digital or an original signature on this CAFO; ii. service of the fully executed CAFO on the Respondent by mail or electronically by e-mail. Respondent understands that the mailing or e-mail address may be made public when the CAFO and certificate of service are filed and uploaded to a searchable database. Complainant agrees to acceptance of the Respondent's digital or an original signature on this Agreement.

FOR NAVISUN LLC



Sign Name _____
Print Name Allen Bucknam
Title Interim CEO and Board Member

Date: January 30, 2024

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY:

Carol Tucker, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region 1

Date: _____

FINAL ORDER

1. EPA has provided a thirty-day opportunity for public notice and comment on this proposed CAFO, pursuant to Section 309(g)(4)(A) of the CWA, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b).

2. The foregoing Consent Agreement is incorporated by reference into this Final Order and is hereby ratified.

3. Respondent is hereby ordered to comply with the terms of the above Consent Agreement, which will become final 30 days from the date the Regional Judicial Officer transmits the Final Order to the Regional Hearing Clerk, unless a petition to set aside the order is filed by a commenter pursuant to Section 309(g)(4)(C) and of the CWA, 33 U.S.C. § 1319(g)(4)(C), and 40 C.F.R. Part 22.

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

Date: _____