

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
 REGION III  
 1650 Arch Street  
 Philadelphia, Pennsylvania 19103-2029**

In The Matter of

Proceeding to Assess a Class II  
 Administrative Penalty Under  
 Section 309(g) of the Clean Water  
 Act, 33 U.S.C. § 1319(g)

PulteGroup, Inc.  
 100 Bloomfield Hills Parkway  
 Bloomfield Hills, Michigan 48304

CONSENT AGREEMENT  
 AND  
 FINAL ORDER

Respondent

Docket No. CWA-03-2013-0094

Property Located At:

Metro West Vaden Drive Extension  
 9624 T Stockwell Lane  
 Fairfax, Virginia 22031

Lakeview at Brandywine  
 Accokeek Road & Owings Avenue  
 Brandywine, Maryland 20613

2013 JUN 17 PM 2:56  
 REGIONAL HEARING CLERK  
 EPA REGION III PHILA. PA

**RECEIVED**

**I. STATUTORY AUTHORITY**

1. The following Consent Agreement and Final Order (“CAFO”) 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 “the Act”). The Information Request is issued under the authority vested in EPA by Section 308 of the CWA, 33 U.S.C. § 1318. The Administrator of EPA has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated it to the Director of the Water Protection Division of EPA Region III. This CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) & (3).

## **II. BACKGROUND**

2. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person from a point source into waters of the United States except in compliance with specified requirements of the Act, including a permit issued pursuant to the National Pollutant Discharge Elimination System (“NPDES”) program under Section 402 of the Act, 33 U.S.C. § 1342 and 40 C.F.R. Part 122.
3. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(a), the Commonwealth of Virginia has been authorized by EPA to administer the NPDES program within the Commonwealth of Virginia.
4. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(a), the State of Maryland has been authorized by EPA to administer the NPDES program within the State of Maryland.
5. Pursuant to Section 309(a)(1) of the Act, 33 U.S.C. § 1319(a)(1), EPA is authorized to enforce the terms of any permit issued by a State under an EPA- approved NPDES permit program.
6. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.1 and 122.26 provide that facilities with stormwater discharges associated with industrial activity are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).
7. The term “industrial activity” includes, among others, “[c]onstruction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more[.]” 40 C.F.R. § 122.26(b)(14)(x).
8. “Discharge of a pollutant” includes “any addition of any pollutant or combination of pollutants to waters of the United States from any point source.” 40 C.F.R. § 122.2.
9. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. § 122.26(b)(13).

## **III. EPA FINDINGS AND ALLEGATIONS**

10. PulteGroup, Inc. (“Respondent”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

Metro West Site

11. Respondent is the parent corporation of Pulte Home Corporation (“PHC”).
12. At all times relevant to this CAFO, and upon information and belief, PHC was the owner and/or operator of a site known as Metro West Vaden Drive Extension (“Metro West”), located in Fairfax, Virginia.
13. PHC has been at all relevant times engaged in construction activity at Metro West that discharges stormwater from a point source to Accotink Creek. The construction activity at Metro West has disturbed or will disturb approximately 58.28 acres of land.
14. Accotink Creek is a tributary to Gunston Cove, which is a tidal embayment of the Potomac River. The Potomac River is a "navigable water," as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), as well as a “water of the United States,” as defined in 40 C.F.R. 122.2. The Accotink Creek is therefore a “water of the United States” and a “navigable water”.
15. Accotink Creek was identified as impaired on Virginia’s 1996 CWA Section 303(d) Impaired Waters list for not meeting the aquatic life use due to poor health in the benthic biological community. A total maximum daily load (“TMDL”) was established in April 2012 identifying sedimentation caused by excessive stormwater runoff as the primary stressor impacting benthic invertebrates.
16. Pursuant to the authority of the Act, the NPDES program approval, and the Virginia State Water Control Law, Virginia has issued Virginia Pollutant Discharge Elimination System (“VPDES”) Permit No. VAR10 [Virginia Stormwater Management Program (“VSMP”) General Permit for Discharges of Stormwater from Construction Activities] (the “VA Permit”). The effective date of the Permit is July 1, 2009 and the expiration date is June 30, 2014.
17. Section II.A.1. of the VA Permit requires a Storm Water Pollution Prevention Plan (“SWPPP”) to be developed prior to submission of a registration statement and for the SWPPP to be implemented for the construction activity covered by the VA Permit. SWPPPs shall be prepared in accordance with good engineering practices. According to Section II.A.3 of the Permit, an Erosion and Sediment Control Plan (“E&S Plan”) is a component of the SWPPP. The SWPP, including the E&S Plan become requirements of the VA Permit.
18. The SWPPP must describe erosion and sedimentation control measures (“Best Management Practices” or “BMPs”) to control runoff from the Site to protect surface waters.
19. Pursuant to Sections 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1342(a) and (p), and VPDES Permit VAR10, Respondent submitted a VSMP General Permit Registration Statement on or about May 29, 2009, and received approval, effective July 1, 2009, for the discharge of stormwater from construction activities at the Site under VPDES Permit

No. VAR10-10-102119.

20. On August 26, 2011, representatives of EPA conducted an inspection at Metro West (the "Inspection").

**Violation I: Inlet Protection (Metro West)**

21. PHC's E&S Plan includes a diagram for the construction of gravel and wire mesh drop inlet sediment filters. The diagram specifies that wire mesh shall be laid over the drop inlet so that the wire extends a minimum of 1 foot beyond each side of the inlet structure. VDOT #3, #357, or #5 coarse aggregate stone shall be placed over the wire mesh, to a depth of at least 12 inches over the entire inlet opening. The stone shall extend beyond the inlet opening at least 18 inches on all sides.
22. During the Metro West Inspection, EPA representatives observed numerous drop inlets at Metro West that had one or more of the following deficiencies: wire mesh that did not extend one foot beyond each side of the inlet structure; the depth of stone coverage was less than 12 inches; stones did not cover the entire inlet opening; stone coverage did not extend beyond the inlet opening at least 18 inches on all sides.
23. By failing to install drop inlet sediment filters in accordance with the E&S Plan, PHC is in violation of the VA Permit.

Lakeview at Brandywine Site

24. Respondent is the parent corporation of Centex Homes ("Centex").
25. At all times relevant to this Order, upon information and belief, Centex was the owner and/or operator of a site known as Lakeview at Brandywine ("Lakeview Site"), located in Brandywine, Maryland.
26. Centex has been at all relevant times engaged in construction activity at the Lakeview Site that discharges stormwater from a point source to the Piscataway Creek. The construction activity at the Lakeview Site has disturbed or will disturb approximately 123.1 acres of land.
27. The Piscataway Creek is a tributary to the Potomac River. The Potomac River is a "navigable water," as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7) as well as a "water of the United States," as defined in 40 C.F.R. 122.2. The Piscataway Creek is therefore a "water of the United States" and a "navigable water."
28. Piscataway Creek was identified as impaired on Maryland's 1996 303(d) list for not meeting the Aquatic Life and Wildlife use due to unknown causes.
29. Pursuant to the authority of the Act, the NPDES program approval, and Maryland State law, Maryland issued General NPDES Permit Number MDR10 (General Permit for

Stormwater Associated With Construction Activities) (the "MD Permit"). The effective date of the MD Permit is February 26, 2010 and the expiration date is December 31, 2013.

30. The MD Permit authorizes discharges of storm water associated with construction activities to waters of the United States (including discharges to, or through municipal separate storm sewer systems), but only in accordance with the conditions of the MD Permit, the storm water management plan, and the erosion and sediment control plan, which are required by the MD Permit.
31. The storm water management and erosion and sediment control plans must describe erosion and sedimentation control measures ("Best Management Practices" or "BMPs") to control runoff from the Lakeview Site to protect surface waters.
32. Pursuant to Sections 402(a) and 402(p) of the Act, 33 U.S.C. §§ 1342(a) and (p), and General NPDES Permit Number MDR10, Centex submitted a Notice of Intent to be covered under General NPDES Permit Number MDR10 on or about December 18, 2009, and received approval, effective February 26, 2010, for the discharge of stormwater from construction activities at the Site under General NPDES Permit Number MDR10-PG-0043.
33. Part II.A.3. of the MD Permit requires Centex to develop and obtain approval an Erosion and Sediment Control Plan in accordance with the requirements established in Title 4, Subtitle I of the Environment Article, Annotated Code of Maryland (Sediment Control); and in Code of Maryland Regulations ("COMAR") 26.17.01.
34. Centex's Erosion and Sediment Control Plan for the Lakeview Site was approved by Prince Georges County on April 25, 2011.
35. Part VI.A. of the MD Permit requires Centex to comply with the provisions of its Erosion and Sediment Control Plan.
36. On August 25, 2011, EPA representatives conducted an inspection at the Lakeview Site (the "Lakeview Inspection").

**Violation II: Inlet Protection (Lakeview)**

37. Centex's Erosion and Sediment Control Plan requires Centex to place stones, ranging in size between three-quarters of an inch to one and one-half inches, in front of and extending six inches beyond each edge of all inlet grates.
38. During the Lakeview Inspection, EPA representatives observed that Centex had placed stones in front of inlet grates that were larger than size range specified in the Erosion and Sediment Control Plan. Further, EPA representatives observed that the placement of the stones was only in the area directly in front of the inlet grate, and did not extend to six inches beyond the edges of the inlet grate.

39. By failing to install inlet grate stones at the Lakeview Site in accordance with Centex's Erosion and Sediment Control Plan, Centex is in violation of the MD Permit.

**Violation III: Silt Fencing (Lakeview)**

40. Part IV.F. of the MD Permit requires Centex to at all times properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by [Centex] to achieve compliance with the conditions of the MD Permit.
41. Pursuant to its Erosion and Sediment Control Plan, Centex installed silt fencing at various parts of the Lakeview Site.
42. During the Lakeview Inspection, EPA representatives observed several Lakeview Site locations where silt fencing had been undermined, entrenched, or was otherwise failing due to lack of maintenance and/ or sediment accumulation.
43. By failing to maintain silt fencing at the Lakeview Site, Centex is in violation of the MD Permit.

**Violation IV: Non-stormwater Discharge (Lakeview)**

44. Part III.A. of the MD Permit prohibits non-stormwater discharges, except for non-stormwater discharges discharged under the following circumstances: 1) in accordance with the Erosion and Sediment Control Plan; 2) in accordance with an NPDES permit; or 3) the non-stormwater component of the discharge is from fire fighting activities; fire hydrant flushings; air conditioning condensate; uncontaminated spring water; and foundation or footing drains where flows are not causing an erosive condition or contaminated with process materials such as solvents.
45. During the Lakeview Inspection, EPA representatives observed a discharge of "form release" oil from a concrete pump truck into a stormwater inlet at the Lakeview Site.
46. The discharge referenced Paragraph 45 did not occur in accordance with Centex's Erosion and Sediment Control Plan, an NPDES permit, or under any of the exceptions listed in Part III.A.4. of the MD Permit, as referenced in Paragraph 44, above.
47. The discharge of "form release" oil at the Lakeview Site is in violation of the MD Permit.

**IV. CONCLUSION OF LAW**

48. EPA finds that Respondent violated the terms of the VA Permit and the MD Permit as described above, and thus Respondent violated Section 301 of the Act, 33 U.S.C. §

1311(a).

**V. CONSENT AGREEMENT AND FINAL ORDER**

49. Respondent neither admits nor denies EPA's findings and allegations set forth in Section III, above.
50. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
51. Respondent hereby expressly waives its right to a hearing or other proceeding on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consent to issuance of this CAFO without adjudication.
52. Each party shall bear its own costs and attorney fees.
53. The provisions of this CAFO shall be binding upon Respondent, its officers, principals, directors, successors and assigns.
54. The parties agree that settlement of this matter prior to the initiation of litigation, any hearing or adjudication is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
55. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on this CAFO prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Maryland Department of the Environment and the Virginia Department of Conservation and Recreation regarding this action, and will mail a copy of this document to the appropriate Maryland and Virginia officials.
56. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s) alleged, Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA and Respondent agree that Respondent will pay an administrative civil penalty in the amount of fifty six thousand dollars (\$56,000) in full and final settlement of EPA's claims for the violations alleged herein.
57. Respondent shall pay the amount of fifty six thousand dollars (\$56,000) pursuant to this CAFO within thirty (30) days of the effective date, in the following manner:
  - A. All payments by Respondents shall reference Respondents' name and address, and the Docket Number of this action, CWA 03-2013-0094;
  - B. All checks shall be made payable to "United States Treasury";
  - C. All payments made by check and sent by regular mail shall be addressed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact: Heather Russell 513-487-2044

- D. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. Bank  
Government Lockbox 979077  
U.S. EPA, Fines & Penalties  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: 314-418-1028

- E. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- F. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
"D 68010727 Environmental Protection Agency"

- G. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency

CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

H. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV  
Enter sfo 1.1 in the search field. Open and complete the form.

I. Additional payment guidance is available at:  
[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

58. Respondent shall send notice of such payment, including a copy of the check if payment is made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

-and-

Mark Bolender  
Mail Code 3RC20  
Office of Regional Counsel  
U.S. EPA Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

59. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.
60. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely

payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

61. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
62. This Consent Agreement and the accompanying Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present and imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 et seq., the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
63. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations 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.
64. The penalty specified in Paragraph 56, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
65. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

- 66. The undersigned representative of Respondent 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.
- 67. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

**VI. EFFECTIVE DATE**

- 68. Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period was concluded. This CAFO will become final 30 days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).

FOR RESPONDENT:

Date: JANUARY 18, 2013

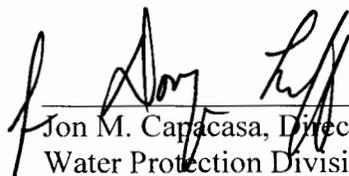
By: David L. Robertson

Name: DAVID L. ROBERTSON

Title: ARSA GENERAL COUNSEL

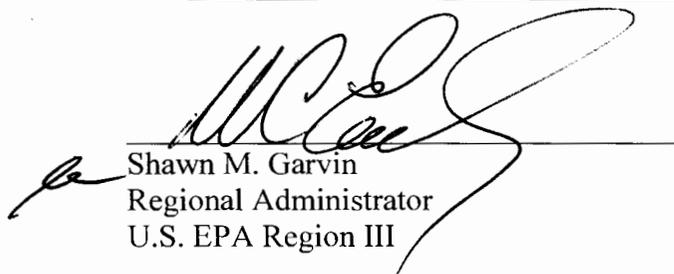
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 2/7/13

  
\_\_\_\_\_  
Jon M. Capacasa, Director  
Water Protection Division  
U.S. EPA Region III

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 13<sup>th</sup> day of June, 2013

  
\_\_\_\_\_  
Shawn M. Garvin  
Regional Administrator  
U.S. EPA Region III