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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGISTRATION CLERK  
EPA -- REGION 10

In the Matter of:

TAMARACK MILL, LLC,  
d/b/a EVERGREEN FOREST,  
New Meadows, Idaho,

Respondent.

DOCKET NO. CWA-10-2016-0031

CONSENT AGREEMENT

**I. STATUTORY AUTHORITY**

1.1. This Consent Agreement is issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by Section 309(g)(2)(B) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g)(2)(B).

1.2. Pursuant to Section 309(g)(1) and (g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(1) and (g)(2)(B), and in accordance with Section 22.18 of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties," 40 C.F.R. Part 22, EPA issues, and Tamarack Mill, LLC (Respondent) agrees to issuance of, the Final Order attached to this Consent Agreement (Final Order).

**II. PRELIMINARY STATEMENT**

2.1. In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this Consent Agreement commences this proceeding, which will conclude when the Final Order becomes effective.

2.2. The Director of the Office of Compliance and Enforcement, EPA Region 10 (Complainant) has been delegated the authority pursuant to Section 309(g) of the CWA,

33 U.S.C. § 1319(g), to sign consent agreements between EPA and the party against whom a Class II penalty is proposed to be assessed.

2.3. Part III of this Consent Agreement contains a concise statement of the factual and legal basis for the alleged violations of the CWA, together with the specific provisions of the CWA and implementing regulations that Respondent is alleged to have violated.

### **III. ALLEGATIONS**

#### **Statutory and Regulatory Background**

3.1. The CWA prohibits the “discharge of any pollutants by any person” except, *inter alia*, as authorized by a National Pollutant Discharge Elimination System (NPDES) permit. CWA § 301(a), 33 U.S.C. § 1311(a); CWA § 402, 33 U.S.C. § 1342.

3.2. The CWA defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source” and defines “navigable waters” to include “waters of the United States.” CWA § 502(7), (12), 33 U.S.C. § 1362(7), (12).

3.3. The CWA defines a “pollutant” to include, *inter alia*, rock, sand, cellar dirt, biological materials, dredged spoil, and solid waste discharged into water. CWA § 502(6), 33 U.S.C. § 1362(6).

3.4. The CWA defines “point source” to include, *inter alia*, “any pipe, ditch, channel, tunnel, conduit, well, [or] discrete fissure ... from which pollutants are or may be discharged.” CWA § 502(14), 33 U.S.C. § 1362(14).

3.5. Waters of the United States include waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce; all interstate waters; and all impoundments and tributaries to those waters. 40 C.F.R. § 122.2.

3.6. The CWA specifies that stormwater discharge “associated with industrial activity” (industrial stormwater) includes the discharge from any conveyance which is used for collecting and processing or raw materials storage areas at an industrial plant. Industrial stormwater is a type of pollutant. CWA § 402(p), 33 U.S.C. § 1342(p); 40 C.F.R. § 122.26(a)(1)(ii), (b)(14).

3.7. EPA may issue an NPDES permit for the discharge of any pollutant, or combination of pollutants, subject to certain requirements of the CWA and conditions that EPA determines are necessary. CWA § 402, 33 U.S.C. § 1342.

3.8. An NPDES permit is required for any stormwater “discharge associated with industrial activity.” CWA § 402(p)(2)(B), 33 U.S.C. § 1342(p)(2)(B); 40 C.F.R. § 122.26(a)(1)(ii).

3.9. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations for the NPDES permit requirements for industrial stormwater discharges at 40 C.F.R. § 122.26. CWA § 402(p), 33 U.S.C. § 1342(p).

3.10. EPA issues NPDES Multi-Sector General Permits for Stormwater Discharges Associated with Industrial Activity (MSGPs) to authorize certain discharges of stormwater associated with industrial activities, provided that appropriate stormwater controls are designed, installed, and maintained, in conformance with the permit criteria. CWA § 402(p), 33 U.S.C. § 1342(p).

3.11. To be authorized to discharge under an applicable MSGP, the discharger must first “prepare and submit a complete and accurate Notice of Intent” (NOI), following the requirements specified by that MSGP, in which the applicant certifies that the applicant meets

the eligibility criteria and will comply with the conditions and requirements set forth in that MSGP.

3.12. Authorization to discharge under Permit No. IDR050000 (2008 MSGP) was available to facilities with industrial activity in the State of Idaho, except for facilities in Indian Country, for the period of September 29, 2009 through September 29, 2013.

3.13. On September 30, 2013, coverage under the 2008 MSGP was administratively continued until a new MSGP was issued. All violations alleged within this Consent Agreement occurred during the time when the 2008 MSGP was in effect.

3.14. Permittees authorized to discharge industrial stormwater under the provisions of the 2008 MSGP are required to implement control measures that reduce and/or eliminate pollutants in stormwater to the extent achievable using control measures that are technologically available and economically practicable and achievable in light of the best industry practice. 2008 MSGP, Part 2.

### **Factual Background**

3.15. At all times relevant to this action, Respondent was a limited liability company organized under the laws of the State of Idaho, and therefore a "person" within the meaning of the CWA. CWA § 502(5), 33 U.S.C. § 1362(5).

3.16. At all times relevant to this action, Respondent owned a facility (Facility), located in New Meadows, Idaho, where Respondent operated a sawmill to manufacture lumber.

3.17. Respondent conducted industrial activity within Standard Industrial Classification (SIC) code 2421, and Manufacturing Major Group 24, Lumber and Wood Products, Except Furniture. 40 C.F.R. § 122.26(b)(14)(ii).

3.18. Respondent submitted a NOI to EPA for coverage under the 2008 MSGP for the Facility on May 22, 2009, which identified Respondent as the operator.

3.19. The Facility is authorized under the 2008 MSGP to release discharges conforming to the requirements of the 2008 MSGP to the Weiser River at three locations: Outfall 001, Outfall 002, and Outfall 003.

3.20. The Weiser River, a tributary to the Snake River and the Columbia River, is a “navigable water” and “waters of the United States,” and is subject to the jurisdiction of the Clean Water Act. CWA § 502(7), 33 U.S.C. § 1362(7); 33 C.F.R. § 328.3(a); 40 C.F.R. § 122.2.

3.21. The Weiser River bisects the Facility, with the majority of activity within the Facility occurring on the western side of the Weiser River.

3.22. EPA conducted an inspection at the Facility on July 15, 2014 (Inspection) to evaluate, *inter alia*, the treatment and disposal of stormwater in accordance with the CWA, the regulations promulgated under the CWA at 40 C.F.R. § 122.26, and the 2008 MSGP.

### **Count 1**

3.23. Respondent was required to retain a copy of its current Stormwater Pollution Prevention Plan (SWPPP) at the facility. 2008 MSGP, Part 5.3.

3.24. Respondent was required to make the Facility’s current SWPPP immediately available to EPA, or other specified entities, at the time of an onsite inspection or upon request. 2008 MSGP, Part 5.3.

3.25. Respondent was required to keep certain inspection, monitoring, and certification records with its SWPPP, including, *inter alia*, the Routine Facility Inspection Reports, Quarterly Visual Assessment Reports, and annual Comprehensive Site Inspection Reports for the Facility.

2008 MSGP, Parts 4.1 – 4.3, 5.4.

3.26. At the time of the Inspection, EPA inspectors asked to review the Facility's current SWPPP, which Respondent was unable to locate or otherwise make available.

3.27. At the time of the Inspection, EPA inspectors asked to review the Facility's Routine Facility Inspection Reports, Quarterly Visual Assessment Reports, and annual Comprehensive Site Inspection Reports, which Respondent was unable to locate or otherwise make available.

3.28. **Violation:** Respondent violated Part 5.3 of the 2008 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to make the Facility's current SWPPP immediately available to EPA at the time of an onsite inspection.

#### **Count 2**

3.29. Respondent was required to submit annual reports to EPA. 2008 MSGP, Part 7.2.

3.30. Respondent did not submit an annual report to EPA in calendar years 2011, 2012, or 2013.

3.31. **Violation:** Respondent violated Part 7.2 of the 2008 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to submit an annual report to EPA for calendar years 2011, 2012, and 2013.

#### **Count 3**

3.32. Respondent sprayed water for intentional wetting of logs at the Facility during the summer months (approximately June to September), at a rate approximately 720,000 gallons per day.

3.33. Respondent was only authorized to discharge stormwater associated with

industrial activity and drainage resulting from the spray down or intentional wetting of logs at wet deck storage areas, if that discharge is conducted in accordance with the terms of the 2008 MSGP. 2008 MSGP, Parts 1.1.2.1, 1.1.2.4, and 8.A.

3.34. Except for a portion of the southeast side of the log storage area, water sprayed for wetting logs within the log storage area, and surface runoff from precipitation within the log storage area, discharged from Outfall 001.

3.35. Water sprayed for wetting logs within the log storage area, and surface runoff from precipitation within the log storage area, discharged from Outfall 001.

3.36. Surface runoff from precipitation that falls near Respondent's maintenance buildings, truck fueling area, and an area with obsolete equipment also discharged from Outfall 001.

3.37. Water discharged from Outfall 001 flowed through a series of settling ponds, after which the discharged water entered a wetland that drained to the Weiser River.

3.38. Respondent was required to monitor pH from discharges resulting from spray down or intentional wetting of logs at wet deck storage areas. 2008 MSGP, Parts 6.2.2.1 and 8.A.7.

3.39. Respondent was required to use a monitoring frequency of twice per year for parameters with numeric effluent limits, as Respondent's Facility is located in Idaho, outside of Indian Country. 2008 MSGP, Parts 6.2.3.1 and 9.10.3.1.

3.40. Respondent was required to analyze samples collected for hydrogen ion concentration (pH) within 15 minutes of collecting the discharge sample. 40 C.F.R. § 136.3, Table II; 2008 MSGP, Appendix B, Part 10.D.

3.41. Respondent was required to submit all monitoring data to EPA using EPA's online eNOI system no later than 30 days after Respondent received complete laboratory results for all monitored outfalls for the reporting period. 2008 MSGP, Part 7.1.

3.42. Respondent failed to collect, analyze, or report pH monitoring data from Outfall 001 in 2011, 2012, 2013, and 2014.

3.43. **Violation:** Respondent violated Parts 6.2.2.1 and 9.10.3.1 of the 2008 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to collect, analyze, and report pH monitoring data from Outfall 001 in 2011, 2012, 2013, and 2014.

#### **Count 4**

3.44. Respondent was required to prepare a SWPPP for Respondent's Facility that depicted the location of, *inter alia*, the locations of all stormwater conveyances including ditches, pipes, and swales; the locations of all stormwater monitoring points; the locations and descriptions of all non-stormwater discharges; and the location of fueling stations. 2008 MSGP, Part 5.1.2.

3.45. Although Respondent's Facility had stormwater conveyances, stormwater monitoring points, non-stormwater discharges, and fueling stations, Respondent did not depict those elements on Respondent's SWPPP.

3.46. **Violation:** Respondent violated Part 5.1.2 of the 2008 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to prepare a SWPPP that depicted the location of all stormwater conveyances, stormwater monitoring points, non-stormwater discharges, and fueling stations at Respondent's Facility.



### Count 5

3.47. Respondent was required to document in the SWPPP for Respondent's Facility the Respondent's procedures for conducting the effluent limitation monitoring requirements specified by the 2008 MSGP, where applicable to Respondent's Facility. 2008 MSGP, Part 5.1.5.2.

3.48. The effluent limitation monitoring requirements, located on Page 12 of Respondent's SWPPP, stated that "Once per year, preferably during the wet season in early fall or mid-spring or early summer, grab samples will be taken and analyzed to ensure compliance with MSGP sector specific limits in Section 8.A.7 for pH and woody debris."

3.49. Respondent was required to use a monitoring frequency of twice per year for parameters with numeric effluent limits, as Respondent's Facility is located in Idaho, outside of Indian Country. 2008 MSGP, Part 9.10.3.1.

3.50. **Violation:** Respondent violated Part 5.1.5.2 of the 2008 MSGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent documented a frequency in Respondent's SWPPP for conducting the effluent limitation monitoring at Respondent's Facility that did not match the frequency required by the 2008 MSGP.

### **IV. TERMS OF SETTLEMENT**

4.1. Respondent admits the jurisdictional allegations contained in this Consent Agreement. Respondent neither admits nor denies the specific factual allegations contained in this Consent Agreement.

4.2. **Penalty:** Pursuant to Section 309(g)(3) of the CWA, 33 U.S.C. § 1319(g)(3), EPA has taken into account the nature, circumstances, extent, and gravity of the alleged violations as

well as Respondent's economic benefit of noncompliance, ability to pay, and other relevant factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle the alleged violations is \$31,500.

4.3. Respondent agrees to pay the total civil penalty set forth in Paragraph 4.2 within 30 days of the effective date of the Final Order. 40 C.F.R. § 22.31(c).

4.4. Payment under this Consent Agreement and the Final Order may be paid by check (mail or overnight delivery), wire transfer, ACH, or online payment. Payment instructions are available at: <http://www2.epa.gov/financial/makepayment>. Payments made by a cashier's check or certified check must be payable to the order of "Treasurer, United States of America" and delivered to the following address:

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

Respondent must note on the check the title and docket number of this action.

4.5. Concurrent with payment, Respondent must serve photocopies of the check, or proof of other payment method, described in Paragraph 4.4 on the Regional Hearing Clerk and EPA Compliance Officer at the following addresses:

Teresa Luna, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, M/S ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
[Luna.teresa@epa.gov](mailto:Luna.teresa@epa.gov)

Chae Park, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, M/S OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
[Park.chae@epa.gov](mailto:Park.chae@epa.gov)

4.6. Except as described in Subparagraph 4.7.2, below, each party shall bear its own fees and costs in bringing or defending this action.

4.7. If Respondent fails to pay the penalty assessed by this Consent Agreement in full by its due date, the entire unpaid balance of penalty and accrued interest shall become immediately due and owing. If such a failure to pay occurs, Respondent may be subject to a civil action to collect the assessed penalty under the CWA, together with interest, fees, costs, and additional penalties described below. In any collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

4.7.1. *Interest.* Interest shall accrue from the effective date of the Final Order, at the rate established by the Secretary of the Treasury, and applied to any portion of the assessed penalty which remains unpaid 30 days after the effective date of the Final Order. CWA § 309(g)(9), 33 U.S.C. § 1319(g)(9); 31 U.S.C. § 3717(a)(1); 40 C.F.R. § 13.11(a)(3).

4.7.2. *Attorneys Fees, Collection Costs, Nonpayment Penalty.* Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a timely basis the penalty set forth in Paragraph 4.2, Respondent shall pay (in addition to any assessed penalty and interest) attorneys fees and costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

4.8. *Federal Tax.* The penalty described in Paragraph 4.2, including any additional costs incurred under Paragraph 4.7, represent an administrative civil penalty assessed by EPA and shall not be deductible for purposes of federal taxes. 26 U.S.C. § 162(f).

4.9. The undersigned representative of Respondent certifies that he or she is authorized to enter into the terms and conditions of this Consent Agreement and to bind Respondent to the terms and conditions of this document.

4.10. Respondent expressly waives any right to contest the allegations and waives any right to appeal the Final Order set forth in the Final Order.

4.11. The provisions of this Consent Agreement and Final Order shall bind Respondent and its agents, servants, employees, successors, and assigns.

4.12. The above provisions in Part IV are STIPULATED AND AGREED upon by Respondent and EPA Region 10.

DATED:

10/29/15

FOR RESPONDENT:



MARK KROGH, Vice President  
Tamarack Mill, LLC

DATED:

11/9/2015

FOR COMPLAINANT:



EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement

**BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

TAMARACK MILL, LLC,  
New Meadows, Idaho

Respondent.

**DOCKET NO. CWA-10-2016-0031**

**FINAL ORDER**

1.1. The Administrator has delegated the authority to issue this Final Order to the Regional Administrator of EPA Region 10, who has in turn delegated this authority to the Regional Judicial Officer in EPA Region 10.

1.2. The terms of the foregoing Consent Agreement are ratified and incorporated by reference into this Final Order. Respondent is ordered to comply with the terms of settlement.

1.3. The Consent Agreement and this Final Order constitute a settlement by EPA of all claims for civil penalties pursuant to the CWA for the violations alleged in Part III of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(a), nothing in this Final Order shall affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law. This Final Order does not waive, extinguish, or otherwise affect Respondent's obligations to comply with all applicable provisions of the CWA and regulations promulgated or permits issued thereunder.

1.4. Respondent waives any and all claims for relief and otherwise available rights or remedies to judicial or administrative review which Respondent may have with respect to any

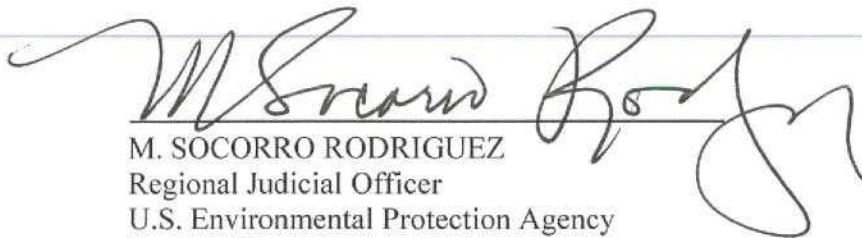
issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

1.5. Pursuant to Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), and 40 C.F.R. § 22.38(b), the Idaho Department of Environmental Quality has been given the opportunity to consult with EPA regarding the assessment of the administrative civil penalty against Respondent.

1.6. 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), EPA has issued public notice of and provided reasonable opportunity to comment on its intent to assess an administrative penalty against Respondent. More than 40 days have elapsed since issuance of this public notice and EPA has received no petition to set aside the Consent Agreement contained herein.

1.7. This Final Order shall become effective upon filing.

SO ORDERED this 14<sup>th</sup> day of December, 2015.

  
M. SOCORRO RODRIGUEZ  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 10

Certificate of Service

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER, In the Matter of: Tamarack Mill, LLC, d/b/a Evergreen Forest, Docket No.: CWA-10-2016-0031**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

The undersigned certifies that a true and correct copy of the document was delivered to:

Christopher Bellovary  
U.S. Environmental Protection Agency  
1200 Sixth Ave, Ste. 900, M/S ORC-113  
Seattle, Washington 98101

Further, the undersigned certifies that a true and correct copy of the aforementioned document was placed in the United States mail certified/return receipt to:

Mark Krogh  
Tamarack Mill, LLC  
3555 Highway 95 South  
New Meadows, Idaho 83654

DATED this 15<sup>th</sup> day of December, 2015

  
\_\_\_\_\_  
Signature

Teresa Luna  
Regional Hearing Clerk  
EPA Region 10