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BEFORE THE HEARINGS CLERK  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY ON 10

In the Matter of:

SILVASTAR FOREST PRODUCTS LLC,  
Ferndale, Washington

Respondent.

DOCKET NO. CWA-10-2017-0020

**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 Silvastar Forest Products 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 22.18(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.

3.1.1. 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).

3.1.2. 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).

3.1.3. 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).

3.1.4. 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.

3.2. 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).

3.2.1. 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).

### **Factual Background**

3.3. Respondent is a limited liability company organized under the laws of the State of Washington, and is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

3.4. Respondent owns and operates a facility (Facility), located at 6975 Salashan Parkway in Ferndale, Washington, where Respondent remanufactures milled lumber into other wood products, such as fascia, trim, decking, and siding.

3.5. At the Facility, Respondent conducts 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). Respondent stores raw materials, equipment, and other items in areas of the Facility that are exposed to precipitation.

3.6. California Creek is located west of the Facility. Industrial stormwater at the Facility is collected in storm drains and discharged into a stormwater retention pond. Overflow



from the stormwater retention pond is discharged to California Creek.

3.7. California Creek is a tributary of Drayton Harbor, which discharges into Semiahmoo Bay, which is part of Puget Sound. California Creek, Drayton Harbor, Semiahmoo Bay, and Puget Sound are waters of the United States, and are 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. § 230.3(s).

3.8. At all times relevant to this Consent Agreement, Respondent was authorized to discharge industrial stormwater that conformed to the requirements of Industrial Stormwater General Permit (ISGP) number WAR011720, issued by the Washington State Department of Ecology (Ecology).

3.9. EPA conducted an inspection at the Facility on September 2 and 15, 2015 (Inspection) to evaluate, *inter alia*, the treatment and disposal of industrial stormwater in accordance with the CWA, the regulations promulgated under the CWA at 40 C.F.R. § 122.26, and the ISGP.

#### **Stormwater Pollution Prevention Plan and Best Management Practices**

3.10. Section S3 of the ISGP requires all permittees covered by the ISGP to prepare and maintain a Stormwater Pollution Prevention Plan (SWPPP).

3.11. Section S3.B of the ISGP establishes minimum SWPPP requirements that include, *inter alia*, Best Management Practices (BMP) to eliminate or reduce the potential to contaminate stormwater and to prevent violations of water quality standards.

3.12. Condition S3.B.4.b requires all permittees to implement certain BMPs and to include those BMPs in the permittee's SWPPP. Permittees may omit a BMP only if the



Permittee clearly justifies each BMP omission in its SWPPP, based upon site conditions that rendered that BMP unnecessary, infeasible, or because the Permittee provided alternative and equally effective BMPs.

#### Count 1

3.13. Although Respondent first applied for authorization to discharge under the terms of the ISGP on June 27, 2014, Respondent did not prepare a SWPPP until at least July 2016.

3.14. **Violation:** Respondent violated Condition S3.A.1 of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to prepare and maintain a SWPPP for the Facility.

#### Count 2

3.15. Condition S3.B.4.b.i.4.a) of the ISGP requires all permittees to “[s]tore all chemical liquids, fluids, and petroleum products, on an impervious surface that is surrounded with a containment berm or dike that is capable of containing 10% of the total enclosed tank volume or 110% of the volume contained in the largest tank, whichever is greater.”

3.16. At the time of the Inspection, Respondent had several containers of paint and paint thinner within the staining building, which did not have any secondary containment.

3.17. **Violation:** Respondent violated Condition S3.B.4.b.i.4.a) of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to provide adequate secondary containment for the paint and paint thinner being stored within the staining building.

#### Count 3

3.18. Condition S3.B.4.b.i.5) of the ISGP requires all permittees “to provide SWPPP training for employees who have duties in areas of industrial activities.” Condition

S3.B.4.b.i.5).c) of the ISGP requires all permittees to provide that SWPPP training on at least an annual basis. Condition S3.B.4.b.i.5).d) of the ISGP requires all permittees to maintain a “log of the dates on which specific employees received training.”

3.19. At the time of the inspection, Respondent provided SWPPP training employees when they started working for the company but did not provide SWPPP training for employees who have duties in areas of industrial activities on at least an annual basis.

3.20. **Violation:** Respondent violated Condition S3.B.4.b.i.5).c) of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to provide SWPPP training for employees who have duties in areas of industrial activities on at least an annual basis.

### **Sampling and Reporting**

3.21. Section S4 of the ISGP establishes stormwater sampling requirements for all permittees. Condition S4.C requires that all permittees “ensure that analytical methods used to meet the sampling requirements specified in this permit conform to the latest revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* contained in 40 CFR Part 136,” unless specified otherwise within the ISGP.

3.22. Section S9 of the ISGP establishes reporting, recordkeeping and record retention requirements. Condition S9.A requires all permittees to prepare and submit Discharge Monitoring Reports (DMRs) on a quarterly basis, for reporting the stormwater sampling data obtained during each applicable reporting period. Condition S9.B requires all permittees to prepare annual reports, for reporting any corrective actions that were evaluated or implemented during that calendar year, and to submit those annual reports by May 15 of the following

3.30. One milligram per liter is the same concentration as 1000 micrograms per liter; the copper and zinc concentrations reported by Respondent to Ecology were one thousand times lower than the copper and zinc concentrations reported by the laboratory to Respondent.

3.31. **Violation:** Respondent violated Condition S9.A.1 of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent submitted a DMR to Ecology that failed to accurately report copper and zinc concentrations in the collected stormwater sample.

#### **Count 6**

3.32. Respondent was required to prepare an annual report for 2014, and submit that annual report by May 15, 2015. ISGP Condition S9.B.1.

3.33. For all time periods relevant to this Consent Agreement, Respondent has not submitted an annual report for 2014.

3.34. **Violation:** Respondent violated Condition S9.B.1 of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to submit an annual report for 2014.

#### **Inspections**

3.35. Section S7 of the ISGP establishes monthly visual inspection requirements for all permittees. Condition S7.A.1 requires all permittees to conduct and document visual inspections of the site each month. Condition S7.C.1 of the ISGP requires all permittees to record the results of each inspection in an inspection report or checklist and keep those records onsite for review.

3.36. Condition S7.C.1.c requires all inspection reports or checklists to include a statement by either the person conducting the monthly inspection, the individual with responsibility for the overall operation of the regulated facility, or the permittee, that in that person's opinion, the site is either in compliance or out of compliance with the terms and



calendar year.

#### Count 4

3.23. The applicable revision of the *Guidelines Establishing Test Procedures for the Analysis of Pollutants* requires pH to be analyzed within 15 minutes of sample collection.

40 C.F.R. § 136.3, Table II.

3.24. On April 24, 2015, Respondent collected a stormwater sample to meet the sampling requirements specified in the ISGP. The stormwater sample was analyzed for pH one hour after the sample was collected.

3.25. **Violation:** Respondent violated Condition S4.C of the ISGP and Section 301(a) of the CWA, 33 U.S.C. § 1311(a), when Respondent failed to follow the required test procedures when analyzing the stormwater sample used to satisfy the sampling requirements of the ISGP.

#### Count 5

3.26. Respondent was required to sample and analyze its stormwater discharges for turbidity, pH, copper, zinc, chemical oxygen demand, and total suspended solids, and to inspect its stormwater discharges for visible oil sheen. ISGP Conditions S5.A and S5.B.

3.27. Respondent was required to report sampling data obtained during each reporting period on a DMR. ISGP Condition S9.A.1.

3.28. Respondent collected a stormwater sample on April 24, 2015, and had the stormwater sample analyzed. On May 11, 2015, the laboratory informed Respondent that Respondent's stormwater sample contained 0.004 mg/L of copper and 0.015 mg/L of zinc.

3.29. On May 12, 2015, Respondent submitted a DMR to Ecology, in which it reported that Respondent's stormwater sample contained 0.004 µg/L of copper and 0.015 µg/L of zinc.

conditions of the SWPPP and the ISGP.

3.37. Conditions S7.C.1.f and G2.B require all inspection reports or checklists to be signed the individual with responsibility for the overall operation of the regulated facility, or the permittee. Conditions S7.C.1.f and G2.D require all inspection reports or checklists to be certified by the individual signing the inspection report or checklist, using the certification statement provided in Condition G2.D.

3.38. Section S9 of the ISGP establishes reporting, recordkeeping and record retention requirements. Condition S9.C.1.d requires all permittees to retain all monthly inspection reports or checklists onsite for a minimum of five years.

#### **Count 7**

3.39. Respondent does not have inspection reports or checklists that occurred during the months of July through October in 2014, or June 2015.

3.40. **Violation:** Respondent violated one or more of the following conditions: Condition S7.A.1 through the failure to conduct and document visual inspections of the site during each month, or Conditions S7.C.1 and S9.C.1.d through the failure to retain all monthly inspection reports or checklists onsite for a minimum of five years.

#### **Counts 8-10**

3.41. Respondent's monthly visual inspection report for July 2015 did not include a statement by either the person conducting the monthly inspection or the individual with responsibility for the overall operation of the regulated facility, that in that person's opinion, the site is either in compliance or out of compliance with the terms and conditions of the SWPPP and the ISGP.

3.42. Respondent's monthly visual inspection report for July 2015 was not signed by the individual with responsibility for the overall operation of the regulated facility.

3.43. Respondent's monthly visual inspection report for July 2015 was also not certified by the individual with responsibility for the overall operation of the regulated facility.

3.44. **Violation:** Respondent violated Condition S7.C.1.c when Respondent did not include the required statement of compliance by either the person conducting the monthly inspection or the individual with responsibility for the overall operation of the regulated facility on Respondent's monthly visual inspection report for July 2015.

3.45. **Violation:** Respondent violated Conditions S7.C.1.f and G2.B when Respondent did not have Respondent's monthly visual inspection report for July 2015 signed by the individual with responsibility for the overall operation of the regulated facility.

3.46. **Violation:** Respondent violated Conditions S7.C.1.f and G2.D when Respondent did not have Respondent's monthly visual inspection report for July 2015 certified by the individual with responsibility for the overall operation of the regulated facility, using the certification statement provided in Condition G2.D.

#### **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



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).

factors. After considering all of these factors, EPA has determined and Respondent agrees that an appropriate penalty to settle the alleged violations is \$34,500.

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 Young, Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 10, M/S ORC-113  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
Young.teresa@epa.gov

Raymond Andrews, Compliance Officer  
U.S. Environmental Protection Agency  
Region 10, M/S OCE-101  
1200 Sixth Avenue, Suite 900  
Seattle, WA 98101  
Andrews.raymond@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.

4.9. 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:

12/15/2016

FOR RESPONDENT:

Doug Martin

DOUG MARTIN, Owner  
Silvistar Forest Products LLC

DATED:

12/15/2016

FOR COMPLAINANT:

Edward J. Kowalski

EDWARD J. KOWALSKI, Director  
Office of Compliance and Enforcement



BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

SILVASTAR FOREST PRODUCTS LLC,  
Ferndale, Washington

Respondent.

DOCKET NO. CWA-10-2017-0020

**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

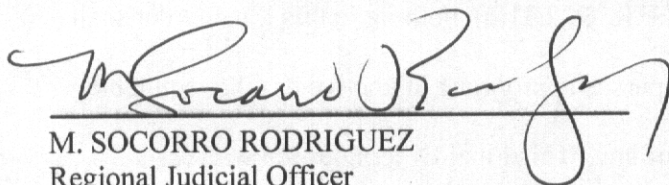
issue of fact or law set forth in this Final Order, including, but not limited to, any right of judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701-708.

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 Washington State Department of Ecology 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 22<sup>nd</sup> day of December, 2016.



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: Silvastar Forest Products LLC, Docket No.: CWA-10-2017-0020**, was filed with the Regional Hearing Clerk and served on the addressees in the following manner on the date specified below:

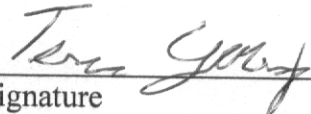
The undersigned certifies that a true and correct copy of the document was delivered to:

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:

Doug Martin  
Silvastar Forest Products LLC  
4395 Curtis Road  
Bellingham, WA 98226

DATED this 23 day of December, 2016

  
\_\_\_\_\_  
Signature

Teresa Young  
Regional Hearing Clerk  
EPA Region 10