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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

In the matter of:

SAGEWOOD LLC.,
Respondent

Driggs, Idaho

Docket No. CWA-10-2007-0148

CONSENT AGREEMENT AND FINAL
ORDER

This Consent Agreement and Final Order ("CAFO") is issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under Section 309 of the Clean Water Act ("Act"), 33 U.S.C. § 1319. The Administrator has delegated the authority to enter into the Final Order contained in Part VI of this CAFO to the Regional Administrator of EPA Region 10, who in turn has redelegated this authority to the Regional Judicial Officer.

I. STATEMENT OF PURPOSE

1.1 Sagewood LLC. ("Respondent") and EPA enter into this CAFO to resolve Respondent's alleged Clean Water Act violations.

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Seattle, Washington 98101
(206) 553-1796



1 1.2 EPA hereby issues, and Respondent hereby agrees to issuance of the Final Order
2 contained in Part VI of this CAFO, pursuant to Sections 309(g)(1) and (g)(2)(B) of the Act, and
3 in accordance with the "Consolidated Rules of Practice Governing the Administrative
4 Assessment of Civil Penalties," 40 C.F.R. Part 22.

5 **II. PRELIMINARY STATEMENT**

6 2.1 In accordance with 40 C.F.R. §§ 22.13(b) and 22.45(b), issuance of this CAFO
7 commences this proceeding; and the proceeding will conclude when the Final Order in Part VI of
8 this CAFO becomes final.

9 2.2 Part III of this CAFO provides the statutory and regulatory background that
10 undergirds EPA's enforcement action. Part IV of this CAFO contains a concise statement of the
11 factual basis for alleging violations of the Act, together with specific references to the provisions
12 of the Act and implementing regulations that Respondent is alleged to have violated. Part V of
13 this CAFO provides the Consent Agreement between the parties. Part VI of this CAFO provides
14 the Final Order resolving the alleged Clean Water Act violations.
15

16 **III. STATUTORY AND REGULATORY BACKGROUND**

17 3.1 Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the "discharge of any
18 pollutant by any person" except as authorized by a National Pollutant Discharge Elimination
19 System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

20 3.2 Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines the term "discharge of
21 a pollutant" to include "any addition of any pollutant to navigable waters from any point source."

22 3.3 Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines "pollutant" to include,
23 *inter alia*, dredged spoil, rock, sand, and biological materials.
24
25



1 3.4 Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines “navigable waters” as
2 “waters of the United States.”

3 3.5 40 C.F.R. § 122.2 defines “waters of the United States” to include waters that
4 “may be susceptible to use in interstate or foreign commerce, including all waters which are
5 subject to the ebb and flow of the tide”

6 3.6 Section 502(14) of the Act, 33 U.S.C. § 1562(14), defines “point source” to
7 include “any discernible, confined and discrete conveyance ... from which pollutants are or may
8 be discharged.”

9 3.7 Section 502(5) of the Act, 33 U.S.C. § 1562(5), defines “person” as “an
10 individual, corporation, partnership, association, State, municipality, commission, or political
11 subdivision of a State, or any interstate body.”

12 3.8 Section 402(p) of the Act, 33 U.S.C. § 1342(p), specifies that an NPDES permit is
13 required for any storm water discharge “associated with industrial activity.” Section 402(p) also
14 authorizes EPA to issue regulations that designate additional storm water discharge sources and
15 establish a comprehensive program to regulate these additional sources.

16 3.9 40 C.F.R. § 122.26(b)(14)(x) defines “[s]torm water associated with industrial
17 activity” to include discharges associated with “[c]onstruction activity, including clearing,
18 grading, and excavation” resulting in the disturbance of at least five acres of total land area.

19 3.10 In July of 2003, EPA re-issued the NPDES General Permit for Storm Water
20 Discharges from Construction Activities (“CGP”) pursuant to Section 402 of the Act, 33 U.S.C.
21 § 1342. The CGP became effective on July 1, 2003 and authorizes certain discharges of storm
22 water associated with construction activities. The CGP’s coverage extends to all facilities in the
23 State of Idaho (except those on Indian land) and requires permittees to comply with the
24 conditions and requirements set forth in the CGP.
25



1 3.11 To obtain coverage for storm water discharges from a construction site under the
2 CGP, a discharger must first "prepare and submit a complete and accurate Notice of Intent."
3 CGP at Part 2.

4 3.12 The CGP defines a "discharger" as the operator of the construction site. An
5 "operator" is defined as both (1) "[t]he party [who] has operational control over construction
6 plans and specifications ...," and (2) "[t]he party [who] has day-to-day operational control of
7 those activities at a project which are necessary to ensure compliance with a [storm water
8 pollution prevention plan] for the site or other permit conditions." CGP at Appendix A.

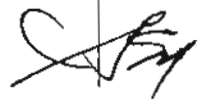
9 3.13 Section 308(a) of the CWA, 33 U.S.C. § 1318(a), authorizes EPA to require the
10 owner or operator of any point source to provide such information as may be reasonably required
11 in carrying out Section 402 of the CWA, 33 U.S.C. § 1342. Pursuant to Section 308(a), EPA has
12 promulgated NPDES permit application requirements. Among these application requirements
13 are:

- 14 • The requirement set forth in 40 C.F.R. § 122.21(a)(1) that "[a]ny person
15 who discharges or proposes to discharge pollutants ... must submit a
16 complete application to [EPA],"
- 17 • The requirement set forth in 40 C.F.R. § 122.26(c)(1) that "[d]ischarges
18 of storm water associated with industrial activity and with small
19 construction activity are required to apply for an individual permit or
20 seek coverage under a promulgated storm water general permit," and
- 21 • The requirement set forth in 40 C.F.R. § 122.21(c)(1) that regulated
22 dischargers of construction storm water submit an NPDES permit
23 application or a Notice of Intent [NOI] to apply for coverage under an
24 NPDES general permit at least ninety (90) days before the date on which
25 construction is to commence unless an applicable NPDES general permit
specifies a different submittal date.

23 3.14 Section 2.1.B of the CGP requires operators to file an NOI at least seven days
24 before commencing construction activities.

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1 3.15 Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1), authorizes EPA to assess
2 administrative penalties against any person who has violated Section 301 or 308 of the CWA, 33
3 U.S.C. § 1311 or 1318. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), also authorizes
4 EPA to assess administrative penalties against any person who has violated any permit condition
5 or limitation in a permit issued under Section 402 of the CWA, 33 U.S.C. § 1342.

6 IV. ALLEGATIONS

7 4.1 Respondent is a "person" as defined in Section 502(5) of the Act, 33 U.S.C. §
8 1362(5).

9 4.2 Respondent owns a 38 acre parcel of property on Ski Hill Road, Driggs, Idaho.
10 Respondent is developing the property under the name, Sagewood Subdivision. Respondent's
11 property is hereinafter referred to as the "Site."

12 4.3 As the owner of the Site, Respondent has operational control over the
13 construction plans and specifications at the Site.

14 4.4 Respondent is a discharger under the CGP.

15 4.5 Storm water discharges from the Site discharge through storm drains and culverts
16 to an unnamed water canal that runs along Ski Hill Road. The water canal drains into Teton
17 Creek, which is a tributary of the Teton River. The Teton River is a tributary of the Snake River
18 Creek, which is a tributary of the Snake River. The Teton River is a tributary of the Snake River
19 a traditional navigable water body. The water canal, Teton Creek, and Teton River are
20 "navigable waters" as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and are "waters
21 of the United States" as defined in 40 C.F.R. § 122.2.

22 4.6 On or about May 1, 2005, Respondent commenced construction activities on the
23 Site that resulted in the clearing, grading, and/or excavation of more than five acres of land.
24
25



1 4.7 On June 7, 2006, EPA inspected the Site and discovered Respondent's
2 construction activity, and that Respondent had not filed an NOI for coverage under the CGP. In
3 addition, EPA inspectors observed indications that storm water was conveyed from the Site
4 through storm drains and culvert pipes to the unnamed water canal described in Paragraph 4.5,
5 and that the storm water contained, among other things, sediment, sand, and dirt, which are
6 pollutants under Section 502(6) of the Act, 33 U.S.C. § 1362(6).

7
8 4.8 As the operator of the Site, Respondent was required to either submit an NOI to
9 obtain coverage under the CGP or apply for an individual NPDES permit before beginning
10 construction activities at the Site.

11 4.9 Prior to the start of construction activities, Respondent failed to apply for an
12 individual NPDES permit or for coverage under the CGP.

13 4.10 On or about July 12, 2006, Respondent filed an NOI for coverage under the CGP.

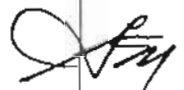
14 4.11 Respondent's failure to timely apply for an NPDES permit is a violation of
15 Section 308 of the Act, 33 U.S.C. § 1318. Under Section 309(g)(2)(B) of the Act, 33 U.S.C. §
16 1319(g)(2)(B), Respondent is liable for the administrative assessment of civil penalties in an
17 amount not to exceed \$11,000 per day for each day during which a violation continues.

18 **V. CONSENT AGREEMENT**

19 The parties to this action hereby stipulate as follows:

20
21 5.1 For the limited purpose of this CAFO, Respondent admits the jurisdictional
22 allegations contained in Part IV of this CAFO.

23 5.2 Respondent neither admits nor denies the specific factual allegations contained in
24 Part IV of this CAFO.



1 5.3 Pursuant to Section 309(g) of the Act, 33 U.S.C § 1319(g), based on the nature,
2 circumstances, extent, and gravity of the alleged violations, Respondent's economic benefit of
3 noncompliance and ability to pay the proposed penalty, and other relevant factors, EPA has
4 determined, and Respondent agrees, that \$20,000 is an appropriate penalty to settle this action.

5 5.4 Respondent consents to the issuance of the Final Order below and agrees to pay
6 the civil penalty cited in Paragraph 5.3 within 30 days of the effective date of the Final Order.

7 5.5 Payment under this CAFO shall be made by cashier's check or certified check,
8 payable to the order of "Treasurer, United States of America" and delivered to the following
9 address:
10

11 Mellon Bank
12 EPA Region 10
13 P.O. Box 360903M
14 Pittsburg, PA 15251

15 Respondent shall note on the check the title and docket number of this case.

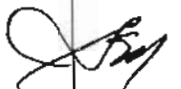
16 5.6 Respondent shall serve photocopies of the check described in Paragraph 5.5 on
17 the Regional Hearing Clerk and the Region 10 Office of Compliance and Enforcement at the
18 following addresses:

19 Regional Hearing Clerk
20 U.S. Environmental Protection Agency
21 Region 10
22 1200 6th Ave (ORC-158)
23 Seattle, WA 98101

24 Office of Compliance and Enforcement
25 U.S. Environmental Protection Agency
Region 10
1200 6th Ave (OCE-133)
Seattle, WA 98101

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1 5.7 If Respondent fails to pay the penalty assessed by this CAFO in full by its due
2 date, Respondent may be subject to a civil action to collect the assessed penalty under the Act,
3 together with interest, fees, costs, and additional penalties described below. In any collection
4 action, the validity, amount and appropriateness of the penalty shall not be subject to review.

5 5.8 If Respondent fails to pay any portion of penalty assessed by this CAFO in full by
6 its due date, Respondent shall also be responsible for payment in the amounts described below:

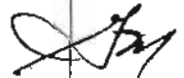
7 5.8.1 Interest: Pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9),
8 any unpaid portion of the assessed penalty shall bear interest at the rate established by the
9 Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1) from the effective date of
10 the Final Order under Part VI; however, no interest shall be payable on any portion of the
11 assessed penalty that is paid within 30 days of the effective date of the Final Order.

12 5.8.2 Attorney Fees, Collection Costs, Nonpayment Penalty: Pursuant to
13 Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9), if Respondent fails to pay on a
14 timely basis the amount of the penalty assessed by the Final Order attached below,
15 Respondent shall pay (in addition to any assessed penalty and interest) attorney fees and
16 costs for collection proceedings and a quarterly nonpayment penalty for each quarter
17 during which such failure to pay persists. Such nonpayment penalty shall be in an
18 amount equal to 20% of the aggregate amount of Respondent's penalties and nonpayment
19 penalties that are unpaid as of the beginning of such quarter.

20 5.9 The penalty described in Paragraph 5.3 of this CAFO, including any additional
21 costs incurred under Paragraph 5.8, represent a civil penalty assessed by EPA and shall not be
22 deductible for purposes of federal taxes.
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1 5.10 The undersigned representative for Respondent certifies that he or she is fully
2 authorized to enter into the terms and conditions of this CAFO and to bind Respondent to this
3 document.

4 5.11 Except as described in Subparagraph 5.8.2 of this CAFO, each party shall bear its
5 own costs in bringing or defending this action.

6 5.12 Respondent expressly waives any rights to contest the allegations and to appeal
7 the Final Order attached below.

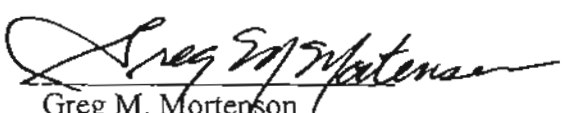
8 5.13 The provisions of this CAFO shall bind Respondent and its officers, directors,
9 agents, servants, employees, successors, and assigns.

10 5.14 The above provisions are STIPULATED AND AGREED upon by Respondent
11 and EPA.

13 DATED:

SAGEWOOD LLC

14
15 8/20/07



16 Greg M. Mortenson
17 LAW OFFICES OF GREG M. MORTENSON
18 For Respondent, SAGEWOOD LLC

18 DATED:

U.S. ENVIRONMENTAL PROTECTION AGENCY

19
20 8/27/07



21 for ANKUR TOHAN
22 Assistant Regional Counsel
23 for Complainant

23 ///

24 ///

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CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT AND FINAL ORDER** in **In the Matter of: Sagewood, LLC, WA, DOCKET NO.: CWA-10-2007-0148** was filed with the Regional Hearing Clerk on October 18, 2007.

On October 18, 2007 the undersigned certifies that a true and correct copy of the document was delivered to:


Ankur Tohan, Esquire
U.S. Environmental Protection Agency
1200 Sixth Avenue, ORC-158
Suite 900
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 on October 18, 2007 to:

Greg M. Mortenson, Esquire
1035 Rammell Road
Tetonia, Idaho 83452

Scott Estay
11 Powder Valley Land
Driggs, Idaho 83422

DATED this 18th day of October 2007.



Carol Kennedy
Regional Hearing Clerk
EPA Region 10

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