

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

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In the Matter of:

Proceeding to Assess Class II
Administrative Penalty Under
Section 309(g) of the Clean Water Act

Hovnanian Enterprises, Inc.

Docket No. CWA-03-2013--0066

Respondent.

**CONSENT AGREEMENT
AND FINAL ORDER**

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant") and Hovnanian Enterprises, Inc. ("Hovnanian" or "Respondent") pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22. The parties having agreed to settlement of alleged violations of the Clean Water Act by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency ("EPA") is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the Debt Collection Improvement Act of 1996, codified at 28 U.S.C. § 2461, any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.

4. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), any person who has violated any NPDES permit condition or

limitation after March 15, 2004 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring after March 15, 2004 up to a total penalty amount of \$157,500.

5. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$ 16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

II. FINDINGS OF FACT

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

2. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.

3. Section 402(p) of the Act, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that, with some exceptions, not relevant here, storm water discharges are “point sources” subject to NPDES permitting requirements under Section 402(a) of the Act, 33 U.S.C. § 1342(a).

4. The clearing, grading and excavating, and related activities at the Sites identified in Paragraphs 12 and 16 herein constitute “industrial activity” within the meaning of § 402(p) of the Act and 40 C.F.R. §§ 122.2 and 122.26(b)(14)(x) or (15).

5. “Storm water” is defined as “storm water runoff, snow melt runoff and surface runoff and drainage.” 40 C.F.R. §122.26(b)(13).

6. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Maryland Department of the Environment (MDE) to issue NPDES permits in 1989.

7. On January 1, 2009, MDE issued an NPDES Construction General Permit, No. MDR10, with an expiration date of December 31, 2013 (hereinafter, “the Permit”). The Permit authorizes discharges of storm water associated with construction activities, but only in accordance with the conditions of the permit.

8. Part II.A.3. of the Permit and Code of Maryland (COMAR) Title 26 Subtitle 17 Chapter 01.05 requires the applicant seeking coverage under the MDR 10 to develop and obtain approval from the appropriate approval authority of an erosion and sediment control plan prior to commencing construction.

9. Hovnanian Enterprises, Inc. (“Respondent” or “Hovnanian”) is a “person” within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

10. K. Hovnanian Homes of Maryland, LLC is a subsidiary of Hovnanian Enterprises, Inc.

11. Hovnanian Enterprises, Inc. is a defendant in the matter of *United States, et al. v. Hovnanian Enterprises, Inc.*, Docket No. 10-cv-1742-TJS (E.D. Pa. 2010).

12. Prior to June 3, 2010, Respondent submitted a Notice of Intent for coverage under the Permit for a construction site known as Palisades at Oak Creek (hereinafter, “Palisades Site”), located south of the intersection of Church Road and Central Avenue in Upper Marlboro, Prince George’s County Maryland.

13. On June 3, 2010, MDE determined that the Palisades Site was eligible for coverage under MDR 10, and assigned the Site Permit Number 10PG0063 (“Palisades Permit”).

14. The Palisades Permit was effective on June 3, 2010.

15. Pursuant to the Palisades Permit, Respondent developed a Sediment Control and Stormwater Management Plan a/k/a Erosion and Sediment Control (“ESC Plan”), which is incorporated into the Palisades Permit. The ESC Plan was initially developed on March 15, 2010, revised by Respondent on April 8, 2010, approved by Prince George’s County on April 29, 2010, revision approved by Prince George’s County on June 22, 2010, and a subsequent revision approved by Prince George’s County on April 15, 2011.

16. Prior to September 10, 2010, Respondent submitted a Notice of Intent for coverage under the Permit for a construction site known as the Shipley Farm Site (hereinafter, “Shipley Site”), located near the intersection of Town Farm Road and Rutherford Road in Upper Marlboro, Prince George’s County Maryland.

17. On September 10, 2010, MDE determined that the Shipley Site was eligible for coverage under MDR 10, and assigned the Site Permit Number 11PG0001 (“Shipley Permit”).

18. The Shipley Permit was effective on September 10, 2010.

19. Pursuant to the Shipley Permit, Respondent developed a Sediment Control and Sediment Grading Plan a/k/a ESC Plan dated March 15, 2010, which is incorporated into the Shipley Permit. The plan was reviewed and approved by Prince George’s County on August 10, 2010.

20. On August 24, 2011, representatives of EPA conducted an inspection at both the Palisades and Shipley Sites.

III. FINDINGS OF VIOLATION

Count 1: Palisades at Oak Creek

1. The Palisades Permit requires, *inter alia*, that Respondent: (1) select, install, implement and maintain control measures at the Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards; (2) take all reasonable measures to prevent the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters; (3) properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit; and (4) upon observation or notification of certain triggering events that could result in the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters, as indicated in Section IV.B of the Permit, undertake certain indicated actions.

2. EPA alleges that the August 24, 2011 inspection revealed that as of August 22, 2011, Respondent has, at the Palisades Site, failed to, *inter alia*, (1) select, install, implement and maintain control measures at the Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards; (2) take all reasonable measures to prevent the discharge of significant amounts of sediment to surface waters or conveyance systems leading to surface waters; (3) properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit; and (4) upon observation or notification of certain triggering events that could result in the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters, as indicated in Section IV.B of the Permit, undertake certain indicated actions.

3. Respondent's failure to comply with the Permit by failing to comply with the above requirements violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2: Shipley Farm

4. The Shipley Permit requires, *inter alia*, that Respondent: (1) select, install, implement and maintain control measures at the Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards; (2) take all reasonable measures to prevent the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters; (3) properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit; and (4) upon observation or notification of certain triggering events that could result in the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters, as indicated in Section IV.B of the Permit, undertake certain indicated actions.

5. EPA alleges that the August 24, 2011 inspection revealed that since April 15, 2011 at the Shipley Site, Respondent has failed to, *inter alia*, (1) select, install, implement and maintain control measures at the Site that minimize pollutants in the discharge as necessary to meet applicable water quality standards; (2) take all reasonable measures to prevent the discharge of significant amounts of sediment to surface waters or conveyance systems leading to surface waters; (3) properly operate and maintain all systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the permit; and (4) upon observation or notification of certain triggering events that could result in the discharge of significant amounts of sediment to surface waters, or conveyance systems leading to surface waters, as indicated in Section IV.B of the Permit, undertake certain indicated actions.

6. Respondent's failure to comply with the Permit by failing to comply with the above requirements violates the Permit and Section 301 of the Act, 33 U.S.C. § 1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

1. Respondent admits the jurisdictional allegations of the Complaint.

2. Respondent neither admits nor denies the Findings of Fact set forth in Section II, above. Respondent does not admit the Conclusions of Law set forth in Sections II and III above. Respondent waives: any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise; and its right to appeal the proposed final order accompanying the consent agreement.

3. Respondent does not admit the Conclusions of Law herein, but agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

4. Respondent hereby expressly waives its right to a hearing 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 consents to issuance of this CAFO without adjudication.

5. Each party to this action shall bear its own costs and attorney fees.

6. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

7. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

8. 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 the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA

has consulted with the State of Maryland regarding this action, and will mail a copy of this document to the appropriate Maryland official.

9. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), 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 HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of one-hundred thirty thousand dollars (\$130,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

10. Respondent shall pay the total administrative civil penalty of one-hundred thirty thousand dollars (\$130,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury":

By regular mail:

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

Contact Eric Volck (513-487-2105)

By overnight delivery:

U.S. Bank
Government Lock Box 979077
US EPA, Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: Eric Volck (513-487-2105)

By Wire Transfer:

Federal Reserve Bank of New Lancaster
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New Lancaster, NY 10045
(Field Tag 4200 of the wire transfer message should read:
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S. currency (also known as REX or remittance express):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On-Line Payments:

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

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-

Lori G. Kier, Esquire
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

11. 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.

12. 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).

13. 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).

14. 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.

15. 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.

16. The penalty specified in Paragraph IV.9, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

17. 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.

18. 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.

19. 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.

V. EFFECTIVE DATE

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 and effective 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, HOVNIANIAN ENTERPRISES, INC.:

Date:
By:
Name:
Title:

J. L. Sorsby
12/20/12

J. Larry Sorsby
Executive Vice President and
Chief Financial Officer

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date:

Jon M. Capacasa
Jon M. Capacasa, Director
Water Protection Division

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

this 20th day of FEBRUARY, 2012 3

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

CERTIFICATE OF SERVICE

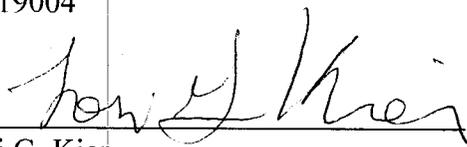
I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Consent Agreement and Final Order, and that a copy of this document was sent to the following individual in the manner described below:

By electronic and First Class Mail:

Jonathan Rinde, Esq.
Manko Gold Katcher Fox
401 City Avenue
Suite 500
Bala Cynwyd, PA 19004

Date:

Feb. 28, 2013



Lori G. Kier
Senior Assistant Regional Counsel
US EPA Region III