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EPA REGION III
PHILADELPHIA, PA

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

In the Matter of:	:	Proceeding to Assess Class II
	:	Administrative Penalty Under
	:	Section 309(g) of the Clean Water Act
	:	
March Mountain Properties, LLC	:	Docket No. CWA-03-2016-0109
Old Trail Village	:	
1005 Heathercroft Circle, Suite 100	:	
Crozet, Virginia 22932	:	
	:	CONSENT AGREEMENT AND
Respondent	:	FINAL ORDER
30° 03' 30.75" N	:	
78° 42' 36.74" W	:	
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CONSENT AGREEMENT

I. STATUTORY AND REGULATORY AUTHORITY

1. 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 persons who violate Section 301(a) of the Act, *id.* § 1311(a). The Administrator has delegated this authority to the Regional Administrator of EPA Region III, who in turn has delegated this authority to the Director, Water Protection Division ("Complainant").

2. This Consent Agreement is entered into by the Complainant and March Mountain Properties, LLC ("Respondent" or "March"), pursuant to Section 309(g) of the CWA and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

3. The Consolidated Rules, at 40 C.F.R. § 22.13(b) provide in pertinent part that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding simultaneously may be commenced and concluded by the issuance of a consent agreement and final order pursuant to 40 C.F.R. § 22.18(b)(2) and (3). Pursuant thereto,

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this Consent Agreement and Final Order (“CAFO”) simultaneously commence and conclude this administrative proceeding against Respondent.

4. Section 309(g)(2)(B) of the Clean Water Act, 33 U.S.C. § 1319(g)(2)(B), authorizes the assessment of 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.

5. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, and Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), 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 up to a total penalty amount of \$177,500 for violations that occurred between January 12, 2009 and December 6, 2013, and \$187,500 per proceeding for violations that occurred after December 6, 2013.

6. 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 Virginia Department of Environmental Quality (“VADEQ”) regarding this action, and will mail a copy of this document to the appropriate VADEQ official.

7. 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.

8. Federal regulations promulgated pursuant to the CWA define the phrase “waters of the United States” to include, among other things, (i) all waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (ii) all interstate waters; (iii) all other waters such as intrastate lakes, rivers and streams, including intermittent streams, the use, degradation, or destruction of which would or could affect interstate commerce; (iv) tributaries of waters of the United States, and (v) all waters adjacent to these waters. 40 C.F.R. § 122.2.

9. “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.

10. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and 40 C.F.R. §§ 122.2 and 122.26 provide that storm water discharges are “point sources” subject to NPDES permitting requirements under section 402(a) of the CWA, 33 U.S.C. § 1342(a).

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

12. “Storm water discharge associated with industrial activity” is defined as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant...”. The term includes storm water discharges from facilities classified as Standard Industrial Classification (SIC) 24.

13. 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. The discharges are subject to specific terms and conditions as prescribed in the permit.

14. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), EPA authorized the Commonwealth of Virginia NPDES program on March 31, 1975. The Virginia Department of Environmental Quality (VADEQ) was authorized to issue general NPDES permits on April 20, 1991. On December 30, 2004, EPA approved the Commonwealth’s request to transfer the issuance of general and individual NPDES permits from VADEQ to the Virginia Department of Conservation and Recreation (VDCR). On July 1, 2013 EPA approved the Commonwealth’s request to transfer issuance of NPDES permits from VDCR to VADEQ.

15. On July 1, 2009 Virginia issued General Permit No. VAR05, General Permit For Stormwater Discharges Associated With Industrial Activity, effective date July 1, 2009 and expiration date June 30, 2014 (the 2009 General Permit). The 2009 General Permit authorized the discharge of stormwater from industrial activity to surface waters of the Commonwealth of Virginia provided that the owner of a source covered by the 2009 General permit filed a registration statement to be covered by the 2009 General Permit and complied with all the requirements of the 2009 General Permit. Table 50-1 of the 2009 General Permit, Sectors Of Industrial Activity Covered By This Permit, includes Sector A: Timber Products, which includes General Sawmills and Planning Mills, (SIC Code 2421).

16. Pursuant to Section 402(i) of the CWA, 33 U.S.C. §1342(i), EPA retains its authority to take enforcement action within Virginia for NPDES permit violations.

II. FINDINGS OF FACT, JURISDICTIONAL ALLEGATIONS AND CONCLUSIONS OF LAW

17. Respondent owns and operates a commercial operation, a mixed-use, large residential and commercial land development located at 1005 Heathercroft Circle, Virginia

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22932 (the "Site"). The Site is classified under SIC Code 1531. The site drains to unnamed tributaries to Slabtown Branch and Lickinghole Creek.

18. Respondent is a corporation and therefore a "person" within the meaning of Part 502(5) of the Act, 33 U.S.C. § 1362(5).

19. Respondent submitted a registration application to VADEQ, VSMP General Permit No. VAR 10 for Storm Water Discharges Associated with Construction Activities Registration Statement on December 1, 2011 in order to obtain authorization for its discharges of stormwater from the Virginia facility.

20. Respondent's Virginia facility discharges stormwater to Slabtown Branch and Lickinghole Creek and their associated tributaries. Slabtown Branch and Lickinghole Creek drains to the South Fork Rivanna River Watershed, a "waters of the United States" within the meaning of Part 502(7) of the Act, 33 U.S.C. § 1362(7) and 40 C.F.R. § 122.2.

21. On April 10, 2014, duly-authorized EPA representatives and their contractors conducted an inspection of Respondent's Virginia facility ("Site inspection").

22. On October 7, 2014, EPA sent Respondent a copy of its Site inspection report.

23. Part III of the 2009 General Permit, Storm Water Pollution Prevention Plan, states that "A Storm Water Pollution Prevention Plan ("SWPPP") shall be developed and implemented for the facility covered by this permit. The SWPPP shall include Best Management practices ("BMPs") that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented and maintained in accordance with good engineering practices to eliminate or reduce pollutants in all storm water discharges from the facility. The SWPPP shall also include any control measures necessary for the storm water discharge to meet applicable water quality standards".

24. Based upon the Site inspection, EPA representatives identified violations of the 2009 General Permit and the CWA as described below.

25. **Failure to Develop or Update the SWPPP in accordance with Section II.A.1. of the Construction General Permit ("CGP").** At the time of the 2014 facility inspection, Respondent had prepared a SWPPP for the Virginia facility, maintained at the facility and last revised as of December 7, 2011 (the facility SWPPP). The SWPPP was not signed/certified; did not include properties/lots no longer under the control of the operator and the dates on which the operator no longer had control; did not include a signed/certified erosion and sedimentation control plan.

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26. Section II.A.1. of the CGP requires that a SWPPP be prepared in accordance with good engineering practices.

25. Respondent's failure to include all of the required information in its SWPPP is a violation of the 2009 General Permit and Part 301 of the Act, 33 U.S.C. § 1311.

26. **Failure to Post Notice of NPDES Permit Coverage in accordance with Section II.B.4. of the CGP.** March's posted notice did not contain the information required in the permit, including signature, SWPPP Review and making SWPPPs available as required by the CGP.

27. Section II.B.4 of the CGP requires a sign be posted at the main entrance to the construction site with a copy of the registration number and information as to where the SWPPP may be found.

28. Respondent's failure to post notice of NPDES Permit Coverage in accordance with Section II.B.4. of the CGP is a violation of the 2009 General Permit and Part 301 of the Act, 33 U.S.C. § 1311.

29. **Failure to Conduct Site Inspections in accordance with Section II.D.4. of the CGP.** The frequency of site inspections were not conducted in accordance with permit requirements. Specifically, inspection documentation was not provided or available prior to July 18, 2012; however, the Permittee had obtained Permit coverage in approximately January 2012. In addition, inspection documentation was not provided or available from July 18, 2012 through October 23, 2013. Furthermore, the EPA Inspection Team noted that the personnel signing the inspection documentation were not identified in the SWPPP.

30. Section II.D.4 requires Site inspections be conducted in accordance with the requirements of the permit.

31. Respondent's failure to conduct Site Inspections every two weeks in accordance with Section II.D.4. of the CGP is a violation of the 2009 General Permit and Part 301 of the Act, 33 U.S.C. § 1311.

32. **Failure to Properly Document Inspection including Follow up Activity in accordance to Section.II.D.4.d. of the CGP.** March did not properly document observations made during site inspections as required under the CGP nor did they make note of corrective measure taken after to address deficiencies.

33. Section II.D.4.d. of the CGP requires that the inspection be properly summarized and retained as part of the SWPPP.

34. Respondent's failure to properly document inspection, including follow up

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activity in accordance with Section II.D.4.d. of the CGP is a violation of the 2009 General Permit and Part 301 of the Act, 33 U.S.C. § 1311.

35. **Failure to Maintain Controls in Violation of Section II.D.3. of the CGP.** March failed to properly maintain control measures and effective operating condition in accordance with good engineering practices in the following areas: rock check dams; storm drain inlet protection; soil stabilization measures.

36. Section II.D.3 of the CGP requires that controls be maintained in effective operating condition in accordance with good engineering practices, among other things.

37. Respondent's failure to maintain controls is a violation of the 2009 General Permit and Part 301 of the Act, 33 U.S.C. § 1311.

38. **Failure to Implement Controls to Minimize Pollutants in Violation of Section II.D.2. of the CGP.** March failed to install control measures to minimize pollutants at the Stone Construction Entrance as well as Soil Stabilization Measures throughout the Site.

39. Section II.D.2 of the CGP requires that controls to minimize pollutants be installed.

40. Respondent's failure to implement controls to minimize pollutants is a violation of the 2009 General Permit and Part 301 of the Act, 33 U.S.C. § 1311.

41. **Failure to Protect Water Quality in Violation of Section I.H.1. of the CGP.** March failed to select, install, implement and maintain a control measure at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standards.

42. Section II.D.3 of the CGP requires that control measures be maintained in effective operating condition.

43. Respondent's failure to protect water quality is a violation of the 2009 General Permit and Part 301 of the Act, 33 U.S.C. § 1311.

III. GENERAL PROVISIONS

44. For the purpose of this proceeding, Respondent admits the jurisdictional allegations set forth in this CAFO.

45. Respondent neither admits nor denies the Findings of Fact set forth in this CAFO.

46. Respondent waives any defenses it might have as to jurisdiction and venue, its

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right to contest the allegations through hearing or otherwise; and its right to appeal the proposed final order accompanying the Consent Agreement.

47. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.

48. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter and consents to issuance of this CAFO without adjudication.

49. Respondent shall bear its own costs and attorney fees.

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

51. 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.

IV. CIVIL PENALTY

52. In full and final settlement of the Complainant's claims for civil penalties for the alleged violations identified herein, Respondent consents to the assessment of, and agrees to pay, in accordance with the terms set forth herein, the total administrative civil penalty of sixty-six thousand dollars (\$66,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

53. The civil penalty amount set forth in Paragraph 52, above, is based on a number of factors, including 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).

54. Respondent shall pay the civil penalty amount described in Paragraph 52, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with this Paragraph and Paragraphs 55 through 59, below, by either cashier's check, certified check, or electronic wire transfer, in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- 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:

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

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

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

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101

Primary Contact: Craig Steffen, (513) 487-2091
Secondary Contact: Molly Williams, (513) 487-2076

- 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 Number: 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

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known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Contact: John Schmid, (202) 874-7026
Remittance Express (REX): (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://www2.epa.gov/financial/makepayment>

j. Payment by Respondent shall reference Respondent's name and address, and the EPA Docket Number of this CAFO.

A copy of Respondent's check or a copy of Respondent's electronic fund transfer shall be sent simultaneously to:

Pamela J. Lazos
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC20)
1650 Arch Street
Philadelphia, PA 19103-2029

and

Ms. Lydia Guy
Regional Hearing Clerk
U.S. EPA, Region III (3RC00)
1650 Arch Street

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55. 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 payment as specified herein shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

56. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a true and correct 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 such interest begins to accrue. 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).

57. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

58. A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that 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).

59. The penalty specified in Paragraph 52 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

60. 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.

VI. RESERVATION OF RIGHTS

61. This CAFO resolves 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.

62. 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 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, EPA may have under law or equity in such event.

VII. FULL AND FINAL SATISFACTION

63. This settlement shall constitute full and final satisfaction of all civil claims for penalties which Complainant has under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the violations alleged in this CA. Compliance with the requirements and provisions of this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and/or regulations administered by EPA.

VIII. PARTIES BOUND

64. This CAFO shall apply to and be binding upon the EPA, Respondent, and Respondent's officers, employees, agents, successors and assigns. 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.

IX. EFFECTIVE DATE

65. Pursuant to 40 C.F.R. § 22.45(b), this CAFO shall be issued after a 40-day public notice period is concluded. This CAFO will become final and effective thirty (30) days after it is filed with the Regional Hearing Clerk, pursuant to Section 309(g)(5) of the Act, 33 U.S.C. § 1319(g)(5), or until a public comment process pursuant to 40 C.F.R. § 22.45(b) is concluded.

X. ENTIRE AGREEMENT

66. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no representations, warranties,

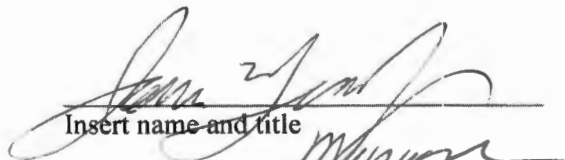
covenants, terms or conditions agreed upon between the parties other than those expressed in this CAFO.

XI. FINAL ORDER

FOR RESPONDENT,

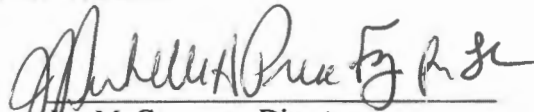
March Mountain Properties

Date: 4/27/16


Insert name and title
Manager

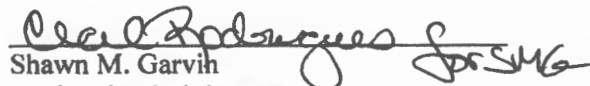
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 6/20/16


Jon M. Capacasa, Director
Water Protection Division

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

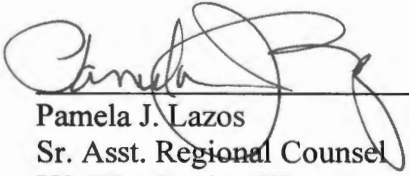
this 24th day of June, 2016


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

CERTIFICATION OF SERVICE

I hereby certify that I sent a true and correct copy of the Consent Agreement and Final Order to March Mountain Properties via certified mail, return receipt requested, at the address listed below after filing the original with the Regional Hearing Clerk, US EPA Region III, 1650 Arch St., Philadelphia, PA 19103.

March Mountain Properties
Old Trail Village
1005 Heathercroft Circle, Suite 100
Crozet, Virginia 22932



Pamela J. Lazos
Sr. Asst. Regional Counsel
US EPA Region III

6/28/16

Date: