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
American Hardwood Industries 4307 Plank Road North Garden, Virginia 22959	Docket No. CWA-03-2016-0060
Respondent	**CONSENT AGREEMENT AND FINAL ORDER**

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 American Hardwood Industries (Respondent), 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, 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).

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. American Hardwood Industries (Respondent) owns and operates an industrial operation as a sawmill facility, consisting of approximately 20.6 acres, located at 4307 Plank Road in North Garden, Virginia 22959 (the Virginia facility). The Virginia facility is classified under SIC Code 2421 as Sawmills and Planning Mills, General, and manufactures hardwood logs and lumber products.

18. American Hardwood Industries is a limited liability corporation registered in Delaware and therefore a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

19. On June 3, 2009 Augusta Lumber, a branch of American Hardwood Industries, submitted a registration application to VADEQ in order to obtain authorization for the discharges of stormwater from the Virginia facility under the 2009 General Permit.

20. Respondent's Virginia facility discharges stormwater to Jumping Branch Creek and its associated tributaries. Jumping Branch Creek consists of "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 February 10, 2014, duly-authorized EPA representatives and their contractors conducted an inspection of Respondent's Virginia facility (the 2014 facility inspection).

22. On June 16, 2014 EPA prepared a final Clean Water Act Compliance Inspection Report for the Virginia facility (EPA's Inspection Report).

23. American Hardwood Industries received a copy of EPA's Inspection Report. American Hardwood Industries prepared and submitted a response to EPA's inspection on June 5, 2014. American Hardwood Industries submitted a timely response to EPA's Inspection Report on December 7, 2015.

24. Based upon the 2014 facility inspection, EPA representatives identified the following violations of the 2009 General Permit and the CWA as described below.

Count 1: Failure to Develop and Implement a Storm Water Pollution Prevention Plan with all of the Contents of the Plan Required by the 2009 General Permit: Facility Site Map

25. 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".

26. 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 July 15, 2013 (the facility SWPPP). Part III.B. 2. c. of the 2009 General Permit (Storm Water Pollution Plan, Contents of the plan, Site description, site map) requires a facility SWPPP to include a site map identifying a number of requirements.

27. Part III.B.2.c.(3) requires that the site map identify the location of all storm water conveyances including ditches, pipe, swales, and inlets and the directions of storm water flows.

28. At the time of the 2014 inspection, the site map included as Respondent's SWPPP did not identify all of the storm water conveyances within the Virginia facility.

29. Part III.B.2.c.(4) requires that the site map identify all the locations of existing structural and source control BMPs.

30. At the time of the 2014 inspection, the site map included as Respondent's SWPPP did not include the locations of all existing structural and source control BMPs. The site map did not include the rock check dams located upgradient of outfalls 01, 02, and 03, which were source controls for the control of storm water at the Virginia facility.

31. Part III.B.2.c.(6) requires that the site map identify the locations of potential pollutant sources at the facility.

32. At the time of the 2014 inspection, the site map included as respondent's SWPPP did not identify all the potential pollutant sources at the Virginia facility. Respondent's site map specifically failed to include the location of a portable toilet located southwest of the fuel island and upgradient of outfall 01, the used oil and hydraulic fluid storage area located at the north central portion of the facility, and mulch and bark stockpiles located at the southwestern portion of the facility, which were actively leaching non storm water onto the ground at the time of the 2014 inspection.

33. Part III. B.2.c.(8) requires that the site map include the locations of specific activities that are exposed to precipitation.

34. At the time of the 2014 inspection, the site map included as respondent's SWPPP did not include the mulch and bark stockpiles located in the southwestern part of the facility, the equipment maintenance area located to the south of Building No. 1, and the facility processing and storage areas, all of which are facility activities exposed to precipitation.

35. Part III. B.2.c.(9) requires that the site map included as Respondent's SWPPP include the location of all storm water outfalls and an approximate outline of the area draining to each outfall.

36. At the time of the 2014 inspection, the site map included as Respondent's SWPPP did not include an outline of the facility areas draining to each of the facility's three storm water outfalls.

37. Part III. B.2.c.(10) requires that the site map included as Respondent's SWPPP include the location and description of all nonstorm water discharges.

38. At the time of the 2014 inspection, the site map included as Respondent's SWPPP did not describe the mulch and bark stockpiles as a source of a nonstorm water discharge. During the 2014 inspection, the inspectors saw nonstorm water actively leaching from the stockpiles and moving downgradient toward outfall 03.

39. Respondent's failure to include all of the required information on its site map as part of the facility SWPPP is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 2: Failure to Develop and Implement a Storm Water Pollution Prevention Plan with all of the Contents of the Plan Required by the 2009 General Permit: Storm Water Controls

40. Part III.B. 6. a. of the 2009 General Permit (Storm Water Pollution Prevention Plan, Contents of the plan, Storm water controls) requires the permittee to implement BMPs for all areas identified as potential pollution sources at the facility and to describe in the facility SWPPP the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to storm water.

41. At the time of the 2014 inspection, the inspectors found that Respondent's SWPPP did not include Respondent's schedule and deadlines for implementation of selected BMPs and storm water controls.

42. Part III.B.6.b. of the 2009 General Permit (Contents of the plan, Storm water controls, Control measures (nonnumeric technology-based effluent limits) requires the permittee to implement specific BMPs to prevent and control pollutants in storm water discharges from the facility.

43. Part III.B.6.b.(1)(Storm water controls, Good housekeeping) requires the permittee to keep clean all exposed areas of the facility that are a potential source of pollutants to storm water discharges. This part requires that the facility SWPPP include a regular schedule for the pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks and containers.

44. At the time of the 2014 inspection, the inspectors found that the facility SWPPP did not identify a regular schedule for the pickup and disposal of waste materials or a regular schedule for the inspection of drums, tanks and containers at the facility.

45. Part III.B.6.b.(4)(Storm water controls, Spill prevention and response procedures) requires the facility SWPPP to describe the procedures that will be followed for preventing and responding to spills and leaks. This part also requires the facility SWPPP to include contact information for individuals and agencies that must be notified in the event of a spill.

46. Section 3.3 (Visual Inspection) of Respondent's SWPPP at the time of the 2014 inspection includes regular inspections of the facility to check for spills or leaks of pollutants that could become storm water runoff. Section 3.6 of the SWPPP includes BMPs that Respondent has added to manage runoff.

47. Section 3.4 (Spill Prevention and Response) of Respondent's SWPPP at the time of the 2014 inspection lists specific practices to be followed, including "contain the liquid until cleanup is complete", "use an appropriate sorbent to clean liquid chemical spills before a rainfall", and "control fuel spills with kitty litter, straw, or sawdust".

48. During the 2014 inspection, the inspectors found that Respondent was not implementing the SWPPP spill prevention and response procedures at various areas of the facility. The inspectors observed visible petroleum product staining at the fuel island area southwest of the main office, at the used oil and hydraulic fluid storage area, and next to the equipment maintenance area located outside building No.1. The inspectors did not see that Respondent followed any of the listed procedures to clean spills in these areas. The inspectors also found that Respondent had not followed its SWPPP secondary containment procedures for potential pollutants for a 55 gallon drum of process oil and other containers of used process oil located in the equipment maintenance area, for four five gallon containers of debarking equipment oil located in the debarking equipment area, and for two fuel containers stored adjacent to the main office building.

49. During the 2014 inspection, the inspectors found that Respondent's SWPPP did not include the required spill prevention and response notification procedures or contact information for individuals and agencies to be notified in the event of a spill.

50. Part III.B.6.b.(5)(Storm water controls, Routine facility inspections) of the 2009 General Permit requires that appropriate facility personnel regularly inspect all areas of the facility where industrial materials or activities are exposed to storm water, and the inspection frequency be specified in the facility SWPPP. This Part requires a minimum frequency of quarterly inspections. Part IV.C.2.B. of the 2009 General Permit includes additional sector specific requirements for timber products and requires monthly inspections for specified areas of sawmill facilities.

51. During the 2014 inspection, the inspectors found that Respondent's SWPPP did not identify the inspection frequency for routine inspections at the facility.

52. Part III.B.6.b.(6)(Storm water controls, Employee training) requires that the permittee implement a specific storm water employee training program and that the facility SWPPP include a schedule for the required storm water employee training.

53. During the 2014 inspection, the inspectors found that the facility SWPPP did not include a schedule for employee training and did not include documentation of a storm water training program that included all the required components of part III.B.6.b.(6).

54. Respondent's failure to include all of the required storm water controls as part of the facility SWPPP, and Respondent's failure to develop and implement all of the required storm water controls, is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C.§ 1311.

Count 3: Failure To Maintain All BMPs Included In A SWPPP In Effective Operating Condition

55. Part III.E. of the 2009 General Permit (Storm Water Pollution Prevention Plan, Maintenance) requires that all BMPs identified in the facility SWPPP shall be maintained in

effective operating condition. If the required routine facility inspections identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event.

56. During the 2014 inspection, the inspectors observed the rock check dam controls that Respondent had installed as BMPs for the facility's three storm water outfalls. The inspectors determined that the three rock check dam controls were not working effectively because there was sediment deposition and accumulation upgradient of the check dams, potentially diminishing the containment capacity of the dams. The inspectors observed evidence of bypassing of the dam controls and erosion around the dam area. Section 2.6 of the facility SWPPP requires the dams to be "cleaned as necessary to prevent sediment from leaving the property", but the inspectors observed sediment accumulation around each dam.

57. Respondent's failure to maintain its BMPs in an effective operating condition is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 4: Failure To Conduct Annual Comprehensive Site Compliance Evaluations and to Modify The Facility SWPPP Following the Annual Evaluations

58. Part III.C. of the 2009 General Permit (Storm Water Pollution Prevention Plan, Comprehensive site compliance evaluation), requires a permittee to conduct a comprehensive site compliance evaluation at least once a year. The evaluation shall include all areas where industrial materials or activities are exposed to storm water. Based on the results of the evaluation, the facility SWPPP shall be modified as necessary to include additional or modified BMPs designed to correct problems identified by the evaluation. The permittee shall prepare and certify a report summarizing the scope of each annual evaluation.

59. During the 2014 inspection, Respondent's representative stated that the facility had not conducted the 2011 annual comprehensive site compliance evaluation. Respondent did not produce any report that included information that a 2011 evaluation had been done at the facility.

60. During the 2014 inspection, the inspectors found that the 2012 annual comprehensive site compliance evaluation report, dated November 20, 2012, identified 14 corrective measures without the facility SWPPP including corrective action dates and documenting the BMP revisions.

61. During the 2014 inspection, the inspectors found that Respondent's 2012 annual comprehensive site compliance evaluation report was not certified by Respondent.

62. Respondent's failure to conduct all of the required annual comprehensive site compliance evaluations and to modify its facility SWPPP by including all BMP revisions occurring at the facility and to properly prepare each annual evaluation report is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 5: Failure to Document All Quarterly Visual Inspections of Storm Water Discharges Associated With Industrial Activities

63. Part I.A.1. of the 2009 General Permit (Effluent Limitations, Monitoring Requirements and Special Conditions, Effluent limitations and monitoring requirements, Types of monitoring requirements and limitations) requires the permittee to perform and document a quarterly visual examination of a storm water discharge associated with industrial activity from each outfall, and to maintain the visual examination reports on site with the facility SWPPP.

64. During the 2014 inspections, Respondent was not able to document a quarterly visual inspection of the facility's storm water discharges for the second quarter of 2013 covering the period April 2013 through June 2013.

65. Respondent's failure to document a visual inspection of the facility's storm water discharges for the second quarter of 2013 is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311.

Count 6: Failure to Prohibit Nonstorm Water Discharges

66. Part II.B.1. of the 2009 General Permit (Special conditions, Allowable nonstorm water discharges) states that all discharges covered by the general permit shall be composed entirely of storm water, except as provided in Part IV. of the general permit.

67 Part IV.(Sector Specific Permit Requirements) 9VAC25-151-90. Sector A-Timber products, includes the requirements for discharges associated with industrial activity from facilities classified as, among other categories, sawmill facilities such as Respondent's facility. The only authorized nonstorm water discharges from timber product facilities are discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage. Under this definition, there should be no chemical pollutants included in a storm water discharge from a sawmill facility.

68. During the 2014 inspection, the inspectors observed evidence of unauthorized nonstorm water discharges at the facility. The inspectors observed well water being pumped into a used 250 gallon tote container labeled "corrosive liquid, N.O.S; contains alkyl amines", which was actively overflowing onto the impervious surface adjacent to the fuel island located in the southwest area of the facility. The inspectors observed that this nonstorm water was actively flowing down gradient from the fuel island area across an impervious surface that contained numerous oil and fuel stains, through a series of two rock check dams, and discharging from outfall 01. The inspectors saw a visible organic sheen on the discharge from outfall 01.

69. Respondent's failure to prohibit the nonstorm water discharge described in paragraph 68 of this Consent Order is a violation of the 2009 General Permit and Section 301 of the Act, 33 U.S.C. § 1311

III. GENERAL PROVISIONS

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

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

72. 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.

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

74. 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.

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

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

77. 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

78. 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 thirty five thousand eight hundred dollars ($35,800) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c).

79. The civil penalty amount set forth in Paragraph 78, 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).

80. Respondent shall pay the civil penalty amount described in Paragraph 78, above, plus any interest, administrative fees, and late payment penalties owed, in accordance with Paragraphs 80 through 84, 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:

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 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:

Robert J. Smolski
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

Philadelphia, PA 19103-2029

81. 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.

82. 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).

83. 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.

84. 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).

85. The penalty specified in Paragraph 78 shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

V. APPLICABLE LAWS

86. 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

87. 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.

88. 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

89. 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

90. 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

91. 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

92 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,

AMERICAN HARDWOOD INDUSTRIES

Date: 1/27/16

John O'Dea
President & CEO

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

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

this 21st day of March, 2016

Date: 3/21/2016

Jon M. Capacasa, Director
Water Protection Division

American Hardwood Industries
Docket No. CWA-03-2016-0060

CERTIFICATE OF SERVICE

I certify that on this date I caused to be sent by certified mail, return receipt requested, a copy of this "Consent Agreement and Final Order" to the following persons:

John O'Dea
President
American Hardwood Industries
567 N. Charlotte Avenue
Waynesboro, Virginia 22980-2856

And the original and a copy delivered by hand to:

Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Additionally, I caused to be sent by first class mail a copy of this "Consent Agreement and Final Order" to the following persons:

Jerome Brooks
Office of Water Compliance
Virginia Department of Environmental Quality
P.O. Box 1105
Richmond, Virginia 23218

Date: March 21, 2016

Robert J. Smolski
Senior Assistant Regional Counsel