STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	**Complaint No. R8-2005-0100**
	)	**for**
	)	**Administrative Civil Liability**
H. Hovnanian	)	**(Amended on January 13, 2006)**
2495 Campus Drive	)	
Irvine, CA 92612	)	
	)	
Attn: Mr. John Svalbe	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. H. Hovnanian (Hovnanian) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Santa Ana Region (hereinafter Board), may impose liability under Section 13385(c) of the California Water Code.

2. A hearing in this matter will be scheduled for the Board's regular meeting on March 3, 2006. Hovnanian or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Board. An agenda for the meeting will be mailed to you not less than 10 days prior to the hearing date.

3. At the hearing, the Board will consider whether to affirm, reject or modify the proposed administrative civil liability or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

4. Hovnanian obtained coverage for its construction site in Beaumont under the Watershed-wide Waste Discharge Requirements for Discharges of Storm Water Runoff Associated with New Developments in the San Jacinto Watershed, NPDES No. CAG618005, Order No. 01-34 (San Jacinto Permit), WDID No. 8 33J300396.

5. Hovnanian is alleged to have violated Provisions I. 3, IV. 2 and Section A. 6 of the San Jacinto Permit. Specific violations are identified in Paragraph 6, below.

   a. Provision I. 3 of the San Jacinto Permit states:

      "Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance."

b. Provision IV. 2 states:

"All dischargers shall develop and implement a SWPPP in accordance with Section A: Storm Water Pollution Prevention Plan. The discharger shall implement controls to reduce pollutants in storm water discharges from their construction sites to the BAT/BCT[1] performance standard."

c. Section A. 6 states:

"At a minimum, the discharger/operator must implement an effective combination of erosion and sediment control on all disturbed areas during the rainy season..."

6. This complaint is based on the following facts:

a. Hovnanian is the owner named in the Notice of Intent (NOI) for a 565-acre construction site located on the west side of Highland Springs Avenue, approximately 0.5 miles south of the intersection of Highland Springs Avenue and Sun Lakes Blvd in the City of Beaumont. The land generally slopes to the south towards Portrero Creek, and runoff from the site is tributary to Portrero Creek. One hundred seventy-five acres are currently being graded or have been graded. The owner of the site is H. Hovnanian, the developer is K. Hovnanian Homes and the NOI identifies Mr. John Svalbe as the contact for the site.

b. On July 29, 2004, coverage under the San Jacinto Permit was authorized and the storm water pollution prevention plan (SWPPP) for the project was approved.

c. On October 7, 2004, Board staff conducted an inspection of the construction site. The SWPPP specified that sediment basins would be constructed at the beginning of grading. However, silt fences were the only best management practice (BMP) implemented at the site. There were no sediment basins and no erosion control measures. The BMP implemented at the site was not adequate to control the discharge of pollutants from the site. These are violations of Provision IV. 2, Section A. 6 and Section A. 8 of the San Jacinto Permit. Site personnel were orally informed of these violations and were asked to correct the problems.

d. During a rain event on October 20, 2004, sediment-laden discharges from the site were noted, and Board staff took samples of the sediment-laden runoff. One of the samples had 21,000 mg/l total suspended solids (TSS), compared to the U.S. EPA benchmark of 100 mg/l TSS[2]. The discharge of TSS, in excess of levels expected in storm water runoff where proper control measures are implemented, threatens to cause pollution and indicates that proper controls have not been

[1] BAT is the acronym for Best Available Technology; BCT is the acronym for Best Conventional Technology.
[2] The 100 mg/l benchmark for TSS is directly from the federal industrial multi-sector permit. Construction is considered one kind of industry.

implemented. The controls specified in the SWPPP were not fully implemented. These are violations of Provisions I. 3 and IV. 2 of the San Jacinto Permit. Site personnel were orally informed about these violations and asked to correct the problems.

e. On October 26, 2004, Board staff inspected the site and observed that a large retention basin had been built that received run-off from about one-third of the site. Board staff requested that site staff improve other areas of the project that still did not have adequate protection.

f. On October 27, 2004, Board staff re-inspected the site during a storm event. The large retention basin held run-off from the eastern third of the site. However, sediment–laden run-off continued to be discharged from other areas of the site. On November 17, 2004, Board staff notified site personnel by email that a complaint was received that indicated water was being pumped from the retention basin without adequate BMPs.

g. Board staff inspected the site on January 3, 2005 and on February 11, 2005. Only a few of the sediment basins specified in the SWPPP had been constructed, and the site had little, if any, erosion control measures. Samples were taken each time, and the results (9,000 mg/l and 6,400 mg/l TSS) indicated that the few desiltation basins that had been constructed were not effective. Together, these activities constituted a violation of Provisions I. 3, IV. 2 and Section A. 6 of the San Jacinto Permit.

h. On February 16, 2005, a Notice of Violation (NOV) was sent to Hovnanian that outlined the inadequate BMP implementation at the site and the violations noted in Paragraphs c. – g., above. Hovnanian was directed to immediately implement an effective combination of erosion and sediment control BMPs at the site.

i. On March 7, 2005, Hovnanian responded to the NOV, and during a follow-up inspection on April 29, 2005, Board staff noted that significant improvements had been made at the site.

7. Hovnanian violated Provisions I. 3, IV. 2 and Section A. 6 and A. 8 of the San Jacinto Permit by failing to properly implement an effective combination of erosion and sediment control BMPs, by failing to implement the approved SWPPP in a timely manner and by causing a discharge storm water containing TSS that threatened to cause a pollution. Pursuant to Water Code Section 13385(a)(2), civil liability may be imposed for the preceding violations.

8. Section 13385(a)(2) provides that any person who violates waste discharge requirements shall be civilly liable. Section 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars ($10,000) for each day the violation occurs. Additional liability, not to exceed $10 per gallon of discharge, may be imposed for each gallon discharged in excess of 1,000 gallons.

9. Sediment-laden storm water discharged to Portrero Creek from the site was estimated to be 9.1 million gallons for the four days when staff observed discharges from the site (based on rainfall intensity, disturbed area and runoff coefficient).

10. Pursuant to Section 13385(c), the total maximum assessment for which Hovnanian is civilly liable is $91.039 million, based on estimated discharge (9.1 million gallons - 1,000 gallons = 9.0999 million gallons @ $10 per gallon = $90.999 million) and for four days of observed violations (4 days @ $10,000 per day=$40,000) for the violations cited in Paragraph 6, above.

11. Hovnanian saved approximately $65,369 (see below) by not implementing adequate control measures at the site. This is based on: (1) cost of erosion controls for approximately 10% of the disturbed areas (17.5 acres @ $0.03/ft^2 = $22,869); (2) temporary sediment basins during the initial stages of grading operations (minimum 5 basins @ $5,000/basin = $25,000); (3) additional cost of sandbags, visqueen, and other sediment and erosion control materials, labor and maintenance = $10,000; (4) maintenance of sediment basins; and (5) sediment basins @$1,500/basin, 5 times per season=$37,500). Board staff costs for investigating this incident were approximately $3,150 (45 hours at $70/hour). Based on additional information provided by Hovnanian during and after a pre-hearing meeting on December 16, 2005, the Executive Officer determined that the overall cost savings should be reduced by $30,000. These factors were also considered in assessing the penalty proposed in Paragraph 13, below.

12. Section 13385(e) specifies factors that the Board shall consider in establishing the amount of civil liability. These factors include: nature, circumstances, extent, and gravity of the violation, and, with respect to the discharger, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation. These factors are evaluated in the table below.

Factor	Comment
A. Nature, Circumstances, Extent and Gravity of Violation	The SWPPP required that sediment basins with stand pipes be used for desilting the run-off from the site and that they be installed at the onset of grading. Due to the lack of adequate sediment basins, sediment-laden storm water discharges occurred throughout the rainy season and entered the creek. Photos taken and samples collected at the site indicated excessive sediments in the discharge. Sediment-laden storm water was observed entering the creek on multiple occasions. Despite some attempts to implement adequate desiltation basins, Hovnanian failed to implement an effective combination of erosion and sediment control BMPs. Hovnanian failed to adequately respond to oral requests for corrective actions at the site.

B. Culpability	Hovnanian violated the terms of the San Jacinto Permit by failing to implement the approved SWPPP and by failing to properly implement an inspection program to monitor the effectiveness of the BMPs. Through most of the rainy season, Hovnanian did not implement an adequate combination of erosion and sediment control BMPs and continued to discharge polluted storm water into the creek. Hovnanian failed to adequately respond to Board staff's efforts to bring the site into compliance. Board staff gave several oral warnings for not implementing an approved SWPPP. Hovnanian's lack of implementation of an effective combination of BMPs at the site caused pollutants to be repeatedly discharged into waters of the U.S.
C. Economic Benefit or Savings	Hovnanian saved approximately $65,369 by not implementing adequate BMPs.
D. Prior History of Violations	In 2002, K. Hovnanian, the developer, was issued an NOV for violations of the General Construction Storm Water Permit for a construction site in Orange County. In 2005, Forecast Homes and K. Hovnanian Homes were issued four ACLs for violations of the San Jacinto Permit and the General Permit for construction sites in Riverside County.
E. Other matters as justice may require	Regional Board staff spent approximately 45 hours investigating this incident (@$70.00 per hour, the total cost for staff time is $3,150).
F. Ability to pay	The discharger has not provided any information to indicate that it is unable to pay the proposed assessment.

13. After consideration of the above factors, the Executive Officer proposes that civil liability be imposed on Hovnanian in the amount of $196,368 for the violations cited above. This amount is based on cost savings of $65,369 plus $40,000 for 4 days of violation and $90,999 for 9,099,900 gallons @ $0.01/gallon. No additional per gallon assessment has been made for discharges during storm events not observed by Board staff.

WAIVER OF HEARING

Hovnanian has indicated that it wishes to waive its right to a hearing. Please sign the attached waiver form and return it, together with a check for $196,368, to this office. The check should be made out to the State Water Resources Control Board.

If you have any questions, please contact Ms. Milasol C. Gaslan at (951) 782-4419, or Mr. Michael J. Adackapara at (951) 782-3238 or contact the Board's legal counsel, Jorge Leon, at (916) 341-5180.

1-13-06
Date

Gerard J. Thibeault
Executive Officer

In the matter of:	)	**Complaint No. R8-2005-0100**
	)	**for**
	)	**Administrative Civil Liability**
H. Hovnanian	)	**(Amended on January 13, 2006)**
2495 Campus Drive	)	
Irvine, CA 92612	)	
	)	
Attn: Mr. John Svalbe	)	

WAIVER OF HEARING

I agree to waive the right of H. Hovnanian to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2005-0100. I have enclosed a check, made payable to the State Water Resources Control Board, in the amount of $196,368. I understand that I am giving up the right of H. Hovnanian to be heard and to argue against allegations made by the Executive Officer in this complaint, and against the imposition of, and the amount of, the liability proposed.

_____ _____

Date for H. Hovnanian

California Regional Water Quality Control Board
Santa Ana Region

Alan C. Lloyd, Ph.D.
Agency Secretary

3737 Main Street, Suite 500, Riverside, California 92501-3348
Phone (951) 782-4130 - FAX (951) 781-6288
http://www.waterboards.ca.gov/santaana

Arnold Schwarzenegger
Governor

January 13, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. John Svalbe
H. Hovnanian
2495 Campus Drive
Irvine, CA 92612

AMENDED ADMINISTRATIVE CIVIL LIABILITY (ACL) COMPLAINT NO. R8-2005-0100, FOUR SEASONS, BEAUMONT, RIVERSIDE COUNTY

Dear Mr. Svalbe:

The above-referenced ACL Complaint was issued to H. Hovnanian on November 22, 2005. During our meeting on December 16, 2005 and subsequently, you provided additional information to us regarding the site conditions. Based on this additional information, we have amended the complaint and a copy of the amended complaint is enclosed.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on March 3, 2006. The staff report regarding this complaint and the meeting agenda will be mailed to you not less than 10 days prior to the Board meeting.

You have indicated that you wish to waive your right to a hearing based on these revisions of the complaint. Should you waive your right to a hearing and pay the proposed assessment, the Regional Board may not hold a public hearing on this matter. To waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check for $196,368. The check should be made payable to the State Water Resources Control Board. The payment and the waiver form should be mailed to this office in the enclosed preprinted envelope.

If you have any questions regarding this, you may contact Ms. Milasol C. Gaslan at (951) 782-4419 or Mr. Michael J. Adackapara at (951) 782-3238. All legal questions should be referred to our legal counsel, Mr. Jorge Leon, at (916) 341-5180.

Sincerely,

Gerard J. Thibeault
Executive Officer

Enclosures: Amended Complaint No. R8-2005-0100, Waiver Form and Envelope

cc with a copy of the Complaint:

Regional Board
Bruce Fujimoto, State Water Resources Control Board, Division of Water Quality
Jorge Leon, State Water Resources Control Board, Office of Chief Counsel
Wayne Rosenbaum, Foley & Lardner LLP
Kathi Moore, US-EPA, Region 9 (WTR-7)
Riverside County, Storm Water Program – Jason Uhley, NPDES Coordinator
City of Beaumont – John Wilder, NPDES Coordinator