STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

In the matter of:	)	**Complaint No. R8-2005-0102**
	)	**for**
	)	**Administrative Civil Liability**
K. Hovnanian-Forecast Homes	)	(First issued: November 22, 2005)
3536 Concours Street, Ste. 100	)	(Amended: March 6, 2006)
Ontario, CA 91764	)	
	)	
Attn: Mr. Steven Keene	)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. K. Hovnanian-Forecast Homes (Forecast) 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 April 21, 2006. Forecast 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. Forecast obtained coverage for three adjacent construction sites 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) on July 22, 2003 (Tract 30789, WDID No. 8 33J300223) and August 5, 2004 (Tract 31917, WDID No. 8 33J300432). Each of these sites also has an approved storm water pollution prevention plan (SWPPP). The sites are located in the City of Lake Elsinore.

5. Forecast 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. Forecast is the owner named in the Notices of Intent (NOI) for the 82 and 51-acre construction sites located northwest of McVickers Canyon Park Road, Lake Elsinore, CA. The developer is also Forecast and the contact for the sites is currently Mr. Steven Keene. The land has steep hills draining to a wash on one side and a residential area on the other side.

b. On October 20, 2004, Board staff conducted an inspection of the Forecast construction sites during a rain event. The SWPPP for Tract 31917 specified run-on to the tract was to be diverted away from any disturbed areas. None of the sites had made any provisions for diverting run-on. The SWPPP specified permanent and temporary sediment control basins. The permanent sediment control basins, intended as a post-construction BMP, were being used as sediment control basins during construction. The temporary sediment basins specified in the SWPPP had not been built. The permanent basin by Sandpiper Drive was inadequate for sediment control, and it quickly clogged during the rain event. These are violations of Provision IV. 2 and Section A. 6 of the San Jacinto Permit.

c. Forecast had built large check dams across the steep, dirt street, to slow the flows, to capture sediment and to direct the flow to the sediment basin. Some of the check dams were washed away during the storm and the flows were not directed into the sediment basin. This caused a discharge of sediment-laden storm water onto Sandpiper Drive, a residential neighborhood, depositing sediment and rocks as large as 5 inches for three blocks down the street until the flow entered a storm drain inlet. A sample of the run-off was obtained. The sample contained 41,000 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 implemented. No

[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.

erosion control measures were implemented at the site. These are violations of Provisions I. 3, IV. 2 and Section A. 6 of the San Jacinto Permit.

d. On October 26, 2004, Board staff inspected the sites again. There was a new sediment trap about 150 feet uphill from the end of Sandpiper Drive. The discharge from the sediment trap did not go into the sediment basin, but discharged directly into the storm drain system. Board staff met with site personnel and advised them that the BMPs specified in the SWPPP were not properly being implemented.

e. On October 27, 2004, Board staff re-inspected the sites during a storm event. The sediment trap upstream from Sandpiper Drive had been completely filled with sediment from upstream erosion. There were no erosion control measures implemented. The run-off was sampled and it contained 13,000 mg/l TSS. These are violations of Provisions I. 3 and IV. 2 and Section A. 6 of the San Jacinto Permit.

f. On November 16, 2004, Board staff inspected the sites with the City of Lake Elsinore inspectors and Forecast staff. Various non-compliance issues were discussed with Forecast.

g. On January 7, 2005, Board staff inspected the sites. Samples taken showed discharges of 4,500 mg/l TSS near Sandpiper Drive and 9,000 mg/l TSS near McVickers Canyon Park Road.

h. On February 16, 2005, Board staff issued a Notice of Violation (NOV) to Forecast outlining the violations noted in Paragraphs b. – g., above. Forecast was directed to immediately implement an effective combination of erosion and sediment control BMPs at the site. Forecast's March 25, 2005 response indicated that new controls had been implemented to bring the sites into compliance with the San Jacinto Permit.

i. On April 1, 2005, Board staff contacted Forecast staff by telephone and discussed the deficiencies in the March 25, 2005 response, including the inadequate sediment basin on the Sandpiper Drive side of the sites and the lack of any sediment basins on the McVickers Canyon Park Road side of the sites.

j. On April 28, 2005, Board staff conducted a follow-up inspection of the sites during a rain event. Two samples were taken. The first sample was taken at a discharge point from the sediment basin on the Sandpiper Drive side of the sites. The permanent sediment basin was mostly being bypassed and the sample results showed a sediment level of 48,000 mg/l TSS. Run-off from the McVickers Canyon Park Road side of the sites had a sediment level of 16,000 mg/l TSS.

7. Forecast violated Provisions I. 3, IV. 2 and Section A. 6 of the San Jacinto Permit by failing to properly implement an effective combination of erosion and sediment control BMPs and failing to implement the approved SWPPP. Forecast discharged storm water containing pollutants to waters of the United States from the above construction sites. 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 the storm drain system from the sites was estimated to be 15 million gallons for 4 days when staff observed discharges from the sites (based on rainfall intensity, area and runoff coefficient).

10. Pursuant to Section 13385(c), the total maximum assessment for which Forecast is civilly liable is $150.03 million, based on estimated discharge (15 million gallons - 1,000 gallons = 14.999 million gallons @ $10 per gallon) and $40,000 @ $10,000 for 4 days of violations for the 4 days of discharge observed for the violations cited in Paragraph 7, above.

11. Forecast saved an estimated $121,900 by not implementing adequate control measures at the sites. This is based on an additional cost of: a) $57,000 for channeling of run-on water (@ $19/ft for 3,000 feet of two-foot diameter corrugated plastic pipe); b) $10,000 for proper design and construction of two temporary sediment basins (@ $5,000/basin); c) $36,000 for cleaning both basins 6 times during the winter (@ $3,000/basin per cleaning), d) $18,900 for 10 mil plastic for 3,000 linear feet of lined ditch (@ $126/12'x20' roll).

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 SWPPPs specified that sediment basins be used to adequately desilt the run-off from the site. Due to the lack of adequate sediment basins, sediment-laden storm water discharges occurred throughout the rainy season and entered the storm drain system. Photos taken and samples collected at the sites indicates excessive sediments in the discharge. Forecast failed to implement an effective combination of erosion and sediment control BMPs. Forecast failed to adequately respond to oral requests for corrective actions at the site.
B. Culpability	Forecast violated the terms of the San Jacinto Permit by failing to implement the approved SWPPP. Throughout the rainy season, Forecast did not implement an adequate combination of erosion and sediment control BMPs and continued to discharge polluted storm water into the storm drain system. Forecast did not respond in a timely manner to Board staff's efforts to bring the sites into compliance.
C. Economic Benefit or Savings	Forecast saved at least $121,900 by not implementing adequate BMPs.
D. Prior History of Violations	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 Forecast in the amount of $236,895 for the violations cited above. This amount is based on cost savings of $121,900, plus $40,000 for 4 days of violation @ $10,000/day and $74,995 for 15 million gallons –1,000 gallons @ $0.005 per gallon of discharge.

WAIVER OF HEARING

Forecast has indicated that it wishes to waive its right to a hearing and to participate in a supplemental environmental project. Please sign the attached waiver form and return it, together with two checks for a total amount of $236,895, as described in the attached waiver form, to this office in the enclosed preprinted envelope.

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.

3/6/06
Date

Gerard J. Thibeault
Executive Officer

In the matter of:	)	**Complaint No. R8-2005-0102**
	)	**for**
	)	**Administrative Civil Liability**
K. Hovnanian Forecast Homes	)	(First issued: November 22, 2005)
3536 Concours Street, Ste. 100	)	(Amended: March 6, 2006)
Ontario, CA 91764	)	
	)	
Attn: Mr. Steven Keene	)	

WAIVER OF HEARING

I agree to waive the right of K. Hovnanian Forecast Homes (Forecast) to a hearing before the Santa Ana Regional Water Quality Control Board with regard to the violations alleged in Complaint No. R8-2005-0102. On behalf of Forecast, I agree to participate in a supplemental environmental project (SEP) for 50% of the assessment. I have enclosed a check, made payable to the State Water Resources Control Board for $118,448 and a second check, made payable to the Eastern Municipal Water District for $118,447, for the Quail Valley Water Quality Improvement SEP. I understand that I am giving up the right of Forecast 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 K. Hovnanian Forecast Homes

California Regional Water Quality Control Board
Santa Ana Region

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

March 6, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Steven Keene
K. Hovnanian-Forecast Homes
3536 Concours Street, Ste. 100
Ontario, CA 91764

AMENDED ADMINISTRATIVE CIVIL LIABILITY (ACL) COMPLAINT NO. R8-2005-0102, LAKE ELSINORE, RIVERSIDE COUNTY

Dear Mr. Svalbe:

The above-referenced ACL Complaint was issued to K. Hovnanian on November 22, 2005. During our meetings on December 22, 2005 and February 17, 2006, 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 April 21, 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 and want to participate in a supplemental environmental project (SEP) for fifty percent of the total assessed amount. We have revised the ACL and the waiver form to reflect your agreement to donate 50% of the assessed amount towards the Quail Valley Water Quality Improvement Project. This SEP is a joint project of Riverside County, City of Canyon Lake, Elsinore Valley Municipal Water District and Eastern Municipal Water District, and Eastern Municipal Water District is the lead agency.

We are enclosing a copy of the revised ACL, including the waiver form, and a pre-printed envelope. Please sign the waiver form and submit the form with a check for $118, 447 made payable to Eastern Municipal Water District, and a second check for $118,448 made payable to the State Water Resources Control Board. These two checks and the waiver form should be mailed to this office no later than April 6, 2006 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. R8-2005-0102, 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
Shanda Beltran, Latham & Watkins LLP
Kathi Moore, US-EPA, Region 9 (WTR-7)
Riverside County, Storm Water Program – Jason Uhley, NPDES Coordinator
City of Lake Elsinore – Ken Seumalo, NPDES Coordinator

STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
SANTA ANA REGION

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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.

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"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. Forecast is the owner named in the Notices of Intent (NOI) for the 82 and 51-acre construction sites located northwest of McVickers Canyon Park Road, Lake Elsinore, CA. The developer is also Forecast and the contact for the sites is currently Mr. Steven Keene. The land has steep hills draining to a wash on one side and a residential area on the other side.

b. On October 20, 2004, Board staff conducted an inspection of the Forecast construction sites during a rain event. The SWPPP for Tract 31917 specified run-on to the tract was to be diverted away from any disturbed areas. None of the sites had made any provisions for diverting run-on. The SWPPP specified permanent and temporary sediment control basins. The permanent sediment control basins, intended as a post-construction BMP, were being used as sediment control basins during construction. The temporary sediment basins specified in the SWPPP had not been built. The permanent basin by Sandpiper Drive was inadequate for sediment control, and it quickly clogged during the rain event. These are violations of Provision IV. 2 and Section A. 6 of the San Jacinto Permit.

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7. Forecast violated Provisions I. 3, IV. 2 and Section A. 6 of the San Jacinto Permit by failing to properly implement an effective combination of erosion and sediment control BMPs and failing to implement the approved SWPPP. Forecast discharged storm water containing pollutants to waters of the United States from the above construction sites. 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 the storm drain system from the sites was estimated to be 15 million gallons for 4 days when staff observed discharges from the sites (based on rainfall intensity, area and runoff coefficient).

10. Pursuant to Section 13385(c), the total maximum assessment for which Forecast is civilly liable is $150.03 million, based on estimated discharge (15 million gallons - 1,000 gallons = 14.999 million gallons @ $10 per gallon) and $40,000 @ $10,000 for 4 days of violations for the 4 days of discharge observed for the violations cited in Paragraph 7, above.

11. Forecast saved an estimated $121,900 by not implementing adequate control measures at the sites. This is based on an additional cost of: a) $57,000 for channeling of run-on water (@ $19/ft for 3,000 feet of two-foot diameter corrugated plastic pipe); b) $10,000 for proper design and construction of two temporary sediment basins (@ $5,000/basin); c) $36,000 for cleaning both basins 6 times during the winter (@ $3,000/basin per cleaning), d) $18,900 for 10 mil plastic for 3,000 linear feet of lined ditch (@ $126/12'x20' roll).

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 SWPPPs specified that sediment basins be used to adequately desilt the run-off from the site. Due to the lack of adequate sediment basins, sediment-laden storm water discharges occurred throughout the rainy season and entered the storm drain system. Photos taken and samples collected at the sites indicates excessive sediments in the discharge. Forecast failed to implement an effective combination of erosion and sediment control BMPs. Forecast failed to adequately respond to oral requests for corrective actions at the site.
B. Culpability	Forecast violated the terms of the San Jacinto Permit by failing to implement the approved SWPPP. Throughout the rainy season, Forecast did not implement an adequate combination of erosion and sediment control BMPs and continued to discharge polluted storm water into the storm drain system. Forecast did not respond in a timely manner to Board staff's efforts to bring the sites into compliance.
C. Economic Benefit or Savings	Forecast saved at least $121,900 by not implementing adequate BMPs.
D. Prior History of Violations	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 Forecast in the amount of $311,890 for the violations cited above. This amount is based on cost savings of $121,900, plus $40,000 for 4 days of violation @ $10,000/day and $149,990 for 15 million gallons –1,000 gallons @ $0.01 per gallon of discharge.

WAIVER OF HEARING

Forecast may waive its right to a hearing. If you choose to do so, please sign the attached waiver form and return it, together with a check for $311,890 in the enclosed preprinted envelope. 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.

11-22-05
Date

Gerard J. Thibeault
Executive Officer

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

November 22, 2005

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Steven Keene
K. Hovnanian-Forecast Homes
3536 Concours Street, Ste. 100
Ontario, CA 91764

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R8-2005-0102, TRACTS NO. 30789 AND 31917, LAKE ELSINORE, RIVERSIDE COUNTY

Dear Mr. Keene:

We are enclosing a certified copy of Complaint No. R8-2005-0102, proposing administrative civil liability of $311,890 for violations of the Watershed-Wide Waste Discharge Requirements for Discharges of Storm Water Runoff Associated With New Developments in the San Jacinto Watershed, Order No. 01-34, NPDES No. CAG618005, WDID Nos. 8 33J3000223 and 8 33J3000432.

If necessary, a public hearing on this matter will be scheduled for the Regional Board meeting on January 18, 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 the option to waive your right to a hearing. 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. If you choose to waive your right to a hearing, please sign the enclosed waiver form and submit the form with a check for $311,890. 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 do not wish to waive your right to a hearing, a pre-hearing meeting with Board staff is recommended. Should you wish to schedule a pre-hearing meeting, please call us prior to December 16, 2005. At that time, you may submit information that may not have been previously available to staff regarding this incident. The information should address the following:

1. Nature, circumstances, extent, and gravity of the violations;

2. Your ability to pay the proposed assessment;

3. Any prior history of violations;

4. Your degree of culpability;

5. Economic benefit or saving; and

6. Such other matters as justice may require.

If you have any questions regarding this complaint, 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: Complaint No. R8-2005-0102, Waiver Form, Preprinted 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
Kathi Moore, US-EPA, Region 9 (WTR-7)
Riverside County, Storm Water Program – Jason Uhley, NPDES Coordinator
City of Lake Elsinore – Ken Seumalo, NPDES Coordinator
K. Hovnanian Forecast Homes – Yossi Noudel, Chief Legal Counsel
K. Hovnanian Forecast Homes – Mr. Roy Moffett
K. Hovnanian Forecast Homes – Mr. Kevin Kindig