

asserting claims against Hovnanian that are resolved by the Consent Decree.

The proposed Complaint alleges three types of storm water violations—discharges without a permit, failure to timely apply for permit coverage, and permit violations, in violation of Sections 301 and 308 of the CWA and analogous state law—and alleges a general pattern and practice of non-compliance at Hovnanian's Sites throughout the country.

The Consent Decree addresses Hovnanian's violations of the Clean Water Act ("CWA") as well as violations of state and federal National Pollutant Discharge Elimination System ("NPDES") permits governing the discharge of storm water from Hovnanian's construction Sites. The Consent Decree resolves claims of the United States and State Plaintiffs for past violations of storm water requirements at the Sites identified in Appendix A of the Complaint by requiring the payment of a civil penalty totaling \$1 million and the institution of injunctive relief in the form of a nationwide management, reporting and training program to improve compliance with storm water requirements at Hovnanian's future construction Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to this proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, *Attention: Nancy Flickinger (EES)*, and should refer to *United States of America v. Hovnanian Enterprises, Inc.*, Civil Action No. 2:10-cv-01742-TJS, DOJ # 90-5-1-1-08709.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19016. The consent decree also may be examined on the following Department of Justice Web site, [http://www.usdoj.gov/enrd/Consent\\_Decrees.html](http://www.usdoj.gov/enrd/Consent_Decrees.html). A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax No. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$46.50 (25 cents per page reproduction

cost for a full copy) payable to the U.S. Treasury.

**Maureen Katz,**

*Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

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**DEPARTMENT OF LABOR**

**Employee Benefits Security Administration**

**Publication of Model Notices for Health Care Continuation Coverage Provided Pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA) and Other Health Care Continuation Coverage, as Required by the American Recovery and Reinvestment Act of 2009 (ARRA), as Further Amended by the Continuing Extension Act (CEA) of 2010, Notice**

**AGENCY:** Employee Benefits Security Administration, Department of Labor.

**ACTION:** Notice of the Availability of the Model Health Care Continuation Coverage Notices Required by ARRA, as further amended by CEA.

**SUMMARY:** On April 15, 2010, President Obama signed the Continuing Extension Act of 2010 (Pub. L. 111-157), which extended, for a third time, the availability of the health care continuation coverage premium reduction provided for COBRA and other health care continuation coverage as required by ARRA (Pub. L. 111-5). ARRA, as amended, retained the requirement that the Secretary of Labor (the Secretary), in consultation with the Secretaries of the Treasury and Health and Human Services, develop model notices. These models are for use by group health plans and other entities that, pursuant to ARRA, as amended, must provide notices of the availability of premium reductions and additional election periods for health care continuation coverage. This document announces the availability of the model health care continuation coverage notices required by ARRA, as further amended by CEA.

**FOR FURTHER INFORMATION CONTACT:** Kevin Horahan or Mark Connor, Office of Health Plan Standards and Compliance Assistance, Employee Benefits Security Administration, (202) 693-8335. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

created the health care continuation coverage provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA), the Internal Revenue Code (Code), and the Public Health Service Act (PHS Act). These provisions are commonly referred to as the "COBRA continuation provisions," and the continuation coverage that they mandate is commonly referred to as "COBRA continuation coverage." Group health plans subject to the Federal COBRA continuation provisions are subject to ARRA's premium reduction provisions and notice requirements. The Federal COBRA continuation coverage provisions do not apply to group health plans sponsored by employers with fewer than 20 employees. Many States require health insurance issuers that provide group health insurance coverage to plans not subject to the COBRA continuation provisions to provide comparable continuation coverage. Such continuation coverage provided pursuant to State law is also subject to ARRA's premium reduction provisions and notice requirements.

**II. Description of the Model Notices**

*a. In General*

ARRA, as further amended, mandates the provision of certain notices. Each of these notices must include: a prominent description of the availability of the premium reduction, including any conditions on the entitlement; a model form to request treatment as an "Assistance Eligible Individual";<sup>1</sup> the name, address, and telephone number of the plan administrator (and any other person with information about the premium reduction); a description of the obligation of individuals paying reduced premiums who become eligible for other coverage to notify the plan; and (if applicable) a description of the opportunity to switch coverage options.

The Department of Labor (the Department) created these model notices to cover an array of situations in order to deal with the complexity of the various scenarios facing dislocated workers and their families. In an effort to ensure that the notices include all of the information required under ARRA, as amended, while minimizing the burden imposed on group health plans and issuers, the Department has created several packages. As with those models

<sup>1</sup> In general, an "Assistance Eligible Individual" is an individual who has experienced an involuntary termination of employment that is a COBRA "qualifying event" at any time from September 1, 2008 through May 31, 2010 if he or she elects such COBRA coverage. For purposes of ARRA, certain involuntary terminations are considered qualifying events despite the occurrence of a previous qualifying event.

previously developed by the Department, each of the new packages is designed for a particular group of qualified beneficiaries, and contains all of the information needed to satisfy the content requirements for ARRA's amended notice provisions. The packages include the following disclosures:

- A summary of ARRA's premium reduction provisions.
- A form to request the premium reduction.
- A form for plans (or issuers) that permit qualified beneficiaries to switch coverage options to use to satisfy ARRA's requirement to give notice of this option.
- A form for an individual to use to satisfy ARRA's requirement to notify the plan (or issuer) that the individual is eligible for other group health plan coverage or Medicare.
- COBRA election forms and information, as appropriate.

*b. General Notice*

Plans that are subject to the COBRA continuation provisions under Federal law are required to send the General Notice.<sup>2</sup> It must include the information described above and be provided to ALL qualified beneficiaries, not just covered employees, who experience a qualifying event through May 31, 2010.<sup>3</sup>

The Department has modified the previously updated version of this model notice so that it includes all of the information related to the premium reduction and other rights and obligations under ARRA, as further amended by CEA. This model also includes all of the information required in an election notice required pursuant to the Department's final COBRA notice regulations under 29 CFR 2590.606–4(b).<sup>4</sup> Using this model to provide

<sup>2</sup> Under ARRA, as amended, the Secretary generally is responsible for developing all of the model notices with the exception of model notices relating to Temporary Continuation Coverage under 5 U.S.C. 8905a, which is the responsibility of the Office of Personnel Management (OPM). In developing the original ARRA model notices, the Department was required to, and did, consult with the Departments of the Treasury and Health and Human Services, OPM, the National Association of Insurance Commissioners, and plan administrators and other entities responsible for providing COBRA continuation coverage. This set of models was again created in consultation with staff at the Departments of the Treasury and Health and Human Services.

<sup>3</sup> This notice need not be provided to the extent that a notice including accurate information regarding rights under ARRA has already been provided.

<sup>4</sup> The 60-day period for electing COBRA continuation coverage is measured from when a complete notice is provided. ARRA provides that COBRA election notices provided for qualifying events occurring during the effective dates of the

notice to individuals who have experienced any qualifying event from September 1, 2008 through May 31, 2010 will satisfy the Department's existing requirements for the content of the COBRA election notice as well as those imposed by ARRA, as amended.

*c. Alternative Notice*

Issuers that offer group health insurance coverage that is subject to comparable continuation coverage requirements imposed by State law must provide the Alternative Notice. The Alternative Notice must include the information described above and be provided to ALL qualified beneficiaries, not just covered employees, who have experienced a qualifying event through May 31, 2010.<sup>5</sup> The Department has modified the previously updated version of this model notice. However, because continuation coverage requirements vary among States it should be further modified to reflect the requirements of the applicable State law. Issuers of group health insurance coverage subject to this notice requirement should feel free to use the model Alternative Notice, the model Notice of New Election Period, the model Supplemental Information Notice, the model Notice of Extended Election Period, or the model General Notice (as appropriate).

*d. Notice of New Election Period*

The Notice of New Election Period is required to be sent by plans that are subject to COBRA continuation provisions under Federal or State law. It must include the information described above and should be provided to ALL individuals who:

- Experienced a qualifying event that was a reduction in hours at any time from September 1, 2008 through May 31, 2010;
- Experienced a termination of employment at any point from March 2, 2010 through May 31, 2010; AND
- Either did not elect COBRA continuation coverage when it was first offered OR who elected but subsequently discontinued COBRA.

Generally, individuals who have experienced a qualifying event that consists of a reduction of hours and who, from March 2, 2010 through May 31, 2010, experience an involuntary termination of employment must be provided this notice within 60 days of the event. Pursuant to CEA, for the April 1, 2010 through April 14, 2010 period,

premium reduction period are not complete if they fail to include information on the availability of the premium reduction.

<sup>5</sup> See note 3 above.

the notice requirement attaches to any termination of employment. The Department strongly recommends that notice be provided to individuals who experienced any termination of employment because employers may be subject to civil penalties if it is later determined that the termination was involuntary and notice was not provided. The Department has updated its model Notice of New Election Period. Using this model to provide notice to these individuals satisfies the requirements of ARRA, as amended by CEA.

*e. Supplemental Information Notice*

The Supplemental Information Notice is required to be sent by plans that are subject to COBRA continuation provisions under Federal or State law. It must include the information described above and should be provided to ALL individuals who elected and maintained COBRA continuation coverage based on the following qualifying events:

- All qualifying events related to a termination of employment that occurred from March 1, 2010 through April 14, 2010 for which notice of the availability of the premium reduction available under ARRA was not given; or
- Reductions of hours that occurred during the period from September 1, 2008 through May 31, 2010 which were followed by a termination of the employee's employment that occurred on or after March 2, 2010 and by May 31, 2010.

For the first item above plans must provide this notice to all individuals with a qualifying event related to any termination of employment if they have not already been provided notice of their rights under ARRA. This notice must be provided before the end of the required time period for providing a COBRA election notice. For the second item above, generally, individuals who experience an involuntary termination of employment from March 2, 2010 through May 31, 2010 after experiencing a qualifying event that consists of a reduction of hours must be provided this notice within 60 days of the termination of employment. However, as has been noted, CEA requires plans to provide notices to all individuals with qualifying events related to ANY termination of employment that occurred from April 1, 2010 through April 14, 2010. In those cases, this notice must be provided before the end of the required time period for providing a COBRA election notice.<sup>6</sup>

<sup>6</sup> ARRA section 3001(a)(7) provides that COBRA election notices provided for qualifying events

Continued

Because employers may be subject to civil penalties if it is later determined that the termination was involuntary, the Department strongly recommends that notice be provided to individuals who experienced any termination of employment. The Department has updated its model Supplemental Information Notice. Using this model to provide notice to these individuals satisfies the requirements of ARRA, as amended by CEA.

#### *f. Notice of Extended Election Period*

The Notice of Extended Election Period is required to be sent by plans that are subject to COBRA continuation provisions under Federal or State law. It must include the information described above and be provided to ALL individuals who experienced a qualifying event that was a termination of employment from April 1, 2010 through April 14, 2010, were provided notice that did not inform them of their rights under ARRA, as amended by CEA, and either chose not to elect COBRA continuation coverage at that time OR elected COBRA but subsequently discontinued that coverage. This notice must be provided before the end of the required time period for providing a COBRA election notice.<sup>7</sup> The Department has updated its model Notice of Extended Election Period. Using this model to provide notice to these individuals satisfies the requirements of ARRA, as amended by CEA.

### **III. For Additional Information**

For additional information about ARRA's COBRA premium reduction provisions as amended by CEA, contact the Department's Employee Benefits Security Administration's Benefits Advisors at 1-866-444-3272. In addition, the Employee Benefits Security Administration has developed a dedicated COBRA Web page [www.dol.gov/COBRA](http://www.dol.gov/COBRA) that will contain information on the program as it is developed. Subscribe to this page to get up-to-date fact sheets, FAQs, model notices, and applications.

### **IV. Paperwork Reduction Act Statement**

According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13) (PRA), no persons are required to respond to a collection of information unless such collection displays a valid Office of Management and Budget

occurring during the effective dates of the premium reduction program are not complete if they fail to include information on the availability of the premium reduction.

<sup>7</sup> See note 6 above.

(OMB) control number. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number; further, the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. 3512.

OMB has approved the Department's no-material, non-substantive change request for the updated notices under OMB Control Number 1210-0123. The public reporting burden for this collection of information is estimated to average approximately 3 minutes per respondent, including time for gathering and maintaining the data needed to complete the required disclosure. There is also an additional \$0.44 average cost per response for mailing costs. Interested parties are encouraged to send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Office of the Chief Information Officer, Attention: Departmental Clearance Officer, 200 Constitution Avenue, NW., Room N-1301, Washington, DC 20210 or e-mail [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov) and reference the OMB Control Number 1210-0123.

### **V. Models**

The Department has decided to make the model notices available in modifiable, electronic form on its Web site: <http://www.dol.gov/COBRA>.

### **VI. Statutory Authority**

**Authority:** 29 U.S.C. 1027, 1059, 1135, 1161-1169; Sec. 3001, Pub. L. 111-5, 123 Stat. 115; Sec. 1010, Pub. L. 111-118, 123 Stat. 3409; Sec. 3, Pub. L. 111-144, 124 Stat. 42; Sec. 3, Pub. L. 111-157, 124 Stat. 1116; and Secretary of Labor's Order 6-2009, 74 FR 21524 (May 7, 2009).

Signed at Washington, DC, this 30th day of April 2010.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration.*

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### **LIBRARY OF CONGRESS**

#### **Copyright Office**

[Docket No. RF 2009-1B]

#### **The Register of Copyrights' and the Copyright Royalty Judges' authority to determine the constitutionality of 17 U.S.C. 114(f)(5)**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final Order.

**SUMMARY:** Two material questions of substantive law were referred to the Register of Copyrights concerning the authority of the Register of Copyrights and the Copyright Royalty Judges to determine the constitutionality of 17 U.S.C. 114(f)(5). The Register of Copyrights responded by delivering a Memorandum Opinion to the Copyright Royalty Board on April 30, 2010.

**DATES:** Effective Date: April 30, 2010.

#### **FOR FURTHER INFORMATION CONTACT:**

Tanya Sandros, Deputy General Counsel, or Stephen Ruwe, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:** In the Copyright Royalty and Distribution Reform Act of 2004, Congress amended Title 17 to replace the copyright arbitration royalty panels with the Copyright Royalty Judges ("CRJs"). One of the functions of the CRJs is to make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections 112(e), 114, 115, 116, 118, 119 and 1004 of the Copyright Act. The CRJs have the authority to request from the Register of Copyrights ("Register") an interpretation of any material question of substantive law that relates to the construction of provisions of Title 17 and arises during the proceeding before the CRJs. See 17 U.S.C. 802(f)(1)(A)(ii).

On March 31, 2010, the Register received an Order from Copyright Royalty Judge William J. Roberts, Jr. referring the following two material questions of substantive law for her consideration:

Does the Register of Copyrights have the authority under Chapter 7, or any other provisions of the Copyright Act, to determine the constitutionality of 17 U.S.C. 114(f)(5)?

Do the Copyright Royalty Judges have the authority under Chapter 8, or any other provisions of the Copyright Act, to determine the constitutionality of 17 U.S.C. 114(f)(5)?

The Register also received the briefs filed with the CRJs by RealNetworks,