

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA, STATE
OF ALABAMA, and
SOUTH CAROLINA DEPARTMENT OF
HEALTH AND ENVIRONMENTAL
CONTROL

Plaintiffs,

v.

D.R. HORTON, INC. and D.R. HORTON,
INC. – BIRMINGHAM,

Defendants.

COMPLAINT

Civil Action No:

Plaintiffs the United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), with respect to its claims under federal law; and the State of Alabama, by the authority of the Alabama Attorney General’s Office, at the request of the Alabama Department of Environmental Management (“ADEM”), and the South Carolina Department of Health and Environmental Control (“SCDHEC”) (collectively, “State Plaintiffs”), with respect to their state law claims, allege as follows:

NATURE OF THE CASE
(Water pollution from construction activities)

1. This is a civil action filed under the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d), against D.R. Horton, Inc., and its subsidiary D.R. Horton, Inc. – Birmingham, for failure to comply with the conditions of permits issued pursuant to the CWA under 33 U.S.C. § 1342, and for the unauthorized discharge of pollutants in stormwater from construction activity

at residential construction sites in violation of a permit and/or in violation of the CWA, 33 U.S.C. § 1311. This action is also brought pursuant to the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 through 22-22-14, and South Carolina Pollution Control Act, S.C. Code §§ 48-1-10 through 48-1-350.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action under: 28 U.S.C. §§ 1331 (Federal question), 1345 (United States as plaintiff), and 1355 (Fine, penalty or forfeiture); 33 U.S.C. §§ 1319 (CWA Enforcement) (b) and (d); and 28 U.S.C. § 1367 (Supplemental jurisdiction) as to the State Plaintiffs' claims.

3. Venue is proper in this District under: 33 U.S.C. § 1319(b) (CWA Enforcement); and 28 U.S.C. §§ 1391 (Venue in general), and 1395 (Fine, penalty or forfeiture) because a substantial part of the events giving rise to this action occurred in this District.

DEFENDANTS

4. D.R. Horton, Inc. is a corporation organized and existing under the laws of Delaware and is a "person" as defined in 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2. D.R. Horton, Inc. – Birmingham, a wholly owned subsidiary of D.R. Horton, Inc., is a corporation organized and existing under the laws of Alabama and is a "person" as defined in 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2. Hereinafter, the term "Horton" includes both defendants.

5. Horton owns and/or operates numerous sites in various states where it has constructed or is currently constructing residential homes, including sites within this District.

STATUTORY AND REGULATORY FRAMEWORK

6. The CWA states that the “objective of this chapter is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U.S.C. § 1251(a), and prohibits the discharge of any pollutant absent (*inter alia*) a CWA permit. 33 U.S.C. § 1311(a),

7. The CWA specifically requires a permit for stormwater discharges associated with industrial activity. 33 U.S.C. § 1342(p). EPA regulations define the term “storm water discharge associated with industrial activity” to include stormwater discharges from construction activities, including clearing, grading, and excavation activities, that result in a disturbance of five or more acres of total land area. 40 C.F.R. § 122.26(b)(14)(x). Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five or more acres. *Id.* The term “storm water discharge associated with small construction activity” also includes stormwater discharges from construction activities, including clearing, grading, and excavation activities, that result in a disturbance of equal to or greater than one acre and less than five acres. 40 C.F.R. § 122.26(b)(15)(i). Construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre and less than five acres. *Id.*

8. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1), the Operator is required to submit to the Department a Notice of Registration in order to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

9. SC DEHC’s analogous state laws include similar relevant requirements. Pollution Control Act, S.C. Code Ann. §§ 48-1-10 et seq.; Stormwater Management and Sediment

Reduction Act, S.C. Code Ann. §§ 48-14-10 et seq.; S.C. Code Ann. Regs. 61-9, Water Pollution Control Permits; S.C. Code Ann. Regs. 72-300 through 72-316, Standards for Stormwater Management and Sediment Reduction.

10. In 1992, EPA issued a General Permit for Storm Water Discharges from Construction Activities. 57 Fed. Reg. 41176 (Sept. 9, 1992). EPA has, on various occasions, subsequently modified and reissued that general permit. 63 Fed. Reg. 7858 (Feb. 17, 1998); 63 Fed. Reg. 36,490 (July 6, 1998); 65 Fed. Reg. 25,122 (Apr. 28, 2000); 68 Fed. Reg. 39,087 (July 1, 2003); 73 Fed. Reg. 40,338 (July 14, 2008); and 77 Fed. Reg. 12,286 (Feb. 29, 2012). The violations alleged in this Complaint occurred during the effective date of the 2012 federal general permit (effective February 16, 2012 to February 16, 2017).

11. Some States implement their own stormwater permitting program, if the State program meets the federal requirements set forth in 40 C.F.R. Part 123.33 U.S.C. § 1342(b). The States of Alabama, North Carolina, and South Carolina are so authorized by EPA and have issued their own general permits governing the discharges of stormwater associated with construction activity.

12. Alabama's General Permit for Discharges from Construction Activities that Result in a Total Land Disturbance of One Acre or Greater and Sites Less than One Acre but are Part of a Common Plan of Development or Sale, effective April 1, 2011 through March 31, 2016, was subsequently reissued twice and is effective through March 31, 2026. See Permit No. ALR100000. This permit was in effect at all times relevant to the violations alleged in this Complaint.

13. North Carolina's General Permit No. NCG 010000 to Discharge Stormwater Under the NPDES for Construction Activities, effective August 3, 2011 through July 31, 2016,

was subsequently reissued three times and is effective through March 31, 2024. See Permit No. NCG 010000. This permit was in effect at all times relevant to the violations alleged in this Complaint.

14. On August 1, 2006, the State of South Carolina issued South Carolina’s NPDES General Permit for Stormwater Discharges From Construction Activities, SCR100000, effective September 1, 2006 (hereinafter “2006 SC Permit”). On October 15, 2012, South Carolina issued NPDES General Permit SCR100000, effective January 1, 2013 with an expiration date of December 31, 2017 (hereinafter “2012 SC Permit”), which replaced the 2006 SC Permit. See 2012 SC Permit Section 1.1. The 2012 SC Permit addresses ongoing projects permitted under the 2006 SC Permit. See 2012 SC Permit Section 2.4.2.A. The 2012 SC Permit creates new classes of permittees, including “Primary Permittees” and “Secondary Permittees.” See 2012 SC Permit Section 2.2. This permit was in effect at all times relevant to the violations alleged in this Complaint. On January 29, 2021, the State of South Carolina reissued SCR100000, which is effective through February 28, 2026.

15. These general permits establish conditions for the discharge of stormwater associated with construction activities, including clearing, grading, and excavating, into waters of the state. *See* ALR100000 Part I; NCG 010000 Section III; 2006 SC Permit Part 1; 2012 SC Permit Section 1. The general permits require a facility to apply for coverage under the general permit by submitting a Notice of Intent or an Erosion and Sediment Control Plan. See ALR100000 Part II; NCG 010000 Section II; 2006 SC Permit Part 2; 2012 SC Permit Section 2. Once permit coverage is obtained, a facility is authorized to discharge in accordance with the terms of the applicable permit. Id.

16. The permit for stormwater discharges associated with construction activities that applies in a state is hereinafter referred to as the “Applicable Permit.”

17. Though they differ in some of the details, in general, under the Applicable Permits, any person subject to the permit is required to develop a stormwater pollution prevention plan (“SWPPP”). See ALR100000 Part III; 2006 SC Permit Part 3; 2012 SC Permit Section 3; NCG 010000 Section II. (In North Carolina, the approved Erosion and Sediment Control Plan for the site and the NCG 010000 General Permit are considered the SWPPP.) SWPPPs set forth a plan to control and reduce pollutants in stormwater discharges from construction activities. Id. The SWPPP must meet specific requirements and include certain information, including a description of the control measures to meet effluent limits in the Applicable Permits. Id.

18. A central requirement of the SWPPP is the selection of best management practices (“BMPs”). Id. BMPs are measures implemented to prevent or reduce the discharge of pollutants to waters of the United States, including preventing erosion (such as the scheduling of the project to minimize the amount of land that is being graded at any particular time) and capturing sediment before it leaves the site (such as the installation of silt fences and sedimentation basins). Id.

19. The Applicable Permits require the permittee to comply with all conditions set forth therein, including implementing the SWPPP and properly operating and maintaining the BMPs. See ALR100000 Parts III-V; 2006 SC Permit Parts 3, 5; 2012 SC Permit Sections 3, 4; NCG 010000 Sections II-IV.

20. The Applicable Permits impose additional requirements, including, among other things: inspection of the site during construction; maintenance of the SWPPP and sometimes

other records at the site; and final stabilization of the site followed by termination of permit coverage. See ALR100000 Parts III, IV; 2006 SC Permit Parts 3, 5; 2012 SC Permit Sections 3, 4, 5; NCG 010000 Sections II and V.

21. The United States is authorized to enforce NPDES general permits issued by states under CWA Sections 309(a)(3) and 402(i), 33 U.S.C. §§ 1319(a)(3) and 1342(i).

22. CWA Section 309(b), 33 U.S.C. § 1319(b), authorizes the Administrator of EPA “to commence a civil action for appropriate relief, including a permanent or temporary injunction,” when any person is in violation of 33 U.S.C. § 1311, or of any permit issued pursuant to CWA Section 402, 33 U.S.C. § 1342.

23. State Plaintiffs are authorized to seek injunctive relief for such violations pursuant to their analogous state laws-

24. CWA Section 309(d), 33 U.S.C. § 1319(d), and the Civil Monetary Penalty Inflation Adjustments set forth at 40 C.F.R. § 19.4 establish maximum civil penalties for violations of the CWA, including violations of any condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. The maximum civil penalty per day per violation of the CWA is \$37,500 for violations occurring after January 12, 2009 through November 2, 2015.

25. State Plaintiffs are authorized to seek civil penalties for such violations pursuant to their analogous state laws. See Ala. Code § 22-22A-5(18)c, as amended, (shall not exceed \$25,000 for each violation); S.C. Code § 48-1-330 (not to exceed \$10,000 per day for each violation).

GENERAL ALLEGATIONS

26. EPA, with the participation of states and/or local governments, conducted inspections at 16 Horton sites: 14 Alabama sites in March 2014; the Red Oak site in North Carolina on September 25, 2013; and the Chapel Gate site in South Carolina on September 25, 2013. EPA also issued requests for information to Horton pursuant to CWA Section 308, 33 U.S.C. § 1318.

27. For each of the 14 Alabama sites addressed in this Complaint, Horton obtained permit coverage after April 1, 2011, and before the inspections by EPA and/or ADEM in 2014. Thus, Horton was required to comply with the terms and conditions of Permit No. ALR100000, the Applicable Permit for the Alabama sites, at the time of the inspections of the Alabama sites conducted in 2014.

28. For the Red Oak site in North Carolina, Horton obtained permit coverage in 2013; thus, Horton was required to comply with the terms and conditions of Permit No. NGC 010000, effective August 3, 2011, the Applicable Permit for the Red Oak site, at the time of EPA's inspection of the Red Oak site in 2013.

29. For the Chapel Gate site in South Carolina, Horton initially obtained permit coverage under the 2006 SC Permit; then, as of January 1, 2013, the 2012 SC Permit became effective, replacing the 2006 SC Permit. Thus, at the time of EPA's inspection of the Chapel Gate site in 2013, Horton was required to comply with the terms and conditions of the 2012 SC Permit, the Applicable Permit for the Chapel Gate site.

30. Based on EPA's inspections and Horton's response to EPA's requests for information, EPA concluded that Horton violated the CWA by failing to comply with the terms and conditions of the Applicable Permits and by failing to implement or maintain adequate

BMPs that resulted in the unauthorized discharge of sediment-laden water into waters of the United States from at least two of the sites that EPA inspected.

31. Notice of the commencement of this action has been given to the States of Alabama, North Carolina, and South Carolina, in accordance with 33 U.S.C. § 1319(b).

Alabama Sites

Site No. 1: Chapel Hills (Fultondale, Jefferson County, AL)

32. On April 9, 2013, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Chapel Hills site, permit number ALR10A797.

33. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 18.8 acres, and the receiving waters as unnamed streams to Five Mile Creek.

34. EPA and ADEM inspected the Chapel Hills site on March 24, 2014 and March 26, 2014.

35. Violations of the Applicable Permit at the Chapel Hills site were found, including: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); failure to timely take corrective action (*Id.*, Part III.H.1); failure to take all reasonable steps to remove, to the maximum extent possible, pollutants (*Id.*, Part III.H.3); and failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D).

36. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 2: Chelsea Park (Chelsea, Shelby County, AL)

37. On August 27, 2012, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Chelsea Park site, permit number ALR109932.

38. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 3.2 acres, and the receiving waters as Little Creek and unnamed tributary.

39. EPA and ADEM inspected the Chelsea Park site on March 25, 2014.

40. The following violation of the Applicable Permit was found: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)).

41. This violation is a failure to comply with the terms and conditions of the Applicable Permit.

Site No. 3: Chelsea Station (Chelsea, Shelby County, AL)

42. On August 27, 2012, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Chelsea Station site, permit number ALR109911.

43. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 25.8 acres, and the receiving waters as unnamed tributaries to Cooper Creek.

44. EPA and ADEM inspected the Chelsea Station site on March 25, 2014.

45. The following violations of the Applicable Permit were found: inadequate storm drain inlet protection, failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); failure to properly maintain the concrete washout (*Id.*, Part III.C.I.); failure to take all reasonable steps to remove, to the maximum extent possible, pollutants off-site (*Id.*, Part III.H.3); and failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D).

46. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 4: Cotswolds (Birmingham, Jefferson County, AL)

47. On September 13, 2012, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Cotswolds site, permit number ALR109927.

48. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 8.2 acres, and the receiving waters as Coal Branch.

49. EPA and ADEM inspected the Cotswolds site on March 26, 2014.

50. The following violations of the Applicable Permit were found: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); failure to timely take corrective action (*Id.*, Part III.H.1); failure to take all reasonable steps to remove, to the maximum extent possible, pollutants off-site (*Id.*, Part III.H.3); and failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D).

51. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 5: Deerfoot Pointe (Pinson, Jefferson County, AL)

52. On July 27, 2012, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Deerfoot Pointe site, permit number ALR109727.

53. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 14 acres, and the receiving waters as unnamed tributaries to Turkey Creek.

54. EPA and ADEM inspected the Deerfoot Pointe site on March 24, 2014.

55. The following violations of the Applicable Permit were found: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); inadequate stabilization (*Id.*, Part III.B); inadequate site map (*Id.*, Part III.D.3); inadequate site inspection (*Id.*, Part III.G.2.(a)); and failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D).

56. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 6: Doss Ferry (Kimberly, Jefferson County, AL)

57. On June 17, 2013, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Doss Ferry site, permit number ALR10AA79.

58. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 58.7 acres, and the receiving waters as Locust Fork, unnamed tributary to Locust Fork, Lick Creek, and unnamed tributaries to Lick Creek.

59. EPA and ADEM inspected the Doss Ferry site on March 24, 2014.

60. The following violations of the Applicable Permit were found: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); inadequate storm drain inlet protection (*Id.*, Part III.A.9); inadequate stabilization (*Id.*, Part III.B); inadequate site inspection (*Id.*, Part III.G.2.(a)); failure to timely take corrective action (*Id.*, Part III.H.1); and failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D).

61. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 7: Hidden Meadows (Northport, Tuscaloosa County, AL)

62. On August 22, 2012, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Hidden Meadows site, permit number ALR109912.

63. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 16.6 acres, and the receiving water as Mill Creek.

64. EPA and ADEM inspected the Hidden Meadows site on March 27, 2014.

65. The following violations of the Applicable Permit were found: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); inadequate stabilization (*Id.*, Part III.B), inadequate site inspection (*Id.*, Part III.G.2.(a)); failure to update SWPPP (*Id.*, Part III.G.3.(c)); failure to timely take corrective action (*Id.*, Part III.H.1); failure to take all reasonable steps to remove, to the maximum extent possible, pollutants off-site (*Id.*, Part III.H.3); and failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D).

66. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 8: Hunters Gate (Hoover, Shelby County, AL)

67. On January 2, 2013, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Hunters Gate site, permit number ALR10A239.

68. The Notice of Intent listed the activity as construction of single family residences, with the total disturbed area as 7 acres, and the receiving water as Valley Creek.

69. EPA and ADEM inspected the Hunters Gate site on March 25, 2014.

70. The following violations of the Applicable Permit were found: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); failure to properly maintain the concrete washout (*Id.*, Part III.C.I); failure to timely take corrective action (*Id.*, Part III.H.1); and failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D).

71. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 9: Lacey's Grove (Alabaster, Shelby County, AL)

72. On August 8, 2011, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Lacey's Grove site, permit number ALR107469.

73. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 2.25 acres, and the receiving waters as Beaver Dam Creek.

74. On March 25, 2014, EPA and ADEM inspected the Lacey's Grove site.

75. The following violations of the Applicable Permit were found: inadequate storm drain inlet protection, failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); failure to properly maintain concrete washout (*Id.*, Part III.C.I.); inadequate site map (*Id.*, Part III.D.3); inadequate site inspection (*Id.*, Part III.G.2.(a)); and failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D).

76. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 10: Lake Cyrus (Hoover, Jefferson County, AL)

77. On August 2, 2012, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Lake Cyrus site, permit number ALR108080.

78. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 8.05 acres, and the receiving waters as Shades Creek and unnamed tributary to Shades Creek.

79. On March 26, 2014, EPA and ADEM inspected the Lake Cyrus site.

80. The following violations of the Applicable Permit were found: inadequate site map, failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); failure to timely take corrective action (*Id.*, Part III.H.1); and failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D).

81. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 11: Lenox North (Northport, Tuscaloosa County, AL)

82. On August 31, 2011, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Lenox North site, permit number ALR108108.

83. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 15.5 acres, and the receiving water as Tater Hill Creek.

84. EPA and ADEM inspected the Lenox North site on March 27, 2014.

85. The following violation of the Applicable Permit was found: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)).

86. This violation is a failure to comply with the terms and conditions of the Applicable Permit.

Site No. 12: Polo Crossings (Chelsea, Shelby County, AL)

87. On September 7, 2011, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Polo Crossings site, permit number ALR108084.

88. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 2.24 acres, and the receiving water as unnamed tributary to Little Creek.

89. EPA and ADEM inspected the Polo Crossings site on March 25, 2014.

90. The following violations of the Applicable Permit were found: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); inadequate site map (*Id.*, Part III.D.3); inadequate site inspection (*Id.*, Part III.G.2.(a)); and failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D).

91. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 13: Southern Trace (Leeds, Jefferson County, AL)

92. On August 31, 2011, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Southern Trace site, permit number ALR108131.

93. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 9.25 acres, and the receiving waters as unnamed tributaries to Little Cahaba.

94. EPA and ADEM inspected the Southern Trace site on March 24, 2014.

95. The following violations of the Applicable Permit were found: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)), and failure to timely file a notice of termination (*Id.*, Part IV.R.2).

96. These violations are failures to comply with the terms and conditions of the Applicable Permit.

Site No. 14: Trace Crossings (Hoover, Jefferson/Shelby Counties, AL)

97. On April 15, 2013, D.R. Horton, Inc. - Birmingham obtained coverage under the Applicable Permit for the Trace Crossings site, permit number ALR10A799.

98. The Notice of Intent listed the activity as residential lot construction, with the total disturbed area as 10.3 acres, and the receiving waters as Black Creek.

99. EPA and ADEM inspected the Trace Crossings site on March 26, 2014.

100. The following violations of the Applicable Permit were found: failure to maintain a log of daily observations (Permit No. ALR100000, Part III.G.1.(c)); inadequate stabilization (*Id.*, Part III.B); failure to properly maintain concrete washout (*Id.*, Part III.C.I); failure to update the SWPPP (*Id.*, Part III.D.4); failure to timely take corrective action (*Id.*, Part III.H.1); failure to take all reasonable steps to remove, to the maximum extent possible, pollutants (*Id.*, Part

III.H.3); failure to properly implement or maintain BMPs (*Id.*, Parts III.A, IV.D); and failure to timely inform of a change in contact information (*Id.*, Part IV.G.2).

101. On October 17, 2014, ADEM inspected the Trace Crossings site. The following violations were found: inadequate stabilization (*Id.*, Part III.B); failure to properly maintain concrete washout (*Id.*, Part III.C.I); BMPs not properly implemented and maintained resulting in the potential for discharges (III.A., IV.D).

102. These violations are failures to comply with the terms and conditions of the Applicable Permit.

North Carolina Site

Red Oak Estates (Mint Hill, Mecklenburg County, NC)

103. By mid-February 2013, D.R. Horton, Inc. obtained coverage under the Applicable Permit for the 11-acre Red Oak site, permit number #330637.

104. The Erosion and Sediment Control Plan listed the total disturbed area as 10.6 acres. The surface water flows off the site by an unnamed tributary to Irvins Creek.

105. On September 25, 2013, EPA and the County of Mecklenburg Storm Water Services inspected the site. Subsequent to the inspection, EPA issued requests for information to Horton pursuant to CWA Section 308, 33 U.S.C. § 1318. Horton's response showed additional violations:

106. The following violations of the Applicable Permit were found: failure to develop adequate SWPPP; failure to timely repair/replace silt fences; missing and failing silt fence; failure to properly report and document violations; failure to stabilize; and missing inspections. The violations described in this Paragraph are failures to comply with the terms and conditions of the Applicable Permit.

107. The Red Oak site itself, as well as the silt fences, channels, and other conveyances that conveyed stormwater off that site, constitute “point source[s]” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

108. During the inspection, the EPA inspector observed that sediment from the Red Oak site had migrated to off-site areas as a result of inadequately implemented and/or inadequately maintained BMPs.

109. The EPA inspector also observed that sediment from the Red Oak site had migrated from a silt fence overflowing with sediment through eroded channels and into an unnamed tributary of Irvins Creek, a total distance of approximately 300 feet. Water in the unnamed tributary was flowing at the time of the inspection and appeared cloudy and turbid as a result of sediment impacts.

110. D.R. Horton, Inc.’s failure to install or maintain adequate BMPs at the Red Oak site resulted in sedimentation off-site and within the unnamed tributary to Irvins Creek.

111. The unnamed tributary to Irvins Creek is a perennial water body with bed, banks, and ordinary high water mark. The unnamed tributary to Irvins Creek flows into Irvins Creek, which flows into McAlpine Creek, then into Sugar Creek, and then into the Catawba River.

112. The Catawba River is a traditionally navigable water. The unnamed tributary to Irvins Creek, Irvins Creek, McAlpine Creek, and Sugar Creek have relatively permanent flow.

113. The unnamed tributary to Irvins Creek is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a “water[s] of the United States” under 40 C.F.R. § 122.2 (1993).

114. The runoff of sediment-laden stormwater caused by D.R. Horton, Inc.’s construction activities at the Red Oak Site, as described above, qualifies as the “discharge of

pollutants” within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12), because it resulted in the addition of “pollutants,” including rock, sand, cellar dirt, or other pollutants within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, from silt fences, channels, and other discrete conveyances that discharged to streams, creeks, and other water bodies that are “navigable waters” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7), and “waters of the United States” within the meaning of 40 C.F.R. § 122.2 (1993).

South Carolina Site

Chapel Gate (Rock Hill, York County, SC)

115. On March 30, 2011, D.R. Horton, Inc. initially obtained permit coverage under the 2006 SC Permit for the Chapel Gate site, permit coverage number 100286.

116. The Notice of Intent listed the total disturbed area as over 20.8 acres and listed the receiving waterbody as Big Dutchman Creek.

117. On September 25, 2013, EPA, SCDHEC, and York County inspected the Chapel Gate site, which was by then subject to the 2012 SC Permit. Subsequent to the inspection, EPA issued requests for information to Horton pursuant to CWA Section 308, 33 U.S.C. § 1318. Horton’s response showed additional violations.

118. The following violations of the 2012 SC Permit were found: failure to develop adequate SWPPP; failure to update SWPPP; failure to properly design, install, or maintain BMPs; missing BMPs; failure to stabilize; failure to conduct comprehensive weekly inspections; a missing inspection; and failure to timely take corrective action. The violations described in this Paragraph are failures to comply with the terms and conditions of the Applicable Permit.

119. The Chapel Gate site itself, as well as the silt fences, channels, and other conveyances that conveyed stormwater off that site, constitute “point source[s]” within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

120. During the 2013 inspection, the EPA inspector observed that sediment from several areas throughout the Chapel Gate site had escaped from inadequately maintained or overfilled silt fences and had migrated between ten and 250 feet, depending on location, into an unnamed tributary to Big Dutchman Creek. The inspector observed extensive sediment deposits within and adjacent to the tributary, which was flowing at the time of the inspection.

121. On May 30, 2014, York County conducted an inspection of the Chapel Gate site. That inspection found that sediment had migrated off-site into the unnamed tributary to Big Dutchman Creek.

122. D.R. Horton, Inc.’s failure to install or maintain adequate control measures at the Chapel Gate site resulted in sedimentation off-site and within the unnamed tributary to Big Dutchman Creek.

123. The unnamed tributary to Big Dutchman Creek has a bed, banks, and ordinary high-water mark. It flows through and adjacent to the Chapel Gate site and is perennial throughout the majority of that reach. The unnamed tributary flows into Big Dutchman Creek, which then flows into the Catawba River.

124. The Catawba River is a traditionally navigable water. The unnamed tributary to Big Dutchman Creek and Big Dutchman Creek have relatively permanent flow.

125. The unnamed tributary to Big Dutchman Creek is a “navigable water” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and is a “water[s] of the United States” under 40 C.F.R. § 122.2 (1993).

126. The runoff of sediment-laden stormwater caused by D.R. Horton, Inc.'s construction activities at the Chapel Gate Site, as described above, qualifies as the "discharge of pollutants" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12), because it resulted in the addition of "pollutants," including rock, sand, cellar dirt, or other pollutants within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, from silt fences, channels, and other discrete conveyances that discharged to streams, creeks, and other water bodies that are "navigable waters" within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7), and "waters of the United States" within the meaning of 40 C.F.R. § 122.2 (1993).

FIRST CLAIM FOR RELIEF
(Failure to Comply with Applicable CWA Permits)

127. The allegations in Paragraphs 1 through 126 are realleged and incorporated by reference.

128. In violation of the CWA, 33 U.S.C. § 1311, Horton failed to comply with the terms and conditions of the applicable permits at the Red Oak site in North Carolina; the Chapel Gate site in South Carolina; and the Chapel Hills, Chelsea Park, Chelsea Station, Cotswolds, Deerfoot Pointe, Doss Ferry, Hidden Meadows, Hunters Gate, Lacey's Grove, Lake Cyrus, Lenox North, Polo Crossings, Southern Trace, and Trace Crossings sites in Alabama.

129. The CWA provides that any person who violates a condition of an applicable permit issued under the CWA is liable for injunctive relief and penalties. 33 U.S.C. § 1319(b) and (d),

130. Pursuant to CWA Sections 309(b) and (d), 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. § 19.4, Horton is liable for civil penalties not to exceed \$37,500 per day for each violation. To the extent applicable, the analogous state laws also apply to this claim.

SECOND CLAIM FOR RELIEF
(Unauthorized Discharge of Pollutants)

131. The allegations in Paragraphs 1 through 126 are realleged and incorporated by reference.

132. At its Chapel Gate South Carolina and Red Oak, North Carolina sites, Horton discharged pollutants in stormwater to navigable waters in violation of the applicable permits and in violation of 33 U.S.C. § 1311. *See, e.g.*, NCG 010000 Sections I, IV.1, V.2; 2012 SC Permit Sections 1.3.1, 3.2.6.

133. Pursuant to CWA Sections 309(b) and (d), 33 U.S.C. § 1319(b) and (d), and 40 C.F.R. § 19.4, Horton is liable for civil penalties not to exceed \$37,500 per day for each violation. . To the extent applicable, the analogous state laws also apply to this claim.

PRAYER FOR RELIEF

WHEREFORE, the United States of America and the State Plaintiffs respectfully request that this Court:

- A. Find Horton liable for violations of the CWA, and analogous State laws;
- B. Order Horton to pay a civil penalty under 33 U.S.C. § 1319(d), for each day of each violation of the CWA, and to the extent applicable, penalties to the States;
- C. Award Plaintiffs their costs and disbursements in this action; and
- D. Grant any further relief as this Court deems just and proper.

Respectfully submitted,

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