



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JUN 21 2011

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Mitchell Newman
D.R. Horton-New Jersey, Inc.
700 East Gate Drive, Suite 110
Mount Laurel, NJ 08054

Fran Phillips
Gardere Wynne Sewell LLP
3000 Thanksgiving Tower
1601 Elm Street
Dallas, TX 75200-4761

Ted Harbour
D.R. Horton, Inc.
301 Commerce Street, Suite 500
Fort Worth, TX 76102

RE: Consent Agreement and Final Order
In the Matter of D.R. Horton-New Jersey, Inc.
Docket No. CWA-02-2011-3402

U.S. ENVIRONMENTAL PROTECTION AGENCY
2011 JUN 21 P 3:27
TELETYPE UNIT

Dear Messrs and Madam:

Enclosed please find the executed Consent Agreement and Final Order (“CA/FO”) negotiated with D.R. Horton to settle the above-referenced enforcement action. Per paragraph eight of the CAFO, the civil penalty payment of ninety-nine thousand dollars (\$99,000) to the United States Treasury and, per paragraph 12(a), the supplemental environmental project payment of one hundred four thousand four hundred twenty dollars (\$104,420) to The Land Conservancy of New Jersey, are due within thirty (30) days of service. If you have any questions, I can be reached at (212) 637-3203.

Sincerely,

Chris Saporita
Assistant Regional Counsel

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF

D.R. Horton-New Jersey, Inc.
700 East Gate Drive, Suite 110
Mount Laurel, New Jersey 08054

The Grande at Hanover, Whippany, New Jersey
NPDES Tracking No. NJU000792
The Grande at Springville, Mount Laurel, New Jersey
NPDES Tracking No. NJU000908

Respondent

Proceeding pursuant to Section 309(g) of
the Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-02-2011-3402

U.S. ENVIRONMENTAL
PROTECTION AGENCY
REGIONAL HEARING
OFFICE
JUN 21 P 3:21

I. PRELIMINARY STATEMENT

Complainant, the United States Environmental Protection Agency (“EPA”), having filed the Complaint referenced herein on December 14, 2010, against Respondent, D.R. Horton-New Jersey, Inc.; and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order (“CAFO” or “Agreement”) without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

II. PROCEDURAL AND FACTUAL BACKGROUND

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 309(g) of the Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1319(g).
2. The Complaint alleges that Respondent is liable for four (4) distinct violations of the Clean Water Act, some of which continued for nearly five (5) years, in the operation of its construction sites in Whippany and Mount Laurel, New Jersey, which resulted, among other things, in the discharge of stormwater pollution into waters of the United States, in violation of Sections 301 and 402 of the Act, 33 U.S.C. § 1311 and § 1342, respectively, and proposes to assess a civil penalty of one hundred

seventy thousand eight hundred fourteen dollars (\$170,814).

3. Respondent has not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.
4. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this Complaint. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Agreement.
5. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

III. TERMS OF SETTLEMENT

6. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), given the nature of the violations, Respondent's agreement to revise its policies, procedures and practices in order to ensure compliance with the Act, Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, EPA has determined that **ninety-nine thousand dollars (\$99,000)** is an appropriate civil penalty to settle this action.
7. Respondent consents to the issuance of this Consent Agreement and Final Order, and consents, for the purposes of settlement, to the payment of the civil penalty cited in the foregoing paragraph, and to the performance of the SEP as described in paragraph 12, below.
8. Not more than thirty (30) days after the Final Order is signed by the Regional Administrator of EPA Region 2, Respondent shall submit a cashier's or certified check, payable to the Treasurer of the United States of America, for ninety-nine thousand dollars (\$99,000). The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document, and shall be mailed to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

If Respondent elects to pay by wire transfer, such payment shall be made as follows:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:

“D 68010727 Environmental Protection Agency”

Respondent shall also send a copy of the payment to each of the following:

Christopher Saporita, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007

and

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007

9. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
10. If the payment is not received on or before the applicable due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15) will be assessed for each thirty (30) day period (or any portion thereof), following the due date, in which an overdue balance remains unpaid. A six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) days of a due date.

In addition, pursuant to Section 309(g)(9) of the Clean Water Act, 33 U.S.C. §1319(g)(9), if the payment is not received by the applicable due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is twenty percent (20%) of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondent will also be required to pay Complainant's reasonable attorneys fees and costs for collection proceedings in connection with nonpayment.

11. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.
12. Performance of the Supplemental Environmental Project (SEP)

Respondent shall complete the following supplemental environmental project, which the parties agree is intended to secure significant environmental or public health protection and improvements.

- a. Not more than thirty (30) days after the Final Order is signed by the Regional Administrator, Respondent will pay **one hundred four thousand four hundred twenty dollars (\$104,420)** to The Land Conservancy of New Jersey (Land Conservancy), 19 Boonton Avenue, Boonton, NJ 07005, for the specific purpose of partially funding a two hundred twelve (212) acre land acquisition and preservation project known as the South Branch Preserve, located in Mount Olive Township, Morris County, New Jersey (see Attachments 1 (SEP Proposal) and 2 (SEP Figure)). Respondent shall timely send a copy of, or receipt for, the payment to:

Christopher Saporita, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, NY 10007

- b. Within sixty (60) days of the closing of the land acquisition, Respondent shall provide a final report to EPA, at the address above, confirming and describing the purchase in detail, including copies of the deed, deed restrictions, and conservation easement.
 - c. If the purchase does not close by December 31, 2011, Respondent will submit to EPA, by January 31, 2012, a report on the status of the project, describing whether it is expected to be completed, and, if so, when.
 - d. In the event the Land Conservancy is unable to complete the land acquisition described in paragraph 12(a) of this Agreement, Respondent may submit for EPA approval, no later than January 31, 2012, a proposal for an alternative SEP, which shall be of similar type, and for the same dollar amount, as the original SEP. If Respondent fails to submit an approvable proposed alternative SEP, or otherwise fails to complete the SEP or any reporting requirement thereunder, by January 31, 2012, it will be required to pay the full value of the SEP to the United States Treasury, in the manner described in paragraph 8 of this Agreement, by no later than February 29, 2012. If such payment becomes due, and is not paid timely, interest and penalties will be assessed in accordance with paragraph 10 of this Agreement.
13. Respondent hereby certifies that, as of the date of this Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant, or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for any of the activities that are part of the SEP.
 14. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by including, and signing, the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

15. Public Statements. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action (USEPA Region 2 docket number CWA-02-2011-3402) taken by the U.S. Environmental Protection Agency for violations of Sections 301 and 402 of the Clean Water Act."
16. This Agreement shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
17. This Agreement constitutes a final and complete settlement by EPA of all claims for civil penalties pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), for the violations alleged in the Complaint. Compliance with this Agreement shall not be a defense to any enforcement actions unrelated to the violations alleged in the Complaint that are commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with all such laws and regulations.
18. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized by the party represented to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
19. The provisions of this Agreement shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
20. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Agreement.
21. Respondent consents to service upon it by delivery of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

BY:

Ted Harbour
SIGNATURE

6/14/2011
DATE

TED HARBOUR
NAME (Please print)

SENIOR VICE PRESIDENT
TITLE (Please print)

COMPLAINANT:



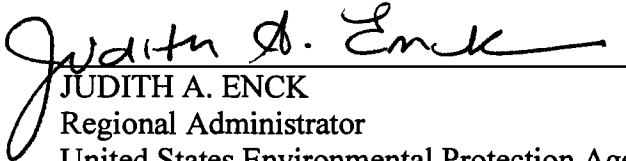
DORE LAPOSTA

Director, Division of Enforcement and Compliance Assistance
United States Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007

JUNE 16, 2011
DATE

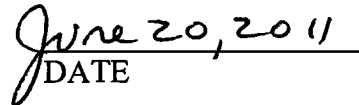
IV. FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.



JUDITH A. ENCK

Regional Administrator
United States Environmental Protection Agency, Region 2
290 Broadway
New York, NY 10007



DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF

D.R. Horton-New Jersey, Inc.
700 East Gate Drive, Suite 110
Mount Laurel, New Jersey 08054

The Grande at Hanover, Whippany, New Jersey
NPDES Tracking No. NJU000792
The Grande at Springville, Mount Laurel, New Jersey
NPDES Tracking No. NJU000908

Respondent

Proceeding pursuant to Section 309(g) of
the Clean Water Act, 33 U.S.C. § 1319(g)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. CWA-02-2011-3402

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return-receipt-requested, a copy of this "Consent Agreement and Final Order" to:

Mr. Mitchell Newman	Fran Phillips	Ted Harbour
D.R. Horton-New Jersey, Inc.	Gardere Wynne Sewell LLP	D.R. Horton, Inc.
700 East Gate Drive, Suite 110	and 3000 Thanksgiving Tower	and 301 Commerce Street
Mount Laurel, NJ 08054	1601 Elm Street	Suite 500
	Dallas, TX 75200-4761	Fort Worth, TX 76102

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), the original and a copy of this "Consent Agreement and Final Order" to:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), a copy of this "Consent Agreement and Final Order" to:

Honorable Susan L. Biro
U.S. Environmental Protection Agency
1099 14th Street, N.W., Suite 350
Washington, DC 20005

JUN 21 2011

Date

Ana Madera

Print Name

Signature

Ana Madera
Branch Secretary

Print Title