



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 27 2007

CERTIFIED MAIL 7005 3110 0003 6266 0097
RETURN RECEIPT REQUESTED

Ms. Fran Phillips
Gardere Wynne Sewell, LLP
1601 Elm Street, Suite 3000
Dallas, TX 75201

SUBJ: Consent Agreement and Final Order
Docket No. CWA-04-2007-4510(b)
D. R. Horton, Inc.
Rosser Cove, Jefferson County, Alabama

Dear Ms. Phillips:

Enclosed please find a fully executed copy of the Consent Agreement and Final Order that has been finalized by the Environmental Protection Agency and the Regional Judicial Officer. Please make note of the provisions under Section IV. Payment.

Should you have any questions or problems, please contact Ms. Susan Pope at (404) 562-9770.

Sincerely,




Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division

Enclosure

cc: Alabama Department of Environmental
Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
D. R. HORTON, INC.)
ROSSER COVE)
JEFFERSON COUNTY, ALABAMA)
_____)

ADMINISTRATIVE ORDER
DOCKET NO. CWA 04-2007-5100

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CONSENT AGREEMENT

I. Statutory Authority

1. This is a civil penalty proceeding pursuant to Section 309(g)(2)(A) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g)(2)(A), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, published at 64 Fed. Reg. 40176 (July 23, 1999) and codified at 40 Code of Federal Regulations ("C.F.R.") Part 22.

2. The authority to take action under Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), is vested in the Administrator of the United States Environmental Protection Agency ("EPA"). The Administrator has delegated this authority to the Regional Administrator, Region 4, who in turn has delegated this authority to the Director of the Water Management Division, who in turn has delegated this authority to the Chief of the Water Programs Enforcement Branch of EPA, Region 4 ("Complainant").

II. Allegations

3. At all times relevant to this action, D.R. Horton, Inc. ("Respondent"), was a corporation duly organized and existing under the laws of the State of Alabama and therefore a "person" within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

4. At all times relevant to this action, Respondent owned and/or operated a construction site known as Rosser Cove ("Facility") located on County Road 18 in Jefferson County, Alabama.

5. To accomplish the objective of the CWA, defined in Section 101(a) of the CWA, 33 U.S.C. § 1251(a), as to restore and maintain the chemical, physical and biological integrity of the nation's waters, Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person into waters of the United States except as in compliance with a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

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6. Section 402 of the CWA, 33 U.S.C. § 1342, establishes a NPDES Permit Program authorizing EPA or authorized states to administer the NPDES Permit Program, including the issuance of NPDES permits allowing for the discharge of pollutants, including storm water, into navigable waters subject to specific terms and conditions. EPA has granted the State of Alabama through the Department of Environmental Management (“ADEM”) approval to issue NPDES permits pursuant to Section 402(b) of the CWA.

7. ADEM issued the *National Pollutant Discharge Elimination System (NPDES) Construction, Noncoal/Nonmetallic Mining and Dry Processing Less Than Five Acres, Other Land Disturbance Activities, and Areas Associated With These Activities*, Permit No. ALR100000 (“the Permit”) in accordance with Code of Alabama 1975, Sections 22-22-1 to 22-22-14 and Sections 22-22A-1 and 22-22A-16 *et seq.*, as amended, and the CWA. The Permit was effective March 1, 2003; facilities receiving coverage after that date will have permit coverage for a period of one year. Facilities must submit a Notice of Registration (“NOR”) each year thereafter to maintain coverage.

8. The Permit is an Alabama statewide NPDES general permit governing storm water point source discharges associated with construction activities including clearing, grading, and excavation activities except operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale.

9. On January 21, 2005, Respondent submitted an NOR requesting permit coverage to ADEM. A renewal NOR was submitted on January 9, 2006.

10. Part 335-6-12-.06(4) of the Permit requires the Permittee to take all reasonable steps to prevent and/or minimize, to the extent practicable, any discharge which has a reasonable likelihood of adversely affecting the quality of groundwater or surface water receiving the discharge(s).

11. Part 335-6-12-.15(11)(a)3 of the Permit requires the Permittee to record any deficiencies noted during inspections, any corrective action or mitigation needed to correct the deficiencies, and a proposed compliance schedule.

12. Part 335-6-12-.21(2)(b)2 of the Permit requires the Permittee to include in the Construction Best Management Practices Plan (“CBMPP”) a description of how the Permittee will provide minimization of the surface area that is disturbed at any one time and describe how the Permittee will minimize the introduction and facilitate removal of sediment, nutrients, and other pollutants in the storm water.

13. Part 335-6-12-.21(2)(b)3 of the Permit requires the Permittee to include in the CBMPP a description of proper cleanup/removal or effective stabilization of sediment deposited offsite in the event of such an occurrence, and effective remediation of sediment or other pollutant in-stream impacts to the maximum extent practicable.

14. Part 335-6-12-.21(2)(b)5 of the Permit requires the Permittee to include in the CBMPP a description of measures to be implemented on all areas not undergoing active disturbance or active construction and progressive construction for longer than 13 days to prevent/minimize erosion and ensure timely temporary vegetative cover, and permanent revegetation or cover of all disturbed areas when disturbance is complete.

15. Part 335-6-12-.21(2)(b)9 of the Permit requires the Permittee to include in the CBMPP a detailed description of the site and the nature of the construction activity, description of intended sequence of major activities which disturb soils, and existing data describing surface soils as well as subsoils.

16. Part 335-6-12-.21(2)(b)12 of the Permit requires the Permittee to include in the CBMPP a description of temporary and permanent stabilization practices, including a schedule and/or sequence for implementation. The Permittee shall ensure that the site plans provide for the stabilization of disturbed portions of the site, description of structural and nonstructural practices to divert flow from exposed soils, storm water flows, or otherwise limit runoff and the discharge of pollutants.

17. Part 335-6-12-.21(2)(b)13 of the Permit requires the Permittee to include in the CBMPP a description of the management of any overload flow not otherwise controlled by effective BMPs; trapping of any sediment in channelized flow to the extent possible; staging construction to limit bare areas subject to erosion; protection of down slope drainage inlets where they occur; minimization of offsite sediment or mud tracking by vehicles or equipment; stabilization of drainage ways or channels; installation of permanent stabilization practices as soon as possible after final grading.

18. Part 335-6-12-.21(2)(b)14 of the Permit requires the Permittee to include in the CBMPP a description of the use of energy or flow velocity dissipation devices at discharge locations and along the length of any outfall channel to provide a stable, non-erosive flow velocity from the structure and prevent water body scouring, stream bank erosion, and sedimentation, during and after construction.

19. Part 335-6-12-.21(4) of the Permit requires the Permittee to ensure that BMPs are designed, implemented and regularly maintained to provide effective treatment of discharges of pollutants in storm water resulting from runoff generated by probable storm events expected or predicted during construction disturbance, and during extended periods of adverse weather and seasonable conditions.

20. Part 335-6-12-.21(5)(a) of the Permit requires the Permittee to ensure that BMPs are fully implemented and regularly maintained.

21. Part 335-6-12-.21(5)(b) of the Permit requires the Permittee to ensure that BMPs shall be implemented to the maximum extent practicable to prevent off-site sedimentation and deposition of construction site wastes.

22. Part 335-6-12-.21(6) of the Permit requires the Permittee to remediate any off-site deposition or discharge of sediment and other pollutants and implement measures to remediate any impacts to the maximum extent practicable.

23. Part 335-6-12-.26(2) of the Permit requires the Permittee to document and ensure that effective BMPs are properly designed, implemented and consistently maintained to prevent or minimize discharges of pollutants in storm water runoff.

24. Part 335-6-12-.28(4)(f) of the Permit requires the Permittee to perform complete and comprehensive inspections and evaluations of defined or designated construction sites and activities as often as is necessary until any non-compliant BMPs, discharges or any deficiencies observed during a prior inspection are corrected and documented as being in compliance.

25. Part 335-6-12-.28(7) of the Permit requires the Permittee to document in its inspection reports site conditions, BMP deficiencies and maintenance needs, and corrective actions that need to be implemented to ensure compliance with the requirements of the Permit.

26. Part 335-6-12-.35(1) of the Permit requires the Permittee to properly operate and maintain all BMPs, facilities, systems of treatment and control, and associated appurtenances which are installed or used to achieve compliance.

27. On March 14, 2006, representatives of EPA in conjunction with ADEM performed a Compliance Storm Water Evaluation Inspection ("CSWEI") at Respondent's Facility. EPA's CSWEI was to evaluate the treatment and disposal of storm water at the Facility in accordance with the CWA, the regulations promulgated thereunder at 40 C.F.R) § 122.26, and the ADEM Permit.

28. As a result of the CSWEI, EPA, Region 4 has determined that Respondent discharged storm water associated with industrial activity from its Facility within the meaning of Section 402(p) of the CWA, 33 U.S.C. § 1342(p), and its implementing regulations.

29. During the CSWEI, EPA inspectors observed the following:

A. Corrective actions were not included in self-inspection reports that identified deficiencies, as required by Part 335-6-12-.05(3), Part 335-6-12-.15(11)(a)3, Part 335-6-12-.28(4)(f) and Part 335-6-12-.28(7) of the Permit.

B. Silt fences near the outfall of sedimentation basin no. 1 and at the entrance/exit of the Facility were not maintained, as required by Part 335-6-12-

.05(3), Part 335-6-12-.06(4), Part 335-6-12-.21(4), Part 335-6-12-.21(5)(a), Part 335-6-12-.26(2) and Part 335-6-12-.35(1) of the Permit.

C. Filter rings described in the CBMPP were not installed at the basin outfalls, resulting in sediment discharge; this is a failure to comply with Part 335-6-12-.05(3), Part 335-6-12-.06(4), Part 335-6-12-.21(2)(b)2, Part 335-6-12-.21(2)(b)14, Part 335-6-12-.21(4) and Part 335-6-12-.21(5)(a) and (b) of the Permit.

D. Approximately 70% of the Facility was not stabilized, including near the entrance/exit and at the berm near the west side, as required by Part 335-6-12-.06(4), Part 335-6-12-.21(2)(b)5, Part 335-6-12-.21(2)(b)12 and Part 335-6-12-.21(2)(b)13 of the Permit.

E. Sediment discharge from sedimentation basin no. 1 was observed in the unnamed tributary to Five Mile Creek. Sediment discharge must be either prevented or minimized and the Creek remediated, as required by Part 335-6-12-.06(4), Part 335-6-12-.21(2)(b)3, Part 335-6-12-.21(5)(b), Part 335-6-12-.21(6) and Part 335-6-12-.26(2) of the Permit.

F. The CBMPP did not describe the sequence of major activities which disturb soils, as required by Part 335-6-12-.21(2)(b)9 of the Permit.

30. Therefore, Respondent violated Sections 301 and 402(p) of the CWA, 33 U.S.C. §§ 1311 and 1342(p), by failing to comply with the Permit, and for discharges not authorized by the Permit.

III. Stipulations and Findings

31. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order ("CA/FO") will simultaneously commence and conclude this matter.

32. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out above and neither admits nor denies the factual allegations set out above.

33. Respondent hereby waives its right to contest the allegations set out above and its right to appeal the Final Order accompanying this Consent Agreement.

34. Respondent consents to the assessment of and agrees to pay the civil penalty as set

forth in this CA/FO and consents to the other conditions, including the performance of the Supplemental Environmental Project (“SEP”), as set forth in this CA/FO.

35. By signing this CA/FO, Respondent certifies that the information it has supplied concerning this matter was at the time of submission, and is, truthful, accurate, and complete for each such submission, response and statement. Respondent realizes that there are significant penalties for submitting false or misleading information, including the possibility of fines and/or imprisonment for knowing submission of such information.

36. EPA reserves the right to assess and collect any and all civil penalties for any violation described herein to the extent that any information or certification provided by Respondent was materially false or inaccurate at the time such information or certification was provided to EPA.

37. Complainant and Respondent agree to settle this matter by their execution of this CA/FO. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of the CWA.

IV. Payment

38. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), and 40 C.F.R. Part 19, and considering the nature of the violations and other relevant factors, EPA has determined that Fifteen Thousand Dollars (\$15,000) is an appropriate civil penalty to settle this action.

39. Respondent shall submit payment of the penalty specified in the preceding paragraph within thirty (30) days of the effective date of this CA/FO via a cashier’s or certified check, payable to the order of “Treasurer, United States of America.” The check shall reference on its face the name of Respondent and the Docket Number of this CA/FO. Such payment shall be tendered to:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, PA 15251-7099

40. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CA/FO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

and

Mary Mattox
U.S. Environmental Protection Agency, Region 4
Water Programs Enforcement Branch
Water Management Division
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960.

41. The penalty amount specified above shall represent civil penalties assessed by EPA and shall not be deductible for purposes of federal taxes.

42. Pursuant to 40 C.F.R. Part 13 and 31 U.S.C. § 3717 et seq., if EPA does not receive payment of the penalty assessed by this CA/FO in full by its due date, interest shall accrue on the unpaid balance from the due date through the date of payment at an annual rate equal to the rate of the current value of funds to the United States Treasury as prescribed and published by the Secretary of the Treasury. If all or part of the payment is overdue, EPA will assess a late-payment handling charge of \$15.00, with an additional delinquent notice charge of \$15.00 for each subsequent thirty (30) day period. EPA will also assess on a monthly basis an up to six percent (6%) per annum penalty on any principal amount not paid within ninety (90) days of the due date.

43. Pursuant to Section 309(g)(9) of the CWA, 33 U.S.C. § 1319(g)(9), failure by Respondent to pay the penalty assessed by the CA/FO in full by its due date may subject Respondent to a civil action to collect the assessed penalty plus interest (at currently prevailing rates from the effective date of this CA/FO), attorney's fees, costs for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent (20%) of the aggregate amount of such penalty and nonpayment penalty which are unpaid as of the beginning of such quarter. In any such collection action, the validity, amount and appropriateness of the penalty and of this CA/FO shall not be subject to review.

V. Supplemental Environmental Project

44. Defendant shall complete the Supplemental Environmental Project ("SEP") described in Appendix A in accordance with the schedule included therein.

45. The total expenditure for the SEP shall not be less than Twenty-Two Thousand Five Hundred Dollars (\$22,500.00). Defendant shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report.

46. SEP Implementation.

A. Within thirty (30) days of entry of this CA/FO, Respondent shall begin implementation of the SEP as described in Appendix A.

B. Within sixty (60) days of entry of this CA/FO, and monthly thereafter until the SEP Completion Report is submitted, Respondent shall provide a Report to EPA on the status of the SEP. The Reports shall be submitted to the EPA contact listed in Paragraph 40 below.

C. Within eighteen (18) months of entry of this CA/FO, Respondent shall submit a SEP Completion Report to EPA, certifying that the SEP funds have been applied to the Project, how the funds were used, an evaluation of the SEP's success, and a certification that the SEP has been completed in accordance with this CA/FO and Appendix A. The Reports shall be submitted to the EPA contact listed in Paragraph 58 below.

47. Defendant hereby certifies that, as of the date of this CA/FO, Defendant is not required to perform or develop the SEP by any federal, State or local law or regulation; nor is the Defendant required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Defendant further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

48. Defendant agrees that it will not take a federal tax deduction for the performance of this SEP.

49. SEP Stipulated Penalties. In the event that Defendant fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP described in Appendix A, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP described above, and/or the actual expenditures for the SEP were not applied as described in Appendix A, Defendant shall be liable for stipulated penalties according to the provisions set forth below:

A. If the SEP is not completed satisfactorily in accordance with Appendix A, but the Complainant determines that the Defendant: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP as described in Appendix A, Defendant shall not be liable for any stipulated penalty under this paragraph.

B. If the SEP is completed satisfactorily in accordance with Appendix A, but the Defendant spent less than 90 percent of the amount of money required to be spent for the project, Defendant shall pay a stipulated penalty to the United States in a dollar amount equal to the difference of the amount spent and \$22,500.

C. If the SEP is completed satisfactorily in accordance with Appendix A, and the Defendant spent at least 90 percent of the amount of money required to be spent for the project, Defendant shall not be liable for any stipulated penalty under this paragraph, and shall be deemed to have satisfied Paragraph 50.

D. For the failure to submit any of the Reports required by Paragraph 46 above, Respondent shall be liable for stipulated penalties as follows:

- (1) For Day 1 up to and including
Day 30 of non-compliance..... \$100.00 per day
- (2) For Day 31 up to and including
Day 60 of non-compliance..... \$250.00 per day
- (3) For Day 61 and beyond
of non-compliance..... \$500.00 per day

Such payments shall be made without demand by EPA on or before the last day of the month following the month in which the stipulated penalty accrued.

50. The determination of whether the SEP has been satisfactorily completed and whether the Defendant has made a good faith, timely effort to implement the SEP is reserved to the sole discretion of EPA.

V. General Provisions

51. This CA/FO 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. Other than as expressed herein, compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA.

52. Nothing in this CA/FO shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Respondent's violation of this CA/FO or of the statutes and regulations upon which this CA/FO is based, or for Respondent's violation of any federal or state statute, regulation or permit.

53. Except as otherwise set forth herein, this CA/FO constitutes a settlement by Complainant and Respondent of all claims for civil penalties pursuant to the CWA with respect to only those violations alleged in this CA/FO. Except as otherwise set forth herein, compliance with this CA/FO shall resolve the allegations of violations contained herein. Nothing in this CA/FO is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent, or other liability resulting from violations that were not alleged in this CA/FO. Other than as expressed herein, Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

54. Each undersigned representative of the parties to this CA/FO certifies that he or she is fully authorized to enter into the terms and conditions of this CA/FO and to execute and legally bind that party to it.

55. This CA/FO applies to and is binding upon Respondent and its officers, directors, employees, agents, successors and assigns.

56. Any change in the legal status of Respondent, including but not limited to any transfer of assets of real or personal property, shall not alter Respondent's responsibilities under this CA/FO.

57. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this CA/FO.

58. In accordance with 40 C.F.R. § 22.5, the individuals below are authorized to receive service relating to this proceeding.

For Complainant:

Judy K. Marshall
Associate Regional Counsel
Office of Environmental Accountability
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street
Atlanta, GA 30303-8960
(404) 562-9533

For Respondent:

Fran Phillips
Gardere Wynne Sewell, LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201
(214) 999-4803

59. The parties acknowledge and agree that this CA/FO is subject to the requirements of 40 C.F.R. § 22.45(c)(4), which provides a right to petition to set aside a consent agreement and proposed final order based on comments received during the public comment period.

60. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.38(b), Complainant represents that the State of Alabama was provided a prior opportunity to consult with Complainant regarding this matter.

VI. Effective Date

61. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

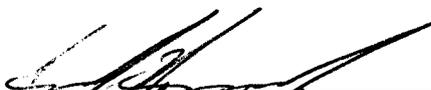
For COMPLAINANT, U.S. ENVIRONMENTAL PROTECTION AGENCY:

for 

Douglas F. Mundrick, P.E., Chief
Water Programs Enforcement Branch
Water Management Division
U.S. EPA, Region 4

Date: 2/7/07

For RESPONDENT, D.R. Horton, Inc.:



NAME: Andrew Hancock
TITLE: City Manager

Date: 1/31/07

Name of Project: City of Fultondale Black Creek Park stream restoration
SEP Project Category: Environmental Restoration and Protection
Timeline: Completion within 6 months of approval
Estimated Cost: \$22,500

Budget	
Project Supervision	\$2,000
Project Coordination	\$2,000
Construction and Materials Contractor: City of Fultondale	\$17,500
Publicity to regulated community	\$500
Preparation of written report summarizing Project	\$500
TOTAL	\$22,500

Project location

Black Creek Park and adjacent land on Black Creek in Fultondale, Alabama, Jefferson County. Black Creek is a tributary to Five Mile Creek within the Black Warrior River Watershed. The park is located within Section 30, Range 2 west, and Township 16 east.

Project summary

Environmental restoration, stream bank restoration. As part of the implementation of the Five Mile Creek Greenway, Cawaco RC&D Council in cooperation with the City of Fultondale will restore up to 2000 feet of stream bank within Black Creek and the adjacent developing Fultondale city park. The environmental restoration will reduce erosion, improve water quality and provide aquatic habitat. The partners will work together to plan, construct and publicize a highly-visible demonstration site that showcases cutting-edge storm water management technologies to the regulated community. The total proposed budget for the restoration is \$22,500.

Project description

The Five Mile Creek Greenway Partnership began in 2002 to promote and facilitate coordinated and cohesive planning, development, and maintenance of a network of greenways, parks, trails and points of interest along Five Mile Creek. Black Creek is a significant tributary to Five Mile Creek. The City of Fultondale is a member of the greenway partnership. The greenway is being developed along Black Creek in Fultondale as a connector to the proposed 17-mile rails-to-trails path across the northern side of the Five Mile Creek watershed.

Black Creek is located in the shale hills eco-region, sometimes referred to as the Warrior Coal Field. Black Creek watershed drains from the edge of the shale hills west towards the Black Warrior River. The streams the shale hills do not have the base flow found in the headwaters of Five Mile Creek. Coal mining is the major industry and extensive open pit mines have

altered the landscape, soils and streams.

In 1998 the Alabama Department of Environmental Management produced a Watershed Assessment report of streams within Jefferson County. Five Mile Creek was listed as the fourth top priority out of the 16 watersheds that were evaluated. Top environmental threats in the watershed were reported as non-point source pollution runoff and sediment loads associated with urban development, urban and suburban pollutants entering both the surface and ground water, bacteria from domestic waste disposal, acid mine drainage and solid waste/litter.

The watershed has a history of industrial pollution. As industries work to clean up and remediate outfalls to the creek, urban storm water runoff is increasing in the watershed from increased impervious surfaces. The communities along Five Mile Creek have been plagued with flooding for many years. Recent floods have been devastating to several communities. Much of the greenway paths are expected to be built on Federal Emergency Management Act (FEMA) buy-out land including the path in the western reaches of Black Creek Park, downstream of the proposed project.

Increased urban runoff has eroded banks of Black Creek, a tributary to Five Mile Creek through Black Creek Park. Stream banks be will stabilized and the growth of native plant vegetation will be promoted using techniques from USDA-NRCS Stream Restoration Standards and Specifications. Restoration will follow the NRCS protocol including analysis of corridor condition, restoration design and monitoring of restoration.

The stream channel will be restored to a natural meandering channel including restoration of riffles, falls, and shallow areas to increase dissolved oxygen and niche habitat. Erosion of adjacent stream access points will be stabilized with installation of porous concrete, porous asphalt, or other geo-grid infiltration zones. Invasive exotic plants such as Chinese privet and kudzu will be removed. Appropriate plants native to the southeastern United States will be installed along the banks of the creek to increase shade and food for aquatic species including macroinvertebrates.

Black Creek Park is owned by the City of Fultondale. Within the time frame of the SEP, the City of Fultondale has the equipment and man power to perform the stream enhancement activities described above. Cawaco RC&D Council will provide expertise and guidance for environmentally safe methods of invasive plant removal and re-establishment of the native plant community and coordinate community and civic involvement in the implementation of the project.

Project supervision, administration and publicity will include staff time for facilitating communications between the SEP representative and project partners, developing web-based materials to publicize the site, bookkeeper time for setting up an account for the project and managing all invoices associated with project completion. Day-to-day management will be through the City of Fultondale building inspector. The City of Fultondale will manage the site and provide long-term maintenance.

Expected Environmental Benefit

Control of urban and industrial sedimentation. The project will control stream bank erosion for improvement of water quality and natural habitat, and create a public demonstration area for how to remediate stream bank erosion and sedimentation from non-point source runoff.

Project Schedule

Respondent shall ensure that the Project activities are performed as follows:

Activity	Deadline
Project begins with authorization and approval	Within one (1) calendar month of effective date of CA/FO
Monthly reports begin	Within two (2) calendar months of effective date of CA/FO and monthly after until project evaluation period is ended
Project Site Planning completed, construction begins	Within four (4) calendar months of effective date of CA/FO
Construction completed and project is operational	Within five (5) calendar months of effective date of CA/FO
Begin project Evaluation and publicity	Within five (5) calendar months of effective date of CA/FO
End Project Evaluation and Publicity	Within seventeen (17) calendar months of effective date of CA/FO
Submit SEP Completion Report	Within eighteen (18) calendar months of effective date of CA/FO

Organizational Information

Cawaco RC&D Council and the City of Fultondale will work together to design, implement and monitor the stream bank restoration. Cawaco RC&D will be the coordinating organization and first point of contact.

Cawaco RC&D Council
1731 1st Avenue North
Suite 200
Birmingham, Al 35203

Contact Person

Francesca E. Gross
Five Mile Creek Greenway Partnership Coordinator
(205) 264-8489
fgross@rpcgb.org

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:)
)
D. R. HORTON, INC.) CONSENT AGREEMENT AND
) FINAL ORDER
ROSSER COVE)
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) DOCKET NO. CWA-04-2007-4510(b)

FINAL ORDER

In accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits*, including Subpart I, 40 C.F.R. Part 22, and authorities delegated to me, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Pursuant to Section 309(g)(2)(A) of the CWA, 33 U.S.C. § 1319(g)(2)(A), Respondent is hereby ordered to comply with the terms of the foregoing Consent Agreement.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 3/26/07


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the attached **CONSENT AGREEMENT AND FINAL ORDER** in the matter of D.R. Horton, Inc., **Docket No. CWA-04-2007-4510(b)** (filed with the Regional Hearing Clerk on MAR 27 2007, 2007), was served on MAR 27 2007, 2007, in the manner specified to each of the persons listed below.

By hand-delivery:

Judy K. Marshall
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

By certified mail,
return receipt requested:

Fran Phillips
Gardere Wynne Sewell, LLP
1601 Elm Street, Suite 3000
Dallas, Texas 75201
(214) 999-4803

Steve Jenkins, Chief
Field Operations Division
Alabama Department of Environmental Management
P. O. Box 301463
Montgomery, AL 36130-1463



Ms. Patricia A. Bullock
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
Sam Nunn Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303-8960
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Mary Mattox on 1/31/07
(Name) (Date)

in the WMD/WPEB/GES at (404) 562- 9733
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree
USAO COLLECTS

Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree
DOJ COLLECTS

Oversight Billing - Cost Package required:
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: DB Holston, Inc - Rossed Cove, Jefferson County, AL
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 15,000
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: CWA- 04- 2007- 4510 (6)

The Site Specific Superfund Account Number: _____
WMD

The Designated Regional/Headquarters Program Office: _____

TO BE COMPLETED BY LOCAL FINANCIAL MANAGEMENT OFFICE:

The IFMS Accounts Receivable Control Number is: _____ Date _____

DISTRIBUTION:

A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:

- 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044

- 2. Originating Office (EAD)
- 3. Designated Program Office

B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- 1. Originating Office
- 2. Regional Hearing Clerk

- 3. Designated Program Office
- 4. Regional Counsel (EAD)