

**FILED**

Feb 18, 2025

6:17 am

U.S. EPA REGION 5  
HEARING CLERK

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	<b>Docket No. CWA-05-2025-0002</b>
	)	
<b>D.R. Horton – Indiana LLC, Marion</b>	)	<b>Proceeding to Assess a Class II Civil</b>
<b>County, Indiana,</b>	)	<b>Penalty under Section 309(g) of the Clean</b>
	)	<b>Water Act, 33 U.S.C. § 1319(g)</b>
<b>Respondent.</b>	)	
	)	
	)	

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**Consent Agreement and Final Order**

**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 309(g) of the Clean Water Act (“CWA” or “the Act”), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2)-(3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules) as codified at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2)-(3).

2. The Complainant is, by lawful delegation, the Director of the Enforcement and Compliance Assurance Division, EPA Region 5, U.S. Environmental Protection Agency (“EPA”), Region 5.

3. Respondent is D.R. Horton – Indiana LLC (“D.R. Horton”), a limited liability company in Indianapolis, Indiana.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, an administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (“CAFO”). *See* 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the terms of this CAFO, including the assessment of the civil penalty specified below.

#### **Jurisdiction and Waiver of Right to Hearing**

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the consent agreement.

#### **Statutory and Regulatory Background**

9. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit for the discharge of dredged or fill material into navigable waters pursuant to Section 404 of the CWA, 33 U.S.C. § 1344.

10. Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (“Corps”), to issue permits for the discharge of dredged or fill material into navigable waters.

11. Section 309(g) of the CWA, 33 U.S.C. § 1319(g), authorizes the Administrator to assess a Class II civil penalty under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), after consultation with the State in which the violation occurs, when the Administrator finds, on the basis of any information available, that a person has violated Section 301 of the CWA, 33 U.S.C. § 1311, which prohibits unpermitted discharges of any pollutant to navigable waters and discharges of any pollutant to navigable waters not in compliance with a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344. EPA may conduct such enforcement consistent with the January 1989 Memorandum Between the Department of the

Army and The Environmental Protection Agency, Federal Enforcement for the Section 404 Program of the Clean Water Act.

**Factual Allegations**

12. Respondent is a limited liability company and therefore a “person” under Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

13. At all times relevant to this Order, Respondent owned the "Parks at Decatur" site, a housing development, located at Latitude 39.6364, Longitude -86.2930 in Marion County, Indiana (“Site”).

14. The impacted tributaries to the Quack Branch and wetlands are “navigable waters” under Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

15. On December 31, 2021 Respondent submitted notice to the Indiana Department of Environmental Management (“IDEM”) and the Corps that it intended to apply for permits for the discharge of dredged or fill material into the wetlands associated with Quack Branch.

16. Between December 31, 2021 and January 27, 2023, Respondent submitted additional information to both IDEM and the Corps and engaged in discussions regarding permits for the discharge of dredged or fill material into the wetlands associated with Quack Branch.

17. On August 23, 2022 IDEM issued a water quality certification for the Site under Section 401 of the CWA, 33 U.S.C. § 1341.

**Count 1: Unlawful Discharge of Pollutants into Quack Branch**

18. The statements in paragraphs 1 through 17 are hereby incorporated by reference as if set forth in full.

19. Between July 2022 and December 13, 2022, Respondent, or its contractors, used bulldozers, track hoes, and other equipment to discharge dredged and fill material impacting approximately .52 acres of wetlands, of which .24 acres were impacted by draining, and 550 linear feet of tributaries associated with the Quack Branch.

20. At no time relevant to this discharge did Respondent have a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, for the discharge described in paragraph 19.

21. The dredged or fill material discharged into the impacted tributaries to the Quack Branch and wetlands is a “pollutant” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

22. Respondent, or its contractors, used equipment, including but not limited to bulldozers and track hoes, to place the dredged or fill material in the impacted tributaries to the Quack Branch and wetlands.

23. This equipment, including but not limited to bulldozers and track hoes, are discernible, confined and discrete conveyance, and constitute “point sources” as defined in Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

24. Respondent’s addition of dredged or fill material, in or about July 2022, from equipment, including but not limited to bulldozers and track hoes into impacted tributaries to the Quack Branch and wetlands constitutes a “discharge of a pollutant” as defined by Section 502(12) of the CWA, 33 U.S.C. § 1362(12).

25. Because Respondent owned or operated a Site that acted as point sources for the discharge of pollutants to navigable waters, Respondent and the Site have been subject to the

CWA and the 404 program at all times relevant to this Order. Thus, any such discharge has been and is subject to the CWA and its implementing regulations.

26. Therefore, Respondent is a person who discharged dredged or fill material from a point source into navigable waters, without a permit, in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

27. Each day the pollutant remains in the navigable waters and/or each day the pollutant is discharged to the navigable waters constitutes a continuing violation of the CWA and an additional day in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

#### **Civil Penalty**

28. Under Section 309(g)(2)(B) of the CWA, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19, the Administrator may assess a Class II civil penalty up to \$26,685 per day of violation up to a total of \$333,552, for violations of the CWA that occurred after November 2, 2015 and for which penalties are assessed on or after December 27, 2023, or other amounts as penalty levels may be later adjusted at 40 C.F.R. Part 19.

29. Based upon the facts alleged in this CAFO, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, degree of culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$105,702.

30. Within 30 days after the effective date of this CAFO, Respondent must pay the \$105,702 civil penalty ("Assessed Penalty").

31. Respondent shall pay the Assessed Penalty and any interest, fees, and other charges due using any method, or combination of appropriate methods, as provided on the EPA



website: <https://www.epa.gov/financial/makepayment>. For additional instructions see:  
<https://www.epa.gov/financial/additional-instructions-making-payments-epa>. When making a  
payment, Respondent shall:

a. Identify every payment with Respondent's name and the document number of  
this Agreement, CWA-05-2025-0002.

b. Concurrently with any payment or within 24 hours of any payment,

Respondent shall serve proof of such payment to the following persons:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5  
[r5hearingclerk@epa.gov](mailto:r5hearingclerk@epa.gov)

Marc Escudie (ECW-15J)  
U.S. Environmental Protection Agency  
[escudie.marc@epa.gov](mailto:escudie.marc@epa.gov)

Carlene Dooley (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
[dooley.carlene@epa.gov](mailto:dooley.carlene@epa.gov)

U.S. Environmental Protection Agency  
Cincinnati Finance Center  
[CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov)

"Proof of Payment" means, as applicable, a copy of the check, confirmation of credit card  
or debit card payment, or confirmation of wire or automated clearinghouse transfer, and any  
other information required to demonstrate that payment has been made according to EPA  
requirements, in the amount due, and identified with the appropriate docket number and  
Respondent's name.

32. Interest, Charges, and Penalties on Late Payments: Pursuant to 33 U.S.C. §  
1319(g)(9), 31 U.S.C. § 3717, 31 C.F.R. §901.9, and 40 C.F.R. §13.11, if Respondent fails to

timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, the entire unpaid balance of the Assessed Penalty and all accrued interest shall become immediately due and owing, and EPA is authorized to recover the following amounts.

- a. Interest. Interest begins to accrue from the effective date. If the Assessed Penalty is paid in full within thirty (30) days, interest accrued is waived. If the Assessed Penalty is not paid in full within thirty (30) days, interest will continue to accrue until the unpaid portion of the Assessed Penalty as well as any interest, penalties, and other charges are paid in full. Interest will be assessed at prevailing rates, per 33 U.S.C. § 1319(g)(9). The rate of interest is the IRS large corporate underpayment rate.
- b. Handling Charges. The United States' enforcement expenses including, but not limited to, attorneys' fees and costs of collection proceedings.
- c. Late Payment Penalty. A twenty percent (20%) quarterly non-payment penalty.

33. Late Penalty Actions. In addition to the amounts described in the prior Paragraph, if Respondent fails to timely pay any portion of the Assessed Penalty, interest, or other charges and penalties per this Agreement, EPA may take additional actions. Such actions EPA may take include, but are not limited to, the following.

- a. Refer the debt to a credit reporting agency or a collection agency, per 40 C.F.R. §§ 13.13 and 13.14;
- b. Collect the debt by administrative offset (i.e., the withholding of money payable by the United States government to, or held by the United States government for, a person to satisfy the debt the person owes the United States government), which

includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds, per 40 C.F.R. Part 13, Subparts C and H.

- c. Suspend or revoke Respondent's licenses or other privileges, or suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds, per 40 C.F.R. § 13.17.
- d. Request that the Attorney General bring a civil action in the appropriate district court to recover the full remaining balance of the Assessed Penalty, in addition to interest and the amounts described above, pursuant to 33 U.S.C. § 1319(g)(9). In any such action, the validity, amount, and appropriateness of the Assessed Penalty shall not be subject to review.

34. Allocation of Payments. Pursuant to 31 C.F.R. 901.9(f) and 40 C.F.R. § 13.11(d), a partial payment of debt will be applied first to outstanding handling charges, second to late penalty charges, third to accrued interest, and last to principal that is the outstanding Assessed Penalty amount.

35. Tax Treatment of Penalties. Penalties, interest, and other charges paid pursuant to this Agreement shall not be deductible for purposes of federal taxes.

36. Pursuant to 26 U.S.C. § 6050X and 26 C.F.R. § 1.6050X-1, EPA is required to send to the Internal Revenue Service ("IRS") annually, a completed IRS Form 1098-F ("Fines, Penalties, and Other Amounts") with respect to any court order or settlement agreement (including administrative settlements), that require a payor to pay an aggregate amount that EPA reasonably believes will be equal to, or in excess of, \$50,000 for the payor's violation of any law or the investigation or inquiry into the payor's potential violation of any law, including amounts paid for "restitution or remediation of property" or to come "into compliance with a law." EPA is



further required to furnish a written statement, which provides the same information provided to the IRS, to each payor (i.e. a copy of the IRS Form 1098-F). Failure to comply with providing IRS Form W-9 or Tax Identification Number (“TIN”), as described below, may subject Respondent to a penalty, pre 26 U.S.C. § 6723, 26 U.S.C. § 6724(d)(3), and 26 C.F.R. § 301.6723-1. In order to provide EPA with sufficient information to enable it to fulfil these obligations, EPA herein requires, and Respondent herein agrees, that:

- a. Respondent shall complete an IRS Form W-9 (“Request for Taxpayer Identification Number and Certification”), which is available at <https://www.irs.gov/pub/irs-pdf/fw9.pdf>;
- b. Respondent shall therein certify that its completed IRS Form W-9 includes Respondent’s correct TIN or that Respondent has applied and is waiting for issuance of a TIN;
- c. Respondent shall email its completed Form W-9 to Milton Wise at EPA’s Cincinnati Finance Center at [wise.milton@epa.gov](mailto:wise.milton@epa.gov), within 30 days after the effective date of this CAFO, and EPA recommends encrypting IRS Form W-9 correspondence; and
- d. In the event that Respondent has certified in its completed IRS Form W-9 that it does not yet have a TIN but has applied for a TIN, Respondent shall provide EPA’s Cincinnati Finance Center with Respondent’s TIN, via

email, within five (5) days of Respondent's receipt of a TIN issued by the IRS.

### **General Provisions**

37. The parties consent to service of this CAFO by email at the following valid email addresses: dooley.carlene@epa.gov (for Complainant) and aromig@psrb.com and [mabridwell@drhorton.com](mailto:mabridwell@drhorton.com) (for Respondent). Respondent understands that the CAFO will become publicly available upon proposal for public comment and upon filing.

38. Full payment of the penalty as described in paragraphs 29 and 30 and full compliance with this CAFO shall not in any case affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

39. As provided under 40 C.F.R. § 22.18(c), full payment of the penalty as described in paragraphs 29 and 30 and full compliance with this CAFO shall only resolve Respondent's liability for federal civil penalties under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for the particular violations alleged in this CAFO.

40. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable laws, regulations, or permits.

41. Respondent certifies that it is complying with Sections 301(a) and 404 of the CWA, 33 U.S.C. §§ 1311(a), 1344.

42. The terms of this CAFO bind Respondent and its successors and assigns.

43. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms of this CAFO.

44. Each party agrees to bear its own costs and attorneys fees in this action.

45. This CAFO constitutes the entire agreement between the parties.

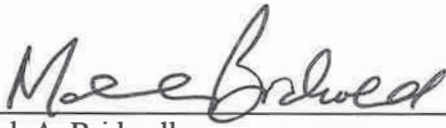
46. Pursuant to 40 C.F.R. § 22.18(b)(3), this Consent Agreement does not dispose of this proceeding without execution of the Final Order. The Final Order will not be issued until after completion of the requirements of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45(b), which require, among other things, public notice and a reasonable opportunity to comment on any proposed penalty order. Further, under Section 309(g), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.45, this Consent Agreement may be withdrawn before execution of the Final Order. Please refer to Section 309(g) of the CWA, 33 U.S.C. 1319(g), 40 C.F.R. § 22.45, and 40 C.F.R. Part 22 (the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties) for detailed information on the procedures regarding Consent Agreement and Final Order as a penalty order under the CWA and settlement under Part 22.

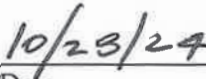
47. When final and effective, this CAFO is a “final order” for purposes of 40 C.F.R. §§ 22.13, 22.18, 22.31, 22.45 and the EPA’s Clean Water Act Section 404 Settlement Penalty Policy (Dec. 2001).

48. In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the Final Order is signed by the Regional Judicial Officer or Regional Administrator.

**In the Matter of:**  
**D.R. Horton – Indiana LLC**  
**Docket No. CWA-05-2025-0002**


**D.R. Horton -Indiana LLC, Respondent**

  
\_\_\_\_\_  
Mark A. Bridwell  
Division Vice President, Land Development  
D.R. Horton – Indiana, LLC

  
\_\_\_\_\_  
Date

**United States Environmental Protection Agency, Complainant**

**MICHAEL**  
**HARRIS**

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MICHAEL HARRIS  
Date: 2024.11.20 15:12:15  
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Michael D. Harris  
Division Director  
Enforcement and Compliance Assurance Division  
U.S. EPA Region 5

\_\_\_\_\_  
Date

**In the Matter of:  
D.R. Horton – Indiana, LLC  
Docket No. CWA-05-2025-0002**

**Final Order**

In accordance with Section 309(g)(5) of the CWA, 33 U.S.C. § 1319(g)(5), and 40 C.F.R. § 22.45, this CAFO shall become effective 30 days after the date of issuance unless, if applicable, a commenter files a petition for judicial review pursuant to 33 U.S.C. § 1319(g)(8) or a request for hearing pursuant to 33 U.S.C. § 1319(g)(4)(C), or, if applicable, 30 days after the request or petition is denied. The date of issuance is the date the undersigned signed this Final Order. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18, 22.31, and 22.45. IT IS SO ORDERED.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5