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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
GARDEN HOMES, GARDEN HOMES REALTY)	
CORPORATION, GARDEN HOMES COMMERCIAL)	
PROPERTIES, CLARK DEVELOPERS LLC, SUNSET)	Civ. A. No.
RIDGE DEVELOPERS LLC, NORDAN REALTY CORP,)	
BLOOMFIELD BELLEVILLE ASSOCIATES, SCENIC)	
RIDGE LOPATCONG LLC, ALLENDALE WHITNEY,)	
LLC, RIVERVALE DEVELOPERS LLC, RIVERFRONT)	
DEVELOPERS LLC, 351 MOLNAR ASSOCIATES)	
LLC, DUNHAMS FARMS DEVELOPERS,)	
)	
Defendants.)	
_____)	

COMPLAINT

Plaintiff, the United States of America, by the 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”), files this Complaint and alleges as follows:

1. This is a civil action for injunctive relief and civil penalties brought pursuant to Sections 309(b) and (d) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. §§ 1319(b), (d), against Garden Homes and twelve of its subsidiaries or affiliates as enumerated in Paragraphs 9 to 20, below (collectively “Defendants” or “Garden Homes”), for failure to comply with the New Jersey Department of Environmental Protection (“NJDEP”) Construction General Permit (“Construction General Permit”), which is authorized by the EPA pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p). Plaintiff seeks to obtain injunctive relief and civil penalties for violations of the Act, as well as its implementing permits and regulations. The allegations in this Complaint concern Defendants’ operations at ten construction sites in New Jersey.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and 33 U.S.C. § 1319(b).

3. Venue is proper in this District pursuant to 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b),(c) and 1395(a), because Defendants conduct business in this District, the violations occurred in this District, and because business offices of Garden Homes are located in this District.

4. Authority to bring this civil action is vested with the Attorney General of the United States, pursuant to Section 506 of the CWA, 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

5. Notice of the commencement of this action has been provided to the State of New Jersey pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b).

DEFENDANTS

6. Garden Homes designs, constructs, markets and sells luxury homes and

commercial properties throughout New Jersey.

7. Garden Homes' headquarters and principal place of business is at 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

8. The following entities are wholly-owned subsidiaries or affiliates of Garden Homes: Garden Homes Realty Corporation, Garden Commercial Properties, Clark Developers LLC, Sunset Ridge Developers, LLC, Nordan Realty Corp., Bloomfield Belleville Associates, Scenic Ridge Lopatcong, LLC, Allendale, Whitney, LLC, River Vale Developers, LLC, Riverfront Developers, LLC, 351 Molnar Associates, LLC and Dunhams Farm Developers, LLC.

9. Garden Homes Realty Corporation is a corporation existing under the laws of New Jersey and is a "person" as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of Garden Homes Realty Corporation is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

10. Garden Homes Commercial Properties is a corporation existing under the laws of New Jersey and is a "person" as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of Garden Homes Realty Corporation is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

11. Clark Developers, LLC is a limited liability company existing under the laws of New Jersey and is a "person" as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of Clark Developers LLC is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

12. Sunset Ridge Developers, LLC is a limited liability company existing under the laws of New Jersey and is a "person" as defined in Section 502 (5) of the CWA, 33 U.S.C. §

1362(5), 40 C.F.R. § 122.2. The business address of Sunset Ridge Developers, LLC is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

13. Nordan Realty Corp. is a corporation existing under the laws of New Jersey and is a “person” as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of Nordan Realty Corp is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

14. Bloomfield Belleville Associates, is a limited liability company existing under the laws of New Jersey and is a “person” as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of Bloomfield Belleville Associates is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

15. Scenic Ridge Lopatcong, LLC, is a limited liability company existing under the laws of New Jersey and is a “person” as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of Scenic Ridge Lopatcong, LLC is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

16. Allendale Whitney, LLC, is a limited liability company existing under the laws of New Jersey and is a “person” as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of Allendale Whitney, LLC is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

17. River Vale Developers, LLC is a limited liability company existing under the laws of New Jersey and is a “person” as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of River Vale Developers, LLC is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

18. Riverfront Developers, LLC, is a limited liability company existing under the

laws of New Jersey and is a “person” as defined in Section 502(5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of Riverfront Developers, LLC is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

19. 351 Molnar Associates, LLC, is a limited liability company existing under the laws of New Jersey and is a “person” as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of 351 Molnar Associates, LLC is 820 Morris Turnpike, Suite 301, Short Hills, New Jersey.

20. Dunhams Farm Developers, LLC is a limited liability corporation existing under the laws of New Jersey and is a “person” as defined in Section 502 (5) of the CWA, 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2. The business address of Dunhams Farms Developers, LLC is is 2300 U.S. Route 1, North Brunswick, New Jersey.

21. At all times relevant to the Complaint, Defendants controlled the real property that is the subject of this Complaint and otherwise directed, controlled or performed the activities that occurred on the real property that is the subject of this Complaint.

STATUTORY AND REGULATORY AUTHORITY

22. Congress enacted the CWA to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a).

23. To accomplish the objectives of the CWA, Section 301(a), 33 U.S.C. § 1311(a), prohibits the “discharge of any pollutant” by any person except in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued by EPA or an authorized state permitting agency, pursuant to CWA Section 402, 33 U.S.C. § 1342.

24. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines the term “discharge

of a pollutant” as, *inter alia*, “any addition of any pollutant to navigable waters from any point source.”

25. Section 502(6) of the CWA, 33 U.S.C. § 1362(6), broadly defines “pollutant” as “dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.”

26. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “waters of the United States.”

27. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as including “any discernable, confined and discrete conveyance . . . from which pollutants are or may be discharged.”

28. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires a NPDES-authorized permit for stormwater discharges “associated with industrial activity.”

29. EPA regulations define the term “stormwater discharge associated with industrial activity” to include stormwater discharges associated with (1) construction activities, including “clearing, grading and excavation activities,” that result in a disturbance of five or more acres of total land area or 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 acres or more; and (2) small construction activities, including “clearing, grading, and excavating” that result in a disturbance of equal to or greater than one acre and less than five acres or 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 and less than five acres. 40 C.F.R.

§§ 122.26(b)(14)(x); 122.26(b)(15).

30. Under EPA's regulations, any person who discharges or who proposes to discharge stormwater associated with industrial activity must apply for an individual permit or seek coverage under a stormwater general permit. *See* 40 C.F.R. §§ 122.21(a); 122.26(c); 122.28.

31. Pursuant to CWA Section 402(b), 33 U.S.C. § 1342(b), EPA may authorize a state to implement its own NPDES stormwater permitting program for discharges into navigable waters within its jurisdiction so long as the state program meets the federal requirements set forth in 40 C.F.R. Part 123. New Jersey is so authorized and has issued its own Construction Permit governing discharges of stormwater associated with construction activities.

32. The requirements of the Construction Permit include the following:

a. “[C]onstruction activity that may result in a stormwater discharge authorized by this permit shall be executed only in accordance with a Stormwater Pollution Prevention Plan (“SPPP”) that consists of the soil erosion and sediment control plan (“SESCP”) component and the construction site waste control (“CSWC”) component.” Construction Permit, Part I.E.1.

b. The permittee shall conduct and document weekly inspections of the areas of industrial activity to identify areas contributing to the stormwater discharge authorized by this permit and evaluate whether the SPPP is being properly implemented and maintained, or whether additional measures are needed to implement the SPPP. *See* Construction Permit, Part I.E.3.

33. Section 309(b) of the CWA, 33 U.S.C. § 1319(b), authorizes the EPA Administrator “to commence a civil action for appropriate relief, including a permanent or temporary injunction,” when any person is in violation of Section 301 of the CWA, 33 U.S.C. §

1311, or of any permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

34. CWA Section 309(d), 33 U.S.C. § 1319(d), provides, in part, that any person who violates Section 301 of the Act, 33 U.S.C. § 1311, or violates any permit condition or limitation in a NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$32,500 per day for each violation that occurred on or after March 15, 2004 through January 12, 2009; and up to \$37,500 per day for each violation that occurred after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4; 73 Fed. Reg. 75340-45 (Dec. 11, 2008, as corrected at 74 Fed. Reg. 626-27, Jan. 7, 2009) (codified at 40 C.F.R. pt. 19).

GENERAL ALLEGATIONS

35. EPA conducted inspections at three Garden Homes construction sites in New Jersey. During said inspections, EPA observed violations that indicated a pattern of failure to comply with the requirements of the Construction Permit.

36. EPA obtained additional information from Garden Homes through information requests issued by EPA pursuant to Section 308 of the CWA, 33 U.S.C § 1318. Garden Homes' responses to EPA's information request revealed recurring Construction Permit violations at seven additional sites.

37. Based on the inspections, responses to information requests and other information, the United States alleges that Garden Homes violated the Construction Permit at the following ten construction sites: Clark in West Clark, New Jersey; Bel Air Woods (Sunset Ridge) in Livingston, New Jersey; The Reserve at Bel Air in West Orange, New Jersey; Bloomfield Redevelopment in Bloomfield, New Jersey; Scenic Ridge Estates in Phillipsburg, New Jersey; The Whitney, in Allendale, New Jersey; Cherry Wood in River Vale, New Jersey;

Riverfront at Cranford Station in Cranford, New Jersey; Altair Condominiums in Elmwood Park, New Jersey; and Estates at Dunham's Farm in South Brunswick, New Jersey (collectively the "Sites").

38. The violations at the Sites include failure to implement and maintain the SESCO component of the SPPP, failure to develop and implement the CSWC component of the SPPP, and failure to conduct and document weekly inspections of the areas of industrial activity.

39. Based on the inspections performed by EPA and Garden Homes' responses to EPA's requests for information, and based on the centralized control Garden Homes maintains over the Sites, the United States alleges that Garden Homes has exhibited a pattern of failure to comply with the requirements of the Construction Permit that could or did result in discharges of storm water to waters of the United States. Any such stormwater discharges would have been conveyed through ditches, culverts, swales, gullies, channels and detention basins through disturbed areas of the Sites and could have been contaminated with sand, dirt, sediment, and suspended solids that could result in turbidity.

40. Garden Homes disturbed equal to or greater than one acre of soil at each of the Sites.

41. With respect to each Site, at all times relevant to this Complaint, Garden Homes has maintained operational control over the construction plans and specifications, including the ability to make modifications to such plans and specifications, and/or Garden Homes has maintained day-to-day operational control necessary to ensure compliance with the SPPP for each Site or with other conditions of the Construction Permit at each Site.

SPECIFIC ALLEGATIONS

42. Plaintiff realleges and incorporates by reference Paragraphs 1 through 41.

Clark Developers LLC – “Clark” Development

43. On March 31, 2011, NJDEP issued authorization for Construction Permit coverage to Clark Developers, LLC for a “Proposed Residential Development,” located at 268-300 Terminal Avenue West, Clark, New Jersey (“Clark Site”) (Permit No. NJG0190055).

44. Garden Homes commenced construction activities at the Clark Site on May 1, 2011, and these construction activities resulted in the disturbance of approximately ten (10) acres of soil.

45. The Clark Site Stormwater discharges stormwater associated with industrial construction activity, such as construction activity subject to Section 402(p)(2) of the CWA, 33 U.S.C. § 1342(p)(2).

46. The Clark Site discharges to the Robinson Branch Tributary, which flows into the Rahway River, a traditionally navigable body of water and a water of the United States.

47. Garden Homes developed a SESCO for Clark Site containing Best Management Practices (“BMPs”) for the site, which is enforceable under the Construction Permit, Part I.E.1.a.

48. EPA inspected the Clark Site on July 18, 2012 and found numerous violations of the Construction Permit.

49. Garden Homes failed to implement BMPs specified in the SESCO component of the SPPP from at least July 18, 2012 until October 10, 2012, in violation of the Construction Permit, Part I.E.1.a. Specifically, Garden Homes failed to install perimeter silt fencing along the northeastern and southeastern property lines and three on-site catch basins lacked filter fabric.

50. Garden Homes failed to maintain BMPs specified in the SESCO from at least July 18, 2012 until October 10, 2012, in violation of the Construction Permit, Part I.E.1.a.

Specifically, Garden Homes failed to maintain the perimeter silt fencing where portions were torn, not keyed into the ground and had fallen down, and one catch basin on-site contained torn filter fabric.

51. Garden Homes failed to develop and implement the CSWC component of the SPPP from May 1, 2012 until October 10, 2012, in violation of the Construction Permit, Parts I.E.1.d and I.J. Specifically, the designated concrete washout was not lined and bermed and was not clearly designated with a sign. In addition, concrete washout was observed on the ground outside of the designated concrete washout area.

52. Garden Homes failed to conduct and document fifty-four (54) weekly inspections between May 1, 2012 and September 20, 2013, at the Clark Site, in violation of the Construction Permit, Part I.E.3.

Sunset Ridge Developers, LLC - "Bel Air Woods" Development

53. On March 7, 1996, NJDEP issued authorization for Construction Permit coverage to Sunset Ridge Developers, LLC for the Bel Air Woods project located at 17 Lafayette Rd., Livingston, New Jersey ("Bel Air Woods") (Permit No. NJP099171).

54. Garden Homes commenced construction activities at the site on June 15, 2006, and these construction activities resulted in the disturbance of approximately fifty (50) acres of soil.

55. Bel Air Woods discharges stormwater associated with industrial construction activity subject to Section 402(p)(2) of the CWA, 33 U.S.C. § 1342(p)(2).

56. Bel Air Woods discharges to the Canoe Brook Tributary, which flows into the Passaic River, a traditionally navigable body and a water of the United States.

57. Garden Homes developed a SESCO for Bel Air Woods containing BMPs for the

site, which is enforceable under the Construction Permit, Part I.E.1.a.

58. EPA inspected the Bel Air Woods site on March 21, 2013, and found various violations of the Construction Permit.

59. Garden Homes failed to implement BMPs specified in the SESCO component of the SPPP from at least March 21, 2013 until September 30, 2013, in violation of the Construction Permit, Part I.E.1.a. Specifically, Garden Homes failed to install perimeter silt fencing along the perimeter of the site between disturbed soil behind Lot 2.15 and the Canoe Brook Tributary, and four (4) on-site catch basins lacked filter fabric.

60. Garden Homes failed to maintain the BMPs specified in the SESCO component of the SPPP from at least March 21, 2013 until September 30, 2013, in violation of the Construction Permit, Part I.E.1.a. Specifically, Garden Homes failed to maintain perimeter silt fencing where portions were torn, not keyed into the ground and had fallen down adjacent to lots with disturbed soil, seven (7) stormwater catch basin on-site contained torn filter fabric, and eight (8) construction site entrances lacked sufficient stone.

61. Garden Homes failed to conduct and document two hundred and thirty-nine (239) weekly inspections between January 1, 2009 and September 30, 2013, at the Bel Air Woods site, in violation of the Construction Permit, Part I.E.3.

Nordan Realty Corporation - “The Reserve at Bel Air” Development

62. On May 5, 2005, NJDEP issued authorization for Construction Permit coverage to Nordan Realty Corporation for the Jayber Tract Subdivision located at Northfield Avenue, West Orange, New Jersey (“The Reserve at Bel Air”) (Permit No. NJP099172).

63. Garden Homes commenced construction activities at the site on September 1, 2005, and these construction activities resulted in the disturbance of approximately twelve (12)

acres of soil.

64. The Reserve at Bel Air site discharges stormwater associated with industrial construction activity subject to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

65. The Reserve at Bel Air site discharges to the Bear Brook, which flows into the Canoe Brook, and then into the Passaic River, a traditionally navigable body of water and a water of the United States.

66. Garden Homes developed an SESCO containing BMPs for the site, which is enforceable under the Construction Permit, Part I.E.1.a.

67. EPA inspected the Reserve at Bel Air site on March 21, 2013, and found various violations of the Construction Permit.

68. Garden Homes failed to implement the BMPs specified in the SESCO component of the SPPP from at least March 21, 2013 until September 30, 2013, in violation of the Construction Permit, Part I.E.1.a. Specifically, Garden Homes failed to install perimeter silt fencing along the perimeter of the site between the disturbed soil behind 4 and 6 Wadams Court and the Bear Brook Tributary, between soil stock piles and the Bear Brook Tributary at 55 Haggerty Drive, and between soil and sand stock piles on Haggerty Drive and the Bear Brook Tributary. In addition, three (3) on-site catch basins lacked filter fabric and Garden Homes failed to rectify damage caused by erosion to the Bear Brook Tributary at two (2) locations behind 53 Haggerty Drive.

69. Garden Homes failed to maintain the BMPs specified in the SESCO component of the SPPP from at least March 21, 2013 until September 30, 2013, in violation of the Construction Permit, Part I.E.1.a. Specifically, Garden Homes failed to maintain perimeter silt fencing where portions were torn, not keyed into the ground, buried and failed to extend across the entire slope,

contained gaps between stakes, and had fallen down adjacent to lots with disturbed soil. In addition, two (2) catch basins on-site contained torn filter fabric and sediment was tracked onto the road.

70. Garden Homes failed to develop and implement the CSWC component of the SPPP from at least March 21, 2013 until September 30, 2013, in violation of the Construction Permit, Parts I.E.1.d and I.J. Specifically, Garden Homes failed to maintain a spill kit on-site, utilized a torn designated concrete washout liner, allowed hardened concrete waste to stockpile, failed to designate concrete washout with a sign, and allowed fuel to spill on the ground adjacent to the fuel tank and uphill from an unprotected catch basin.

71. Garden Homes failed to conduct and document two hundred and ten (210) weekly inspections from January 1, 2009 until May 24, 2013, at the Reserve at Bel Air site, in violation of the Construction Permit, Part I.E.3.

Bloomfield Belleville Associates - "Bloomfield" Development

72. On June 22, 2012, NJDEP issued authorization for Construction Permit coverage to Bloomfield Belleville Associates for the "Demolition for Oakes Pond Redevelopment" located at 221-225 Belleville Avenue, Bloomfield, New Jersey ("Bloomfield Redevelopment").

73. Garden Homes commenced construction activities at the site on August 1, 2012, and these construction activities resulted in the disturbance of approximately eleven (11) acres of soil.

74. The Bloomfield Redevelopment site discharges stormwater associated with industrial construction activity subject to Section 402(p)(2) of the CWA, 33 U.S.C. § 1342(p)(2).

75. The Bloomfield Redevelopment site discharges to the Third River, which flows into the Passaic River, a traditionally navigable body of water and a water of the United States.

76. Garden Homes failed to conduct and document fifty-four (54) weekly inspections between August 1, 2012 and September 20, 2013, at the Bloomfield Redevelopment site, in violation of the Construction Permit, Part I.E.3.

Scenic Ridge Lopatcong, LLC - "Scenic Ridge Estates" Development

77. On July 9, 2003, NJDEP issued authorization for Construction Permit coverage to Scenic Ridge Lopatcong, LLC for the Scenic Ridge Estates project located at Belvidere Road, Lopatcong, New Jersey.

78. Garden Homes commenced construction activities at the site on October 1, 2006, and these construction activities resulted in the disturbance of sixty-eight (68) acres of soil.

79. The Scenic Ridge Estates site discharges stormwater associated with industrial construction activity subject to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

80. The Scenic Ridge Estates site discharges to an unnamed tributary to the Delaware River, a traditionally navigable body of water and a water of the United States.

81. Garden Homes failed to conduct and document two hundred and thirty-six (236) weekly inspections between January 1, 2009 and September 20, 2013, at the Scenic Ridge Estates site, in violation of the Construction Permit, Part I.E.3.

Allendale Whitney, LLC - "The Whitney" Development

82. On March 12, 2010, NJDEP issued authorization for Construction Permit coverage to Allendale Whitney, LLC for the Whitney Townhouses project located at Chestnut Street, Allendale, New Jersey.

83. Garden Homes commenced construction activities at the site on April 1, 2010, and these construction activities resulted in the disturbance of approximately twenty-one (21) acres of soil.

84. The Whitney Townhouses site discharges stormwater associated with industrial construction activity subject to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

85. The Whitney Townhouses site discharges to the Allendale Brook, which flows into the Hohokus Brook, and then into the Saddle River, a traditionally navigable body of water and a water of the United States.

86. Garden Homes failed to conduct and document one hundred and sixteen (116) weekly inspections between April 1, 2010 and July 12, 2013, at the Whitney Townhouses site, in violation of the Construction Permit, Part I.E.3.

River Vale Developers, LLC - “Cherry Wood” Development

87. On August 6, 2007, NJDEP issued authorization for Construction Permit coverage to River Vale Developers, LLC for a “Multi-Family Residential” project located at Poplar Road, River Vale, New Jersey (“Cherry Wood”).

88. Garden Homes commenced construction activities at the site on June 15, 2010, and these construction activities resulted in the disturbance of approximately ten (10) acres of soil.

89. The Cherry Wood site discharges stormwater associated with industrial construction activity subject to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

90. The Cherry Wood site discharges to the Cherry Brook, which flows into the Hackensack River, a traditionally navigable body of water and a water of the United States.

91. Garden Homes failed to conduct and document one hundred and fifty-five (155) weekly inspections between June 15, 2010 and June 7, 2013, at the Cherry Wood site, in violation of the Construction Permit, Part I.E.3.

Riverfront Developers, LLC - “Riverfront at Cranford Station” Development

92. On March 31, 2011, NJDEP issued authorization for Construction Permit coverage to Riverfront Developers, LLC for a “Mixed Use Re-development” project located at South Avenue East & High Street, Cranford, New Jersey (“Riverfront at Cranford Station”).

93. Garden Homes commenced construction activities at the site on May 1, 2011, and these construction activities resulted in the disturbance of approximately three (3) acres of soil.

94. The Riverfront at Cranford Station site discharges stormwater associated with industrial construction activity subject to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

95. The Riverfront at Cranford Station site discharges to the Rahway River, a traditionally navigable body of water and a water of the United States.

96. Garden Homes failed to conduct and document eighty (80) weekly inspections between March 1, 2009 and July 5, 2013, at the Riverfront at Cranford Station site, in violation of the Construction Permit, Part I.E.3.

351 Molnar Associates, LLC - “Altair Condominiums” Development

97. On April 10, 2008, NJDEP issued authorization for Construction Permit coverage to 351 Molnar Associates, LLC for the Altair Condominiums project located at 351 Molnar Drive, Elmwood Park, New Jersey (“Altair Condominiums”).

98. Garden Homes commenced construction activities at the site on November 1, 2005, and these construction activities resulted in the disturbance of approximately seven (7) acres of soil.

99. The Altair Condominiums site discharges stormwater associated with industrial construction activity subject to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

100. The Altair Condominiums site discharges to an unnamed tributary of the Passaic River, a traditionally navigable body of water and a water of the United States.

101. Garden Homes failed to conduct and document two hundred and forty-one (241) weekly inspections between January 1, 2009 and August 31, 2013, at the Altair Condominiums site, in violation of the Construction Permit, Part I.E.3.

Dunhams Farm Developers, LLC - “Estates at Dunham’s Farm” Development

102. On May 10, 2005, NJDEP issued authorization for Construction Permit coverage to Dunhams Farm Developers, LLC for the Estates at Dunhams Farms project located at 2475 Dunhams Corner Road, South Brunswick, New Jersey.

103. Garden Homes commenced construction activities at the site May 10, 2005, and these construction activities resulted in the disturbance of approximately ninety (90) acres of soil.

104. The Estate at Dunhams Farm site discharges stormwater associated with industrial construction activity subject to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

105. The Estates at Dunhams Farms site discharges to the Ireland Brook, which flows into the Western Mill Pond and then into the Raritan River, a traditionally navigable body of water and a water of the United States.

106. Garden Homes failed to conduct and document two hundred and six (206) weekly inspections between January 1, 2009 and September 27, 2013, at the Estates at Dunhams Farms site, in violation of the Construction Permit, Part I.E.3.

CLAIMS FOR RELIEF

107. Plaintiff realleges and incorporates by reference Paragraphs 1 through 106.

108. Garden Homes failed to comply with the terms and conditions of the Construction Permit in violation of CWA Sections 301 and 402(p) , 33 U.S.C. §§ 1311 and 1342, at ten sites in New Jersey.

First Claim for Relief: Failure to Develop, Maintain and/or Implement the SESCO

109. As discussed in more detail above in Paragraphs 49-50, 59-60, and 68-69, Clark Developers LLC, Sunset Ridge Developers LLC, and Nordan Realty Corporation failed to develop, maintain and/or implement the SESCO.

110. At all times relevant to the claims set forth in Paragraph 109, Garden Homes, Garden Homes Commercial Properties, and Garden Homes Realty Corporation directed, controlled or performed the activities that occurred on the real property that is the subject of these claims.

111. Unless enjoined, these violations will continue and will recur at other Garden Homes' construction sites.

112. Pursuant to CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319 (b) and (d), and 40 C.F.R. Part 19, Clark Developers LLC, Sunset Ridge Developers LLC, Nordan Realty Corporation, Garden Homes, Garden Homes Commercial Properties, and Garden Homes Realty Corporation are liable for injunctive relief and civil penalties of up to \$32,500 per day for each such violation occurring from March 16, 2004 through and including January 12, 2009, and \$37,500 per day for each such violation thereafter, including any other violations that may occur in the future

Second Claim for Relief: Failure to Develop, Maintain and/or Implement the CSWC

113. As discussed in more detail above in Paragraphs 51 and 70, Clark Developers LLC and Nordan Realty Corporation failed to develop, maintain and/or implement the CSWC.

114. At all times relevant to the claims set forth in Paragraph 113, Garden Homes, Garden Homes Commercial Properties, and Garden Homes Realty Corporation directed, controlled or performed the activities that occurred on the real property that is the subject of

these claims.

115. Unless enjoined, these violations will continue and will recur at other Garden Homes' construction sites.

116. Pursuant to CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319 (b) and (d), and 40 C.F.R. Part 19, Clark Developers LLC, Nordan Realty Corporation, Garden Homes, Garden Homes Commercial Properties, and Garden Homes Realty Corporation are liable for injunctive relief and civil penalties of up to \$32,500 per day for each such violation occurring from March 16, 2004 through and including January 12, 2009, and \$37,500 per day for each such violation thereafter, including any other violations that may occur in the future.

Third Claim for Relief: Failure to Conduct and/or Document Weekly Inspections

117. As discussed in more detail above in Paragraphs 52, 61, 71, 76, 81, 86, 91, 96, 101, and 106, Clark Developers LLC, Sunset Ridge Developers LLC, Nordan Realty Corporation, Bloomfield Belleville Associates, Scenic Ridge Lopatcong LLC, Allendale Whitney LLC, Rivervale Developers LLC, Riverfront Developers LLC, 351 Molnar Associates LLC, and Dunhams Farms Developers LLC failed to conduct and/or document weekly inspections.

118. At all times relevant to the claims set forth in Paragraph 117, Garden Homes, Garden Homes Commercial Properties, and Garden Homes Realty Corporation directed, controlled or performed the activities that occurred on the real property that is the subject of these claims.

119. Unless enjoined, these violations will continue and will recur at other Garden Homes' construction sites.

120. Pursuant to CWA Sections 309(b) and (d), 33 U.S.C. §§ 1319 (b) and (d), and 40

C.F.R. Part 19, Garden Homes is liable for injunctive relief and civil penalties of up to \$32,500 per day for each such violation occurring from March 16, 2004 through and including January 12, 2009, and \$37,500 per day for each such violation thereafter, including any other violations that may occur in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America respectfully requests that this Court:

1. Order Garden Homes to comply with the terms of the CWA and the conditions of the Construction Permit at all of its active construction sites with stormwater permits;

2. Require, *inter alia*, a corporate-wide evaluation of existing stormwater practices, the development of a corporate-wide stormwater management program (“SMP”), long-term corporate-wide implementation and compliance with the SMP, enactment of a Supplemental Environmental Project, and compliance with reporting requirements to the EPA;

3. Assess civil penalties against Defendants pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d) of up to \$32,500 for each violation per day, prior to January 12, 2009 and \$37,500 per day for each violation alleged thereafter, including any other violations that may occur in the future;

4. Award the United States its costs and disbursements in this action; and

5. Grant Plaintiff, the United States of America, any such further relief as this Court deems just and proper.

Respectfully submitted,

FOR THE UNITED STATES OF AMERICA

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division

Date: 5/29/2015

/s/ Claire H. Woods
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