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17 IN THE UNITED STATES DISTRICT COURT  
 18 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 19 SAN FRANCISCO OR OAKLAND DIVISIONS

20 UNITED STATES OF AMERICA,  
 21 THE STATE OF ILLINOIS, and  
 22 ALABAMA DEPARTMENT OF ENVIRONMENTAL  
 MANAGEMENT

23 Plaintiffs,

24 v.

25 SWINERTON BUILDERS, f/d/b/a SWINERTON  
 26 RENEWABLE ENERGY and d/b/a SWINERTON  
 27 BUILDERS, CORPORATION and SWINERTON  
 BUILDERS, INC.

28 Defendant.

Civil Action No.

COMPLAINT

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1 **COMPLAINT**

2 Plaintiffs, the United States of America, through its undersigned attorneys, by the  
3 authority of the Attorney General, and at the request of the Administrator of the United States  
4 Environmental Protection Agency (“EPA”), with respect to its claims under federal law; the  
5 State of Alabama and the Alabama Department of Environmental Management (“ADEM”), by  
6 the authority of the Alabama Attorney General’s Office, with respect to its Alabama state law  
7 claims; and the State of Illinois (“Illinois”), by and through Kwame Raoul, Attorney General of  
8 the State of Illinois, on behalf of the People of the State of Illinois on his own motion and upon  
9 the request of the Illinois Environmental Protection Agency (“IEPA”), with respect to its Illinois  
10 state law claims, file this Complaint and allege as follows:

11 **NATURE OF ACTION**

12 1. This is a civil action for injunctive relief and civil penalties under the Clean Water  
13 Act (“CWA”) against Swinerton Builders, doing business as, *inter alia*, Swinerton Renewable  
14 Energy, Swinerton Builders, Inc., and Swinerton Builders, Corporation (“Swinerton”). During  
15 construction of solar energy facilities (commonly known as solar farms) in Alabama and Idaho,  
16 Swinerton discharged pollutants in stormwater without permit authorization in violation of the  
17 CWA, 33 U.S.C. § 1311. At those sites and two sites in Illinois, Swinerton failed to comply with  
18 the conditions and limitations of permits issued pursuant to 33 U.S.C. § 1342, for the discharge  
19 of stormwater from a construction site. With respect to the Alabama site, this action also is  
20 brought pursuant to the Alabama Water Pollution Control Act (“AWPCA”), Ala. Code §§ 22-22-  
21 1 through 22-22-14, *as amended*. With respect to the Illinois sites, this action also is brought  
22 pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.

23 **JURISDICTION**

24 2. This Court has jurisdiction over the subject matter of this action. 33 U.S.C. §§  
25 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345 and 1355. This Court has jurisdiction over the  
26 state law claims pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction), because they are  
27 related to the federal claims and form part of the same case or controversy. This Court also has  
28 jurisdiction over the parties in this action.

1 **DIVISIONAL ASSIGNMENT**

2 3. Pursuant to Civil L.R. 3-2(c), this action is properly assigned to the San Francisco  
3 or Oakland Divisions, because Swinerton’s principal place of business is located in Contra Costa  
4 County, and none of the events or omissions giving rise to the claims occurred in any other  
5 County within this district.

6 **VENUE AND AUTHORITY**

7 4. Venue is proper in this district, because Swinerton’s principal place of business is  
8 in this District. 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 and 1395.

9 5. The United States has provided notice of the commencement of this action to the  
10 States of Alabama, Idaho, and Illinois in accordance with 33 U.S.C. § 1319(b).

11 6. Authority to bring this action is vested in the United States Department of Justice  
12 under 28 U.S.C. §§ 516 and 519.

13 7. Authority to bring this action on behalf of the State of Alabama is vested in the  
14 Attorney General under Ala. Code §§ 22-22A-5(12), 22-22A-5(18), as amended. ADEM is also  
15 authorized to bring an action under Ala. Code §§ 22-22A-5(12) and (18).

16 8. Authority to bring this action is vested in the Illinois Attorney General by Section  
17 4 of the Illinois Attorney General Act, 15 ILCS 205/4, and Section 42(d) and (e) of the Illinois  
18 Environmental Protection Act, 415 ILCS 5/42(d) and (e).

19 **PLAINTIFFS**

20 9. Plaintiff United States of America, by the undersigned attorneys, is acting on  
21 behalf of EPA.

22 10. Plaintiff ADEM is the state agency responsible for issuing and enforcing  
23 environmental permits in the State of Alabama.

24 11. Plaintiff Illinois is acting through the Illinois Attorney General on his own motion  
25 and at the request of Illinois EPA.

26 **DEFENDANT**

27 12. Defendant Swinerton Builders is a corporation incorporated and with its principal  
28 office in Concord, California. Because it is a corporation, Swinerton is a “person” as defined in

1 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2, Ala. Code § 22-22-1(b)(7), ADEM Admin Code r.  
2 335-6-6-.02(II), 415 ILCS 5/3.315, and 35 Ill. Adm. Code 301.355.

3 13. Swinerton Renewable Energy was a division of Defendant Swinerton Builders  
4 with its principal office in San Diego, California. As of December 23, 2021, Defendant, and its  
5 related companies, sold Swinerton Renewable Energy and assets related to the construction of  
6 solar energy facilities.

## 7 LEGAL AUTHORITY

### 8 A. Statutory & Regulatory Background

9 14. The Clean Water Act is designed to restore and maintain the chemical, physical  
10 and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

11 15. To accomplish the objectives of the Act, the CWA prohibits the “discharge of any  
12 pollutant” by any person except in certain circumstances, such as in compliance with a National  
13 Pollutant Discharge Elimination System (“NPDES”) permit issued by EPA, or an authorized  
14 state. 33 U.S.C. § 1311(a).

15 16. The CWA defines the term “discharge of a pollutant” as, inter alia, “any addition  
16 of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

17 17. The CWA defines “navigable waters” as “the waters of the United States,  
18 including the territorial seas.” 33 U.S.C. § 1362(7). “Waters of the United States” has been  
19 further defined to include, among other things, waters which are currently used, were used in the  
20 past, or may be susceptible to use in interstate or foreign commerce; and tributaries of such  
21 waters. 40 C.F.R. § 122.2 (1993) & 40 C.F.R. § 120.2 (2020).

22 18. The CWA defines a “point source” as “any discernable, confined and discrete  
23 conveyance... from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

24 19. The CWA requires a permit for stormwater discharges “associated with industrial  
25 activity.” 33 U.S.C. § 1342(p).

26 20. “Industrial activity” includes construction activity that disturbs 5 acres or more of  
27 total land area. Construction activity includes “clearing, grading, and excavation.” 40 C.F.R. §  
28 122.26(b)(14)(x).

1 21. States may issue their own stormwater permits for discharges into navigable  
2 waters within their jurisdiction if they are authorized by EPA to do so. 33 U.S.C. § 1342(b). For  
3 states that have not been authorized, EPA remains the permitting authority for purposes of the  
4 CWA.

5 22. EPA promulgated regulations relating to the control of stormwater discharges at  
6 40 C.F.R. § 122.26. Any state-authorized permitting authority must include such requirements in  
7 its NPDES permitting program.

8 23. Persons who discharge or who propose to discharge stormwater “associated with  
9 industrial activity” are required to apply for an individual permit or to seek coverage under a  
10 promulgated stormwater general permit. *See* 40 C.F.R. §§ 122.21(a), 122.26(c), 122.28, 123.25.

11 24. Persons who discharge or who propose to discharge stormwater associated with  
12 construction activity covered by 40 C.F.R. § 122.26(b)(14)(x) must submit an application 90  
13 days before the date construction is to commence, or by the deadlines provided by the terms of  
14 any applicable general permit. 40 C.F.R. § 122.21(c). Application under a general permit is  
15 made by submitting a Notice of Intent (“NOI”), and submission of a complete and timely NOI  
16 provides the discharger with coverage under the general permit by the date specified in the  
17 permit unless notified otherwise by EPA. *See* 40 C.F.R. § 122.28(b)(2).

18 25. The State of Alabama's analogous state laws require a permit for discharges of  
19 stormwater associated with construction activity that disturbs 1 acre or greater to state waters.  
20 ADEM Admin. Code r. 335-6-12-.02(m).

21 26. The Illinois Environmental Protection Act and Illinois Pollution Control Board  
22 Regulations prohibit discharge of any contaminant or pollutant into waters of the State without  
23 an NPDES permit issued by IEPA, or in violation of the provisions and conditions of the NPDES  
24 permit issued to the discharger. 415 ILCS 5/12(f); 35 Ill. Adm. Code 309.102(a).

25 **B. The Federal Construction General Permit (Applicable to Idaho Site)**

26 27. At all times relevant to this Complaint, the State of Idaho was not authorized by  
27 EPA to issue stormwater permits for construction activities. Therefore, EPA was the permitting  
28 authority for purposes of the CWA.

1 28. In 1992, EPA issued a Final NPDES General Permit for Stormwater Discharges  
2 from Construction Sites, known as the "Construction General Permit" or CGP (hereinafter  
3 "Federal CGP"). 57 Fed. Reg. 41176 (Sept. 9, 1992). EPA has subsequently modified and  
4 reissued this general permit several times. The versions applicable at all times relevant to this  
5 Complaint are the versions issued in 2012 ("the 2012 Federal CGP") and in 2017 ("the 2017  
6 Federal CGP"). See 77 Fed. Reg. 12286 (Feb. 29, 2012); 82 Fed. Reg. 6534 (Jan. 19, 2017).

7 29. A person must obtain coverage under the Federal CGP prior to discharging  
8 stormwater if that person engages in construction that meets the definition of "industrial activity"  
9 pursuant to 40 C.F.R. § 122.26(b)(14)(x) and either (i) has operational control of construction  
10 project plans and specifications, or (ii) has day-to-day operational control of those activities  
11 which are necessary to ensure compliance with permit conditions. In addition, "[w]here there are  
12 multiple operators associated with the same project, all operators are required to obtain permit  
13 coverage." 2012 Federal CGP Part 1.1 (Note), 2017 Federal CGP Part 1.1.

14 30. All operators associated with a construction site are required to submit a  
15 complete, accurate, and timely NOI at least 14 days before commencing construction activities in  
16 order to be covered under the Federal CGP. 2012 Federal CGP Part 1.4 (Note), 2017 Federal  
17 CGP Part 1.4.

### 18 **C. The Alabama Construction General Permit**

19 31. At all times relevant to this Complaint, the State of Alabama, through ADEM,  
20 was authorized to issue its own NPDES permits for the discharge of stormwater associated with  
21 construction activity.

22 32. On March 29, 2016, ADEM issued General Permit No. ALR100000 for  
23 Stormwater Discharges from Construction Activity ("Alabama Permit"). The Alabama Permit  
24 applicable at all times relevant to this Complaint became effective on April 1, 2016 and expired  
25 on March 31, 2021.

26 33. Pursuant to the Alabama Permit, any person wishing to obtain coverage under the  
27 general permit must submit a complete Notice of Intent ("NOI") prior to the initiation of  
28 construction activity. Alabama Permit, Part II.A.1.

1 34. The NOI is required to include, among other information, a general description of  
2 the activity for which permit coverage is desired; the latitude and longitude of each point of  
3 discharge for which permit coverage is required; identification of the waterbodies receiving  
4 discharges for which permit coverage is desired; and the number of estimated disturbed acres and  
5 total site acreage. Alabama Permit, Part II.C.1. The NOI must be signed and certified both by  
6 an authorized official of the applicant, and by a qualified credentialed professional, such as a  
7 licensed professional engineer or a Certified Professional in Erosion and Sediment Control.  
8 Alabama Permit, Part II.

9 35. An operator is authorized to discharge stormwater associated with construction  
10 activity to surface waters in accordance with the requirements of the Alabama Permit upon  
11 ADEM's receipt of a complete and timely NOI which meets the requirements of the permit and  
12 ADEM Admin Code r. 335-6-6-.23. Alabama Permit, Parts I.A and II.F.1.

13 36. Discharges from points that are not listed in the NOI are not authorized by the  
14 Alabama Permit. Alabama Permit, Part IV.A.3.

15 37. The Alabama Permit requires permittees to design, install, and maintain site-  
16 appropriate best management practices ("BMPs") to minimize the amount of soil exposed during  
17 construction activity. Alabama Permit, Part III.A. BMPs are structural and non-structural  
18 practices and management strategies implemented and maintained to prevent and minimize the  
19 introduction of pollutants to stormwater and to treat stormwater to remove pollutants prior to  
20 discharge. Alabama Permit, Part V. BMPs selected for a site must comply with technical  
21 standards outlined in the Alabama Permit and be described in detail in a Construction Best  
22 Management Practices Plan ("CBMPP") prepared for the site. Alabama Permit, Part III.

23 38. A permittee may not commence construction activity until a CBMPP has been  
24 prepared and certified by a qualified credentialed professional. Alabama Permit, Part III.E. The  
25 CBMPP must, among other items, include a site map clearly showing all points of discharges to  
26 waters of the State; a description of procedures for removal of sediment accumulation; and a  
27 detailed description of BMPs to be implemented at the site during each sequence of activity.  
28 Alabama Permit, Part III.E.4. The Alabama Permit requires that a permittee properly implement



1 and regularly maintain the controls, practices, devices, and measures specified in the CBMPP.  
2 Alabama Permit, Part III.E.3. Permittees must regularly update the CBMPP if BMPs change, are  
3 ineffective, or malfunctioning. Alabama Permit, Parts III.E, III.H., and III.I.

4 39. Part I.C. of the Alabama Permit explicitly excludes certain discharges associated  
5 with construction activity from coverage under the permit, including discharges to surface waters  
6 from sediment basins or impoundments where an outlet structure that withdraws water from the  
7 surface is not utilized, unless utilization of such a structure is not feasible.

8 40. The Alabama Permit requires a permittee to promptly take all reasonable steps to  
9 remove, to the maximum extent practical, pollutants deposited offsite or in a waterbody or  
10 stormwater conveyance structure. Alabama Permit, Part III.I.3.

11 41. The Alabama Permit also imposes additional requirements on permittees,  
12 including, among others: qualifications of specific persons required to be on-site, Alabama  
13 Permit, Part III.G.1 and Part III.H; site inspections, Alabama Permit, Part III.H; maintenance of  
14 specific records, Alabama Permit, Part III.H.3; and a requirement to display facility information  
15 at the entrance to the site, Alabama Permit, Part IV.T.

16 **D. The Illinois Construction General Permit**

17 42. At all times relevant to this Complaint, the State of Illinois, through IEPA, was  
18 authorized under 33 U.S.C. § 1342, to issue its own permits for the discharge of stormwater  
19 associated with construction activity.

20 43. On August 3, 2018, IEPA issued General NPDES Permit No. ILR10 for Storm  
21 Water Discharges from Construction Site Activities ("Illinois Permit"). The Illinois Permit  
22 became effective on August 3, 2018 and expired on July 31, 2023. The Illinois Permit was  
23 applicable at all times relevant to this Complaint.

24 44. A person must obtain coverage under the Illinois Permit prior to discharging  
25 stormwater if that person engages in construction that meets the definition of "industrial activity"  
26 pursuant to 40 C.F.R. § 122.26(b)(14)(x) and 35 Ill. Adm. Code 301.325.

27 45. A permittee obtains coverage under the Illinois Permit by submitting a complete,  
28 signed, and certified NOI to Illinois EPA. Unless notified to the contrary, a permittee is

1 authorized to discharge stormwater associated with construction activity in accordance with the  
2 requirements of the Illinois Permit 30 days following Illinois EPA's receipt of the NOI and  
3 required attachments. Illinois Permit, Parts I.C.1., II.A.1, II.C and VI.G.

4 46. With the NOI, a permittee must submit a site-specific, signed and certified  
5 Stormwater Pollution Prevention Plan ("SWPPP") that complies with the requirements in Part IV  
6 of the Illinois Permit. In general, the SWPPP describes how the permittee intends to comply  
7 with the terms and conditions of the Illinois Permit at its construction site. *Id.*, Parts IV.F and  
8 VI.G. The SWPPP must be maintained on site at all times, along with any revisions, and must be  
9 amended to identify any new contractors or subcontractors that will implement a SWPPP  
10 measure. *Id.*, Part IV.C.

11 47. Part IV.D of the Illinois Permit sets forth the content required for a SWPPP.  
12 Among other things, each SWPPP must include: a description of the site and planned  
13 construction activities; identification of responsible contractors and subcontractors; minimum  
14 components for erosion and sediment, and pollution controls to be designed and implemented at  
15 a site; establishment of natural buffers; and procedures for inspections and inspection reports by  
16 qualified personnel. *Id.*, Part IV.D.

17 **ENFORCEMENT AUTHORITIES**

18 48. If a state NPDES program is approved pursuant to 33 U.S.C. § 1342(b), the  
19 Administrator of EPA retains the authority to take enforcement action under 33 U.S.C. § 1319.  
20 See 33 U.S.C. § 1342(i).

21 49. The CWA authorizes the Administrator of EPA "to commence a civil action for  
22 appropriate relief, including a permanent or temporary injunction," when any person is in  
23 violation of 33 U.S.C. §§ 1311, 1318, or of any condition or limitation in a permit issued  
24 pursuant to 33 U.S.C. § 1342, including state permits. 33 U.S.C. § 1319(b).

25 50. The CWA provides, in part, that any person who violates 33 U.S.C. §§ 1311,  
26 1318, or any condition or limitation in a permit issued pursuant to 33 U.S.C. § 1342, shall be  
27 subject to a civil penalty not to exceed \$64,618 per day for each such violation occurring after  
28

1 November 2, 2015, where penalties are assessed on or after January 6, 2023. 33 U.S.C. §  
2 1319(d); 88 Fed. Reg. 988 (Jan. 6, 2023) (codified at 40 C.F.R. pt. 19).

3 51. Pursuant to Ala. Code § 22-22A-5(18) and (19) and ADEM Admin. Code 335-6-  
4 6-.12(a)(3), ADEM is authorized to seek civil penalties not to exceed \$25,000 per violation, and  
5 injunctive relief, for violations of the AWPCA, its implementing regulations, or conditions of  
6 permits issued by ADEM pursuant to the AWPCA. Pursuant to Ala. Code § 22-22A-5(18)(c),  
7 each day of violation is a separate violation of the AWPCA.

8 52. The Illinois Environmental Protection Act authorizes the Illinois Attorney  
9 General to commence a civil action to recover penalties and to restrain violations of the Illinois  
10 Environmental Protection Act, any permit or term or condition of a permit, or to require such  
11 other actions as may be necessary to address violations of any permit or term or condition of a  
12 permit. 415 ILCS 5/42(d) and (e). The Act further provides that violators shall be liable for a  
13 civil penalty not to exceed \$10,000 per day of violation. 415 ILCS 5/42(b)(1).

14 **ALLEGATIONS**

15 53. From at least 2016 until approximately December 23, 2021, Swinerton Builders,  
16 through Swinerton Renewable Energy, constructed renewable energy projects, including solar  
17 energy facilities, and other large-scale construction projects throughout the United States.

18 54. As relevant to this Complaint, Swinerton served as the engineering, procurement,  
19 and construction contractor for the following projects to construct photovoltaic solar generation  
20 sites (commonly known as solar farms): the American Falls Site near American Falls, Idaho; the  
21 AL Solar Site near LaFayette, Alabama; the Prairie State Site in unincorporated Perry County,  
22 Illinois; and the Big River Site in White County, Illinois (together, “the Sites”).

23 55. At each of the Sites, Swinerton performed, directed, or supervised some or all of  
24 the following activities: clearing timber and vegetation; stumping and removing brush; grading  
25 and regrading the land (i.e., flattening); constructing solar panel arrays, roads, substations and  
26 perimeter fences; installing electrical cables, inverters, and other mechanical equipment; and  
27 earthworks.

1 56. The activities described in Paragraph 55 are “construction” and “construction  
2 activity” within the meaning of 40 C.F.R. § 122.26(b)(14)(x), ADEM Admin. Code r. 335-6-12-  
3 .02(e), (g), and (m), the Alabama Permit, and the Illinois Permit.

4 57. At each of the Sites, Swinerton engaged in construction activity that resulted in  
5 the disturbance of at least 5 acres.

6 58. At each of the Sites, Swinerton operated, directed, and controlled daily  
7 construction activity and was responsible for stormwater management and compliance with the  
8 applicable Permit.

9 **A. The American Falls Site (Idaho)**

10 59. The American Falls Site consists of approximately 357 acres of previously  
11 undeveloped agricultural land at the corner of Ramsey Road and Smith Road, about 6 miles  
12 northeast of American Falls, Idaho.

13 60. In 2016, Swinerton entered into contracts to develop the American Falls Site into  
14 a 40-megawatt solar farm consisting of solar panel arrays, inverters, a substation, and associated  
15 roads for service, maintenance and access.

16 61. Between approximately August 22, 2016 and November 4, 2017, Swinerton, its  
17 subcontractors, and other contractors hired by the project owner, constructed the solar farm at the  
18 American Falls Site.

19 62. Between at least August 22, 2016 and June 2017, Swinerton was an “owner or  
20 operator” of the American Falls Site within the meaning of 40 C.F.R. §§ 122.2, 122.21(b), and  
21 the Federal CGP.

22 63. Swinerton did not at any time submit an NOI for its construction activities at the  
23 American Falls Site.

24 64. On several occasions in 2017, representatives from the Idaho Department of  
25 Environmental Quality ("IDEQ") conducted site visits and an inspection at the American Falls  
26 Site.

27 65. On multiple occasions during these visits, IDEQ personnel observed discharges of  
28 water from the American Falls Site, carrying sediment and eroded materials across Smith Road

1 and into Blind Spring Creek. Blind Spring Creek empties into Seagull Bay, which is part of  
2 American Falls Reservoir.

3 66. During these visits, IDEQ personnel also observed and recorded numerous other  
4 stormwater issues at the American Falls Site, including but not limited to: improperly designed,  
5 installed, and maintained stormwater controls; failure to protect storm drain inlets and stabilize  
6 soil; discharges of turbid water that violated water quality standards; and failure to take  
7 corrective actions and prepare corrective action reports.

8 67. In October 2018, EPA sent an information request to Swinerton pursuant to 33  
9 U.S.C. § 1318, requesting information about stormwater issues at the American Falls Site.  
10 Swinerton provided materials in response in December 2018 and February 2019, including  
11 copies of contracts and self-inspection reports.

12 68. The self-inspection reports and other materials provided to EPA documented  
13 numerous occasions on which stormwater discharged from the American Falls Site to culverts  
14 under Smith Road and into Blind Spring Creek, as well as many other incidents of significant  
15 noncompliance with the requirements of the Federal CGP.

16 **B. The AL Solar Site (Alabama)**

17 69. The AL Solar Site consists of over 1000 acres of previously undeveloped land,  
18 which included overgrown fields, wooded areas, and recently timbered areas, located at 11375  
19 County Road 83, LaFayette, Alabama.

20 70. Between 2016 and 2019, the AL Solar Site was developed into a 79.2-megawatt  
21 solar farm consisting of solar panel arrays, inverters, a substation, and associated roads for  
22 service, maintenance, and access.

23 71. Between at least March 13, 2017 through November 7, 2019, Swinerton, its  
24 subcontractors, and other contractors hired by the project owner, constructed the solar farm on at  
25 least 700 acres of land at the AL Solar Site.

26 72. Between at least March 13, 2017 through November 7, 2019, Swinerton was an  
27 “operator” of the AL Solar Site within the meaning of Part V of the Alabama Permit and ADEM  
28

1 Admin. Code r. 335-6-6-.02(ii), and an “owner or operator” within the meaning of 40 C.F.R.  
2 § 122.2.

3 73. On or about August 28, 2016, the owner of the AL Solar Site submitted an NOI to  
4 be covered by the Alabama Permit and identified 775 acres to be disturbed for activities  
5 including land clearing, grubbing, and grading. The NOI requested permit coverage for 7  
6 outfalls that discharge to Kellem Hill Creek. In a letter dated September 4, 2016, ADEM  
7 confirmed that the site owner was granted coverage under the Alabama Permit for the AL Solar  
8 Site.

9 74. Kellem Hill Creek is approximately 4.7 miles long, runs through a small portion  
10 of the AL Solar Site, and flows approximately 4 miles from the AL Solar Site to the confluence  
11 with Oseligee Creek, which in turn discharges to the Chattahoochee River.

12 75. At least 33 tributaries, none of which are named, run through or near the AL Solar  
13 Site and discharge to Kellem Hill Creek.

14 76. On or about June 28, 2017, Swinerton submitted an NOI requesting the transfer of  
15 the Alabama Permit coverage for the AL Solar Site to Swinerton Builders, Inc. The NOI  
16 identified 986 acres to be disturbed and requested permit coverage for 1 outfall that discharged to  
17 Kellem Hill Creek.

18 77. In a letter dated July 10, 2017, ADEM confirmed that coverage under the  
19 Alabama Permit had been modified to name Swinerton Builders, Inc. as the permittee for the AL  
20 Solar Site, consistent with the June NOI.

21 78. Swinerton submitted a Notice of Termination (“NOT”) on November 4, 2019.  
22 The NOT was accompanied by a certified statement by a professional engineer that the Site was  
23 stabilized. Swinerton’s coverage under the Alabama Permit for activities at the AL Solar Site  
24 ended on November 7, 2019.

25 79. On August 22, 2017, ADEM personnel inspected the AL Solar Site to determine  
26 its compliance with the Alabama Permit and the AWPCA.

1 80. During the inspection, an ADEM inspector observed that the AL Solar Site  
2 discharged stormwater to Kellell Hill Creek and its unnamed tributaries from multiple discharge  
3 points that were not listed on the NOI.

4 81. In a Notice of Violation dated September 12, 2017, ADEM informed Swinerton  
5 that, during the inspection, ADEM had identified the following violations of the Alabama Permit  
6 and the AWPCA: failure to implement and regularly maintain appropriate, effective BMPs  
7 (Alabama Permit, Part III.A); failure to implement and/or maintain effective stabilization  
8 practices to dissipate stormwater runoff energy and provide for non-erosive flow velocity at  
9 discharge outlets (Alabama Permit, Part III.A.3 and Part III.A.5); failure to protect streambed  
10 and/or stabilize a raised crossing in a water of the State (Alabama Permit, Part III.A); failure to  
11 include all waters receiving discharges from the facility or all discharge points on the NOI  
12 (Alabama Permit, Part II.C and Part III.E); and failure to display facility identification (Alabama  
13 Permit, Part IV.T).

14 82. On or about September 22, 2017, Swinerton responded to ADEM's NOV and  
15 provided updated photographs of the AL Solar Site and additional documentation. This  
16 information demonstrated that Swinerton continued to fail to minimize exposed soil or erosion at  
17 the AL Solar Site and failed to properly implement BMPs.

18 83. On or about December 13, 2017, Swinerton submitted an NOI to ADEM to revise  
19 its permit coverage to include 33 locations from which stormwater was discharged from the AL  
20 Solar Site to Kellell Hill Creek and its tributaries. On or about December 15, 2017, ADEM  
21 confirmed that coverage under the Alabama Permit had been modified to include the additional  
22 discharge points.

23 84. On November 30, 2018, representatives of EPA and ADEM inspected the Site to  
24 evaluate its compliance with the stormwater requirements of the CWA and its implementing  
25 regulations, the State of Alabama's construction stormwater regulations, and the Alabama  
26 Permit.

27 85. During the inspection, EPA inspectors observed evidence that sediment had  
28 discharged into Kellell Hill Creek and its tributaries from multiple outfalls not listed on the

1 operative NOI, and through a sediment basin without a functioning outlet structure. The  
2 inspectors observed significant accumulations of sediment in Kellem Hill Creek and its  
3 tributaries, near discharge points from the site.

4 86. During the inspection, EPA inspectors also observed significant areas of concern,  
5 including but not limited to: improperly designed, installed, and maintained stormwater controls;  
6 failure to stabilize soils and minimize exposed soil or erosion; insufficient self-inspections;  
7 failure to take action to correct insufficient, broken, or improper stormwater controls; and a  
8 failure to prepare, update, or maintain site documentation, including the on-site CBMPP, self-  
9 inspection reports, and corrective action reports.

10 87. In a letter dated August 1, 2019, EPA informed Swinerton that it had determined  
11 Swinerton was in violation of the Alabama Permit and the CWA at the AL Solar Site and  
12 provided a copy of the inspection report for the 2018 inspection documenting the identified non-  
13 compliance. EPA requested that Swinerton provide additional information to EPA for the  
14 purpose of determining compliance with the CWA and the Alabama Permit.

15 88. Swinerton provided EPA with additional information regarding the AL Solar Site  
16 in response to that request, including copies of contracts, CBMPPs, self-inspection reports, aerial  
17 and site photos, corrective action logs, rainfall logs, written correspondence, and NOIs.

18 89. Based on a review of that information, EPA identified additional violations by  
19 Swinerton of the Alabama Permit and the CWA, including deficiencies in the CBMPP for the  
20 AL Solar Site, failures to stabilize soil in a timely manner, failures to properly implement and  
21 maintain BMPs, and failures to take corrective action in a timely manner.

### 22 **C. The Prairie State Site (Illinois)**

23 90. The Prairie State Site consists of over 1000 acres of previously undeveloped  
24 agricultural land, located at the intersection of Goldenrod Road and Tigerlily Road in  
25 unincorporated Perry County, Illinois.

26 91. Starting in approximately July 2020, the Site was developed into a 99-megawatt  
27 solar farm consisting of solar panel arrays, inverters, a substation, and associated roads for  
28 service, maintenance, and access.



1 92. From at least July 1, 2020 through the present, Swinerton was retained by the  
2 project owner as the general contractor for the Site and, with its subcontractors, constructed the  
3 solar farm on approximately 640 acres of land at the Prairie State Site.

4 93. Between at least July 1, 2020 through the present, Swinerton was an “operator” of  
5 the Prairie State Site within the meaning of 40 C.F.R. § 122.2.

6 94. On or about May 6, 2020, Swinerton submitted an NOI to Illinois EPA for  
7 coverage under the Illinois Permit for construction activity at the Site. In a letter dated July 22,  
8 2020, IEPA granted coverage and assigned Permit # ILR10BK15 for the Prairie State Site.

9 95. From July 22, 2020 until the present, Swinerton was covered by and responsible  
10 for compliance with the Illinois Permit, and implementation of the SWPPP, at the Prairie State  
11 Site.

12 96. On April 19, 2021, EPA representatives inspected the Prairie State Site to  
13 determine its compliance with the Illinois Permit and the Clean Water Act. During the  
14 inspection, EPA representatives did a walk-through of the Prairie State Site and reviewed and  
15 made copies of documentation, including the on-site SWPPP, records of amendments to the  
16 SWPPP, and self-inspection reports.

17 97. In May 2021, EPA requested that Swinerton and the project owner provide  
18 additional information regarding stormwater compliance at the Prairie State Site for the purpose  
19 of determining compliance with the CWA and the Illinois Permit. This request was pursuant to  
20 EPA’s authority under 33 U.S.C. § 1318.

21 98. During the inspection, and following a review of documents provided by  
22 Swinerton, EPA identified numerous areas of concern at the Prairie State Site, including but not  
23 limited to: improperly designed, installed, or maintained stormwater controls; controls that  
24 differed from, or were insufficiently described in, the site’s SWPPP; sediment track-out and  
25 unstabilized areas; failure to control stormwater volume and velocity within the Site to minimize  
26 erosion; failure to timely correct these and other observed issues; failure to take corrective action  
27 or document corrective actions taken; and numerous deficiencies in inspection processes and  
28 inspection reports.

**D. The Big River Site (Illinois)**

1  
2 99. The Big River Site consists of over 1000 acres of previously undeveloped  
3 agricultural land, located at the intersection of County Road 1200 North and County Road 400  
4 East in White County, Illinois.

5 100. From approximately March 1, 2021 through the present, the Big River Site is  
6 being developed into an approximately 150-megawatt solar farm consisting of solar panel arrays,  
7 inverters, transformers and other mechanical equipment, perimeter fencing, and associated roads  
8 for service, maintenance, and access. The Site project has two phases (Phase 1 and Phase 2).

9 101. From at least November 2020 until March 22, 2022, Swinerton was retained by  
10 the project owner as the general contractor for the Big River Site and, with its subcontractors,  
11 constructed the solar farm on the Big River Site.

12 102. Between at least November 1, 2020 through at least March 22, 2022, Swinerton  
13 was an “operator” of the Big River Site within the meaning of 40 C.F.R. § 122.2.

14 103. On or about December 30, 2020, an NOI was submitted to Illinois EPA for  
15 coverage under the Illinois Permit for construction activity during Phase 1. In a letter dated  
16 January 29, 2021, Illinois EPA granted coverage and assigned Permit # ILR10ZA5C for the Big  
17 River Site. On or about June 1, 2021, an NOI was submitted to Illinois EPA for coverage under  
18 the existing Illinois Permit for construction activity during Phases 1 and 2. Both NOIs identified  
19 Swinerton as the contractor/operator for the Big River Site.

20 104. On March 23, 2022, the project owner submitted a new NOI for the Big River  
21 Site identifying a new contractor for the Big River Site.

22 105. From December 30, 2020 through at least March 22, 2022, Swinerton, was  
23 covered by and responsible for compliance with the Illinois Permit, and implementation of the  
24 SWPPP, at the Big River Site.

25 106. On April 20, 2021, EPA representatives inspected the Big River Site to determine  
26 its compliance with the Illinois Permit and the CWA. During the inspection, EPA inspectors did  
27 a walk-through of the site and reviewed and obtained copies of site documentation, including the  
28 on-site SWPPP, records of amendments to the SWPPP, and self-inspection reports.

1 107. During the inspection, EPA identified numerous areas of concern at the Big River  
2 Site, including but not limited to: failure of installed structural controls; sediment track-out; soil  
3 disturbance within a wetland buffer; uncovered dumpsters; and self-inspections performed by  
4 unqualified personnel not identified in the SWPPP.

5 108. On May 19, 2021, EPA requested that Swinerton and the project owner provide  
6 additional information regarding stormwater compliance at the Big River Site for the purpose of  
7 determining compliance with the CWA and the Illinois Permit. This request was pursuant to  
8 EPA's authority under 33 U.S.C. § 1318.

9 109. Following a review of documents provided by Swinerton and the project owner,  
10 EPA identified additional deficiencies in the self-inspections and inspection reports for the Big  
11 River Site.

12 **FIRST CLAIM FOR RELIEF**

13 **(Unauthorized Discharges – American Falls Site)**

14 110. Plaintiff United States realleges and incorporates by reference Paragraphs 1  
15 through 109.

16 111. Swinerton's construction activities resulted in the discharge of stormwater  
17 containing significant amounts of sediments and other pollutants from the American Falls Site.

18 112. The stormwater passed through culverts under Smith Road into Blind Spring  
19 Creek and traveled downstream into Seagull Bay and ultimately into American Falls Reservoir.

20 113. The stormwater discharges from the American Falls Site during construction  
21 activities constitute discharges of a "pollutant" within the meaning of the CWA. 33 U.S.C. §§  
22 1311, 1362(6), 1362(12).

23 114. The stormwater discharges associated with construction activity at the American  
24 Falls Site constitute discharges from a "point source" within the meaning of the CWA. 33 U.S.C.  
25 §§ 1362(14) and 1342(p); 40 C.F.R. §§ 122.1 and 122.26.

26 115. American Falls Reservoir, including Seagull Bay, is a traditionally navigable  
27 water.  
28

1 116. Blind Spring Creek is a tributary of Seagull Bay with relatively permanent and  
2 continuous flow.

3 117. Blind Spring Creek, Seagull Bay, and American Falls Reservoir constitute  
4 "navigable waters" and "waters of the United States" within the meaning of 33 U.S.C. § 1362(7),  
5 and 40 C.F.R. § 122.2 (1993).

6 118. To obtain permit coverage for its discharges of stormwater from the American  
7 Falls Site, Swinerton was required to timely apply for and maintain coverage under the Federal  
8 CGP or an individual permit, pursuant to 33 U.S.C. §§ 1318 and 1342(p), 40 C.F.R.  
9 §§ 122.21(a), (c), 122.26(c), and 122.28.

10 119. As alleged in Paragraph 63, Swinerton never submitted an NOI for construction  
11 activities at the American Falls Site.

12 120. As a result, during the entire period of construction at the American Falls Site,  
13 Swinerton's discharges from that site were not covered by the Federal CGP or any permit issued  
14 in compliance with 33 U.S.C. § 1342(p).

15 121. Swinerton's discharges from the American Falls Site were discharges of  
16 pollutants, by Swinerton, from a point source to waters of the United States that were not  
17 authorized by a NPDES permit and are violations of the CWA, 33 U.S.C. § 1311.

18 122. Swinerton's unauthorized discharges of sediment caused harm to the receiving  
19 waters that has not been offset, redressed, or remediated.

20 123. As described in Paragraphs 48 - 50, for each violation referred to in this Claim for  
21 Relief, the United States is entitled to injunctive relief, as well as civil penalties for each day of  
22 violation.

23 **SECOND CLAIM FOR RELIEF**

24 **(Unauthorized Discharges and Permit Violations – AL Solar Site)**

25 124. Plaintiffs United States and ADEM reallege and incorporate by reference  
26 Paragraphs 1 through 109.

*Unauthorized Discharges*

1  
2 125. Swinerton’s construction activities resulted in the discharge of stormwater  
3 containing significant amounts of sediment from the AL Solar Site. The stormwater passed  
4 through the AL Solar Site itself, sediment basins, outfalls, silt fences, berm seeps, and other  
5 discrete conveyances, to Kellem Hill Creek directly or to the unnamed tributaries of Kellem Hill  
6 Creek, traveled downstream to Oseligee Creek, and ultimately into the Chattahoochee River.

7 126. The Chattahoochee River is a traditionally navigable water. Oseligee Creek,  
8 Kellem Hill Creek and its unnamed tributaries are relatively permanent and continuously flowing  
9 waters that are tributaries to the Chattahoochee River.

10 127. Kellem Hill Creek and its unnamed tributaries, Oseligee Creek, and the  
11 Chattahoochee River constitute “navigable waters” and “waters of the United States” within the  
12 meaning of 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2 (1993), and “waters of the State,” within  
13 the meaning of Ala. Code § 22-22-1, *as amended*, ADEM Admin. Code r. 335-6-6-.02(fff).

14 128. The stormwater discharges from the AL Solar Site during construction activities  
15 constitute discharges of a “pollutant” within the meaning of 33 U.S.C. §§ 1311, 1362(6),  
16 1362(12) and ADEM Admin. Code r. 335-6-6-.02(mm).

17 129. The stormwater discharges associated with construction activity at the AL Solar  
18 Site, including from outfalls, the eroded containment channel, eroded gullies, sediment basins, or  
19 other discrete conveyances, constitute discharges from a “point source” within the meaning of  
20 the CWA, 33 U.S.C. §§ 1362(14) and 1342(p); 40 C.F.R. §§ 122.2 and 122.26; and ADEM  
21 Admin. Code r. 335-6-6-.03(1), (2).

22 130. Between at least March 13, 2017 and November 30, 2018, on multiple occasions  
23 while construction activities were ongoing, stormwater was discharged to Kellem Hill Creek or  
24 unnamed tributaries of Kellem Hill Creek from locations on the AL Solar Site that were not  
25 listed on the operative NOI for the site.

26 131. Between at least November 2018 and no later than June 2019, on occasions while  
27 construction activities were ongoing, stormwater was discharged to Kellem Hill Creek or  
28 unnamed tributaries of Kellem Hill Creek from sediment basins without utilizing an outlet

1 structure.

2 132. Each of the discharges described in the previous two paragraphs was a discharge  
3 of pollutants, by Swinerton, from a point source to waters of the United States and waters of the  
4 State that was not authorized by the Alabama Permit or any permit issued pursuant to 33 U.S.C.  
5 § 1342, and is a violation of the CWA, 33 U.S.C. § 1319, and ADEM Admin. Code r. 335-6-6-  
6 .03(1), (2).

7 133. Swinerton's unauthorized discharges of sediment caused harm to the receiving  
8 waters that has not been offset, redressed or remediated.

9 134. As described in Paragraphs 48 - 50, for each unauthorized discharge referred to in  
10 this Claim for Relief, the United States is entitled to civil penalties and injunctive relief.

11 135. As described in Paragraph 51, for each unauthorized discharge referred to in this  
12 Claim for Relief, ADEM is entitled to injunctive relief and civil penalties.

13 *Violations of Conditions and Limitations of the Alabama Permit*

14 136. Between July 10, 2017 and November 7, 2019, Swinerton failed to comply with  
15 the conditions and limitations of the Alabama Permit at the AL Solar Site, because Swinerton  
16 failed to: include required and updated information in the CBMPP for the site; install and  
17 maintain effective erosion and sediment controls at the site, initiate final or temporary soil-  
18 stabilization measures in a timely manner; take timely and appropriate corrective actions; take  
19 any steps to remove sediment and silt deposited in water bodies; ensure the site was fully  
20 inspected at required intervals by qualified personnel; or prepare, maintain, or retain required  
21 records of self-inspections.

22 137. Each failure to comply with the Alabama Permit is a separate violation of the  
23 conditions or limitations of the Alabama Permit by Swinerton.

24 138. As described in Paragraphs 48 - 50, for each violation of the Alabama Permit  
25 referred to in this Claim for Relief, the United States is entitled to civil penalties for each day of  
26 violation.

27 139. As described in Paragraph 51, for each violation of the Alabama Permit referred  
28 to in this Claim for Relief, ADEM is entitled to civil penalties.

**THIRD CLAIM FOR RELIEF**

**(Permit Violations - Prairie State Site)**

140. Plaintiffs United States and Illinois reallege and incorporate by reference Paragraphs 1 through 109.

141. At various times between at least July 1, 2020 and the present, Swinerton failed to comply with conditions or limitations of the Illinois Permit at the Prairie State Site, because Swinerton failed to: maintain an updated SWPPP for the site; design, install, or maintain effective stormwater controls for the site that complied with Illinois Permit requirements; ensure the site was fully inspected at required intervals by qualified personnel; or take timely and appropriate corrective actions to address stormwater controls.

142. Each failure to comply with the Illinois Permit identified in this Claim for Relief is a separate violation of the conditions or limitations of the Illinois Permit by Swinerton.

143. As described in Paragraphs 48 - 50, for each day of violation of a condition or limitation of the Illinois Permit referred to in this Claim for Relief, the United States is entitled to civil penalties.

144. As described in Paragraph 52, for each day of violation of a condition or limitation of the Illinois Permit referred to in this Claim for Relief, Illinois is entitled to civil penalties.

**FOURTH CLAIM FOR RELIEF**

**(Permit Violations - Big River Site)**

145. Plaintiffs United States and Illinois reallege and incorporate by reference Paragraphs 1 through 109.

146. At various times between at least July 1, 2020 and March 22, 2022, Swinerton failed to comply with conditions or limitations of the Illinois Permit at the Big River Site, because Swinerton failed to: design, install, or maintain effective stormwater controls for the site that complied with Illinois Permit requirements; ensure the site was fully inspected at required intervals by qualified personnel; and include all information required by the Illinois Permit in self-inspection reports.

1 147. Each failure to comply with the Illinois Permit identified in this Claim for Relief  
2 is a separate violation of the conditions or limitations of the Illinois Permit by Swinerton.

3 148. As described in Paragraphs 48 - 50, for each day of violation of a condition or  
4 limitation of the Illinois Permit referred to in this Claim for Relief, the United States is entitled to  
5 civil penalties.

6 149. As described in Paragraph 52, for each day of violation of a condition or  
7 limitation of the Illinois Permit referred to in this Claim for Relief, Illinois is entitled to civil  
8 penalties.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, the United States of America, ADEM, and Illinois respectfully request  
11 that the Court grant the following relief:

- 12 1. Order Swinerton to undertake measures, at its own expense and at the direction of  
13 EPA, to mitigate the harm caused by its unauthorized discharges to waters of the  
14 United States and waters of the State of Alabama, as appropriate;
- 15 2. Order Swinerton to pay civil penalties to the United States, pursuant to 33 U.S.C. §  
16 1319(d), for each day of violation of the CWA;
- 17 3. For the AL Solar Site, order Swinerton to pay civil penalties to ADEM, pursuant to  
18 Ala. Code § 22-22A-5(18), *as amended*, for each violation of Alabama state law;
- 19 4. For the Prairie State Site and Big River Site, order Swinerton to pay civil penalties to  
20 Illinois for each day of violation of the Illinois Environmental Protection Act;
- 21 5. Award the United States, ADEM, and Illinois their costs and disbursements in this  
22 action; and
- 23 6. Grant such other relief as the Court deems just and proper.

24 Respectfully submitted,

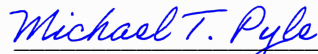
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[*Pro Hac Vice Application Forthcoming*]

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**ATTESTATION**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the other signatories above.

Dated: January 17, 2024

/s/ Sheila McAnaney  
Sheila McAnaney

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only)

SAN FRANCISCO/OAKLAND

SAN JOSE

EUREKA-MCKINLEYVILLE

DATE

SIGNATURE OF ATTORNEY OF RECORD

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