

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, ) No. \_\_\_\_\_  
 )  
 v. )  
 )  
 WAL-MART STORES, INC., )  
 )  
 Defendant. )  
\_\_\_\_\_)

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General of the United States, at the request of the Administrator of the United States Environmental Protection Agency (“EPA”) and by and through its undersigned attorneys, alleges as follows:

INTRODUCTION

1. This is a civil action for injunctive relief and civil penalties brought pursuant to the Clean Water Act, 33 U.S.C. § 1319(b), (d), against Wal-Mart Stores, Inc. (“Wal-Mart”) for the discharge of pollutants without a permit in violation of 33 U.S.C. § 1311, and for violations of the conditions of several permits issued pursuant to 33 U.S.C. § 1342, for discharge of pollutants from storm water from construction sites.

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 and 1395, because Wal-Mart is incorporated in and conducts business in this District, and because certain of the violations occurred in this District.

4. Notice of the commencement of this action has been given to the States of Utah, South Dakota, Texas, Michigan, Delaware, Colorado, Tennessee, California, and New Jersey in accordance with 33 U.S.C. § 1319(b).

#### DEFENDANT

5. Wal-Mart is a corporation incorporated under the laws of Delaware and is a “person” as defined in 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

6. Wal-Mart is a Delaware corporation doing business in all fifty states of the United States, including this District. Wal-Mart’s principal place of business is in Bentonville, Arkansas.

7. Wal-Mart has constructed and is currently constructing discount retail stores for its ownership and/or operation on various pieces of property owned and/or operated by Wal-Mart throughout the United States, including Delaware. Wal-Mart constructs well over 100 new stores each year.

#### STATUTORY AND REGULATORY AUTHORITY

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

9. To accomplish the objectives of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in certain circumstances, including in compliance with a permit issued pursuant to 33 U.S.C. § 1342 or 33 U.S.C. § 1344.

10. The Clean Water Act requires parties who may discharge storm water runoff associated with industrial activity to obtain a permit. 33 U.S.C. § 1342(p).

11. On November 16, 1990, EPA published regulations which defined the term “storm water discharge associated with industrial activity” to include storm water discharges from construction activities, including clearing, grading, and excavation activities, that result in a disturbance of five or more acres of total land area. 40 C.F.R. § 122.26(b)(14)(x). Those regulations also set forth the permit application requirements for storm water discharges. 55 Fed. Reg. 48,063 (Nov. 16, 1990). These regulations are codified at 40 C.F.R. § 122.26 (“storm water regulations”).

12. In 1992, EPA issued a Final NPDES General Permit for Storm Water Discharges from Construction Sites. 57 Fed. Reg. 41176, 41209 (Sept. 9, 1992). This General Permit was effective from September 9, 1992 to September 9, 1997. On February 17, 1998, EPA Regions 1, 2, 3, 7, 8, 9, and 10 reissued the General Permit. 63 Fed. Reg. 7858-7906 (17 Feb. 1998). EPA Region 6 issued a General Permit on July 6, 1998. 63 Fed. Reg. 36490-36519 (July 6, 1998). EPA Region 4 issued a General Permit on April 28, 2000. 65 Fed. Reg. 25122-25145 (Apr. 28, 2000).

13. On July 1, 2003, EPA Regions 1, 2, 3, 5, 6, 7, 9, and 10 issued a new General Permit which governed storm water discharges from construction activities, including clearing, grading, and excavation activities, that result in a disturbance of one or more acres of total land area. 68 Fed. Reg. 39087 - 39091 (July 1, 2003).

14. Pursuant to the Act, states may issue their own storm water permits if they are authorized by EPA to do so. Many states, including Utah, South Dakota, Texas, Michigan, Delaware, Colorado, Tennessee, New Jersey, and California have issued their own General Permits governing discharges of storm water associated with construction activities. See Utah

Storm Water General Permit for Construction Activities Permit No. UTR100000 (the “Utah General Permit”), South Dakota General Permit for Storm Water Discharges Associated with Industrial or Construction Activities Permit No. SDR100000 (the “South Dakota General Permit”), Texas Storm Water Construction General Permit No. TXR10QG20 (the “Texas General Permit”), Michigan Permit-By-Rule for Construction Activities No. MIR105273 (the “Michigan General Permit”), Delaware General Permit for Storm Water Construction, Del. Admin. Reg. § 9 (the “Delaware General Permit”), Colorado General Permit for Storm Water Discharges associated with Construction Activity No. COR- 030000 (the “Colorado General Permit”), Tennessee General Permit No. TNR10-0000 for Storm Water from Construction Activities (“the Tennessee General Permit”), California Construction Storm Water General Permit, NPDES No. CAS000002 (the “California General Permit”), New Jersey General Permit for Construction and Mining Activity, General Storm Water Permit No. NJG0088323 (the “New Jersey General Permit”).

15. Though they differ in some of the details, in general, both the federal and state General Permits impose similar requirements on the owners and operators of construction sites. Generally, a person must obtain coverage under a General Permit if that person engages in construction defined as industrial activity by 40 C.F.R. § 122.26(b)(14)(x) and either has operational control of construction project plans and specifications or has day-to-day operational control of those activities which are necessary to ensure compliance with permit conditions. 33 U.S.C. § 1342; 40 C.F.R. Part 122.

16. At the outset, any person subject to the permit is required to develop a storm water pollution prevention plan (“SWPPP”) which sets forth a plan for minimizing and

eliminating to the extent feasible discharges of storm water associated with construction activities. Under each permit, the SWPPP must meet specific requirements and include certain information (such as the soil type, a description of the drainage patterns at the site, an identification of sensitive resources such as endangered species and historic buildings, and which person is responsible for implementing each portion of the plan).

17. At the heart of the SWPPP is the selection of best management practices (“BMPs”) designed to eliminate to the extent feasible the migration of pollution from construction sites into the nation’s waters. These practices include measures to prevent erosion (such as the scheduling of the project to minimize the amount of land that is being graded at any particular time) and measures to capture sediment before it leaves the site (such as silt fences and sedimentation basins).

18. The permits also require the permittee to implement the SWPPP and to properly implement and maintain the BMPs to eliminate, to the extent feasible, discharges of storm water to the nation’s waters.

19. The permits impose additional requirements, including those for inspection of the site during construction, maintenance of the SWPPP and sometimes other records at the site, and final stabilization of the site followed by termination of permit coverage.

20. The Act authorizes the Administrator of EPA “to commence a civil action for appropriate relief, including a permanent or temporary injunction,” when any person is in violation of 33 U.S.C. § 1311 or of any permit issued pursuant to 33 U.S.C. § 1342. 33 U.S.C. § 1319(b)

21. The Act provides, in part, that any person who violates 33 U.S.C. § 1311, or any permit issued pursuant to 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each such violation occurring before January 31, 1997, or not to exceed \$27,500 per day for each such violation occurring after January 31, 1997 through and including March 15, 2004 and \$32,500 per day for each such violation thereafter. 40 C.F.R. § 19.4; 62 Fed. Reg. 7121-01 (Feb 13, 2004) (to be codified at 40 C.F.R. pt. 19).

#### FACTUAL ALLEGATIONS

22. In 2001, the United States sued Wal-Mart in the District of Arkansas for violations of the Clean Water Act, alleging that Wal-Mart had either failed to obtain coverage under the appropriate General Permit as required or had violated the terms of that permit during construction of seventeen Wal-Mart stores. The United States further alleged that, as a result of Defendant's compliance failures, there were discharges of pollutants including eroded soil, residues of construction materials and other substances involved in construction activities at the seventeen identified sites.

23. The action by the United States was settled through entry of a Consent Decree, which established a compliance program and called for the payment of a civil penalty of \$1,000,000.

24. Wal-Mart has continued constructing well over 100 Wal-Mart, Wal-Mart Supercenter and Sam's Club stores every year.

25. During the inspections at Wal-Mart construction sites between 1999 and the present, EPA detected a pattern of failures to comply with the requirements of applicable permits for the discharge of storm water from these construction sites. As described in the following

paragraphs, this pattern was evident from inspections of at least twenty-four construction sites in at least nine states.

**Stores No. 16684/1708 (Riverdale, Utah)**

26. In approximately June 2001, Wal-Mart, through its contractors, commenced construction of Stores No. 16684 and 1708, located in Riverdale, Utah.

27. The construction site for Stores No. 16684 and 1708 comprised more than 34 acres and disturbed the ground over at least 5 acres.

28. The construction of Stores No. 16684 and 1708 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to Weber River, which is a water of the United States.

29. Wal-Mart controlled the plans and specifications for the construction of Stores No. 16684 and 1708 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Utah General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. §122.21(b).

30. Though construction began in June 2001, Wal-Mart did not apply for or obtain permit coverage under the Utah General Permit for the construction of Stores No. 16684 and 1708 until on or about September 7, 2001.

31. EPA inspected the construction site for Stores No. 16684 and 1708 on May 6, 2002.

32. During the inspection, EPA observed a number of violations of the Utah General Permit, including but not necessarily limited to: failure to timely submit a Notice of Intent and failure to properly install or maintain BMPs including failure to install diversion dikes at the concrete washout area as specified in the SWPPP, placement of a portable toilet next to a storm water inlet, poor housekeeping in the concrete mixing area, failure to install an earth berm perimeter as specified in the SWPPP, and spilling or dumping paint near an uncovered manhole.

In addition, EPA observed that the SWPPP was inadequate because it was not signed and because the changes to BMPs and site conditions had not been recorded in the SWPPP.

#### **Store No. 3232 (West Jordan, Utah)**

33. In approximately February 2001, Wal-Mart, through its contractors, commenced construction of Store No. 3232, located in West Jordan, Utah.

34. The construction site for Store No. 3232 comprised more than 20 acres and resulted in the disturbance of at least 5 acres.

35. The construction of Store No. 3232 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to the Salt Lake County Municipal Separate Storm Sewer System, which discharges to waters of the United States.

36. Wal-Mart controlled the plans and specifications for the construction of Store No. 3232 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Utah General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation



under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

37. Though construction began in February 2001, Wal-Mart did not apply for or obtain permit coverage under the Utah General Permit for the construction of Store No. 3232 until on or about May 29, 2001.

38. EPA inspected the construction site for Store No. 3232 on May 6, 2002.

39. During the inspection, EPA observed a number of violations of the Utah General Permit, including but not necessarily limited to: failure to timely submit a Notice of Intent and failure to stabilize the site before termination, in that the Notice of Termination was submitted December 28, 2001 and five months later sod pallets and construction debris were located in the northeast corner of the site.

#### **Store No. 4730 (West Jordan, Utah)**

40. In approximately February 2001, Wal-Mart, through its contractors, commenced construction of Store No. 4730, located in West Jordan, Utah.

41. The construction site for Store No. 4730 comprised more than 16 acres and resulted in the disturbance of at least 5 acres.

42. The construction of Store No. 4730 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to the Salt Lake County Municipal Separate Storm Sewer System, which discharges to waters of the United States.

43. Wal-Mart controlled the plans and specifications for the construction of Store No. 4730 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Utah General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

44. Though construction began in February 2001, Wal-Mart applied for and obtained permit coverage under the Utah General Permit for the construction of Store No. 4730 on or about May 29, 2001.

45. EPA inspected the construction site for Store No. 4730 on May 6, 2002.

46. During the inspection, EPA observed a number of violations of the Utah General Permit, including but not necessarily limited to: failure to timely submit a Notice of Intent and failure to stabilize the site before termination, in that the Notice of Termination was submitted on or about December 28, 2001, but the inspection found the area behind the Sam's Club Store was unstabilized and potential erosion problems to the City's storm water system.

#### **Store No. 2791 (Georgetown, Delaware)**

47. In 2000, Wal-Mart, through its contractors, constructed Store No. 2791, located in Georgetown, Delaware.

48. The construction of Store No. 2791 resulted in the disturbance of at least 5 acres.

49. The construction of Store No. 2791 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other

substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to Naticoke Creek, which is a water of the United States.

50. Wal-Mart controlled the plans and specifications for the construction of Store No. 2791 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Delaware General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

51. Wal-Mart did not apply for or obtain permit coverage under any General Permit for the construction of Store No. 2791 during any of the over 200 days of construction.

52. Inspectors for both the Sussex County Conservation District and EPA observed a number of violations of the Delaware General Permit including but not necessarily limited to: allowing soil and sediment to enter the receiving stream and cause erosion and failing to install BMPs such as riprap protection at the receiving stream, a sediment basin, and silt fences. In addition, inspectors observed that Wal-Mart failed to stabilize roads and parking areas, cleared outside the limits of the area described in the Erosion and Sedimentation Plan, failed to control oil and fuel leaks, and failed to install stabilizing matting.

#### **Store No. 984 (Castle Rock, Colorado)**

53. In approximately December 1998, Wal-Mart, through its contractors, commenced construction of Store No. 984 in Castle Rock, Colorado.

54. The construction site for Store No. 984 comprised approximately 20 acres within a 61 acre construction site and resulted in the disturbance of at least 5 acres.

55. The construction of Store No. 984 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to East Plum Creek, which is a water of the United States.

56. Wal-Mart controlled the plans and specifications for the construction of Store No. 984 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

57. EPA inspected the construction site for Store No. 984 on October 13, 1999.

58. EPA review of the SWPPP for the construction of Store No. 984 revealed that the plan was deficient because the plan lacked an identification of the control measures to be used during each phase of construction.

59. In addition, during the inspection, the inspector observed a number of violations of the applicable General Permit including but not necessarily limited to: off-site migration of silt and soil due to improper stabilization of entrance and exit points and inadequate silt retention BMPs around the retention ponds. In addition, Wal-Mart had not maintained a storm water inspection log as required by the Colorado General Permit.

**Store No. 2752 (Commerce City, Colorado)**

60. In approximately December 1998, Wal-Mart, through its contractors, commenced construction of Store No. 2752, located in Commerce City, Colorado.

61. The construction site for Store No. 2752 comprised at least 16.62 acres and resulted in the disturbance of at least 5 acres.

62. The construction of Store No. 2752 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to Sand Creek, which is a water of the United States.

63. Wal-Mart controlled the plans and specifications for the construction of Store No. 2752 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

64. Wal-Mart applied for and obtained permit coverage under the Colorado General Permit for the construction of Store No. 2752 on or about December 8, 1998.

65. EPA inspected the construction site for Store No. 2752 on August 25, 1999 and found that Wal-Mart had failed to maintain a copy of the SWPPP at the Site or to have a complete SWPPP for the construction as required by the Colorado General Permit. In addition, Wal-Mart had failed to maintain an inspection log for the storm water management system inspections as required by the Colorado General Permit. In addition, EPA observed that there were three areas of erosion along the south boundary of the site that needed corrective action.

### **Store No. 966 (Cortez, Colorado)**

66. Beginning in approximately March 1998, Wal-Mart, through its contractors, commenced construction of Store No. 966, located in Cortez, Colorado.

67. The construction site for Store No. 966 comprised approximately 20 acres and resulted in the disturbance of at least 5 acres.

68. The construction of Store No. 966 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to an unnamed tributary of McElmo Creek, which is a water of the United States.

69. Wal-Mart controlled the plans and specifications for the construction of Store No. 966 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

70. Wal-Mart applied for and obtained permit coverage under the Colorado General Permit for the construction of Store No. 966 effective March 3, 1998.

71. EPA inspected the construction site for Store No. 966 on September 16, 1999.

72. During the inspection, the EPA observed a number of violations of the applicable General Permit including but not necessarily limited to: failure to properly maintain silt fences,

failure to install enough silt fences, failure to maintain a log of storm water managements system inspections, and failure to maintain a copy of the SWPPP at the site.

**Store No. 2892 (Parker, Colorado)**

73. Beginning in about August 1999, Wal-Mart, through its contractors, commenced construction of Store No. 2892, located in Parker, Colorado.

74. The construction site for Store No. 2892 resulted in the disturbance of at least 5 acres.

75. The construction of Store No. 2892 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to Cherry Creek, which is a water of the United States.

76. Wal-Mart controlled the plans and specifications for the construction of Store No. 2892 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

77. Wal-Mart applied for and obtained permit coverage under the Colorado General Permit for the construction of Store No. 2892 effective August 9, 1999.

78. EPA inspected the construction site for Store No. 2892 on October 13 and November 5, 1999.

79. During the inspection, the EPA observed a number of violations of the applicable General Permit including but not necessarily limited to: failure to conduct regular inspections of the site to ensure storm water management systems were in place and operating properly, failure to maintain a log of storm water managements system inspections, and failure to maintain a copy of the SWPPP at the site.

**Store No. 1001 (Pueblo, Colorado)**

80. Beginning in about May 2001, Wal-Mart, through its contractors, commenced construction of Store No. 1001, located in Pueblo, Colorado.

81. The construction site for Store No. 1001 resulted in the disturbance of over 16 acres.

82. The construction of Store No. 1001 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to Salt Creek, which is a water of the United States.

83. Wal-Mart controlled the plans and specifications for the construction of Store No. 1001 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

84. Wal-Mart applied for and obtained permit coverage under the Colorado General Permit for the construction of Store No. 1001 effective on or about March 16, 2001.



85. EPA inspected the construction site for Store No. 1001 on May 13, 2002.

86. During the inspection, EPA observed a number of violations of the applicable General Permit including but not necessarily limited to: failure to maintain a current SWPPP at the Site, poor housekeeping of the site, including trash and debris around the site, and inadequate protection at storm drain inlet (sediment was observed at bottom of drain inlet and significant soil build up in sediment basin).

**Store No. 5033 (Fort Morgan, Colorado)**

87. Beginning in about April 2002, Wal-Mart, through its contractors, commenced construction of Store No. 5033, located in Fort Morgan, Colorado.

88. The construction site for Store No. 5033 resulted in the disturbance of over 20 acres.

89. The construction of Store No. 5033 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to the South Platte River, which is a water of the United States.

90. Wal-Mart controlled the plans and specifications for the construction of Store No. 5033 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

91. Wal-Mart applied for and obtained permit coverage under the Colorado General Permit for the construction of Store No. 5033 effective on or about January 7, 2001.

92. EPA inspected the construction site for Store No. 5033 on May 13, 2002.

93. During the inspection, EPA observed a number of violations of the applicable General Permit including but not necessarily limited to: failure to maintain a complete and current SWPPP at the Site and inadequate maintenance of BMPs, including the absence of a vehicle track out pad at the south entrance, poor maintenance of the north entrance vehicle track out pad making it ineffective to prevent soil and sediments from leaving the project site, no containment for four 55-gallon drums of equipment hydraulic fluid, inadequate erosion control around a drainage ditch that flows towards a storm water drain, and inadequate containment for a tank.

#### **Store No. 1689 (Aurora, Colorado)**

94. Beginning in about April 2002, Wal-Mart, through its contractors, commenced construction of Store No. 1689, located in Aurora, Colorado.

95. The construction site for Store No. 1689 resulted in the disturbance of over 20 acres.

96. The construction of Store No. 1689 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to the Cherry Creek, which is a water of the United States.

97. Wal-Mart controlled the plans and specifications for the construction of Store No. 1689 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit,

and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

98. Wal-Mart applied for and obtained permit coverage under the Colorado General Permit for the construction of Store No. 1689 effective on or about January 17, 2002.

99. EPA inspected the construction site for Store No. 1689 on May 14, 2002.

100. During the inspection, EPA observed a number of violations of the applicable General Permit including but not necessarily limited to: failure to maintain a complete and accurate SWPPP at the site, inadequate material handling and spill prevention including failure to address a leaking 55-gallon drum, and inadequate operation and maintenance of BMPs including inadequate silt fences and unprotected areas of disturbed soil as well as inadequate protection at manhole and storm drain inlet.

#### **Store No. 4786 (Logan, Utah)**

101. Beginning in about February 2002, Wal-Mart, through its contractors, commenced construction of Store No. 4786, located in Logan, Utah.

102. The construction site for Store No. 4786 resulted in the disturbance of over 14 acres.

103. The construction of Store No. 4786 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to the Cutler Reservoir, which is a water of the United States.

104. Wal-Mart controlled the plans and specifications for the construction of Store No. 4786 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Utah General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

105. Wal-Mart applied for and obtained permit coverage under the Utah General Permit for the construction of Store No. 4786 effective on or about November 5, 2001.

106. EPA inspected the construction site for Store No. 4786 on May 7, 2002.

107. During the inspection, EPA observed a number of violations of the Utah General Permit including but not necessarily limited to: inadequate installation and maintenance of BMPs including gaps in silt fences, unmarked storm drains, and off-site migration of sediment on departing vehicles and failure to maintain a complete and current copy of the SWPPP on site.

**Store No. 286 (Ennis, Texas)**

108. Beginning in about November 2001, Wal-Mart, through its contractors, commenced construction of Store No. 286, located in Ennis, Texas.

109. The construction site for Store No. 286 comprised approximately 22 acres and resulted in the disturbance of at least 5 acres.

110. The construction of Store No. 286 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to Cottonwood Creek, which is a water of the United States.

111. Wal-Mart controlled the plans and specifications for the construction of Store No. 286 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Texas General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

112. Wal-Mart applied for and obtained permit coverage under the Texas General Permit for the construction of Store No. 286 effective on or about November 11, 2001.

113. EPA inspected the construction site for Store No. 286 on April 1, 2002.

114. During the inspection, EPA observed a number of violations of the applicable General Permit, including but not necessarily limited to: off-site migration of silt and soil due to a BMP failure and improper stabilization of entrance and exit points, inadequate maintenance of silt fences and entrances, inadequate inspections of the site, and failure to maintain a complete and current copy of the SWPPP on site.

#### **Store No. 6631 (Aurora, Colorado)**

115. In approximately January 2002, Wal-Mart, through its contractors, commenced construction of Store No. 6631, located in Aurora, Colorado.

116. The construction site for Store No. 6631 resulted in the disturbance of at least 5 acres.

117. The construction of Store No. 6631 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances

which discharge to West Tollgate Creek, a tributary of the South Platte River, which is a water of the United States.

118. Wal-Mart controlled the plans and specifications for the construction of Store No. 6631 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

119. Wal-Mart applied for and obtained permit coverage under the Colorado General Permit for the construction of Store No. 6631 on or about November 5, 2001.

120. EPA inspected the construction site for Store No. 6631 on May 15, 2002.

121. During the inspection, EPA observed a number of violations of the applicable General Permit including but not necessarily limited to: failure to prepare and maintain an adequate SWPPP and inadequate maintenance of BMPs, including the failure to prevent track out of sediments by vehicles.

#### **Store No. 3566 (Aurora, Colorado)**

122. In approximately October 2001, Wal-Mart, through its contractors, commenced construction of Store No. 3566, located in Aurora, Colorado.

123. The construction site for Store No. 3566 comprised more than 19 acres and resulted in the disturbance of at least 5 acres.

124. The construction of Store No. 3566 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other

substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to Cherry Creek, a tributary of the South Platte River, which is a water of the United States.

125. Wal-Mart controlled the plans and specifications for the construction of Store No. 3566 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

126. Wal-Mart applied for and obtained permit coverage under the Colorado General Permit for the construction of Store No. 3566 on or about February 5, 2001.

127. EPA inspected the construction site for Store No. 3566 on May 15, 2002.

128. During the inspection, EPA observed a number of violations of the applicable General Permit including but not necessarily limited to inadequate material handling and spill prevention, including the following violations: (1) liquids (i.e., color release liquid spill, fuel spill, drums without bungs and pails without caps, color hardener powder placement) were inadequately protected, (2) Port-A-Potty was located next to storm drain, and (3) a portable 500-gallon diesel fuel tank was not contained and leaking. Further, EPA observed inadequate BMPs including: (1) inadequate concrete wash water controls that allow drainage into the storm water drain inlet, and (2) areas that remained unstabilized for over 60 days and unprotected slopes.

**Store No. 3568 (West Valley, Utah)**

129. In approximately January 2002, Wal-Mart, through its contractors, commenced construction of Store No. 3568, located in West Valley, Utah.

130. The construction site for Store No. 3568 comprised more than 20 acres and resulted in the disturbance of at least 5 acres.

131. The construction of Store No. 3568 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to the Salt Lake County Municipal Separate Storm Sewer System, which discharges to waters of the United States.

132. Wal-Mart controlled the plans and specifications for the construction of Store No. 3568 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Utah General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

133. Wal-Mart applied for and obtained permit coverage under the Utah General Permit for the construction of Store No. 3568 on or about December 15, 2001.

134. EPA inspected the construction site for Store No. 3568 on May 6, 2002.

135. During the inspection, EPA observed a number of violations of the Utah General Permit, including but not necessarily limited to the failure to properly maintain BMPs including: (1) storm drain inlet covers were torn and compromised, (2) sediment in some of the drains, (3)



track out evident at the northwest corner of the property, (4) the silt fence had holes, (5) inadequate installation of the silt fences, and (5) debris was littered throughout the site. In addition, EPA observed that the SWPPP for the site was inadequate because it was not signed and it failed to address: (1) the areas of soil disturbance, (2) location of the concrete washout, (3) the location where storm water is discharged to surface water, (4) the location of all control measures, (5) off-site sediment controls, (6) removal of sediment from sediment traps or sedimentation ponds, and (7) threatened or endangered species.

**Store No. 1535 (Sioux Falls, South Dakota)**

136. On approximately November 25, 2001, Wal-Mart, through its contractors, commenced construction of an expansion of Store No. 1535 in Sioux Falls, South Dakota.

137. The construction of the expansion of Store No. 1535 disturbed at least 8 acres of land.

138. The expansion of Store No. 1535 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to the Big Sioux River which is a water of the United States.

139. Wal-Mart controlled the plans and specifications for the expansion of Store No. 1535 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the South Dakota General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

140. Wal-Mart applied for and obtained permit coverage under the South Dakota General Permit for the expansion of Store No. 1535 effective approximately November 2001.

141. EPA inspected the construction site for the expansion of Store No. 1535 on May 22, 2002.

142. During the inspection, EPA observed at least the following violations of the South Dakota General Permit: inadequate installation and maintenance of BMPs including absence of protection of storm sewer drains, removal of and failure to re-install a silt fence, inadequate installation of remaining silt fence, heavy mud and sediment along the south side of building expansion that would flow to unprotected storm drains, and absence of a vehicle track out pad. In addition, EPA observed that the SWPPP was inadequate because: (1) it failed to call for inspection of the site within 24 hours of the end of a storm that is 0.5 inches or greater and (2) it did not include a signature.

**Store No. 1741 (Milford, Delaware)**

143. In approximately May 2000, Wal-Mart, through its contractors, commenced construction of an expansion of Store No. 1741 in Milford, Delaware.

144. The construction of the expansion of Store No. 1741 disturbed at least 5 acres of land.

145. The construction of Store No. 1741 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to a water of the United States.

146. Wal-Mart controlled the plans and specifications for the construction of Store No. 1741 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Delaware General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

147. Wal-Mart applied for and obtained permit coverage under the Delaware General Permit for the construction of Store No. 1741 effective in approximately May 2000.

148. EPA inspected the construction site for Store No. 1741 on at least May 8, 2000.

149. During the inspection, EPA observed at least the following violations of the Delaware General Permit: inadequate installation and maintenance of BMPS, including failure to follow proper construction sequence, failure to properly install and maintain silt fences, failure to build ponds in accordance with plans or with dewatering devices, failure to install or stabilize swales and entrances, and failure to control fuel spills.

**Store No. 619 (Dayton, Tennessee)**

150. Prior to December 2002, Wal-Mart, through its contractors, commenced construction of an expansion of Store No. 619 in Dayton, Tennessee.

151. The construction of the expansion of Store No. 619 disturbed at least 5 acres of land.

152. The construction of Store No. 619 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other

substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to a water of the United States.

153. Wal-Mart controlled the plans and specifications for the construction of Store No. 619 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Tennessee General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

154. Wal-Mart applied for and obtained permit coverage under the Tennessee General Permit for the construction of Store No. 619 effective prior to December 2002.

155. The Tennessee Department of Environment and Conservation inspected the construction site for Store No. 619 on December 23, 2002.

156. During the inspection, the Tennessee Department of Environment and Conservation observed at least the following violations of the Tennessee General Permit: inadequate installation and maintenance of BMPS, including failure to install silt fences called for by the SWPPP, failure to install rip rap at the retention and sediment basin, improper installation of silt fences, build up of sediment in the storm water drain inlets and outfalls, and off-site vehicle tracking of sediment. In addition, the inspectors observed that the SWPPP was inadequate because, among other things, it did not indicate site drainage patterns, failed to provide adequate design for a sediment basin, provided for no inlet protection at a storm drain, and failed to accurately reflect site conditions.

157. On January 8, 2003, the Tennessee Department of Environment and Conservation issued Wal-Mart a Notice of Violation ordering Wal-Mart to correct the SWPPP and address the inadequacies in the BMPs.

**Store No. 3582 (Colorado Springs, Colorado)**

158. In approximately March 2002, Wal-Mart, through its contractors, commenced construction of Store No. 3582, located in Colorado Springs, Colorado.

159. The construction site for Store No. 3582 comprised more than 30 acres and resulted in the disturbance of at least 5 acres.

160. The construction of Store No. 3582 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to Sand Creek, which is a water of the United States.

161. Wal-Mart controlled the plans and specifications for the construction of Store No. 3582 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

162. Wal-Mart applied for and obtained permit coverage under the Colorado General Permit for the construction of Store No. 3582 on or about January 28, 2002.

163. EPA inspected the construction site for Store No. 3582 on May 14, 2002.

164. During the inspection, EPA observed a number of violations of the applicable General Permit including but not necessarily limited to inadequate maintenance of BMPs, including: (1) significant gaps between silt fence sections, (2) silt fence downed by construction vehicles, and (3) a dirt pile at curb and upstream from storm water drain. Further, EPA observed that there had been inadequate inspections of the BMPS since the inspection reports failed to identify gaps and holes in silt fences. Further, the EPA inspector observed that a silt fence had been installed in the middle of the creek, therefore allowing silt loading into waters of the United States. Moreover, EPA observed that certain necessary BMPs were inadequate or absent. Also, EPA observed that the SWPPP was inadequate because the plan did not contain: (1) identification of the run-off coefficient before and after construction, (2) an estimate of the percent of vegetative ground cover, (3) areas of soil disturbance, (4) areas of cut and fill, (5) areas used for storage of building materials, soils or waste, and (6) the required signatures.

**Store No. 1719 (Big Rapids, Michigan)**

165. In May 2001, Wal-Mart, through its contractors, commenced construction of an expansion of Store No. 1719 in Big Rapids, Michigan.

166. The construction of the expansion of Store No. 1719 disturbed at least 20 acres of land.

167. The expansion of Store No. 1719 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to an unnamed tributary to Mitchell Creek, which is a water of the United States.

168. Wal-Mart controlled the plans and specifications for the expansion of Store No. 1719 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Michigan General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

169. Wal-Mart applied for and obtained permit coverage under the Michigan General Permit for the expansion of Store No. 1719 effective May 9, 2001.

170. The Michigan Department of Environmental Quality inspected the construction site for the expansion of Store No. 1719 on July 18, 2001. This inspection and later correspondence with Wal-Mart revealed that Wal-Mart had violated the Michigan General Permit when one of its contractors dug a trench to let the water out of a detention pond, breaching a silt fence and allowing silt to be deposited in wetlands on property adjoining the construction site for the expansion of Store No. 1719.

171. On July 26, 2001, the Mecosta County Drain Commissioner's Office issued Wal-Mart a Notice of Violation ordering Wal-Mart to immediately stop all sediment from leaving the site and remove sediment from the adjoining land.

**Store No. 1988/6621 (Roseville, California)**

172. During November 2002, Wal-Mart, through its contractors, began construction of Wal-Mart and Sam's Club Stores No. 1988 and 6621 in Roseville, California.

173. The construction site for Stores No. 1988 and 6621 comprised approximately 57 acres and resulted in the disturbance of at least 5 acres.

174. Wal-Mart controlled the plans and specifications for the construction of Stores No. 1988 and 6621 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the California General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

175. Wal-Mart applied for and obtained permit coverage under the California General Permit for the construction of Stores No. 1988 and 6621 in November 2002.

176. Both EPA and state officials inspected the construction site for Stores No. 1988 and 6621 in January 2003. These inspections revealed that there was an excessive amount of sediment discharging from two outfalls at the site into vernal pools within the Highland Reserve South Open Space Preserve (the "Preserve").

177. The vernal pools within the Preserve are connected to each other by drainage channels which, in turn, connect to Pleasant Grove Creek, which is a water of the United States.

178. EPA and state inspectors concluded that the discharge of excessive sediments to the vernal pools was the result of ineffective and inadequate BMPs at the construction site for Stores No. 1988 and 6621. In addition, EPA and state inspectors concluded that the SWPPP for the construction site was inadequate because it failed to identify sufficient erosion and sediment control measures.

179. On January 9, 2003, the Regional Water Quality Control Board for the Central Valley Region of California issued Wal-Mart a Notice of Violation directing Wal-Mart to take steps to eliminate the discharge of sediment-laden water from the construction site, ensure



appropriate and effective BMPs were installed and maintained, and closely monitor future conditions at the site and take corrective action as necessary.

180. On January 15, 2003, Wal-Mart prepared a revised SWPPP for the Site, and on February 12, 2003, EPA and state inspectors inspected the site again observing that additional BMPs had been installed.

#### **Store No. 953 (Loveland, Colorado)**

181. In approximately August 2001, Wal-Mart, through its contractors, commenced construction of Store No. 953, located in Loveland, Colorado.

182. The construction site for Store No. 953 comprised 45 acres and resulted in the disturbance of at least 5 acres.

183. The construction of Store No. 953 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to a water of the United States.

184. Wal-Mart controlled the plans and specifications for the construction of Store No. 953 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the Colorado General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

185. Wal-Mart applied for and obtained permit coverage under the Colorado General Permit for the construction of Store No. 953 on or about January 22, 2001.

186. EPA inspected the construction site for Store No. 953 on March 12, 2002.

187. During the inspection, EPA observed a number of violations of the applicable General Permit including but not necessarily limited to: inadequate operation and maintenance of BMPs including construction activity 25 feet in front of a silt fence, torn or inadequate installation of silt fence, and inadequate protection of storm drain inlets, inadequate BMPs in that there was no vehicle track out pad at road entrance and no designated concrete wash area, and poor housekeeping, including trash and other debris were observed, and concrete piles were scattered about the site.

**Store No. 5142 (Neptune, New Jersey)**

188. In approximately March 2002, Wal-Mart, through its contractors, commenced construction of Store No. 5142, located in Neptune, New Jersey.

189. The construction site for Store No. 5142 comprised more than 20 acres and resulted in the disturbance of more than 5 acres.

190. The construction of Store No. 5142 resulted in the potential for or the actual discharge of pollutants including soil, sediment, residues of construction materials and/or other substances involved in construction activities to storm sewers, ditches, or other conveyances which discharge to Jumping Brook, a water of the United States.

191. Wal-Mart controlled the plans and specifications for the construction of Store No. 5142 or otherwise met the definition of operator under 40 C.F.R. § 122.2, the General Permit, and the New Jersey General Permit and was therefore required to obtain NPDES permit coverage for the construction activities and then comply with all requirements and conditions for

operation under the Act, its regulations, and under the applicable permit. 33 U.S.C. § 1342; 40 C.F.R. § 122.21(b).

192. Wal-Mart applied for and obtained permit coverage under the New Jersey General Permit for the construction of Store No. 5142 on or about September 19, 2002.

193. The Freehold Soil Conservation District of the New Jersey Natural Resources Conservation Program inspected the construction site for Store No. 5142 on May 1, 2003, June 3, 2003, July 25, 2003, and August 4, 2003.

194. During these inspections, the Freehold Soil Conservation District observed a number of violations of the New Jersey General Permit including but not necessarily limited to: inadequate maintenance of silt fences and other BMPs, failure to install necessary BMPs, discharge of excessive sediment from the site, and failure to prepare a complete and accurate SWPPP.

195. On at least the following dates, the Freehold Soil Conservation District issued notices of deficiency, orders to stop construction, or notices of violation at the site for Store No. 5142: May 27, 2003, June 3, 2003, July 28, 2003, and August 5, 2003.

#### FIRST CLAIM FOR RELIEF

#### DEFENDANT FAILED TO MEET THE REQUIREMENTS OF THE GENERAL PERMITS

196. Plaintiff realleges and incorporates by reference Paragraphs 1 through 195.

197. Wal-Mart violated the terms and conditions of the General Permit, the California General Permit, the Colorado General Permit, the Delaware General Permit, the Michigan General Permit, the Texas General Permit, the New Jersey General Permit, the South Dakota General Permit, and/or the Utah General Permit at, *inter alia*, the following Wal-Mart store

construction sites: (i) Stores No. 16684/1708 (Riverdale, Utah), (ii) Store No. 3232 (West Jordan, Utah), (iii) Store No. 4730 (West Jordan, Utah), (iv) Store No. 2791 (Georgetown, Delaware), (v) Store No. 984 (Castle Rock, Colorado), (vi) Store No. 2752 (Commerce City, Colorado), (vii) Store No. 966 (Cortez, Colorado), (viii) Store No. 2892 (Parker, Colorado), (ix) Store No. 1001 (Pueblo, Colorado), (x) Store No. 5033 (Fort Morgan, Colorado), (xi) Store No. 1689 (Aurora, Colorado), (xii) Store No. 4786 (Logan, Utah), (xiii) Store No. 286 (Ennis, Texas), (xiv) Store No. 6631 (Aurora, Colorado), (xv) Store No. 3566 (Aurora, Colorado), (xvi) Store No. 3568 (West Valley, Utah), (xvii) Store No. 1535 (Sioux Falls, South Dakota), (xviii) Store No. 1741 (Milford, Delaware), (xix) Store No. 619 (Dayton, Tennessee), (xx) Store No. 3582 (Colorado Springs, Colorado), (xxi) Store No. 1719 (Big Rapids, Michigan), (xxii) Stores No. 1988/6621 (Roseville, California), (xxiii) Store No. 953 (Loveland, Colorado), and (xxiv) Store No. 5142 (Neptune, New Jersey).

198. Unless enjoined, these violations will continue or will recur at other construction sites.

199. Pursuant to 33 U.S.C. § 1319, Wal-Mart is liable for injunctive relief and civil penalties of up to \$27,500 per day per violation.

#### SECOND CLAIM FOR RELIEF

#### DEFENDANT DISCHARGED IN VIOLATION OF THE REQUIREMENTS OF THE GENERAL PERMITS OR WITHOUT A PERMIT

200. Plaintiff realleges and incorporates by reference Paragraphs 1 through 195.

201. Wal-Mart discharged pollutants to waters of the United States without a permit from at least the following Wal-Mart store construction sites: (i) Stores No. 16684/1708

(Riverdale, Utah), (ii) Store No. 3232 (West Jordan, Utah), (iii) Store No. 4730 (West Jordan, Utah), and (iv) Store No. 2791 (Georgetown, Delaware).

202. Unless enjoined, these violations will continue or will recur at other construction sites.

203. Pursuant to 33 U.S.C. § 1319, Wal-Mart is liable for injunctive relief and civil penalties of up to \$27,500 per day per violation.

#### PRAYER FOR RELIEF

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

A. Order Defendant to comply with the terms of the Act and the conditions of permits at future construction sites, including by, among other things, the development and implementation of an appropriate storm water pollution prevention plan, the application of BMPs to minimize or eliminate discharges of pollutants from the site, and the implementation of corporate policies designed to achieve and assure compliance with the applicable general permit and the Act;

- B. Assess civil penalties against Defendant of up to \$27,500 per day for each violation;
- C. Award the United States its costs and disbursements in this action; and
- D. Grant any such further relief as this Court deems just and proper.

Respectfully submitted,

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