



## 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 penalties brought pursuant to section 309(b) and (d) of the Clean Water Act (the "Act" or "CWA"), 33 U.S.C. § 1319(b) and (d), against Wal-Mart Stores, Inc. ("Wal-Mart"), Western Builders, Inc., Rogers-O'Brien Construction Co., D/B Constructors, Inc., Jaynes Corporation, Gerald A. Martin, Ltd., W.S. Bowlware Construction, Inc., Vratsinas Construction Co., Construction Supervisors, Inc., Dalmac Construction, Inc., and Williams Development & Construction, Inc., for the discharge of pollutants without a permit in violation of section 301 of the CWA, 33 U.S.C. § 1311, and for violations of the conditions of the National Pollution Discharge Elimination System ("NPDES") permit issued pursuant to section 402 of the CWA, 33 U.S.C. § 1342, for discharge of pollutants with storm water from construction projects.
2. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519 and section 506 of the Act, 33 U.S.C. § 1366.
3. Notice of the commencement of this action has been given to the State of Arkansas in accordance with section 309(b) of the Act, 33 U.S.C. § 1319(b).

### JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action pursuant to section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355.
5. Venue is proper in this District pursuant to section 309(b) of the Act, 33 U.S.C. 1319(b), and 28 U.S.C. §§ 1391 and 1395, because Defendant Wal-Mart is located and conducts business in this District. The remaining Defendants waive all objections to venue and consent to proper venue in this District.

### DEFENDANTS

6. Defendant Wal-Mart Stores, Inc. is a corporation incorporated under the laws of Delaware and as such is a "person" as defined in section 502(5) of the Act, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
7. Wal-Mart is a Delaware corporation doing business in all fifty states of the United States, including the Western District of Arkansas. Wal-Mart's principal place of business is in Bentonville, Arkansas.

8. Wal-Mart has constructed and is currently constructing discount retail stores for its ownership and operation throughout the United States on various pieces of property owned and/or operated by Wal-Mart throughout the United States, including Texas, New Mexico, Oklahoma and Massachusetts. Wal-Mart constructs approximately 100-200 new stores each year. Wal-Mart used the other named defendants as its contractors for the construction of the stores that are stated in this complaint.
9. Defendant Western Builders is a corporation incorporated under the laws of Texas and as such is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
10. Defendant Rogers-O'Brien is a corporation incorporated under the laws of Texas and as such is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
11. Defendant D/B Constructors is a corporation incorporated under the laws of Texas and as such is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
12. Defendant Jaynes is a corporation incorporated under the laws of New Mexico and as such is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
13. Defendant Gerald A. Martin is a corporation incorporated under the laws of New Mexico and as such is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
14. Defendant W.S. Bowlware Construction is a corporation incorporated under the laws of Oklahoma and as such is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
15. Defendant Vratsinas Construction is a corporation incorporated under the laws of Arkansas and as such is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
16. Defendant Construction Supervisors is a corporation incorporated under the laws of Texas and as such is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.
17. Defendant Dalmac Construction is a corporation incorporated under the laws of Texas and as such is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

18. Defendant Williams Development and Construction is a corporation incorporated under the laws of Texas and as such is a "person" as defined in section 502(5) of the CWA, 33 U.S.C. § 1362(5) and 40 C.F.R. § 122.2.

#### STATUTORY AND REGULATORY AUTHORITY

19. The objective of the Act is to restore and maintain the chemical, physical and biological integrity of the nation's waters. Section 101(a) of the Act, 33 U.S.C. § 1251(a).

20. To accomplish the objective of the Act, section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants by any person except in compliance with certain sections of the Act, including section 402 of the Act, 33 U.S.C. § 1342.

21. Section 402 of the Act, 33 U.S.C. § 1342, established a National Pollutant Discharge Elimination System ("NPDES") permit program.

22. Section 402(p) of the Act, 33 U.S.C. § 1342(p) requires an NPDES permit for storm water discharges ("storm water permit") from "a discharge associated with industrial activity." Section 402(p) of the Act, 33 U.S.C. § 1342(p).

23. Section 309(b) of the Act, 33 U.S.C. § 1319(b), 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 section 301 of the Act, 33 U.S.C. § 1311, or of any condition or limitation implementing sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations) or 308 (Records and Reports; Inspections) of the Act, 33 U.S.C. § 1311, 1312 or 1318, among other provisions, as set forth in permits issued under section 402 of the Act, 33 U.S.C. § 1342.

24. Section 309(d) of the Act, 33 U.S.C. § 1319(d), provides, in part, that any person who violates section 301 of the Act, 33 U.S.C. § 1311, or any condition or limitation implementing sections 301 (Effluent Limitations), 302 (Water Quality Related Effluent Limitations) or 308 (Records and Reports; Inspections) of the Act, 33 U.S.C. § 1311, 1312 or 1318, among other provisions, as set forth in permits issued under section 402 of the Act, 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$25,000 per day for each and every such violation occurring before January 31, 1997, or not to exceed \$27,500 per day for each and every such violation occurring after January 31, 1997.

25. Pursuant to the Act, including sections 308 and 402(p) of the Act, 33 U.S.C. § 1318, 1342(p), the Administrator of EPA promulgated regulations setting 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").

26. On November 16, 1990, EPA published regulations under the NPDES program 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).

27. Pursuant to Section 402(a) of the Act, EPA issued a Final NPDES General Permit for Storm Water Discharges from Construction Sites. 57 Fed. Reg. 41176, 41209 (Sept. 9, 1992) (hereinafter "the General Permit"). The General Permit was effective from September 9, 1992 to September 9, 1997.

28. The General Permit describes who is required to make application for and operate under coverage of the permit:

...today's permits provide that NOIs [Notice of Intent] must identify and be signed by the party(s) that has operational control of the site. . . [T]wo criteria are to be evaluated when determining the operator(s) for the purpose of NOI submission, the operator must (1) have operational control of the site specifications (including the ability to make modifications in specifications); and (2) have the day-to-day operational control of those activities at the site necessary to ensure compliance with plan requirements and permit conditions. For many construction projects, more than one party (such as a site owner and general contractor for the project) will have to submit an NOI to ensure that both criteria are met.

57 Fed. Reg. at 41191.

29. Pursuant to Section 402(a) of the Act, EPA reissued NPDES General Permits for Storm Water Discharges from Construction Activities in Region 6. 63 Fed. Reg. 36490, 36498 (July 6, 1998) (hereinafter "the Reissued General Permit").

30. The Reissued General Permit describes who is required to make application for and operate under coverage of the permit:

You need a storm water permit if you can be considered an "operator" of the construction activity that would result in the "discharge of storm water associated with construction activity." You must become a permittee if you meet either of the following two criteria: you have operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or you have day-to-day operational control of those activities which are necessary to ensure compliance with a storm water pollution prevention plan (SWPPP) for the site or other permit conditions (e.g., you are authorized to direct workers at a site to carry out activities required by the SWPPP or comply with other permit conditions.

63 Fed. Reg. at 36490.

31. Each person that meets the definition of "operator" and engages in construction defined as industrial activity by 40 C.F.R. § 122.26(b)(14)(x), must apply for and obtain NPDES permit coverage before and during conducting activities that are subject to storm water discharges that carry pollutants to waters of the United States. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

32. Parts IV-VI of the General Permit (57 Fed. Reg. at 41219) and Parts IV-VI of the Reissued General Permit (63 Fed. Reg. at 36502) generally describe the requirements for creation and implementation of a storm water pollution prevention plan and the requirements for implementing pollution control measures. The following requirements are relevant to this action:

a. Part IV.A.3 of the General Permit and Part IV.A.2 of the Reissued General Permit require that the storm water pollution prevention plan created for the site "shall provide for compliance with the terms and schedule of the SWPPP beginning with the initiation of construction activities." (57 Fed. Reg. 41219; 63 Fed. Reg. 36502 ).

b. Parts IV.B and VI.G of the General Permit and the Reissued General Permit require that the storm water pollution prevention plan created for the site be signed and certified by an authorized official of the permittee. (57 Fed. Reg. 41219, 41223; 63 Fed. Reg. 36502, 36506).

c. Part IV.C of the General Permit and the Reissued General Permit requires that the storm water pollution prevention plan created for the site be kept current and reflect necessary changes in the controls based on site changes during construction activities. (57 Fed. Reg. 41219-20; 63 Fed. Reg. 36502).

d. Part IV.D. of the General Permit and the Reissued General Permit requires that the site map that is required to be included with the storm water pollution prevention plan reflect drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, an outline of areas which will not be disturbed, the location of major structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water. (57 Fed. Reg. 41220; 63 Fed. Reg. 36502-503).

e. Part IV.D.2. of the General Permit and the Reissued General Permit requires that the plan include appropriate control measures for each major soil-disturbing activity at the site, to be both described in the plan, and implemented, in order to minimize or limit runoff and discharge of pollutants from the site. (57 Fed. Reg. 41220; 63 Fed. Reg. 36502-503).

f.

Part IV.D.4. of the General Permit requires weekly inspections of the facility

that have not been finally stabilized, as well as inspections within 24 hours of a rainfall event of one-half inch or greater, and requires that records of the inspections relating to the implementation of the storm water pollution prevention plan be made and retained with the storm water pollution prevention plan. (57 Fed. Reg. 41221). Part IV.D.4 of the Reissued General Permit also requires bi-monthly inspections of the facility, as well as inspections within 24 hours after the end of a storm event of one-half inch or greater, and requires that records of the inspections relating to the implementation of the storm water pollution prevention plan be made and retained with the storm water pollution prevention plan. For facilities that have been stabilized, or during seasonal arid periods in arid or semi-arid areas (areas with an average annual rainfall of less than 20 inches), inspections shall be conducted monthly. (63 Fed. Reg. 36505).

g.

Part IV.E of the General Permit requires the storm water pollution prevention

plan to identify each contractor or subcontractor that will be responsible for implementing pollution control measures, and have them sign a certification statement to be incorporated into the storm water pollution prevention plan. (57 Fed. Reg. 41221-22).

h. Part VI.N of the General Permit and the Reissued General Permit requires the permittee to properly operate and maintain pollution control measures used to achieve compliance with the permit and the requirements of the storm water pollution prevention plans. (57 Fed. Reg. 41224; 63 Fed. Reg. 36507).

#### GENERAL ALLEGATIONS

33. During construction of (17) of the Wal-Mart stores, Defendants either failed to obtain coverage under the General Permit as was required, or failed to follow the requirements set forth in the General Permit in implementing pollution control measures. As a result of Defendants' compliance failures, there were discharges of pollutants including eroded soil, sediment, residues of construction materials and other substances involved in construction activities, at the 17 sites as described below.

##### (1). Carrollton Site

34. Wal-Mart and D/B Constructors contracted for the construction of Wal-Mart store No. 1216 at Trinity Mills and Old Denton Road in the City of Carrollton, Dallas County, Texas ("Carrollton site").

35. The Carrollton site comprised approximately 19 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5

or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Carrollton site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1 (b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

36. The Carrollton site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, to Furneaux Creek, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

37. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Carrollton site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Carrollton site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

38. At all times relevant to this action, D/B Constructors was an "operator" of the Carrollton site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Carrollton site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

39. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Carrollton site and was issued Permit Number TXR100591 ("Permit 591"), which became effective on March 16, 1995. D/B Constructors applied for General Permit coverage and was issued Permit Number TXR100593 ("Permit 593"), which became effective on March 16, 1995 for the Carrollton site.

40. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), D/B Constructors applied for General Permit coverage and was issued Permit Number TXR100593 ("Permit 593"), which became effective on March 16, 1995 for the Carrollton site.

41. Wal-Mart failed to comply with the requirements of Permit 591 by, among other things, not implementing pollution control measures, not keeping a current storm water pollution prevention plan, failing to have a Wal-Mart official sign and certify the storm water pollution prevention plan, having a site map which did not reflect the current conditions at the site, not amending the site map to reflect the ongoing needs for control measures for the project, and failing to inspect the storm water controls within 24 hours of a rainfall event of one-half inch or greater.

42. D/B Constructors failed to comply with the requirements of Permit 593 by, among other things, not implementing pollution control measures, not keeping a current storm water pollution prevention plan, failing to have a Wal-Mart official sign and certify the storm water pollution prevention plan, having a site map which did not reflect the current conditions at the site, not amending the site map to reflect the ongoing needs for control measures for the project, and failing to inspect the storm water controls within 24 hours of a rainfall event of one-half inch or greater.

## (2). Dallas Site

43. Wal-Mart and Rogers-O'Brien contracted for the construction of Wal-Mart store No. 2427 at North Central Expressway (US 75) at Midpark in the City of Dallas, Dallas County, Texas

("Dallas site").

44. The Dallas site comprised approximately 13 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Dallas site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1 (b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

45. The Dallas site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, to White Rock Creek, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

46. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Dallas site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Dallas site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

47. At all times relevant to this action, Rogers-O'Brien was an "operator" of the Dallas site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Dallas site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

48. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Dallas site and was issued Permit Number TXR10N426 ("Permit 426"), which became effective on December 15, 1994, and Rogers-O'Brien applied for General Permit coverage and was issued Permit Number TXR10O315 ("Permit 315"), which became effective on April 13, 1995 for the Dallas site.

49. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Rogers-O'Brien applied for General Permit coverage and was issued Permit Number TXR10O315 ("Permit 315"), which became effective on April 13, 1995 for the Dallas site.

50. Wal-Mart failed to comply with the requirements of Permit 426 by, among other things, failing to have a Wal-Mart official sign and certify the storm water pollution prevention plan, having a site map which did not reflect the current conditions at the site, failing to inspect the storm water controls within 24 hours of a rainfall event of one-half inch or greater, and by failing to properly maintain and implement control devices.

51. Rogers-O'Brien failed to comply with the requirements of Permit 315 by, among other things, having a site map which did not reflect the current conditions at the site, failing to inspect the storm water controls within 24 hours of a rainfall event of one-half inch or greater, and by failing to properly maintain and implement control devices.

### (3). Mansfield Site

52. Wal-Mart and Western Builders contracted for the construction of Wal-Mart store No. 284 at 930 Walnut Creek Drive in the City of Mansfield, Johnson County, Texas ("Mansfield site").

53. The Mansfield site comprised approximately 32 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Mansfield site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1 (b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

54. The Mansfield site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, to the Watson Branch of Walnut Creek, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

55. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Mansfield site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Mansfield site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

56. At all times relevant to this action, Western Builders was an "operator" of the Mansfield site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Mansfield site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

57. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Mansfield site and was issued Permit Number TXR10AB41 ("Permit 41"), which became effective on March 14, 1997. Wal-Mart applied for an administrative extension at the Mansfield site on September 3, 1997 and was given number TXR10BW09 ("Permit 09") as an administrative extension number.

58. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Western Builders applied for General Permit coverage at the Mansfield site and was issued Permit Number TXR10AV14 ("Permit 14"), which became effective on June 2, 1997.

59. Wal-Mart failed to comply with the requirements of Permits 41 and 09 by, among other things, having a site map which did not reflect the current conditions or stabilization practices at the site, failing to have site-specific scheduling of implementation practices, failing to record dates of major construction activities, failing to have a temporary or permanent sediment basin or equivalent control measures, failing to adequately control runoff, and failing to include descriptions of control devices for post-construction storm water discharges.

60. Western Builders failed to comply with the requirements of Permit 14 by, among other things, having a site map which did not reflect the current conditions or stabilization practices at the site, failing to have site-specific scheduling of implementation practices, failing to record dates of major construction activities, failing to have a temporary or permanent sediment basin or equivalent control measures, failing to adequately control runoff, and failing to include descriptions of control devices for post-construction storm water discharges.

(4). Moore Site

61. Wal-Mart and Rogers-O'Brien contracted for the construction of Wal-Mart store No. 277 at 5601 19<sup>th</sup> Street in the City of Moore, Cleveland County, Oklahoma ("Moore Site").

62. The Moore site comprised approximately 23 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Moore site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1 (b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

63. The Moore site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, to the Little River Tributary, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

64. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Moore site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Moore site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

65. At all times relevant to this action, Rogers-O'Brien was an "operator" of the Moore site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Moore site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

66. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Moore site and was issued Permit Number OKR10A746 ("Permit 746"), which became effective on December 8, 1994.

67. Rogers-O'Brien failed to apply for General Permit coverage at the Moore site, and therefore did not have a permit for the Moore site.

68. Every day during which there was cumulative rainfall of more than 0.5 inches, Rogers-O'Brien discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

69. Wal-Mart failed to comply with the requirements of Permit 746 by, among other things, having a site map which did not reflect the current conditions at the site, failing to make some inspections of the storm water controls weekly or within 24 hours of a rainfall event of one-half inch or greater, failing to keep records of inspections with the storm water pollution prevention plan, and not minimizing the off-site vehicle tracking of sediments and the generation of dust.

#### (5). Rockwall Site

70. Wal-Mart contracted for the construction of Wal-Mart store No. 259 at the intersection of IH-30 and Whitehills Drive in the city of Rockwall, Rockwall County, Texas ("Rockwall site").

71. The Rockwall site comprised approximately 34 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5

or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Rockwall site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1 (b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

72. The Rockwall site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, to a stream which flows to Lake Ray Hubbard, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

73. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Rockwall site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Rockwall site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

74. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Rockwall site and was issued Permit Number TXR10T994 ("Permit 994"), which became effective on December 11, 1995.

75. Wal-Mart failed to comply with the requirements of Permit 994 by, among other things, failing to have the storm water pollution prevention plan signed and certified by an authorized official of the Defendant, having a site map for the storm water pollution prevention plan which did not reflect current conditions at the site, failing to make some weekly inspections at the site and failing to inspect the storm water controls within 24 hours of a rainfall event of one-half inch or greater, failing to have certifications signed by contractors at the site, and not correctly maintaining control devices.

#### (6). Ruidoso Site

76. Wal-Mart and Western Builders contracted for the construction of Wal-Mart store No. 851 at 1700 US Highway 70 West in the City of Ruidoso, Lincoln County, New Mexico ("Ruidoso site").

77. The Ruidoso site comprised approximately 17 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Ruidoso site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1 (b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

78. The Ruidoso site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, to the Rio Ruidoso in the Pecos River Basin, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

79. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Ruidoso site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Ruidoso site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the

applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

80. At all times relevant to this action, Western Builders was an "operator" of the Ruidoso site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Ruidoso site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

81. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Ruidoso site and was issued Permit Number NMR10A709 ("Permit 709"), which became effective on March 30, 1997. Although not required, Wal-Mart applied for two NPDES permits for the Ruidoso site. Thus, Wal-Mart was also issued permit number NMR10A654 for the Ruidoso site.

82. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Western Builders applied for General Permit coverage at the Ruidoso site and was issued Permit Number NMR10A705 ("Permit 705"), which became effective on March 30, 1997.

83. Wal-Mart failed to comply with the requirements of Permit 709 by, among other things, having a site map for the storm water pollution prevention plan which did not reflect current conditions at the site, failing to include in the plan, utilize or maintain appropriate control measures for erosion control in the area of the collection and stockpiling of 400,000 cubic yards of excess materials, and failing to fully prepare and implement a complete storm water pollution prevention plan prior to beginning construction.

84. Western Builders failed to comply with the requirements of Permit 705 by, among other things, having a site map for the storm water pollution prevention plan which did not reflect current conditions at the site, failing to include in the plan, utilize or maintain appropriate control measures for erosion control in the area of the collection and stockpiling of 400,000 cubic yards of excess materials, and failing to fully prepare and implement a complete storm water pollution prevention plan prior to beginning construction.

#### (7). Silver City Site

85. Wal-Mart contracted for the construction of Wal-Mart store No. 1357 at 2500 Highway 180 East in the City of Silver City, Grant County, New Mexico ("Silver City site").

86. The Silver City site comprised more than 5 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Silver City site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1(b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

87. The Silver City site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, into various tributaries of Pinos Altos Creek which flows to the San Vicente Arroyo, which flows to the Mimbres River in the Mimbres River Basin, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

88. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the

Silver City site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Silver City site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

89. At all times relevant to this action, Jaynes was an "operator" of the Silver City site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Silver City site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

90. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Silver City site and was issued Permit Number NMR10A762 ("Permit 762"), which became effective on September 9, 1997.

91. Jaynes failed to apply for General Permit coverage at the Silver City site, and therefore did not have a permit for the Silver City site.

92. Wal-Mart failed to comply with the requirements of Permit 762 by, among other things, not implementing a storm water pollution prevention plan or having the plan available at the site for inspection, failing to keep the storm water pollution prevention plan current, and failing to have a Wal-Mart official sign and certify the storm water pollution prevention plan.

93. Every day during which there was cumulative rainfall of more than 0.5 inches, Jaynes discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

(8). Pasadena Site

94. Wal-Mart and Construction Supervisors contracted for the construction of Wal-Mart store No. 2724 at 1107 North Shaver, in the City of Pasadena, Harris County, Texas ("Pasadena Site").

95. The Pasadena site comprised more than 5 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Pasadena site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1(b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

96. The Pasadena site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, into the Vince Bayou, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

97. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Pasadena site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Pasadena site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

98. At all times relevant to this action, Construction Supervisors was an "operator" of the

Pasadena site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Pasadena site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122

99. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Pasadena site and was issued Permit Numbers TXR10HI52 and TXR10FX55 ("Permits 52 and 55"), which became effective on December 31, 1998 and October 4, 1998, respectively.

100. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Construction Supervisors applied for General Permit coverage at the Pasadena site and was issued Permit Number TXR10HF09 ("Permit 09"), which became effective on December 4, 1998.

101. Wal-Mart failed to comply with the requirements of Permits 52 and 55 by, among other things, not properly operating erosion and sediment control measures identified in the site storm water pollution prevention plan, and by not selecting, installing, and maintaining erosion and sediment controls in accordance with good engineering or best management practices, to prevent discharges of pollutants including soil, sediment, residues of construction materials, chemicals and other substances involved in construction activities; by failing to include in the site storm water pollution prevention plan a copy of the permit requirements, or to identify the qualifications of the person making site inspections within the site inspection summary reports; and by failing to include in the site inspection reports indicating compliance a certification that the facility was in compliance with the site storm water pollution prevention plan and NPDES storm water permit.

102. Construction Supervisors failed to comply with the requirements of Permit 09 by, among other things, not properly operating erosion and sediment control measures identified in the site storm water pollution prevention plan, and by not selecting, installing, and maintaining erosion and sediment controls in accordance with good engineering or best management practices, to prevent discharges of pollutants including soil, sediment, residues of construction materials, chemicals and other substances involved in construction activities; by failing to include in the site storm water pollution prevention plan a copy of the permit requirements, or to identify the qualifications of the person making site inspections within the site inspection summary reports; and by failing to include in the site inspection reports indicating compliance a certification that the facility was in compliance with the site storm water pollution prevention plan and NPDES storm water permit.

(9). Stafford Site

103. Wal-Mart and Dalmac Construction contracted for the construction of Wal-Mart store No. 915 at 11210 West Airport Boulevard, in the City of Stafford, Fort Bend County, Texas (Stafford Site).

104. The Stafford site comprised more than 5 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Stafford site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1(b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

105. The Stafford site discharged eroded soil, sediment, residues of construction materials

and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, into the Keegans Bayou, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

106. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Stafford site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Pasadena site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

107. At all times relevant to this action, Dalmac Construction was an "operator" of the Stafford site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Pasadena site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

108. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Stafford site and was issued Permit Number TXR10HV87 ("Permit 87"), which became effective on February 19, 1999.

109. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Dalmac Construction Wal-Mart applied for General Permit coverage at the Stafford site and was issued Permit Number TXR10HU55 ("Permit 55"), which became effective on February 19, 1999.

110. Wal-Mart failed to comply with the requirements of Permit 87 by, among other things, not properly operating erosion and sediment control measures identified in the site storm water pollution prevention plan, and by not selecting, installing, and maintaining erosion and sediment controls in accordance with good engineering or best management practices, to prevent discharges of pollutants including soil, sediment, residues of construction materials, and other substances involved in construction activities; by failing to include in the site storm water pollution prevention plan a copy of the permit requirements, failing to identify the receiving water in its notice of intent, or to provide the estimated runoff coefficients for pre-construction or post-construction activities; and by failing to include in the site inspection reports indicating compliance a certification that the facility was in compliance with the site storm water pollution prevention plan and NPDES storm water permit.

111. Dalmac Construction failed to comply with the requirements of Permit 55 by, among other things, not properly operating erosion and sediment control measures identified in the site storm water pollution prevention plan, and by not selecting, installing, and maintaining erosion and sediment controls in accordance with good engineering or best management practices, to prevent discharges of pollutants including soil, sediment, residues of construction materials, and other substances involved in construction activities; by failing to include in the site storm water pollution prevention plan a copy of the permit requirements, failing to identify the receiving water in its notice of intent, or to provide the estimated runoff coefficients for pre-construction or post-construction activities; and by failing to include in the site inspection reports indicating compliance a certification that the facility was in compliance with the site storm water pollution prevention plan and NPDES storm water permit.

(10). North Interstate 45 Site

112. Wal-Mart and Construction Supervisors contracted for the construction of Wal-Mart

store No. 1279 at 10411 North Interstate 45, in the City of Houston, Harris County, Texas, 77506 ("North Interstate 45 site").

113. The North Interstate 45 site comprised more than 5 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the North Interstate 45 site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1(b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

114. The North Interstate 45 site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, into the San Jacinto River, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

115. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the North Interstate 45 site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Interstate North 45 site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

116. At all times relevant to this action, Construction Supervisors was an "operator" of the North Interstate 45 site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Interstate North 45 site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

117. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the North Interstate 45 site and was issued Permit Number TXR10HQ08 ("Permit 08"), which became effective on January 30, 1999.

118. Construction Supervisors failed to apply for General Permit coverage at the North Interstate 45 Moore site, and therefore did not have a permit for the Moore site.

119. Every day during which there was cumulative rainfall of more than 0.5 inches, Construction Supervisors discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

120. Wal-Mart failed to comply with the requirements of Permit 08 by, among other things, not properly operating erosion and sediment control measures identified in the site storm water pollution prevention plan, and by not selecting, installing, and maintaining erosion and sediment controls in accordance with good engineering or best management practices, to prevent discharges of pollutants including soil, sediment, residues of construction materials, and other substances involved in construction activities; and by failing to include in the site inspection reports indicating compliance a certification that the facility was in compliance with the site storm water pollution prevention plan and NPDES storm water permit.

(11). South Post Oak Road Site

121. Wal-Mart and Williams Development and Construction contracted for the construction of Wal-Mart store No. 2718 at 9555 South Post Oak Road, in the City of Houston, Harris County,

Texas, 77096 ("South Post Oak Road site").

122. The South Post Oak Road site comprised more than 5 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the South Post Oak Road site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1(b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

123. The South Post Oak Road site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, into the Brays Bayou, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

124. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the South Post Oak Road site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the South Post Oak Road, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

125. At all times relevant to this action, Williams Development and Construction was an "operator" of the South Post Oak Road site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the South Post Oak Road, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

126. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the South Post Oak Road site and was issued Permit Number TXR10JZ76 ("Permit 76"), which became effective on November 23, 1999.

127. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Williams Development and Construction applied for General Permit coverage at the Interstate North 45 site and was issued Permit Number TXR10IF40 ("Permit 40").

128. Wal-Mart failed to comply with the requirements of Permit 76 by, among other things, not properly operating erosion and sediment control measures identified in the site storm water pollution prevention plan, and by not selecting, installing, and maintaining erosion and sediment controls in accordance with good engineering or best management practices to prevent discharges of pollutants including soil, sediment, residues of construction materials, and other substances involved in construction activities; no notice was posted by the main entrance with the permit number; the site storm water pollution plan was not signed; and by failing to include in the site inspection reports indicating compliance a certification that the facility was in compliance with the site storm water pollution prevention plan and NPDES storm water permit.

129. Williams Development and Construction failed to comply with the requirements of Permit 40 by, among other things, not properly operating erosion and sediment control measures identified in the site storm water pollution prevention plan, and by not selecting, installing, and maintaining erosion and sediment controls in accordance with good engineering or best management

practices, to prevent discharges of pollutants including soil, sediment, residues of construction materials, and other substances involved in construction activities; no notice was posted by the main entrance with the permit number; the site storm water pollution plan was not signed; and by failing to include in the site inspection reports indicating compliance a certification that the facility was in compliance with the site storm water pollution prevention plan and NPDES storm water permit.

(12). Commerce, Texas

130. Wal-Mart and Western Builders contracted for the construction of Wal-Mart store No. 240 at State Highway 50 and Loop 178, in the City of Commerce, Hunt County, Texas, 75428 ("Commerce site").

131. The Commerce site comprised more than 5 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Commerce site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1(b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

132. The Commerce site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, into the South Sulfur River, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

133. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Commerce site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Commerce site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122

134. At all times relevant to this action, Western Builders was an "operator" of the Commerce site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Commerce site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122

135. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Commerce site and was issued Permit Number TXR10IZ83 ("Permit 83"), which became effective on March 17, 2000.

136. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Western Builders applied for General Permit coverage at the Commerce site and was issued Permit Number TXR10LC92 ("Permit 92"), which became effective on March 17, 2000.

137. Wal-Mart failed to comply with the requirements of Permit 83 by, among other things, not properly operating erosion and sediment control measures identified in the site storm water pollution prevention plan, and by not selecting, installing, and maintaining erosion and sediment controls in

accordance with good engineering or best management practices, to prevent discharges of pollutants including soil, sediment, residues of construction materials, and other substances involved in construction activities; by failing to maintain a site map for the storm water pollution prevention plan that reflected current conditions at the site; and by failing to inspect the storm water controls within 24 hours of a rainfall event of one-half inch or greater.

138. Western Builders failed to comply with the requirements of Permit 92 by, among other things, not properly operating erosion and sediment control measures identified in the site storm water pollution prevention plan, and by not selecting, installing, and maintaining erosion and sediment controls in accordance with good engineering or best management practices, to prevent discharges of pollutants including soil, sediment, residues of construction materials, and other substances involved in construction activities; by failing to maintain a site map for the storm water pollution prevention plan that reflected current conditions at the site; and by failing to inspect the storm water controls within 24 hours of a rainfall event of one-half inch or greater.

### (13) Carlsbad Site

139. Wal-Mart and Western Builders contracted for the construction of Wal-Mart store No. 868 located at Center Street and US 62-180 in the City of Carlsbad, Eddy County, New Mexico ("Carlsbad site").

140. The Carlsbad site comprised approximately 13 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Carlsbad site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1(b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

141. The Carlsbad site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, to the Pecos River Basin, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

142. At all times relevant to this action, Wal-Mart was either an "owner" or "operator" of the Carlsbad site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Carlsbad site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

143. At all times relevant to this action, Western Builders was an "operator" of the Carlsbad site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Carlsbad site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

144. Wal-Mart applied for General Permit coverage at the Carlsbad site, however, Wal-Mart was not eligible for the General Permit as it had expired. Therefore, Wal-Mart did not have a permit for its Carlsbad site.

145. Every day during which there was cumulative rainfall of more than 0.5 inches,

Wal-Mart discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

146. Western Builders applied for General Permit coverage at the Carlsbad site, however, Western Builders was not eligible for the General Permit as it had expired. Therefore, Western Builders did not have a permit for its Carlsbad site.

147. Every day during which there was cumulative rainfall of more than 0.5 inches, Western Builders discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

148. Failure to obtain a permit for storm water discharges is a violation of sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

(14). Albuquerque Site

149. Wal-Mart and Gerald A. Martin Ltd. contracted for the construction of Wal-Mart store No. 1397 at 10224 Coors Bypass NW in the City of Albuquerque, Bernalillo County, New Mexico ("Albuquerque site").

150. The Albuquerque site comprised more than 5 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Albuquerque site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1(b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

151. The Albuquerque site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, into various tributaries of the Rio Grande, in the Rio Grande Basin, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

152. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Albuquerque site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Albuquerque site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

153. At all times relevant to this action, Gerald A. Martin Ltd. was an "operator" of the Albuquerque site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Albuquerque site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

154. Wal-Mart failed to obtain permit coverage at the Albuquerque site.

155. Every day during which there was cumulative rainfall of more than 0.5 inches, Wal-Mart discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

156. Gerald A. Martin Ltd. failed to obtain permit coverage at the Albuquerque site.

157. Every day during which there was cumulative rainfall of more than 0.5 inches, Gerald A. Martin Ltd. discharged storm water to the waters of the United States without a permit in violation

of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

158. Failure to obtain a permit for storm water discharges is a violation of sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

(15). Dallas/I-30 Site

159. Wal-Mart and W.S. Bowlware Construction contracted for the construction of Wal-Mart store No. 2667 at 7401 Samuel Boulevard (facing Interstate 30) in the City of Dallas, Dallas County, Texas ("Dallas/I-30 site").

160. The Dallas/I-30 site comprised approximately 27 acres of construction area, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Dallas/I-30 site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1 (b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

161. The Dallas/I-30 site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, to White Rock Creek, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

162. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Dallas/I-30 site, within the meaning of 40 C.F.R. § 122.2 and the Reissued General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Dallas/I-30 site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

163. At all times relevant to this action, W.S. Bowlware Construction was an "operator" of the Dallas/I-30 site, within the meaning of 40 C.F.R. § 122.2 and the Reissued General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Dallas/I-30 site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

164. Wal-Mart failed to obtain permit coverage at the Dallas/I-30 site.

165. Every day during which there was cumulative rainfall of more than 0.5 inches, Wal-Mart discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

166. W.S. Bowlware Construction failed to obtain permit coverage at the Dallas/I-30 site.

167. Every day during which there was cumulative rainfall of more than 0.5 inches, W.S. Bowlware Construction discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

168. Failure to obtain a permit for storm water discharges is a violation of sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

(16). Mesquite Site

169. Wal-Mart and Vratsinas Construction contracted for the construction of Wal-Mart store No. 789 at 200 E. Highway 80 in the City of Mesquite, Dallas County, Texas ("Mesquite site").

170. The Mesquite site comprised approximately 18 acres of construction area, and the

work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Mesquite site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1 (b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

171. The Mesquite site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, to North Mesquite Creek, which is a "water of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

172. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Mesquite site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Mesquite site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

173. At all times relevant to this action, Vratsinas Construction was an "operator" of the Mesquite site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Mesquite site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

174. Wal-Mart failed to obtain permit coverage at the Mesquite site.

175. Every day during which there was cumulative rainfall of more than 0.5 inches, Wal-Mart discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

176. Vratsinas Construction failed to obtain permit coverage at the Mesquite site.

177. Every day during which there was cumulative rainfall of more than 0.5 inches, Vratsinas Construction discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

178. Failure to obtain a permit for storm water discharges is a violation of sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

(17). Hadley Site

179. Wal-Mart contracted for the construction of Wal-Mart store No. 2683, in the Mountain Farms Mall, 337 Russell Street, Hadley, Massachusetts 01035 ("Hadley site").

180. The Hadley site is part of a construction project that comprised more than 5 acres of construction area as part of a common plan of development, and the work at the site included "construction activity including clearing, grading, and excavation activities" of 5 or more total acres of land as part of the relevant activities at the site, within the meaning of 40 C.F.R. § 122.26(b)(14)(x). Therefore, the Hadley site is considered "industrial activity" and a "point source requiring NPDES permits for discharges" to waters of the United States, within the meaning of 40 C.F.R. § 122.1(b) and within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362.

181. The Hadley site discharged eroded soil, sediment, residues of construction materials and other substances involved in construction activities, which are "pollutants" as defined by

Section 502(6) of the CWA, 33 U.S.C. § 1362(6), and 40 C.F.R. § 122.2, into a wetland adjacent to a perennial stream which flows to the Fort River, which are all "waters of the United States" within the meaning of Section 502 of the CWA, 33 U.S.C. § 1362, and 40 C.F.R. § 122.2.

182. At all times relevant to this action, Wal-Mart was either "owner" or "operator" of the Hadley site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Hadley site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

183. At all times relevant to this action, Bowdoin Construction was an "operator" of the Hadley site, within the meaning of 40 C.F.R. § 122.2 and the General Permit, and was therefore required to obtain NPDES permit coverage for construction activities at the Hadley site, and then comply with all requirements and conditions for operation under the Act, its regulations, and under the applicable permit. CWA § 402, 33 U.S.C. § 1342, 40 C.F.R. Part 122.

184. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), Wal-Mart applied for General Permit coverage at the Hadley site on April 21, 1999. On May 18, 1999, EPA notified Wal-Mart that its Notice of Intent for coverage under the General Permit was incomplete. Wal-Mart did not respond to EPA's notice and therefore Wal-Mart did not obtain permit coverage for the Hadley site.

185. Every day during which there was cumulative rainfall of more than 0.5 inches, Wal-Mart discharged storm water to the waters of the United States without a permit in violation of Sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

186. Failure to obtain a permit for storm water discharges is a violation of sections 301(a) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1342.

#### FIRST CLAIM REQUIREMENTS OF THE NPDES PERMIT

187. Plaintiff realleges and incorporates by reference Paragraphs 1 through 186.

188. Wal-Mart violated the terms and conditions of the General Permit, Permit 591, and the requirements of the storm water pollution prevention plan at the Carrollton site.

189. D/B Constructors violated the terms and conditions of the General Permit, Permit 593, and the requirements of the storm water pollution prevention plan at the Carrollton site.

190. Wal-Mart violated the terms and conditions of the General Permit, Permit 426, and the requirements of the storm water pollution prevention plan at the Dallas site.

191. Rogers-O'Brien violated the terms and conditions of the General Permit, Permit 315, and the requirements of the storm water pollution prevention plan at the Dallas site.

192. Wal-Mart violated the terms and conditions of the General Permit, Permits 41 and 09, and the requirements of the storm water pollution prevention plan at the Mansfield site.

193. Western Builders violated the terms and conditions of the General Permit, Permit 14,

and the requirements of the storm water pollution prevention plan at the Mansfield site.

194. Wal-Mart violated the terms and conditions of the General Permit, Permit 746, and the requirements of the storm water pollution prevention plan at the Moore site.

195. Wal-Mart violated the terms and conditions of the General Permit, Permit 994, and the requirements of the storm water pollution prevention plan at the Rockwall site.

196. Wal-Mart violated the terms and conditions of the General Permit, Permit 709, and the requirements of the storm water pollution prevention plan at the Ruidoso site.

197. Western Builders violated the terms and conditions of the General Permit, Permit 705, and the requirements of the storm water pollution prevention plan at the Ruidoso site.

198. Wal-Mart violated the terms and conditions of the General Permit, Permit 762, and the requirements of the storm water pollution prevention plan at the Silver City site.

199. Wal-Mart violated the terms and conditions of the General Permit, Permits 52 and 55, and the requirements of the storm water pollution prevention plan at the Pasadena site.

200. Construction Supervisors violated the terms and conditions of the General Permit, Permit 09, and the requirements of the storm water pollution prevention plan at the Pasadena site.

201. Wal-Mart violated the terms and conditions of the General Permit, Permit 87, and the requirements of the storm water pollution prevention plan at the Stafford site.

202. Dalmac Construction violated the terms and conditions of the General Permit, Permit 55, and the requirements of the storm water pollution prevention plan at the Stafford site.

203. Wal-Mart violated the terms and conditions of the General Permit, Permit 08, and the requirements of the storm water pollution prevention plan at the North Interstate 45 site.

204. Wal-Mart violated the terms and conditions of the General Permit, Permit 76, and the requirements of the storm water pollution prevention plan at the South Post Oak Road site.

205. Williams Construction violated the terms and conditions of the General Permit, Permit 40, and the requirements of the storm water pollution prevention plan at the South Post Oak Road site.

206. Wal-Mart violated the terms and conditions of the General Permit, Permit 83, and the requirements of the storm water pollution prevention plan at the Commerce site.

207. Western Builders violated the terms and conditions of the General Permit, Permit 92, and the requirements of the storm water pollution prevention plan at the Commerce site.

208. Defendants have violated Sections 301(a), 308 and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1318, 1342(p), by failing to provide the information required by the act and by failing to comply with the conditions listed in their permits.

## SECOND CLAIM

### DEFENDANTS' FAILURES TO OBTAIN NPDES PERMIT COVERAGE

209. Plaintiff realleges and incorporates by reference Paragraphs 1 through 208.
210. Wal-Mart failed to obtain permit coverage at the Carlsbad site.
211. Western Builders failed to obtain permit coverage at the Carlsbad site.
212. Wal-Mart failed to obtain permit coverage at the Albuquerque site.
213. Gerald A. Martin Ltd. failed to obtain permit coverage at the Albuquerque site.
214. Rogers-O'Brien failed to obtain permit coverage at the Moore site.
215. Wal-Mart failed to obtain permit coverage at the Dallas/I-30 site.
216. W.S. Bowlware Construction failed to obtain permit coverage at the Dallas/I-30 site.
217. Wal-Mart failed to obtain permit coverage at the Mesquite site.
218. Vratsinas Construction failed to obtain permit coverage at the Mesquite site.
219. Wal-Mart failed to obtain permit coverage at the Hadley site.

220. Failure to obtain a permit for storm water discharges is a violation of sections 301(a) and 402 of the Act, 33 U.S.C. §§ 1311(a), 1342.

221. Each storm water discharge without a permit is a violation of sections 301(a) and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1342(p).

222. Pursuant to section 309(d) of the Act, 33 U.S.C. § 1319(d), Defendants are subject to civil penalties not to exceed \$25,000 per day for each violation occurring before January 31, 1997 or not to exceed \$27,500 per day for each violation occurring after January 31, 1997.

223. Unless enjoined by this Court, Defendants continue to violate sections 301(a), 308 and 402(p) of the Act, 33 U.S.C. §§ 1311(a), 1318, 1342(p), by failure to obtain a permit for storm water discharges, by failing to provide the information required by the Act and by failing to comply with the conditions listed in its permits. Thus, the government asks for an injunction requiring Defendants to obtain the requisite permit coverage prior to initiating construction operations at building sites, and to comply with the terms and conditions of the applicable NPDES permits in their construction operations in all EPA Regions.

#### PRAYER FOR RELIEF

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

A. Order Defendants to comply with the Act by providing the required information and by adopting appropriate measures to control the pollutants at the construction sites;

B. Order Defendants to comply with the terms and conditions of permits at future construction sites, including, among other things, the development and implementation of a pollution prevention plan, the application of best management practices to minimize or eliminate discharges of pollutants from the site with storm water discharges, and the implementation of corporate policies designed to achieve and assure compliance with the law cited herein. Defendants should be required to demonstrate to EPA and to this Court that it has done so and will continue to do so over time;

C. Permanently enjoin Defendants from failure to comply with the law cited herein, and in particular with the NPDES program and NPDES permit, and each term and condition of such permit;

D. Assess civil penalties against Defendants of up to \$25,000 per day for each and every violation alleged herein occurring before January 31, 1997 or not to exceed \$27,500 per day for each and every violation occurring after January 31, 1997;

- E. Award the United States its costs and disbursements in this action; and
- F. Grant any such further relief as this Court deems just and proper.