

404/Wetland Enforcement: U.S. Environmental Protection Agency and Residential Developer Enter into Consent Agreement



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08/31/2017

The United States Environmental Protection Agency (“EPA”) and D.R. Horton, Inc., (“DRHI”) entered into an August 17th Consent Agreement and Final Order (“CA”) addressing alleged violations of Section 404 of the Clean Water Act. See Docket No.: CWA-04-2017-5501(b).

Section 301(a) of the Clean Water Act generally provides that except in compliance with Section 404 of the Clean Water Act, the discharge of any dredged or fill material by any person shall be unlawful.

The CA provides that on November 8, 2013 to the present, DRHI discharged dredged and/or fill material into wetlands at a “Site” in Osceola County, Florida.

The “Site” is stated to include approximately 1,600 acres.

During the referenced time period, DRHI is alleged to have discharged dredged and/or fill material into wetlands at the Site using earth moving machinery during unauthorized activities associated with the clearing and filling of wetlands for a multi-phased residential development. These activities allegedly impacted about 2.4 acres of herbaceous freshwater wetlands that are adjacent to Lake Tohopekaliga. This lake is stated to be a navigable-in-fact water of the United States.

The discharged dredged and/or fill material at the Site allegedly occurred without a Section 404 Clean Water Act permit.

The CA provides that each day the material allegedly discharged by DRHI remains in waters of the United States without the required Section 404 Clean Water Act permit, is stated to constitute a day of violation of Section 301 of the Clean Water Act.

DRHI neither admits nor denies the specific factual allegations in the CA.

The CA assesses a civil penalty of \$95,000.

[A copy of the CA can be downloaded here.](#)