

STATE OF NORTH CAROLINA  
COUNTY OF SURRY

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
21 CVS \_\_\_\_\_

---

STATE OF NORTH CAROLINA, *ex rel.*, )  
NORTH CAROLINA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
BOTTOMLEY EVERGREENS & )  
FARMS, INC., and BOTTOMLEY )  
PROPERTIES NC, LLC, )  
 )  
Defendants. )

**VERIFIED COMPLAINT AND  
MOTION FOR PRELIMINARY  
INJUNCTIVE RELIEF**

---

**INTRODUCTION**

This is an action to bring to a halt egregious violations of North Carolina’s water quality standards. The land-clearing activities at Defendants’ properties have resulted in extensive damage to numerous stream segments that ultimately feed into Ramey Creek,<sup>1</sup> Roaring Fork, and Big Pine Creek, all of which are classified as Trout Waters. This damage was so severe that a population of trout had to be removed from Ramey Creek by the North Carolina Wildlife Resources Commission. Despite repeated requests, Defendants have failed to submit plans to remediate the damage to these waters and plans to protect these waters from future sediment damage from Defendants’ properties. Plaintiff North Carolina Department of Environmental

---

<sup>1</sup> On some maps, Ramey Creek is called Mill Creek.

Quality brings this action on behalf of the Sovereign State of North Carolina to bring an end to these ongoing violations, to require Defendants to correct past violations, and to ensure that the best uses of these waters are protected.

The State of North Carolina, complaining of Defendants, alleges and says:

### **PARTIES**

1. Plaintiff is the sovereign State of North Carolina. This action is being brought on the relation of the North Carolina Department of Environmental Quality (“DEQ”), the State agency established pursuant to N.C. Gen. Stat. §§ 143B-279.1 *et seq.*, and vested with the statutory authority to enforce the State’s environmental pollution laws, including laws enacted to protect the water quality of the State. The Division of Water Resources (“DWR”) is a division within DEQ and all actions taken by DWR are necessarily actions of the Plaintiff.

2. Upon information and belief, defendant Bottomley Properties, NC, LLC, (“Bottomley Properties”), is a limited liability corporation formed in North Carolina. Defendant owns two tracts of real property spanning Alleghany and Surry Counties, PIN 4031433357 (“Parcel A”), and PIN 4031513742 (“Parcel C”), and one tract of real property located entirely in Alleghany County, PIN 4031310314 (“Parcel B”). The deeds for these parcels are attached hereto as Exhibit 1 (Parcel A), 2 (Parcel B), and 3 (Parcel C) and are incorporated herein by reference.

3. Upon information and belief, defendant Bottomley Evergreens & Farms, Inc. (“Bottomley Evergreens”) is a corporation formed in North Carolina. Defendants Bottomley Properties and Bottomley Evergreens jointly own a tract of real property located in Alleghany County, PIN 4021868050 (“Parcel D”). The deed for Parcel D is attached hereto as Exhibit 4 and is incorporated herein by reference.

4. The geographic information service (“GIS”) maps for these parcels are attached hereto as Exhibit 5 (Parcel A), 6 (Parcel B), 7 (Parcel C), and 8 (Parcel D) and are incorporated herein by reference.

### **JURISDICTION**

5. Jurisdiction for injunctive relief sought to compel enforcement of a statute or regulation rests in the Superior Court pursuant to N.C. Gen. Stat. § 7A-245(a)(2) and N.C. Gen. Stat. § 1-493. Furthermore, the Superior Court has jurisdiction of this action for injunctive relief for existing or threatened violations of various laws and rules governing the protection of water quality pursuant to N.C. Gen. Stat § 143-215.6C.

### **VENUE**

6. Surry County, North Carolina is a proper venue for this action because violations or threatened violations that are the subject of this action for injunctive relief have occurred, are occurring, and may continue to occur in Surry County, in addition to other locations. N.C. Gen. Stat. § 143-215.6C.

### **GENERAL ALLEGATIONS**

#### ***Applicable Laws and Regulations***

7. The Environmental Management Commission (“Commission”) is an agency of the State established pursuant to the provisions of N.C. Gen. Stat. §§ 143B-282 *et seq.* Pursuant to N.C. Gen. Stat. § 143-215.3(a)(1), the Commission has the power “[t]o make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.” These statutes and the rules adopted under them are designed to further the public policy of the State, as stated in N.C. Gen. Stat. § 143-211, “to provide for the conservation of its water and air resources . . . [and], within the context of this Article [21]

and Articles 21A and 21B of this Chapter [143], to achieve and to maintain for the citizens of the State a total environment of superior quality.”

8. N.C. Gen. Stat. § 143-211 further provides that

standards of water and air purity shall be designed to protect human health, to prevent injury to plant and animal life, to prevent damage to public and private property, to insure the continued enjoyment of the natural attractions of the State, to encourage the expansion of employment opportunities, to provide a permanent foundation for healthy industrial development and to secure for the people of North Carolina, now and in the future, the beneficial uses of these great natural resources.

9. The North Carolina General Assembly has directed that the Commission promulgate water quality standards in a three-tiered manner by requiring: (1) promulgation of water body classifications based upon the best uses of surface waters; (2) promulgation of water quality standards that protect these uses; and (3) assignment of classifications to individual segments of surface waters. *See, e.g.*, N.C. Gen. Stat. §§ 143-211(c), 143-214.1, 143-214.3, 143-215.1; 15A NCAC 2B .0101–.0110. Under this system, every surface water segment in the State is assigned an appropriate classification. *See* N.C. Gen. Stat. § 143-214.1(a); 15A NCAC 2B .0101. That classification has certain “best uses” and a set of numeric and narrative standards designed to protect those uses. *See* N.C. Gen. Stat. § 143-214.1(c); 15A NCAC 2B .0101 & 2B .0201.

10. Pursuant to N.C. Gen. Stat. §§ 143-214.1 and 143-215.3(a)(1), the Commission has promulgated water quality standards protecting the best uses of waters such as Ramey Creek, Roaring Fork, Big Pine Creek, and their tributaries in Chapter 2B of Title 15A of the North Carolina Administrative Code (“2B Standards”). A list of the most recent schedule of classifications and water quality standards for the Yadkin River Basin, which includes Ramey

Creek and Roaring Fork, may be found at [https://files.nc.gov/ncdeq/Water%20Quality/Planning/CSU/Surface%20Water/River%20Basin%20Water%20Quality%20Classifications%20as%20of%20Dec%209%202013/Yadkin\\_Hydro\\_order.pdf](https://files.nc.gov/ncdeq/Water%20Quality/Planning/CSU/Surface%20Water/River%20Basin%20Water%20Quality%20Classifications%20as%20of%20Dec%209%202013/Yadkin_Hydro_order.pdf). A list of the most recent schedule of classifications and water quality standards for the New River Basin, which includes Big Pine Creek, may be found at [https://files.nc.gov/ncdeq/Water%20Quality/Planning/CSU/Surface%20Water/River%20Basin%20Water%20Quality%20Classifications%20as%20of%20Dec%209%202013/New\\_Hydro\\_order.pdf](https://files.nc.gov/ncdeq/Water%20Quality/Planning/CSU/Surface%20Water/River%20Basin%20Water%20Quality%20Classifications%20as%20of%20Dec%209%202013/New_Hydro_order.pdf).

11. Ramey Creek, Roaring Fork, and their tributaries are classified as Water Supply II (“WS-II”), Trout Waters, and High Quality Waters in the Yadkin River Basin. 15A NCAC 2B .0301(a), (f)(1). Big Pine Creek and its tributaries are classified as Class C, Trout Waters in the New River Basin. *Id.*

12. The best uses of class WS-II, Trout Waters, and High Quality Waters such as Roaring Fork and Ramey Creek and their tributaries include, but are not limited to, “a source of water supply for drinking, culinary, or food-processing purposes,” as well as “aquatic life propagation, survival, and maintenance of biological integrity (including fishing and fish); wildlife; secondary contact recreation . . . ; [and] agriculture.” 15A NCAC 2B .0214, .0214(1), .0211(1). WS-II waters are generally in predominantly undeveloped watersheds. All WS-II waters are High Quality Waters by supplemental classification. This classification is intended to protect waters which are rated excellent based on biological and physical/chemical characteristics through DWR monitoring or special studies. *See* 15A NCAC 2B .0214, .0214(3); .0224(b)(1) and (3). The waters must remain suitable for those best uses, and any “[s]ources of water pollution

that preclude *any* of these uses on *either a short term or long term basis* shall be deemed to violate a water quality standard.” 15A NCAC 2B .0211(2) (emphasis added).

13. Land-clearing activities can cause erosion and increase the amount of sediment in streams. Excess sedimentation in streams is a continuing concern in this State and can be a serious problem for aquatic species such as mussels and fish. While some sediment input is expected, excessive amounts can smother invertebrates, clog fish gills, destroy fish-spawning areas, reduce survival of fish eggs and larvae, overwhelm the filtering capacity of mussels, and lower overall diversity and abundance of aquatic life. Pollutants such as toxins, bacteria, and nutrients—particularly phosphorus—bind to sediment particles and are transported into streams, where they can accumulate in the sediment and impact aquatic organisms.

14. “Oils, deleterious substances, or colored or other wastes” such as sediment may be present in waters only in “such amounts as shall not render the waters injurious to public health, secondary recreation, or to aquatic life and wildlife, or adversely affect the palatability of fish, aesthetic quality or impair the waters for any designated uses.” 15A NCAC 2B .0211(12).

15. Water temperature is also important to the maintenance of the aquatic ecosystem necessary for trout and other aquatic species. Forested buffers adjacent to streams are important measures in regulating water temperature of streams. Clearing of the vegetated buffers may result in increased temperatures. In Trout Waters, the temperature is not to, in any case, “exceed 20 degrees C (68 degrees F).” 15A NCAC 2B .0211(18). A twenty-five (25) foot vegetated buffer is recognized as protective of trout waters in the context of the Sedimentation Pollution Control Act. N.C. Gen. Stat. § 113A-57(1).

16. Turbidity measures the relative clarity of water. Suspended matter, such as

sediment particles, causes waters to be turbid. Pursuant to 15A NCAC 2B .0211(21), turbidity in waters “shall not exceed . . . 10 NTU [“Nephelometric Turbidity Units”] in streams, lakes, or reservoirs designated as trout waters” unless “turbidity exceeds these levels due to natural background conditions,” in which case “the existing turbidity level shall not be increased.”

17. Uses of wetlands are also regulated in North Carolina. Wetlands have numerous uses, including “[s]torm and flood water storage and retention; . . . [f]iltration or storage of sediments, nutrients, toxic substances, or other pollutants that would otherwise have an adverse impact . . . on the quality of other waters of the State; [h]abitat for propagation of resident wetland-dependent aquatic organisms . . . [and] wetland-dependent wildlife species . . . .” 15A NCAC 2B .0231(b). North Carolina’s water quality standards for wetlands require that “Liquids, fill or other solids, or . . . [f]loating or submerged debris, oil, deleterious substances, or other material shall not be present in amounts that may cause adverse impacts on existing wetland uses.” 15A NCAC 2B .0231(c).

18. In order to place (or “discharge”) fill material into “waters of the United States” (including wetlands at issue here), Section 404 of the Clean Water Act (“CWA”) requires a permit (“404 Permit”) from the U.S. Army Corps of Engineers (“Corps”). CWA § 404, 33 U.S.C. § 1344.

19. Under the cooperative federalism structure of the CWA, the Corps cannot issue a 404 Permit until the State either certifies, or waives its right to certify, that the discharge to be authorized by the 404 Permit will not violate State water quality standards. CWA § 401, 33 U.S.C. § 1341. This certification is known as a 401 Water Quality Certification. DWR may place conditions in a 401 Water Quality Certification in order to ensure state water quality standards will be met, and the Corps must incorporate DWR’s conditions into any 404 Permit that it issues. *See*



CWA § 401(d), 33 U.S.C. § 1341(d); *see also* 15A NCAC 2H .0507(5)(c).

20. In general, installation of culverts in streams requires application for and coverage under such a 404 Permit, as well as an application to and issuance of a corresponding 401 Water Quality Certification. There is an exemption from these requirements under Section 404(f)(1) of the Clean Water Act for farm roads, but only where the culvert is installed so that “that flow and circulation patterns and chemical and biological characteristics of waters of the U.S. are not impaired and that the reach of the waters of the U.S. is not reduced, and that any adverse effect on the aquatic environment are minimized.” CWA § 404(f)(1)(E); 33 U.S.C. § 1344(f)(1)(E). In other words, if the culvert is not installed in this manner, a 404 Permit and 401 Water Quality Certification are required.

21. Whenever DEQ has reasonable cause to believe that any person has violated or is threatening to violate any of the provisions of the State’s environmental laws or regulations, including State water quality laws and rules, DEQ is authorized to “request the Attorney General to institute a civil action in the name of the State upon the relation of [DEQ] for injunctive relief to restrain the violation or threatened violation.” N.C. Gen. Stat. § 143-215.6C. That section further provides that “[u]pon a determination by the court that the alleged violation of the provisions of this Part or the regulations of the Commission has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation.” N.C. Gen. Stat. § 143-215.6C.

22. When the State brings an action to vindicate the public interest pursuant to a statute which provides for injunctive relief to abate violations of law, the usual test for issuance of injunctions need not be met. *State ex rel. Edmisten v. Challenge, Inc.*, 54 N.C. App. 513, 521–22,



284 S.E.2d 333, 338–39 (1981) (explaining that irreparable harm need not be established by the State as long as the statutory conditions for issuance of a preliminary injunction exist); *State ex rel. Morgan v. Dare To Be Great, Inc.*, 15 N.C. App. 275, 189 S.E.2d 802 (1972) (negating the general rule that there will be no equitable relief if there is an adequate remedy at law when the statutory scheme provided the State with injunctive relief under the circumstances presented). For example, the State is not required to show actual injury, such as irreparable harm, in order to obtain injunctive relief, including a preliminary injunction. Rather, it must show only that the violative acts or practices adversely affect the public interest. *See Challenge, Inc.*, 54 N.C. App. at 521–22, 284 S.E.2d at 338–39. An adverse effect on the public interest exists as a matter of law where the statutory conditions for issuance of injunctive relief are present, i.e., where a violation of the applicable statute or regulations exists or is threatened. *Id.* at 522, 284 S.E.2d at 339.

#### ***Factual Allegations***

23. Defendant Bottomley Properties owns Parcel A and Parcel C located in Surry and Alleghany Counties, as well as Parcel B, located in Alleghany County. Parcels A, B, and C are contiguous. Parcel A is approximately 80 acres; Parcel B is approximately 78 acres; and Parcel C is approximately 141 acres. Defendants Bottomley Properties, NC, LLC, and Bottomley Evergreens & Farms, Inc. own Parcel D, located in Alleghany County. Parcel D is approximately 71 acres, and located a short distance away from Parcels A-C.

24. These parcels drain to waters in Surry and Alleghany Counties. A topographic map of the parcels with relevant stream segments labelled is attached hereto as Exhibit 9 and is incorporated herein by reference. These waters are all classified as Trout Waters. Furthermore, Ramey Creek, Roaring Fork, and their tributaries have one of highest classifications possible as

Water Supply II (“WS-II”), Trout Waters, and High Quality Waters. In other words, these pristine waters serve as a resource for not only normal uses but also for drinking water and trout habitat. 15A NCAC 2B .0301(a), (f)(1). Upon information and belief, the North Carolina Wildlife Resources Commission (“Wildlife Resources Commission”) has also identified Ramey Creek in particular as home to an important genetic strain of North Carolina native Brook Trout.

25. DWR staff conducted inspections on October 19, 2020, and February 9, March 30, June 9, June 24, and June 28, 2021. Upon information and belief, Defendants are conducting land-clearing activities on all four parcels for the purposes of converting what had previously been mostly forested land into pasture for cattle.

26. On October 19, 2020, DWR staff conducted an initial site inspection of Parcels A, B, and C, as a result of a complaint about sedimentation in the streams. Staff observed that land clearing activities had occurred on the majority of Parcel A, and that the cleared area on the north side of the parcel had been seeded to allow groundcover to take hold. In other areas of Parcel A, land-clearing activities appeared to be ongoing. DWR observed that significant sedimentation damage had occurred in an unnamed tributary to Ramey Creek (labeled on Exhibit 9 as “UT3 to Ramey Creek”). This stream is classified as Water Supply II, High Quality Waters, and Trout Waters. Sediment had been discharged to this stream at depths of 1 to 3 inches covering 500 linear feet of the stream, in violation of 15A NCAC 2B .0211(2) and 15A NCAC 2B .0211(12). A true and accurate copy of the October 19, 2020 inspection report and representative photographs from the October 19, 2020 inspection are attached hereto as Exhibits 10 and 11, respectively, and are incorporated herein by reference:

27. Based on the violations observed on October 19, 2020, DWR issued a Notice of

Violation to Bottomley Properties on or around November 13, 2020 (“First Notice of Violation”). A true and accurate copy of the First Notice of Violation is attached hereto as Exhibit 12 and incorporated herein by reference. The Notice of Violation explained that the conditions observed by DWR staff on June 12, 2020 constituted the following violations:

- a. Removal of the best usage of surface waters in violation of 15A NCAC 2B .0211(2);
- b. Sediment waste in amounts injurious to, among other things, aquatic life in violation of 15A NCAC .0211(12).

The notice furthermore expressed DWR’s concern that some of the measures apparently intended to prevent sedimentation damage to waters (known as “best management practices” or “BMPs”) were mostly full and required maintenance, and that one of the BMPs had partially failed.

28. The First Notice of Violation requested that Bottomley Properties respond within thirty (30) days and that the response address the following:

- a. Repair the partially failed BMP intended to capture sediment flowing to Roaring Fork;
- b. Reshape and stabilize the erosional gully below the failed BMP referenced in (a) above;
- c. Provide to DWR a plan for regular maintenance of the BMP intended to capture sediment flowing to UT3;
- d. Take action to stabilize the sediment coming off all land that had been cleared, which may include maintenance or replacement of previously installed sedimentation and erosion control measures; and

- e. Provide to DWR a plan of action for future stabilization as land-clearing activities move forward to prevent further damage to waters.

*See Exhibit 12 at 2.*

29. A follow-up site inspection of parcels A, B, and C was conducted by DWR staff on February 9, 2021. Mitchell Bottomley, President of Bottomley Properties, was present for a portion of that site inspection. At the time of the follow-up inspection, DWR had not received a response to the First Notice of Violation. Moreover, DWR staff confirmed that, nearly three months after the First Notice of Violation was issued, action had not been taken to address the problems identified in the First Notice of Violation. The BMP referenced in the First Notice of Violation had still not been maintained and was actively failing, and additional BMPs did not appear to be maintained and were at risk of failing. Land-clearing had continued on Parcels A, B, and C regardless. A true and accurate copy of the February 9, 2021 inspection report from the February 9, 2021 inspection is attached hereto as Exhibit 13 and is incorporated herein by reference.

30. DWR received a response to the First Notice of Violation dated March 10, 2021 (“Response”), nearly four months after DWR issued the First Notice of Violation and requested a response to the same within 30 days. A true and accurate copy of the Response is attached hereto as Exhibit 14 and incorporated herein by reference. In the Response, Bottomley Properties alleged that the weather had “inhibited [its] ability to make the necessary repairs” but that it was the company’s “intent to have the violations corrected by April 15, . . . weather permitting.” Exhibit 14 at 1.

31. In response to the requests for plans to ensure future damage would be prevented, Bottomley Properties did not provide plans or offer a date by which such plans would be provided.

Instead, Bottomley Properties either repeated the claim that weather had prevented the necessary repairs from taking place, or stated that critical areas would be monitored routinely to insure they remained seeded and not disturbed. Exhibit 14 at 2.

32. On March 30, 2021 DWR staff visited streams adjacent to Bottomley Road downslope of Parcels A, B and C to assess site conditions for a possible long-term biological survey of Ramey Creek and Roaring Fork, to which unnamed tributaries on those parcels drain. During the March 30, 2021 site visit, DWR staff observed that additional land-clearing of Parcel B and Parcel C and along Ramey Creek had occurred immediately adjacent to and up to the top of stream banks along Ramey Creek and tributaries within the subject parcels.

33. At the March 30, 2021 site visit, DWR staff also noted that a multiple-pipe culverted stream crossing approximately 30 feet in length had been installed on Parcel C within an unnamed tributary to Ramey Creek. DWR staff could not fully assess these pipes at the time due to vegetative debris blocking the pipes. A true and accurate copy of a photograph from the February 9, 2021 inspection is attached hereto as Exhibit 15 and is incorporated herein by reference.

34. On June 3, 2021 DWR received a referral from the Wildlife Resources Commission regarding concerns of high turbidity within streams adjacent to and within Parcels B and C and from additional recent land-clearing activities on Parcel D, which drains to both Ramey Creek and Big Pine Creek.

35. In response to the referral, DWR conducted an inspection of all four of Defendants' parcels on June 9, 2021. Mr. Bottomley was present during the site inspection. DWR observed that additional land-clearing had occurred on parcels B, C, and D right up to the bank of the streams

with no vegetated buffer, and these activities had been allowed to discharge large amounts of sediment into Ramey Creek and into multiple unnamed tributaries to Ramey Creek including but not limited to UT1 to Ramey Creek.

36. At the time of the June 9 inspection, on Parcel D, there was no evidence of any sedimentation and erosion control measures, agricultural best management practices, or forestry best management practices being used to retain sediment on site and prevent damage to nearby waters. Furthermore, DWR staff observed that the corrective actions required by the First Notice of Violation sent in November of 2020 still had yet to be undertaken. The BMPs on Parcel A still did not appear to be maintained, and there was evidence that these BMPs were failing during rain events.

37. DWR staff noted that the stream crossing first observed during the March 30 site visit had been installed in violation of water quality standards in the following ways:

- a. the pipes were situated above the elevation of the stream bottom, presenting a physical barrier to the passage of fish and other aquatic life through the culvert; and
- b. multiple pipes had been installed, altering the stream's depth due to overwidening of the stream within the culvert, which adversely affects the aquatic habitat for fish and other organisms.

Section 404(f)(1) of the Clean Water Act provides that culverts installed for farm roads are exempt from the 404 Permit requirement only if “flow and circulation patterns and chemical and biological characteristics of waters of the U.S. are not impaired and . . . the reach of the waters of the U.S. is not reduced, and that any adverse effect on the aquatic environment are minimized.” Based on

DWR staff's observations, upon information and belief, the manner of the culvert installation impairs flow, circulation patterns, and biological characteristics, and does not minimize the adverse effect on the aquatic environment, and therefore does not meet the criteria for exemption from the requirement to obtain a 404 Permit and 401 Water Quality Certification. The culvert installation occurred without the issuance of a 401 Water Quality Certification. A true and accurate copy of the June 9, 2021 inspection report and representative photographs from the June 9, 2021 inspection are attached hereto as Exhibits 16 and 17, respectively, and are incorporated herein by reference.

38. On June 24, 2021, DWR staff conducted a site inspection of the four parcels. At this site inspection, DWR staff observed that further land-clearing had occurred on Parcel D in the area draining to Big Pine Creek. A true and accurate copy of the June 24, 2021 inspection report and representative photographs from the June 24, 2021 inspection are attached hereto as Exhibits 18 and 19, respectively, and are incorporated herein by reference.

39. On the June 24 site inspection, DWR staff noted that some sedimentation and erosion control measures had recently been installed on Parcel D. The only stream bank stabilization efforts on any of the four parcels was synthetic fiber material, which is not a DWR-approved material for use on stream banks, along a portion of Big Pine Creek on Parcel D. The use of this material was not sufficient to retain sediment or stabilize the stream channel, and so left the area subject to continued sediment loss into nearby waters. Much of the rest of the land-clearing activity on Parcels B and C was subject to insufficient or poorly maintained sedimentation and erosion control measures to retain sediment on site and prevent damage to nearby waters.

40. During this June 24, 2021 site inspection as well as on a subsequent June 28, 2021

site inspection, DWR staff also measured the length and depth of sediment discharged into streams from Defendants' land-clearing activities. The violations observed constituted some of the most extensive sedimentation damage to waters the DWR staff involved in this matter have ever seen. Sediment had been discharged to seven (7) different streams and two wetland areas from Defendants' land-clearing activities on the four parcels. In total, there was sediment damage to approximately 17,530 linear feet of streams, with sediment in depths that ranged from 3 inches to as much as two feet. Sediment had also infiltrated wetland areas covering approximately 3/4 of an acre.

41. The extraordinary amount of sediment being discharged from Defendants' properties was landing in some of North Carolina's most pristine waters—prime habitat for trout and other aquatic life. Not only are the waters receiving Defendants' sedimentation pollution classified as suitable to provide a source of drinking water and habitat for trout, upon information and belief Ramey Creek in particular has been identified by the Wildlife Resources Commission as containing an important genetic strain of North Carolina native Brook Trout.

42. Upon information and belief, due to the significant risk that trout in nearby waters would not survive the massive surge of sedimentation pollution being discharged by Defendants and the increase to in-stream temperatures resulting from Defendants' removal of the protective streamside canopy, Wildlife Resources Commission staff removed and relocated approximately 100 trout from Ramey Creek over the course of two days in June.

43. On June 28, 2021, DWR staff conducted water quality sampling. DWR's water quality samples show several temperature exceedances above the maximum allowable temperature of 20°C. 15A NCAC 2B .0211(18). Clear-cutting trees near the border of streams removes shade



and can cause water temperatures to exceed the regulatory limit for trout waters. A chart showing DWR's sampling data is attached as Attachment A to the Notice of Violation sent to Bottomley Properties on or around June 30, 2021 ("Second Notice of Violation"). The Second Notice of Violation is attached hereto as Exhibit 20 and is incorporated herein by reference.

44. Sampling data taken by the Wildlife Resources Commission indicated that streams receiving sediment from Defendants' parcels had violations of the 10 NTU turbidity standard for Trout Waters on multiple dates in May and June of 2021, while land-disturbing activities were being conducted without sufficient controls or best management practices. The Wildlife Resources Commission's sampling data is attached as Attachment C to Exhibit 20. On some dates, the amount of turbidity exceeded the measuring equipment's capacity to read. Exhibit 20, Attachment C.

45. Based on the violations observed on June 9, 24, and 28, 2021 as well as those observed on various dates by the Wildlife Resources Commission, DWR issued the Second Notice of Violation. *See* Exhibit 20. The Second Notice of Violation explained that the conditions observed by DWR staff on June 9, 24, and 28, 2021 constituted the following violations:

- a. Violation of 15A NCAC 2B .0211 (2) and (12) from approximately 17,530 linear feet of streams overwhelmed by sediment;
- b. Violation of 15A NCAC 2B .0231(c) from approximately 3/4 of an acre of wetlands impacted by sedimentation pollution;
- c. Violation of 15A NCAC 2B .0211(21) from exceedance of the turbidity standard in Trout Waters;
- d. Violation of 15A NCAC 2B .0211(18) from exceedance of the 20° C (68

degrees F) temperature standard for Trout Waters; and

- e. Failure to obtain a 401 Water Quality Certification for a stream culvert installation that, upon information and belief, did not meet the criteria under Section 404(f) of the Clean Water Act for an exception to the requirement to obtain the same.

46. The Second Notice of Violation requested that Bottomley Properties respond within ten (10) business days and that the response address the following:

- a. Submit the plans and address the unresolved violations from the First Notice of Violation in the manner requested therein;
- b. Provide to DWR a sediment removal plan and stream restoration plan for Big Pine Creek within Parcel D, UT1 to Ramey Creek within Parcel D, and the upper portion of UT4 to Ramey Creek within Parcel C;
- c. Provide to DWR a sediment and erosion control management plan to avoid future sediment loss and further damage to receiving streams; and
- d. Obtain a delineation of the wetland areas and a determination regarding whether the stream crossing on Parcel C requires additional approvals from the U.S. Army Corps of Engineers.

Exhibit 20 at 5-6.

47. On or around July 15, 2021, DWR received a response to the Second Notice of Violation (“Second Response”) through counsel for Defendant Bottomley Evergreens. A true and accurate copy of the Second Response is attached hereto as Exhibit 21 and incorporated herein by reference. In the Second Response, Bottomley Evergreens stated that site stabilization efforts were

underway, but failed to submit any of the plans requested by the First and Second Notices of Violation, and did not indicate that Bottomley Evergreens had contacted or intended to contact the U.S. Army Corps of Engineers as required in the Second Notice of Violation.

48. In a letter dated July 23, 2021, DWR notified Defendants that the Second Response did not sufficiently address the violations set forth in the First and Second Notices of Violation for the reasons noted above. A true and accurate copy of the DWR's letter is attached hereto as Exhibit 22 and incorporated herein by reference. DWR noted that the original deadline for a response to the Second Notice of Violation had passed on July 20, 2021, and requested an updated response by no later than August 5.

49. On August 4, 2021, DWR staff conducted an additional site inspection of the four parcels. A consultant recently hired to work on erosion control at the four parcels, was present, among others. Significant site stabilization work had been performed on the southern portion of Parcel A as well as on parcels B and C. However, the BMPs on Parcel A had still not been maintained despite repeated requests since November 13, 2020, leaving streams downgradient of those measures at risk of further sediment damage. DWR discussed with the consultant potential proposals for stabilization of these BMPs. DWR further noted that cows on Parcel A were not fenced out of a stream tributary, and appeared to be causing water quality standards violations in the tributary. Based on DWR's conversations with the consultant at the site regarding the expected updated response to the Second Notice of Violation, it was unclear to DWR what the updated response would include.

50. During the August 4 site visit, a representative of the U.S. Army Corps of Engineers confirmed that the stream culvert installed on Parcel C did not comply with the exemption for farm

roads under Section 404(f) of the Clean Water Act.

51. On August 5, 2021, the consultant requested from DWR an extension of time to submit an updated response to the June 30 Second Notice of Violation. Rather than submitting the updated response by August 5, 2021 as requested, the consultant proposed to submit the updated response by August 20, 2021.

#### **CLAIM FOR RELIEF**

52. The allegations contained in Paragraphs 1 through 51 are incorporated into this claim for relief as if fully set forth herein.

53. Upon information and belief, Defendant has failed to correct many of the violations noted in First and Second Notices of Violation. Defendant remains in violation of the State's water quality laws.

54. Defendants' failure to correct these violations constitutes a continuing violation of the State's water quality laws that adversely affects the public interest as described in N.C. Gen. Stat. § 143-211.

55. Defendants' repeated violations of State water quality law demonstrate that there is a threat of future violations at the Site.

56. The State is entitled to preliminary and permanent injunctive relief against Defendants to abate the ongoing violations and to prevent the threatened violations set forth in this complaint pursuant to N.C. Gen. Stat. § 143-215.6C.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, State of North Carolina, prays that the Court grant the following relief:

1. That this verified Complaint be used as an affidavit upon which to base all orders of the Court.
2. That the Court preliminarily, and upon final judgment permanently, enter a prohibitory and/or mandatory injunction requiring Defendants to:
  - a. Immediately:
    - i. Prevent future violations of State water quality law at Parcels A, B, C, and D, including preventing any discharges of sediment to waters of the State from those parcels;
    - ii. Provide written notification to the DWR Winston-Salem Regional Office within forty-eight (48) hours of any unauthorized discharges of fill, sediment, or other wastes to waters of the State.
  - b. Within 30 calendar days:
    - i. Submit to DWR for review and approval (which may include conditions) a plan to address the portions of Parcel A referenced in the First Notice of Violation. This plan should detail how Defendants will ensure that sediment from those portions of Parcel A will not reach surface waters.
    - ii. Submit to DWR for review and approval (which may include conditions) a complete sediment removal and stream restoration plan (“Remediation Plan”) for Big Pine Creek within Parcel D, UT1 to Ramey Creek within Parcel D, and the upper portion of UT4 to Ramey Creek within Parcel C (“Waters to Be Restored”). In order to be

considered complete, the Remediation Plan must, at a minimum:

1. Be created by, or under the guidance or direction of, a knowledgeable stream restoration consultant;
2. Provide for removal of sediment impacts to the Waters to Be Restored:
  - a. The sediment must be removed from the Waters to Be Restored, taken to uplands at least 50 feet away from the stream channel and wetland areas and properly stabilized to prevent erosion back into the stream feature;
  - b. Hand labor (buckets, shovels and wheelbarrows) should be used to remove deposited sediment from the stream channel and wetland areas. However, if mechanized equipment is proposed, the plan should clearly indicate in which specific areas the equipment is to be used;
  - c. The plan should describe in detail how sediment will be removed down to the original grade without disturbing the original stream bed.
3. Detail how Defendants will bring the culverted stream crossing on Parcel C into compliance with Section 404(f) of the Clean Water Act;
4. Detail the measures that will be used for temporary stabilization/sediment control while the restoration work is

underway;

5. Provide for restoration of the streams to natural channel conditions, including plan and profile dimensions as expected from reference reach information available for similar location, slopes and watershed sizes;
6. Provide a detailed schedule with dates by which each sediment removal and restoration activity will be accomplished;
7. Demonstrate confirmation from the U.S. Army Corps of Engineers regarding whether a 404 Permit is necessary for the required restoration activities;
8. Provide a complete monitoring and reporting plan containing, at a minimum:
  - a. A monitoring timeline that begins upon the completion of remediation plan and continues for a minimum of three (3) years;
  - b. Clearly established monitoring stations on all stream features and wetland areas;
  - c. Routine field inspections, which must be documented by written accounts of whether the streams have become unstable or if remediation and stabilization efforts for streams have failed or are failing;
  - d. Quarterly (March, June, September, and December)

inspection and review of the restored streams;

- e. Monitoring reports to be submitted annually, by June 1 of each year, to DWR's Winston Salem Regional Office.

These reports must describe each quarterly inspection result, include photographs of each station, include the date of the inspection, and describe any repairs or corrections including dates of completion.

- iii. Submit a plan to plant buffers at least 25 feet wide with native hardwood bare root seedlings along both sides of all stream features within the four parcels, as determined by DWR ("Temperature Restoration Plan") in order to help prevent sediment runoff to streams and restore streams to the proper temperature for trout. The Temperature Restoration Plan must include:

1. Provide a detailed schedule with dates by which each activity will be accomplished;
2. Specify the location and type of trees to be planted; and
3. The final performance standard shall be a minimum of 260 stems per acre at the completion of five years of monitoring (or sooner if approved by DWR).

- iv. Submit to DWR for review and approval (which may include conditions) a sedimentation control management plan for all drainage areas that do not have permanent groundcover sufficient to restrain



erosion (“Site Management Plan”):

1. The Site Management Plan shall propose additional remedial measures if current measures are not sufficient to prevent sediment runoff to streams or wetlands. These measures may include agricultural or silvicultural best management practices, or traditional sedimentation and erosion control measures as recommended by the North Carolina Erosion and Sediment Control Planning and Design Manual issued by NC Division of Energy, Mineral and Land Resources, or a combination of these practices;
2. The Site Management Plan shall include detailed information regarding inspection and maintenance specifications for each measure being utilized;
3. The Site Management Plan shall include for regular inspection and maintenance of all measures, including inspections of all measures after any precipitation event with over 1 inch in a 24-hour period, until drainage areas have permanent groundcover sufficient to restrain erosion coverage as determined by DWR; and
4. The Site Management Plan shall include the submission of monthly reports to DWR describing the inspections performed during the prior month, the conditions observed during each

inspection, and the actions taken to address those conditions.

- c. Upon observing degradation of riparian areas, or streams, or unstable, eroding, or rilled areas, or dead plantings, Defendants shall undertake repairs or maintenance within 14 days of observation. Such repair and maintenance shall be completed within 30 days of observation unless written approval is obtained from DWR for a longer period to make such repairs or perform such maintenance.
- d. No work shall be conducted within the impacted stream channels and wetlands until the Remediation Plan has been reviewed and approved by DWR.
- e. If DWR requires plan revisions in order for either of the plans listed above to be approved, Defendants shall resubmit the plan incorporating said revisions within 15 days of written notification by DWR that such revisions are required.
- f. Once each is approved (the Remediation Plan, the Site Management Plan, and the Temperature Restoration Plan, including any conditions added by DWR to each), execute each plan in accordance with the schedule and dates included therein, but implementation of each plan must be completed by no later than 120 days from receipt of written approval of said plan from DWR.
- g. Within 30 calendar days of implementation of the Remediation Plan, submit a final report documenting the results of the activities set forth in the plan.
- h. Unless otherwise indicated, submit plans and reports referenced above to:

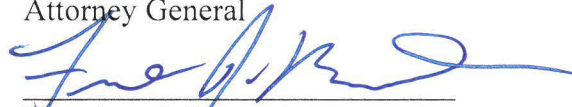
Sue Homewood, DWR  
[Sue.Homewood@ncdenr.gov](mailto:Sue.Homewood@ncdenr.gov)

- i. Prior to the transfer of any of the parcels that are necessary for restoration or monitoring activities listed above, provide for adequate access to said parcels for Defendants or their authorized agents for the duration of the activities required by the approved plans referenced above, including but not limited to monitoring activities and any future maintenance activities.
  - j. Fence any cattle on the four parcels out of the streams and provide an alternative water source to prevent additional degradation and impacts to surface waters.
3. That the cost of this action, including attorneys' fees, if allowable, be taxed against Defendants.
4. That this Court grant such other and further relief as the Court shall deem to be just and proper.

Respectfully submitted this the 5<sup>th</sup> day of August, 2021.

JOSHUA H. STEIN  
Attorney General

By:



Francisco J. Benzoni  
Special Deputy Attorney General  
N.C. State Bar No. 38660  
fbenzoni@ncdoj.gov

Brenda Menard  
Special Deputy Attorney General  
N.C. State Bar No. 35445  
bmenard@ncdoj.gov

N.C. Department of Justice  
Environmental Division  
PO Box 629  
Raleigh, NC 27602  
(919)716-6972 (phone)  
(919)716-6767 (fax)  
*Attorney for Plaintiff*

**VERIFICATION**

NICOLE A. MAHER being duly sworn, deposes and says she is an Environmental Specialist I with the North Carolina Department of Environmental Quality, that she has read the foregoing COMPLAINT AND MOTION FOR PRELIMINARY INJUNCTIVE RELIEF and that she is acquainted with the facts and circumstances stated therein; that the same is true of her own knowledge except as to those matters and things stated and alleged upon information and belief, and as to those matters and things she believes them to be true.

This, the 5<sup>th</sup> day of August 2021.

*Nicole A. Maher*  
\_\_\_\_\_  
NICOLE A. MAHER

Subscribed and sworn to before me

this the 5<sup>th</sup> day of August, 2021.

*Paula Chappell*  
\_\_\_\_\_  
Notary Public

My Commission Expires: 10/30/24

