



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

1595 Wynkoop Street  
DENVER, CO 80202-1129  
Phone 800-227-8917  
<http://www.epa.gov/region08>

MAR - 5 2008

Ref: 8ENF-W

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**#7005-1160-0005-3398-1168**

David J. Paulson  
Northeast Ridge Development Company  
16621 94 1/2 R Street, SE  
Hankinson, North Dakota 58041

Re: Notice of Proposed Assessment of  
Class II Civil Penalty  
Docket No. **CWA-08-2008-0009**

Dear Mr. Paulson:

Enclosed is a document entitled Administrative Complaint and Notice of Opportunity for Hearing ("Complaint"). The United States Environmental Protection Agency ("EPA") is issuing this Complaint against Northeast Ridge Development Company (the "Respondent") pursuant to section 309 of the Clean Water Act (the "Act"), 33 U.S.C. § 1319. In the Complaint, EPA alleges that the Respondent violated section 301 of the Act, 33 U.S.C. § 1311, by discharging, without authorization, dredged and/or fill material into Lake Elsie, including its adjacent wetlands, on property owned by Respondent in Richland County, North Dakota. The Complaint proposes that a penalty of \$85,000 be assessed for these violations.

The Respondent has the right to a hearing to, among other things, contest the factual allegations in the Complaint. We have enclosed a copy of 40 C.F.R. Part 22, which identifies the procedures EPA follows in Class II penalty assessments. Please note the requirements for an answer to the Complaint in 40 C.F.R. § 22.15(b).

**If the Respondent wishes to contest the allegations in the Complaint or the penalty proposed in the Complaint, it must file an answer within thirty (30) days of receipt of the enclosed Complaint to the EPA Region 8 Hearing Clerk at the following address:**

Regional Hearing Clerk (8RC)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, Colorado 80202-1129



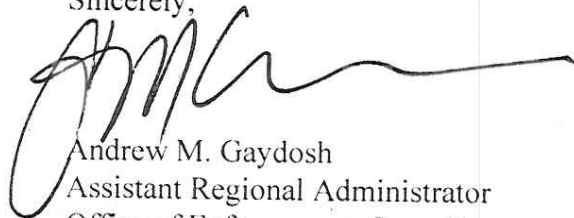
Printed on Recycled Paper

If the Respondent does not file an answer by the applicable deadline, it may be found in default. 40 C.F.R. § 22.17(a). A default judgment may impose the full penalty proposed in the Complaint. 40 C.F.R. § 22.17(b).

EPA encourages settlement of these proceedings at any time prior to a formal hearing if the settlement is consistent with the provisions and objectives of the Act and applicable regulations [See 40 C.F.R. § 22.18]. If a mutually satisfactory settlement can be reached, it will be formalized in a Consent Agreement. Upon final approval of the Consent Agreement by the Regional Judicial Officer, settling Respondent will be bound by the terms of the Consent Agreement and will waive its right to a hearing on, and judicial appeal of, the agreed upon civil penalty. Respondent has the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but this is not required.

**Please note that arranging for a settlement meeting does not relieve Respondent of the need to file a timely answer to EPA's Complaint.** If Respondent wishes to discuss settlement of this matter, the most knowledgeable person on my staff for legal issues is Sheldon Muller, Enforcement Attorney, who can be reached at 303-312-6916. The most knowledgeable person on my staff for technical issues is Kenneth Champagne, Section 404 Enforcement Officer, who can be reached at 303-312-6608. We urge your prompt attention to this matter.

Sincerely,



Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance  
and Environmental Justice

Enclosures:

1. Administrative Complaint
2. Certificate of Service
3. Consolidated Rules of Practice (40 C.F.R. Part 22)
4. SBREFA Information Sheet

cc: Tina Artemis, EPA - Regional Hearing Clerk  
R.E.T. Smith, Esq.  
Dennis Fewless, NDDH  
David LaGrone, U.S. Army Corps of Engineers  
Daniel Cimarosti, U.S. Army Corps of Engineers



## II. STATUTORY AND REGULATORY FRAMEWORK

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

3. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant by any person except as in compliance with, *inter alia*, section 404 of the Act, 33 U.S.C. § 1344.

4. Section 404 of the Act, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers of the United States Army Corps of Engineers ("Corps"), to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into navigable waters, which are defined in the Act as waters of the United States.

5. 33 C.F.R. § 323.3(a) specifies that, unless exempted pursuant to 33 C.F.R. § 323.4, a permit issued by the Corps is required for the discharge of dredged or fill material into waters of the United States.

6. The terms "discharge of a pollutant" and "discharge of pollutants" are defined in section 502(12) of the Act to each mean, in pertinent part, "any addition of any pollutant to navigable waters from any point source . . . ." 33 U.S.C. § 1362(12).

7. Section 502(6) of the Act defines "pollutant" as "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6).

8. "Fill material" is defined in 33 C.F.R. § 323.2(e)(1) as "material placed in waters of the United States where the material has the effect of: (i) Replacing any portion of a water of

the United States with dry land; or (ii) Changing the bottom elevation of any portion of a water of the United States.” 33 C.F.R. § 323.2(e)(2) sets forth examples of fill material which include “rock, sand, soil, clay, plastics, construction debris, wood chips . . . .”

9. “Dredged material” is defined in 33 C.F.R. §323.2(c) as “material that is excavated or dredged from waters of the United States.”

10. “Discharge of fill material” is defined, in pertinent part, in 33 C.F.R. § 323.2(f) as “the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary for the construction of any structure or infrastructure in a water of the United States; the building of any structure, infrastructure, or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, or other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; . . . .”

11. “Discharge of dredged material” is defined, in pertinent part, in 33 C.F.R. § 323.2(d) as “any addition of dredged material into, including any redeposit of dredged material other than incidental fallback within, the waters of the United States. The term includes, but is not limited to, . . . [t]he addition of dredged material to a specified discharge site located in waters of the United States . . . and [a]ny addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.”

12. "Point source" is defined, in pertinent part, in section 502(14) of the Act as any discernible, confined and discrete conveyance . . . from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

13. "Navigable waters" is defined in section 502(7) of the Act as "waters of the United States, including the territorial seas." 33 U.S.C. § 1362(7).

14. "Waters of the United States," as defined in 33 C.F.R. § 328.3(a), includes, *inter alia*: (1) All waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce . . . ; (3) All other waters such as intrastate lakes, . . . the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters: (i) Which are or could be used by interstate or foreign travelers for recreational or other purposes; or (ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce . . . ; [and] (7) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1) through (6) of this section."

15. "Wetlands" is defined in 33 C.F.R. § 328.3(b) as "those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions."

16. "Adjacent" is defined in 33 C.F.R. § 328.3(c) as "bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are 'adjacent wetlands.'"

17. "Person" is defined in section 502(5) of the Act as "an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body." 33 U.S.C. § 1362(5).

18. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. Part 19 authorize the assessment of a Class II civil penalty of up to \$11,000 per day for each violation of section 301 of the Act, 33 U.S.C. § 1311, up to a maximum of \$137,500 for violations which occur on or before March 15, 2004, and up to a maximum of \$157,500 for violations which occur after March 15, 2004.

### **III. GENERAL ALLEGATIONS**

19. Respondent Northeast Ridge Development Company is and was at all times relevant to the Complaint a North Dakota corporation having a registered office address of 16621 94 ½ R Street, SE, Hankinson, North Dakota 58041.

20. David J. Paulson is the registered agent of Northeast Ridge Development Company.

21. Respondent is and was at all times relevant to the Complaint a "person" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).

22. On or about December 2, 1996, David Paulson and John P. Murphy purchased Outlot 3 of North Ridge Lakeshore Lots, Richland County, North Dakota, from Concordia College Corporation.

23. On or about April 15, 1998, Respondent, Northeast Ridge Development Company, was incorporated in North Dakota.

24. On or about April 27, 1998, David Paulson and John P. Murphy conveyed Outlot 3 of North Ridge Lakeshore Lots, Richland County, North Dakota, and a portion of Outlot 2 of North Ridge Lakeshore Lots, Richland County, North Dakota, to Respondent.

25. On or about May 29, 1998, Outlots 2 and 3 of North Ridge Lakeshore Lots, Richland County, North Dakota, were replatted as the Lake Elsie Subdivision.

26. On or about January 16, 2004, a portion of the Lake Elsie Subdivision was replatted as Paulson's Subdivision (the "Site"). The Site consists of blocks 1, 2 and 3 and Outlot F. Respondent is developing a marina and residential subdivision on the Site.

27. At all times relevant to the Complaint, Respondent owned, controlled and/or operated the Site. The Site consists of approximately 17 acres located adjacent to Lake Elsie on the north shore, which is approximately 2 miles southwest of Hankinson, ND.

28. Lake Elsie is currently used, or was used in the past, or may be susceptible to use in interstate or foreign commerce.

29. Lake Elsie is an intrastate lake which is or could be used by interstate or foreign travelers for recreational or other purposes, or from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

30. Lake Elsie is a "water of the United States" within the meaning of 33 C.F.R. § 328.3(a).

31. The Site includes several acres of wetlands. The wetlands on the Site provide, among other benefits, flood attenuation, shoreline protection, water quality protection, and wildlife habitat.



32. The wetlands on the Site, including the wetlands that are the subject of this Complaint, are adjacent to Lake Elsie and therefore are “waters of the United States” within the meaning of 33 C.F.R. § 328.3(a)(7).

33. Pursuant to Section 309(g)(1) of the Act, 33 U.S.C. §1319(g)(1), EPA has consulted with the North Dakota Department of Health, Division of Water Quality, regarding assessment of this administrative penalty by furnishing a copy of this complaint and inviting comments on behalf of the State of North Dakota.

#### **IV. SPECIFIC ALLEGATIONS**

34. On or about February 5, 1997, David Paulson submitted an Application for a Department of the Army permit to the U.S. Army Corps of Engineers’ (“Corps”) North Dakota Regulatory Office, which application proposed the construction of a channel and marina that would impact Lake Elsie and wetlands adjacent to Lake Elsie located on the Site. The Corps assigned #199760033 to the February 5, 1997 application.

35. In a letter to Mr. Paulson dated February 20, 1997, the Corps requested additional information necessary to consider permit application #199760033 complete. The Corps again requested additional information in a letter to Mr. Paulson dated June 6, 1997.

36. Under cover of a letter dated May 19, 1997, the United States Department of Agriculture’s Natural Resources Conservation Service (“NRCS”) provided Respondent’s consultant, Interstate Engineering, with wetland maps for Respondent’s proposed Lake Elsie marina. The NRCS letter stated that “[t]he area of the marina is most certainly a wetland . . .”

37. In a letter to Mr. Paulson dated June 18, 1997, the Corps withdrew permit application #199760033 from its active files, as agreed to by Mr. Paulson during a phone

conversation on June 17, 1997, due to issues regarding United States Fish and Wildlife Service wetland easements on the Site.

38. On or about January 14, 1999, Respondent submitted a second Application for Department of the Army Permit to the Corps, which proposed the construction of a channel, marina, and residential development that would impact Lake Elsie, a channel leading from Lake Elsie through Outlot C of the Lake Elsie Subdivision to the wetlands on the Site, and wetlands adjacent to Lake Elsie located on the Site. The Corps assigned #199960033 to the permit application.

39. In reference to permit application #199960033, the Corps sent letters to Respondent dated February 10, 1999, and March 19, 1999, which requested additional information necessary to consider the permit application complete and indicated that a wetland delineation and a practicable alternatives analysis needed to be provided prior to commencement of permit processing. The Corps again requested this additional information in a letter to Respondent dated April 21, 1999.

40. In a letter dated April 28, 1999, from Respondent's consultant, Interstate Engineering, to the Corps, Interstate Engineering advised that the NRCS would be performing a field wetland delineation of the Site within the next couple of weeks.

41. In a letter dated May 28, 1999, the NRCS advised Respondent's consultant, Interstate Engineering, that the NRCS had performed a wetland determination for the Lake Elsie marina that was the subject of Respondent's Corps permit application. The wetland determination, enclosed with the NRCS's letter, made clear that wetlands were present throughout most of the Site.

42. In a letter to the Corps dated June 14, 1999, Respondent provided two alternatives for the Proposed Lake Elsie Marina project that was the subject of permit application #199960033; both alternatives proposed approximately 4.94 acres of impacts to wetlands on the Site.

43. In a letter to Respondent dated June 18, 1999, the Corps stated that if the project, as then proposed in permit application #199960033, were approved, compensatory mitigation for approximately 4.94 acres of impacts to wetlands would be required; the Corps therefore requested that Respondent submit a conceptual mitigation plan to the Corps for review and evaluation.

44. On September 20, 1999, the Corp issued a public notice for permit application #199960033. The stated purpose of the public notice was to inform the public and other interested parties, and to solicit their comments, regarding the proposed project on the Site. The public notice described the proposed project as the excavation of an inlet channel and marina impacting approximately 3.54 acres of seasonal/semipermanent wetlands, and placement of fill material in approximately 1.40 acres of wetland located adjacent to an existing roadway located on the north side of the proposed marina site in order to build up that roadway.

45. On February 17, 2000, Respondent submitted a mitigation plan to the Corps which proposed the creation of 1.4 acres of wetlands on-site and 3.5 acres of wetlands off-site to compensate for approximately 4.94 acres of impacts to wetlands under permit application #199960033.

46. In a letter to Respondent dated December 7, 2001, the Corps withdrew permit application #199960033 from its permit review process due to Respondent's inability to obtain

water quality certification for the proposed project from the North Dakota Department of Health, as required pursuant to section 401 of the Act, 33 U.S.C. § 1341.

47. On July 13, 2004, and October 6, 2004, the Corps conducted inspections of the Site after receiving a complaint of impacts to wetlands. Based on those inspections and other information, the Corps found, and Complainant hereby alleges, that Respondent and/or its agents discharged dredged and/or fill material into waters of the United States in conjunction with (1) the deepening and widening of an inlet channel through Outlot C of the Lake Elsie Subdivision that connects Lake Elsie and the wetlands at the Site and the placement of riprap materials in the channel and within the ordinary high water mark of Lake Elsie, and (2) the placement of material into the wetlands located in the southeast and northwest portions of the Site.

48. The discharges of dredged and/or fill material described in paragraph 47 of this Complaint were conducted, in part, between September 2003 and July 13, 2004, and, in part, between July 13, 2004 and October 6, 2004.

49. By letter dated November 1, 2004, addressed to Respondent, the Corps found, and EPA hereby alleges, that Respondent's actions, as described in paragraph 47 of this Complaint, required prior Corps authorization and that the required authorization had not been granted. Further, the Corps directed Respondent to "cease and desist any further work within Lake Elsie and its adjacent wetlands."

50. The unauthorized activities set forth in paragraph 47 of this Complaint were components of Mr. Paulson's proposed project under permit application #199760033 and Respondent's proposed project under permit application #199960033. The Corps estimated, and

EPA hereby alleges, that approximately 1.5 acres of waters and wetlands had been filled with dredged and/or fill material without authorization.

51. The activities described in paragraph 47 of this Complaint were performed using common earthmoving vehicles and equipment, all of which were operated by Respondent and/or by one or more individuals on behalf of Respondent.

52. Under cover of a letter dated September 1, 2005, EPA issued Respondent a Findings of Violation and Administrative Order for Compliance, Docket No. CWA-08-2005-0046, requiring Respondent to submit a Restoration Plan for removing the discharged dredged and fill material from Lake Elsie and its adjacent wetlands and restoring Lake Elsie and its adjacent wetlands to their pre-impact configuration and/or grade. EPA's authority for such action is provided under section 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3).

53. On or about May 26, 2006, Respondent's consultant, WPC, Inc., submitted a wetland delineation report for the Site.

54. On or about October 21, 2005, June 15, 2006, September 28, 2006, and December 22, 2006, Respondent submitted iterations of the Restoration Plan which proposed restoration of the impacted wetlands and waters. Based on the May 26, 2006 wetland delineation report, the December 22, 2006 Restoration Plan found that 1.45 acres of wetlands at the Site were filled during construction activities and 0.12 acres of waters of the U.S. were filled during the deepening of the channel leading from Lake Elsie to the wetlands and the installation of rock riprap into this channel.

55. On February 23, 2007, EPA approved Respondent's December 22, 2006 Restoration Plan.

56. Respondent's Restoration Plan has not yet been implemented.

**V. VIOLATION - DISCHARGE OF POLLUTANTS WITHOUT A PERMIT**

57. Paragraphs 1 through 56 are realleged and incorporated herein by reference.

58. The discharged materials described in paragraph 47 of this Complaint are, and were at all times relevant to the Complaint, "fill material" within the meaning of 33 C.F.R. § 323.2(e) and/or "dredged material" within the meaning of 33 C.F.R. § 323.2(c).

59. The discharged materials described in paragraph 47 of this Complaint are, and were at all times relevant to the Complaint, "pollutants" within the meaning of section 502(6) of the Act, 33 U.S.C. § 1362(6).

60. The vehicles and equipment described in paragraph 51 of this Complaint are and were at all times relevant to the Complaint each a "point source" within the meaning of section 502(14) of the Act, 33 U.S.C. § 1362(14).

61. Lake Elsie and its adjacent wetlands, including the wetlands at the Site and the channel located at the Site that connects Lake Elsie to the wetlands at the Site, are and were at all times relevant to the Complaint "waters of the United States" within the meaning of 33 C.F.R. § 328.3(a) and therefore "navigable waters" within the meaning of section 502(7) of the Act, 33 U.S.C. § 1362(7).

62. Each instance of the placement of dredged and/or fill material into Lake Elsie, the channel located at the Site that connects Lake Elsie to the wetlands at the Site, and the wetlands at the Site constitutes the "discharge of fill material" within the meaning of 33 C.F.R. § 323.2(f), and/or the "discharge of dredged material" within the meaning of 33 C.F.R. § 323.2(d), and

constitutes the “discharge of a pollutant” or “discharge of pollutants” within the meaning of section 502(12) of the Act, 33 U.S.C. § 1362(12).

63. The discharges of pollutants from a point source by Respondent into waters of the United States described in Paragraph 47 of this Complaint, undertaken without the required permit or other authorization issued by the Corps pursuant to section 404 of the Act, 33 U.S.C. § 1344, constitutes violations of sections 301 and 404 of the Act, 33 U.S.C. §§ 1311 and 1344, and are subject to the assessment of penalties pursuant to section 309(g) of the Act, 33 U.S.C. § 1319(g).

64. Each day that such unpermitted and unauthorized discharges remain in place in the channel located at the Site that connects Lake Elsie to the wetlands at the Site and in the wetlands at the Site constitutes a separate violation of sections 301 and 404 of the Act, 33 U.S.C. §§ 1311 and 1344, and constitutes a continuing violation within the meaning of section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B).

#### **VI. NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY**

65. Based on the foregoing allegations and pursuant to the authority of section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA Region 8 hereby proposes to issue a Final Order Assessing Administrative Penalties to Respondent assessing a penalty in the amount of Eight-Five Thousand Dollars (\$85,000).

66. The proposed penalty amount was determined by EPA after taking into account all factors identified in section 309(g)(3) of the Act, 33 U.S.C. § 1319(g). These factors include: the nature, circumstances, extent and gravity of the violation or violations; Respondent’s prior compliance history and degree of culpability for the cited violations; any economic benefit or

savings accruing to Respondent by virtue of the violations; Respondent's ability to pay the proposed penalty, and other matters as justice may require. EPA may issue the Final Order Assessing Administrative Penalties thirty (30) days after Respondent's receipt of this Notice, unless Respondent, within that time, requests a hearing on this Notice pursuant to section VII (Notice of Opportunity to Request a Hearing) of this Complaint.

**VII. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

67. As provided in section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and 40 C.F.R. § 22.15(c), Respondent has the right to request a hearing in this matter. If Respondent (1) contests any material fact upon which the Complaint is based, (2) contends that the amount of penalty proposed in the Complaint is inappropriate, or (3) contends that it is entitled to judgment as a matter of law, it must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty (30) days after service of the Complaint.

68. Respondent's answer must: (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) state the circumstances or arguments which are alleged to constitute the grounds of any defense; (3) state the facts which Respondent disputes; (4) state the basis for opposing any proposed relief; and (5) specifically request a hearing, if desired. 40 C.F.R. § 22.15(b). Failure to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation.

40 C.F.R. § 22.15(d).

69. Respondent's answer, an original and one copy, must be filed with:

Regional Hearing Clerk  
U.S. EPA Region 8 (8RC)  
1595 Wynkoop Street  
Denver, Colorado 80202-1129



A copy of Respondent's answer and all other documents filed in this action must be served on:

Sheldon Muller  
Enforcement Attorney  
U.S. EPA, Region 8 (8ENF-L)  
1595 Wynkoop Street  
Denver, CO 80202-1129

70. Be aware that should Respondent request a hearing on this proposed penalty assessment, members of the public, to whom EPA is obligated to give notice of this proposed action, will have a right under section 309(g)(4)(B) of the Act, 33 U.S.C. §1319(g)(4)(B), to be heard and to present evidence.

**IF RESPONDENT FAILS TO REQUEST A HEARING, IT WILL WAIVE ITS RIGHT TO CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.**

**IF RESPONDENT FAILS TO FILE A WRITTEN ANSWER WITHIN THE THIRTY (30) DAY LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R. § 22.17. A DEFAULT JUDGMENT MAY IMPOSE THE FULL PENALTY PROPOSED IN THE COMPLAINT.**

71. Should Respondent not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who submit timely comments on this proposal will have an additional thirty (30) days to petition EPA to set aside the Final Order Assessing Administrative Penalties and to hold a hearing thereon. EPA will grant the petition and will hold a hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order Assessing Administrative Penalties.

**VIII. TERMS OF PAYMENT FOR QUICK RESOLUTION**

72. If Respondent does not contest the findings and assessments set out above, this action may be resolved by paying the proposed penalty in full pursuant to 40 C.F.R. § 22.18. If such payment is made within ten (10) days after the close of the public comment period provided for under 40 C.F.R. § 22.45, no Answer need be filed. If more time is needed for payment, Respondent may file, within thirty (30) days after receipt of the Complaint, a statement agreeing to pay the penalty, and then pay the money within sixty (60) days after receipt of the Complaint. The penalty payment must be made by certified or cashier's check payable to "Treasurer, the United States of America," and remitted to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Copies of the check shall be sent to:

Kenneth Champagne  
U.S. Environmental Protection Agency, 8ENF-W  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

Sheldon Muller  
U.S. Environmental Protection Agency, 8ENF-L  
1595 Wynkoop Street  
Denver, CO 80202-1129

A transmittal letter identifying the case title and docket number must accompany the remittance and copies of the check.

73. Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing in this matter.

74. Neither assessment nor payment of an administrative civil penalty pursuant to section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondent's continuing obligation to comply with the Clean Water Act or any other federal, state, or local law or regulations, and any separate compliance order issued under section 309(a) of the Act, 33 U.S.C. §1319(a), for the violations alleged herein.

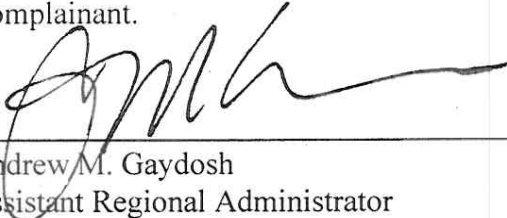
**IX. SETTLEMENT CONFERENCE**

75. EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set out above. The settlement process, however, may be pursued simultaneously with the administrative litigation process. If a settlement can be reached, its terms will be expressed in a written consent agreement signed by the parties and incorporated into a final order by the Regional Judicial Officer. 40 C.F.R. § 22.18. To explore the possibility of settlement in this matter, contact Sheldon Muller, Enforcement Attorney, at the address above. Mr. Muller can also be reached at (303) 312-6916.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8  
Complainant.

Date: \_\_\_\_\_

3/3/08

  
\_\_\_\_\_  
Andrew M. Gaydosh  
Assistant Regional Administrator  
Office of Enforcement, Compliance, and  
Environmental Justice

CERTIFICATE OF SERVICE

I certify that on the date noted below, I sent by certified mail, return receipt requested, a copy of the foregoing ADMINISTRATIVE COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING, and a copy of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, to:

David Paulson  
Northeast Ridge Development Company  
16621 94 1/2 R Street, SE  
Hankinson, North Dakota 58041

Certified Return Receipt No. #7005-1160-0005-3398-1168

and to:

R.E.T. Smith, Esq.  
Smith Strege & Fredericksen, LTD  
321 Dakota Ave.  
Wahpeton, ND 58075

Certified Return Receipt No. #7005-1160-0005-3398-1175

I further certify that on the same date below I sent by certified mail, return receipt requested, a copy of this document to:

Dennis Fewless, Director  
North Dakota Department of Health  
Division of Water Quality  
918 East Divide Avenue, 4th Floor  
Bismarck, ND 58501-1947

Certified Return Receipt No. #7005-1160-0005-3398-1182

I further certify that on the same date below the original and one copy were hand-delivered to:

Tina Artemis  
Regional Hearing Clerk  
U.S. Environmental Protection Agency (8RC)  
1595 Wynkoop Street  
Denver, CO 80202-1129

Date: 3/5/08

J. David Reed