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United States
Environmental Protection
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REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

PUBLIC NOTICE

Hintz Excavating & Blacktop
667 S. Main Street
Adams, Wisconsin 53910

RHC Docket No. CWA-05-2012-0003

The U.S. Environmental Protection Agency, Region 5, is providing this notice of its proposal to assess a civil penalty in the amount of \$1,250.00 against Hintz Excavating & Blacktop (Respondent), for its alleged violation of Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311. A proposed Consent Agreement and Final Order (CAFO) imposing this penalty would resolve allegations that the Respondent discharged dredged and fill material from a point source into approximately two acres of wetlands in conjunction with excavation work it performed in 2007 at property owned by Brian Daliege in Adams County, Wisconsin, in violation of a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344.

A copy of the proposed CAFO may be viewed on-line at <http://www.epa.gov/region5/publicnotices/index.htm> by clicking on the "CAFO (PDF)" link at the Public Notices home page for the docket number identified above. Alternatively, the CAFO may be received by contacting the Regional Hearing Clerk at the address listed below.

This proposed CAFO may be subject to further revision as additional facts may require.

OPPORTUNITY FOR COMMENT: Section 309(g) of the CWA, 33 U.S.C. §1319(g), requires that interested persons be given notice of the proposed penalty and a reasonable opportunity to comment on it.

Any person who wishes to comment on the proposed CAFO may submit written comments, may attend or present evidence at any hearing scheduled on this matter, or both, by following the procedures in Title 40 of the Code of Federal Regulations, Part 22, Section 45 (40 C.F.R. 22.45) particularly subpart (c) *Comment by a person who is not a party*. This portion of the code of federal regulations may be accessed at <http://www.gpoaccess.gov/cfr/retrieve.html>. A link to this site is also available at <http://www.epa.gov/region5/publicnotices/index.htm>, which is the site at which this notice and the associated complaint are also posted. The link is entitled "View 40 CFR Part 22.45". You may also wish to review 40 C.F.R. Part 22 to learn more about the procedures and rules of practice governing the administrative assessment of civil penalties.

Comments should be made in writing to the Regional Hearing Clerk at:

Docket No. CWA-05-2012-0003

LaDawn Whitehead
Regional Hearing Clerk
Mail Code (E-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

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Written comments may be submitted to the Regional Hearing Clerk electronically, by mail, or by delivery to the Clerk's address above. Your comments should include the case name, docket number, and your complete mailing address. If you plan to use a FAX or a messenger service to deliver your comments or other documents, please call the Regional Hearing Clerk at (312) 886-3713 for further instructions to insure delivery.

To submit comments electronically, go to the website: <http://epa.gov/region5/publicnotices/>, click the "Submit a Comment Online" phrase in the first paragraph, and complete the blanks. Note that the EPA requires your regular mailing address, since we must use the U.S. Postal Service to reply, request additional information, or notify you of a hearing. If you wish to include any kind of attachment with your comment, please mail them instead to the Regional Hearing Clerk in hard copy (with a copy of the e-mail), so that we are certain to receive your documents in an unaltered, complete, and readable form.

Regardless of how you submit them, **all written comments must be received in the Regional Hearing Clerk's Office no later than 4:30 p.m., Central Time, of the "Comment Period End Date:" shown on the Public Notices home page for this docket number:**

<http://www.epa.gov/region5/publicnotices/index.htm>

Comments and documents sent to any EPA employee other than the Regional Hearing Clerk are not assured of consideration in this matter.

All documents filed in this proceeding (including documents submitted by the Respondent or by public commenters) are available for public inspection by appointment only between 9 a.m. and 4:30 p.m., Monday through Friday at the EPA Regional Office in Chicago. An appointment for such an inspection may be made by calling (312) 886-3713 or by writing the Regional Hearing Clerk at the address above.

Only the Respondent may request a hearing on the proposed penalty order. If a hearing is held, we will advise commenters who (during the public comment period) submitted a written request to participate in a hearing of the date, time, and place of the hearing, which they may attend and present evidence on the appropriateness of the proposed penalty assessment by following the instructions in 40 C.F.R. § 22.45(c)(1).

The EPA will send a copy of the final CAFO to any person who submitted written comments or attended a hearing, provided they give us their current mailing address.

Only persons who submit written comments or ask to participate in any hearing held in this matter, during this comment period, preserve a right to petition the Regional Administrator to set aside the final CAFO on the basis that material evidence was not considered, as described in 40 C.F.R. § 22.45(c)(4).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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PROTECTION AGENCY

In the Matter of:) **Docket No. CWA-05-2012-0003**
)
Hintz Excavating & Blacktop,)
Adams, Wisconsin,) **Proceeding to Assess a Class II Civil Penalty**
) **Under Section 309(g) of the Clean Water Act,**
) **33 U.S.C. § 1319(g).**
Respondent.)

CONSENT AGREEMENT AND FINAL ORDER

CONSENT AGREEMENT

I. Preliminary Statement

1. This civil administrative action is commenced and settled under the authority vested in the Administrator of the United States Environmental Protection Agency pursuant to Section 309(g) of the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and Sections 22.13(b) and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules of Practice) as codified at 40 C.F.R. Part 22.

2. Complainant is by lawful delegation the Director, Water Division, Region 5, United States Environmental Protection Agency.

3. Respondent is Hintz Excavating & Blacktop (Hintz), located at 667 S. Main Street, Adams, Wisconsin 53910.

4. Respondent admits that the Administrator of the EPA has jurisdiction of this proceeding pursuant to Sections 301 and 309 of the CWA, 33 U.S.C. §§ 1311 and 1319, and the regulations at 40 C.F.R. §§ 22.18(b)(2) and 22.38.

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. This Consent Agreement and its accompanying Final Order (“CAFO”) simultaneously commences and concludes this administrative penalty proceeding, as provided by Sections 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), for Respondent’s alleged violations of Section 301 of the CWA, 33 U.S.C. § 1311.

7. Respondent consents to the assessment of the civil penalty specified in this CAFO, and to the terms of this CAFO.

II. Factual Allegations

8. Brian Daliege owns 86 acres of real property in the North half of the Northeast quarter of Section 4, Township 19 North, Range 7 East, Town of Colburn, Adams County, Wisconsin (the “Site”). The Site contains wetlands abutting an unnamed tributary to Buckner Creek. On March 12, 2004, Daliege obtained a CWA Section 404 permit (Permit No. MVP-2003-06216-WMS) to expand an existing impoundment on the unnamed tributary by excavating the existing north and south impoundment shorelines. No wetland fill impacts were authorized by this permit as all dredged material was to be placed in an upland location.

9. Daliege hired Respondent Hintz to conduct excavation activities at the Site.

10. In January and February 2007, Respondent used excavators and a bulldozer to deposit approximately 3,200 cubic yards of dredged material and organic debris into approximately two (2) acres of wetlands on the north side of the impoundment identified in paragraph 8 above, to expand the impoundment.

11. The dredged material described in paragraph 10 above remained emplaced on-site until July 2008 when Daliege hired another contractor to restore the wetlands disturbed by the activities described in paragraph 10.

III. General Allegations

12. Respondent Hintz is a Wisconsin business which is and was at all times relevant to this CAFO, conducting business in and located in central Wisconsin.

13. Respondent is a “person” within the definition set forth at Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

14. The unnamed tributary on the Site is a perennial stream which is a tributary to Buckner Creek, which is a tributary of Big Roche a Cri Creek, which is tributary to the Wisconsin River.

15. The Wisconsin River is a navigable-in-fact interstate water.

16. The unnamed tributary, Buckner Creek and Big Roche a Cri Creek are “waters of the United States” as that term is defined under 40 C.F.R. §§ 230.3(s) and 232.2, and thus are “navigable waters” under the CWA.

17. Directly abutting and immediately adjacent to the Site’s unnamed tributary is an area, comprising in excess of 10 acres, which is inundated or saturated by groundwater at a frequency and duration sufficient to support, and that under normal circumstances can support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

18. The dredged material fill areas described in paragraph 10 above constitute “wetlands” as that term is defined under 40 C.F.R. §§ 230.3(t) and 232.

19. The wetlands described in paragraph 10 above constitute “waters of the United States” as that term is defined under 40 C.F.R. §§ 230.3(s) and 232.2, and thus a “navigable water” under the CWA.

20. The deposited materials identified in paragraph 10 above are “pollutants,” as that term is defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The excavators and bulldozers identified in paragraph 10 above are “point sources,” as that term is defined at Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. The emplacement of dredged material as described in paragraph 10 above, into the wetlands identified in paragraph 8, constitutes a “discharge of pollutants,” as that term is defined by Section 502(12), 33 U.S.C. § 1362(12), to the waters of the United States.

23. As an operator on the property identified in paragraphs 8 and 10 above, Respondent is liable for acts conducted on the property owner’s behalf with respect to the property, and thus constitutes a person who discharged pollutants into navigable waters.

24. At no time during the depositing of material as described in paragraph 10 above, into the wetlands described in paragraph 8, did Respondent or the property owner possess a permit issued by the Corps pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, purporting to authorize the activities performed as described in paragraph 10.

IV. Alleged Violations

25. Each day that Respondent discharged pollutants into navigable waters without a permit issued by the Corps pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a separate day of violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

26. Each day that the pollutants discharged by Respondent remained within navigable waters without a permit issued by the Corps pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a separate day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

V. Stipulations

27. Respondent neither admits nor denies the specific factual allegations of this Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.18(b)(2).

28. Respondent consents to the assessment of the civil penalty set out in the Consent Agreement and Final Order, pursuant to 40 C.F.R. § 22.18(b)(2).

29. Respondent waives any right to contest the allegations of the Consent Agreement and its right to appeal the proposed Final Order, pursuant to 40 C.F.R. § 22.18(b)(2).

VI. Civil Penalty

30. Respondent agrees to pay a civil penalty in the amount of \$1250.

31. Within 30 days after the effective date of this CAFO, Respondent must pay the full penalty by sending a cashier's or certified check, payable to the order of the U.S. Treasury, to:

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

32. Respondent's check must note the Name, Docket Number, and Billing Document Number of this action.

33. Respondent must include with its cashier's or certified check a transmittal letter stating the Name, Docket Number, and Billing Document Number of this action, as well as Respondent's complete address. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk
U.S. Environmental Protection Agency (E-13J)
77 West Jackson Boulevard
Chicago, IL 60604-3511

Gregory T. Carlson
U.S. Environmental Protection Agency (WW-16J)
77 West Jackson Boulevard
Chicago, IL 60604-3511

Reginald A. Pallesen
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3511

34. This civil penalty is not deductible for federal tax purposes.

35. If Respondent fails to pay the civil penalty timely, Complainant may bring an action to collect any unpaid portion of the penalty with additional interest, handling charges, nonpayment penalties, and Complainant's enforcement expenses for the collection action.

36. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15.00 handling charge each month that any portion of the penalty due is more than thirty (30) days past due. Complainant will assess a six percent (6%) per year penalty on any principal amount not paid timely pursuant to this CAFO.

VII. General Provisions

37. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

38. This CAFO does not affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

39. This CAFO does not affect Respondent's responsibility to comply with the CWA and other applicable federal, state and local laws and regulations.

40. Respondent certifies that it is complying fully with Sections 301 and 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

41. The terms of this CAFO bind the EPA and Respondent and its successors and assigns.

42. Each person signing this CAFO certifies he or she has the authority to sign this CAFO for the party he or she represents and to bind that party to its terms.

43. Each party agrees to bear its own costs and fees, including attorneys' fees, for this action.

44. This CAFO constitutes the entire agreement between the parties.

VIII. Public Notice and Effective Date

45. This CAFO is subject to the public notice and comment provisions of Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.

46. The effective date of this CAFO is the date the EPA files it with the Regional Hearing Clerk.

IT IS SO AGREED

Hintz Excavating & Blacktop



Timmy L. Hintz

10-30-11

Date

United States Environmental Protection Agency



Tinka G. Hyde
Director, Water Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3511

12-1-11

Date

In the Matter of: Hintz Excavating & Blacktop

Docket No. CWA-05-2012-0003

FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. Respondent Hintz Excavating & Blacktop is hereby **ORDERED** to comply immediately with all of the terms of the foregoing Consent Agreement upon the filing of this CAFO with the Regional Hearing Clerk, U.S. EPA, Region 5. This Final Order disposes of this matter pursuant to Sections 22.18(b) and 22.31 of the Consolidated Rules of Practice, 40 C.F.R. §§ 22.18(b) and 22.31.

Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3511

Date

In the Matter of: Hintz Excavating & Blacktop

Docket No. CWA-05-2012-0003