



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

March 6, 2013

REPLY TO THE ATTENTION OF  
E-19J

Honorable Susan L. Biro  
Office of Administrative Law Judges  
U. S. Environmental Protection Agency  
Ariel Rios Building, Mailcode: 1900L  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

RE: In The Matter of: Polo Development, Inc. (Poland, Ohio)  
AIM Georgia, LLC (Buford, Georgia)  
Joseph Zdrilich (Poland, Ohio)  
Docket No.: CWA-05-2013-0003  
Complaint Date: January 8, 2013  
Total Proposed Penalty: \$30,500.00

Dear Judge Biro:

Enclosed are copies of the Respondents Answer to an Administrative Complaint for *Polo Development, Inc.*, *AIM Georgia, LLC* and *Joseph Zdrilich*.

Please assign an Administrative Law Judge for this case. If you have questions contact me at (312) 886-3713.

Sincerely,

A handwritten signature in blue ink, appearing to read "La Dawn Whitehead".

La Dawn Whitehead  
Regional Hearing Clerk

Enclosure

cc: Grant W. Wilkinson, Esquire  
Wilkinson & Associates, LLC  
P.O. Box 9005  
Maumee, Ohio 43537  
(419) 794-3007  
(419) 885-2761 (fax)  
[wilkinson@findlay.edu](mailto:wilkinson@findlay.edu)

Richard Clarizio, Esquire  
Associate Regional Counsel  
Office Regional Counsel  
U.S. EPA, Region 5  
77 West Jackson Blvd., C-14J  
Chicago, Illinois 60604-3590  
(312) 886-0559  
(312) 582-5889 (fax)

**WILKINSON & ASSOCIATES, LLC**  
**P.O. BOX 9005**  
**MAUMEE, OH 43537**  
**(419) 794-3007**  
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March 5, 2013

Regional Hearing Clerk (E-19J)  
Region 5  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard  
Chicago, IL 60604-3590

**RECEIVED**  
MAR 06 2013  
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**USEPA**  
**REGION 5**

Re: **Docket No.: CWA-05-2013-0003**  
In the Matter of: Polo Development, Inc.  
AIM Georgia, LLC  
Joseph Zdrilich  
(1) Respondent AIM Georgia, LLC's Answer to Complaint;  
(2) Respondent Polo Development, Inc.'s Answer to Complaint.

Dear Sir/Madam:

Enclosed are two sets of pleadings.

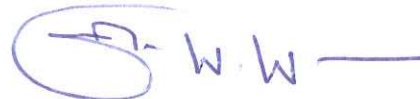
The first set is an original and one copy of a pleading entitled "Answer of Respondent Polo Development to the U.S. EPA's Proceeding to Assess a Civil Penalty Pursuant to Section 309(g) of the Clean Water Act." Two additional copies are provided. Please return those additional file stamped copies in the self-addressed, stamped envelope provided in this mailing.

The second set is an original and one copy of a pleading entitled "Answer of Respondent AIM Georgia, LLC's to the U.S. EPA's Proceeding to Assess a Civil Penalty Pursuant to Section 309(g) of the Clean Water Act." Two additional copies are provided. Please return those additional file stamped copies in the same self-addressed, stamped envelope.

Ann L. Coyle, Regional Judicial Officer, and Richard Clarizio, Associate Regional Counsel, have been properly served under separate cover.

Thank you for processing and returning the documents. Please contact me with any questions.

Respectfully submitted,



Grant W. Wilkinson

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Polo Development, Inc.  
AIM Georgia, LLC  
Joseph Zdrilich

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Docket No. CWA-05-2013-0003

Answer of Respondent Polo Development  
to the U.S. EPA's Proceeding to Assess  
a Class II Civil Penalty Under  
Section 309(g) of the Clean Water Act

**I. Respondent Polo Development, Inc.'s Responses to U.S. EPA's General Allegations**

1. Respondent admits that U.S. EPA Region 5 has instituted an administrative action, but otherwise is without knowledge or information as to the balance of the statements and allegations set forth in paragraph 1 of U.S. EPA's Complaint.

2. Respondent admits that it has been identified as a Respondent in this matter, but denies that it is a person against whom liability or a penalty can be imposed under the Clean Water Act, 33 U.S.C. 1251 *et seq.* Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 2 of U.S. EPA's Complaint.

3. Respondent admits that the Polo Development Site is located north of Polo Boulevard in Section 11 of Poland Township, Mahoning County, Ohio. Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 3 of U.S. EPA's Complaint.

4. Respondent denies the statements and allegations as set forth in paragraph 4 of U.S. EPA's Complaint.

5. Respondent is without knowledge or information sufficient to respond to the statements and allegations as set forth in paragraph 5 of U.S. EPA's Complaint.

6. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 6 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies that it violated those sections of the Clean Water Act cited and alleged by the U.S. EPA in paragraph 6 of its Complaint.

7. Respondent admits that it is a corporation. Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 7 of U.S. EPA's Complaint.

8. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 8 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 8 of U.S. EPA's Complaint.

9. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 9 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Moreover, Respondent denies that it added dirt, spoil, rock and sand to the waters and wetlands identified in paragraph 9 of U.S. EPA's Complaint.

10. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 10 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies the balance of the statements and allegations as set forth in paragraph 10 of U.S. EPA's Complaint.

11. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 11 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies the balance of the statements and allegations as set forth in paragraph 11 of U.S. EPA's Complaint.

12. Respondent denies the statements and allegations in paragraph 12 of U.S. EPA's Complaint.

13. To the extent that U.S. EPA cites and references a regulation that implements the Clean Water Act in paragraph 13 of its Complaint, Respondent admits that said regulatory section is currently in force and effect. The language in 40 C.F.R. 232.3 speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without information or knowledge as to the balance of the statements and allegations set forth in paragraph 13 of U.S. EPA's Complaint.

14. Respondent is without information or knowledge sufficient to enable it to respond to the statements and allegations in paragraph 14 of U.S. EPA's Complaint.

15. Respondent denies the statements and allegations in paragraph 15 of U.S. EPA's Complaint.

16. Respondent is without information or knowledge sufficient to enable it to respond to the statements and allegations in paragraph 16 of U.S. EPA's Complaint.

17. To the extent that U.S. EPA cites and references a regulation that implements the Clean Water Act in paragraph 17 of its Complaint, Respondent admits that said regulatory section is currently in force and effect. The language in 40 C.F.R. 230.3(s)(1) speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies the statements and allegations set forth in paragraph 17 of U.S. EPA's Complaint.

18. Respondent denies the statements and allegations in paragraph 18 of U.S. EPA's Complaint.

19. Respondent denies the statements and allegations in paragraph 19 of U.S. EPA's Complaint.

20. Respondent admits that U.S. EPA issued an administrative order to respondents requiring respondents to develop and implement a Wetlands Restoration Plan on or about October 26, 2011. Otherwise, Respondent denies the remaining statements and allegations in paragraph 20 of U.S. EPA's Complaint.

21. Respondent denies the statements and allegations in paragraph 21 of U.S. EPA's Complaint.

22. Respondent is without knowledge and information as to the statements and allegations in paragraph 22 of U.S. EPA's Complaint.

23. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 23 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without information or knowledge as to the balance of statements and allegations set forth in paragraph 23 of U.S. EPA's Complaint.

## **II. Respondent Polo Development, Inc.'s Response to U.S. EPA's Proposed Civil Penalty**

24. Respondent Polo Development, Inc. contests U.S. EPA's proposed penalty and asserts that it is inappropriate for the following reasons:

- a. Polo Development, Inc. did not engage in any activity that would subject it to a penalty pursuant to the Clean Water Act, its implementing regulations, or any permit issued pursuant to the Clean Water Act.
- b. Imposition of a civil penalty is barred by the statute of limitations.
- c. U.S. EPA's application of the factors associated with its calculation of a civil penalty amount pursuant to Section 309(g) of the Clean Water Act results in an excessive penalty.

- d. The facts associated with this matter exonerate Respondent Polo Development, Inc. and render the assessment of a civil penalty inappropriate and the amount of a civil penalty inappropriate.
- e. U.S. EPA's imposition of a civil penalty and the amount and appropriateness of the civil penalty are barred by, or excessive when viewed in light of, the equitable principles and doctrines of estoppel, waiver, clean hands, laches, and other equitable considerations.
- f. U.S. EPA has failed to incorporate the requirements of the Small Business Regulatory Enforcement Fairness Act in its calculation of the proposed civil penalty.
- g. Respondent Polo Development, Inc. has no ability to pay the proposed civil penalty.

### **III. Respondent Polo Development, Inc.'s Affirmative Defenses**

25. U.S. EPA has failed to state a claim against Respondent Polo Development, Inc. for which relief can be granted.

26. Initial work performed at the Site was performed after receiving authorization from the U.S. Army Corps of Engineers, Pittsburgh District, pursuant to a nationwide permit.

27. Work performed at the Site in 2008, 2011, and 2012 was performed in good faith to comply with the directives of governmental officials.

28. U.S. EPA's institution of this administrative action and the imposition of a civil penalty are barred by the statute of limitations.

29. U.S. EPA's institution of this administrative action and the imposition of a civil penalty are barred by the equitable principles and doctrines of estoppel, waiver, clean hands, laches, and other equitable considerations.

### **IV. Respondent Polo Development, Inc.'s Request for a Hearing**

30. Pursuant to Section 309(g)(2)(B) of the Clean Water Act and Section 22.15 of U.S. EPA's Consolidated Rules of Practice, 40 C.F.R. 22.15, Respondent Polo Development, Inc. requests a hearing to contest material facts alleged in U.S. EPA's Complaint that it has specifically disputed in paragraphs 1 through 23 above, the assessment of a civil penalty and the appropriateness of the amount of the proposed civil penalty as set forth in paragraph 24 above, to provide mitigating and exonerating facts in support of its defenses in paragraphs 25 through 29 above, and to consider whether it is entitled to judgment as a matter of law at any point in this proceeding, up to and including the completion of the hearing.

31. In the meantime, Respondent Polo Development, Inc. intends to engage in an informal settlement conference with U.S. EPA in an effort to resolve this matter.

Respectfully submitted,



Grant W. Wilkinson (0039731)  
Wilkinson & Associates, LLC  
P.O. Box 9005  
Maumee, OH 43537  
(419) 794-3007  
F: (419) 885-2761  
[wilkinson@findlay.edu](mailto:wilkinson@findlay.edu)  
Counsel for Respondent  
Polo Development, Inc.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this pleading titled "Answer of Respondent Polo Development, Inc. to the U.S. EPA's Proceeding to Assess a Class II Civil Penalty Under Section 309(g) of the Clean Water Act" was served by first class mail, postage prepaid, upon Ann L. Coyle, Esq. (C-14J), Regional Judicial Officer, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL, 60604-3590, and Richard J. Clarizio, Esq. (C-14J), Associate Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL, 60604-3590, this 5<sup>th</sup> day of March, 2013.



Grant W. Wilkinson, Esq.  
Counsel for Respondent  
Polo Development, Inc.

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**WILKINSON & ASSOCIATES, LLC**  
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March 5, 2013

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Re: **Docket No.: CWA-05-2013-0003**  
In the Matter of: Polo Development, Inc.  
AIM Georgia, LLC  
Joseph Zdrilich

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**REGION 5**

- (1) Respondent AIM Georgia, LLC's Answer to Complaint;
- (2) Respondent Polo Development, Inc.'s Answer to Complaint.

Dear Sir/Madam:

Enclosed are two sets of pleadings.

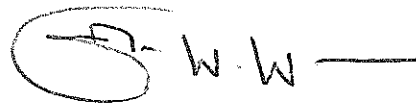
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Ann L. Coyle, Regional Judicial Officer, and Richard Clarizio, Associate Regional Counsel, have been properly served under separate cover.

Thank you for processing and returning the documents. Please contact me with any questions.

Respectfully submitted,



Grant W. Wilkinson

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

Polo Development, Inc.  
AIM Georgia, LLC  
Joseph Zdrilich

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) Docket No. CWA-05-2013-0003

) Answer of Respondent AIM Georgia  
to the U.S. EPA's Proceeding to Assess  
a Class II Civil Penalty Under  
) Section 309(g) of the Clean Water Act

**I. Respondent Aim Georgia, LLC's Responses to U.S. EPA's General Allegations**

1. Respondent admits that U.S. EPA Region 5 has instituted an administrative action, but otherwise is without knowledge or information as to the balance of the statements and allegations set forth in paragraph 1 of U.S. EPA's Complaint.

2. Respondent admits that it has been identified as a Respondent in this matter, but denies that it is a person against whom liability or a penalty can be imposed under the Clean Water Act, 33 U.S.C. 1251 *et seq.* Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 2 of U.S. EPA's Complaint.

3. Respondent admits that the Polo Development Site is located north of Polo Boulevard in Section 11 of Poland Township, Mahoning County, Ohio. Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 3 of U.S. EPA's Complaint.

4. Respondent denies the statements and allegations as set forth in paragraph 4 of U.S. EPA's Complaint.

5. Respondent is without knowledge or information sufficient to respond to the statements and allegations as set forth in paragraph 5 of U.S. EPA's Complaint.

6. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 6 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies that it violated those sections of the Clean Water Act cited and alleged by the U.S. EPA in paragraph 6 of its Complaint.

7. Respondent denies the statements and allegations as set forth in paragraph 7 of U.S. EPA's Complaint.

8. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 8 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 8 of U.S. EPA's Complaint.

9. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 9 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Moreover, Respondent denies that it added dirt, spoil, rock and sand to the waters and wetlands identified in paragraph 9 of U.S. EPA's Complaint.

10. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 10 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies the balance of the statements and allegations as set forth in paragraph 10 of U.S. EPA's Complaint.

11. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 11 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies the balance of the statements and allegations as set forth in paragraph 11 of U.S. EPA's Complaint.

12. Respondent denies the statements and allegations in paragraph 12 of U.S. EPA's Complaint.

13. To the extent that U.S. EPA cites and references a regulation that implements the Clean Water Act in paragraph 13 of its Complaint, Respondent admits that said regulatory section is currently in force and effect. The language in 40 C.F.R. 232.3 speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without information or knowledge as to the balance of the statements and allegations set forth in paragraph 13 of U.S. EPA's Complaint.

14. Respondent is without information or knowledge sufficient to enable it to respond to the statements and allegations in paragraph 14 of U.S. EPA's Complaint.

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18. Respondent denies the statements and allegations in paragraph 18 of U.S. EPA's Complaint.

19. Respondent denies the statements and allegations in paragraph 19 of U.S. EPA's Complaint.

20. Respondent admits that U.S. EPA issued an administrative order to respondents requiring respondents to develop and implement a Wetlands Restoration Plan on or about October 26, 2011. Otherwise, Respondent denies the remaining statements and allegations in paragraph 20 of U.S. EPA's Complaint.

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## **II. Respondent AIM Georgia, LLC's Response to U.S. EPA's Proposed Civil Penalty**

24. Respondent AIM Georgia, LLC contests U.S. EPA's proposed penalty and asserts that it is inappropriate for the following reasons:

- a. AIM Georgia, LLC did not engage in any activity that would subject it to a penalty pursuant to the Clean Water Act, its implementing regulations, or any permit issued pursuant to the Clean Water Act.
- b. Imposition of a civil penalty is barred by the statute of limitations.
- c. U.S. EPA's application of the factors associated with its calculation of a civil penalty amount pursuant to Section 309(g) of the Clean Water Act results in an excessive penalty.

- d. The facts associated with this matter exonerate Respondent AIM Georgia, LLC and render the assessment of a civil penalty inappropriate and the amount of a civil penalty inappropriate.
- e. U.S. EPA's imposition of a civil penalty and the amount and appropriateness of the civil penalty are barred by, or excessive when viewed in light of, the equitable principles and doctrines of estoppel, waiver, clean hands, laches, and other equitable considerations.
- f. U.S. EPA has failed to incorporate the requirements of the Small Business Regulatory Enforcement Fairness Act in its calculation of the proposed civil penalty.
- g. Respondent AIM Georgia, LLC has no ability to pay the proposed civil penalty.

### **III. Respondent AIM Georgia, LLC's Affirmative Defenses**

25. U.S. EPA has failed to state a claim against Respondent AIM Georgia, LLC for which relief can be granted.

26. Initial work performed at the Site was performed after receiving authorization from the U.S. Army Corps of Engineers, Pittsburgh District, pursuant to a nationwide permit.

27. Work performed at the Site in 2008, 2011, and 2012 was performed in good faith to comply with the directives of governmental officials.

28. U.S. EPA's institution of this administrative action and the imposition of a civil penalty are barred by the statute of limitations.

29. U.S. EPA's institution of this administrative action and the imposition of a civil penalty are barred by the equitable principles and doctrines of estoppel, waiver, clean hands, laches, and other equitable considerations.

### **IV. Respondent AIM Georgia, LLC's Request for a Hearing**

30. Pursuant to Section 309(g)(2)(B) of the Clean Water Act and Section 22.15 of U.S. EPA's Consolidated Rules of Practice, 40 C.F.R. 22.15, Respondent AIM Georgia, LLC requests a hearing to contest material facts alleged in U.S. EPA's Complaint that it has specifically disputed in paragraphs 1 through 23 above, the assessment of a civil penalty and the appropriateness of the amount of the proposed civil penalty as set forth in paragraph 24 above, to provide mitigating and exonerating facts in support of its defenses in paragraphs 25 through 29 above, and to consider whether it is entitled to judgment as a matter of law at any point in this proceeding, up to and including the completion of the hearing.

31. In the meantime, Respondent AIM Georgia, LLC intends to engage in an informal settlement conference with U.S. EPA in an effort to resolve this matter.

Respectfully submitted,



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Wilkinson & Associates, LLC  
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Maumee, OH 43537  
(419) 794-3007  
F: (419) 885-2761  
[wilkinson@findlay.edu](mailto:wilkinson@findlay.edu)  
Counsel for Respondent  
AIM Georgia, LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this pleading titled "Answer of Respondent AIM Georgia, LLC to the U.S. EPA's Proceeding to Assess a Class II Civil Penalty Under Section 309(g) of the Clean Water Act" was served by first class mail, postage prepaid, upon Ann L. Coyle, Esq. (C-14J), Regional Judicial Officer, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL, 60604-3590, and Richard J. Clarizio, Esq. (C-14J), Associate Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL, 60604-3590, this 5<sup>th</sup> day of March, 2013.



Grant W. Wilkinson, Esq.  
Counsel for Respondent  
AIM Georgia, LLC

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F: (419) 885-2761  
wilkinson@findlay.edu

February 9, 2013

Regional Hearing Clerk (E-19J)  
Region 5  
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77 West Jackson Boulevard  
Chicago, IL 60604-3590

Re: **Docket No.: CWA-05-2013-0003**  
In the Matter of: Polo Development, Inc.  
AIM Georgia, LLC  
Joseph Zdrilich

- (1) Respondents AIM Georgia, LLC's and Polo Development, Inc.'s Joint Motion for Extension of Time to Answer Complaint;
- (2) Respondent Joseph's Zdrilich's Answer to Complaint

Dear Sir/Madam:

Enclosed are two sets of pleadings.

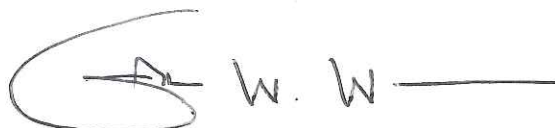
The first set is an original and one copy of a pleading entitled "Respondents AIM Georgia, LLC's and Polo Development, Inc.'s Joint Motion for Extension of Time to Answer the U.S. EPA's Complaint to Assess a Class II Civil Penalty Under Section 309(g) of the Clean Water Act, 33 U.S.C. 1319(g)." I ask that you firstfile this pleading. Two additional copies are provided. I ask that you return the additional file stamped copies in the self-addressed, stamped envelope.

The second set is an original and one copy of a pleading entitled "Respondent Joseph Zdrilich's Answer to U.S. EPA's Proceeding to Assess a Civil Penalty Pursuant to Section 309(g) of the Clean Water Act." I ask that you file this pleading second. Two additional copies are provided. Please return those additional file stamped copies in the same self-addressed, stamped envelope.

Richard Clarizio, Associate Regional Counsel, has been properly served under separate cover.

Thank you for processing and returning the documents. Please contact me with any questions.

Respectfully submitted,

  
Grant W. Wilkinson

Enclosures

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REGIONAL HEARING OFFICE  
U.S. EPA - REGION 5  
2/13 FEB 12 PM 4:33

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

**In the Matter of:** ) **Docket No. CWA-05-2013-0003**  
)  
**Polo Development, Inc.** ) **Answer of Respondent Joseph Zdrilich**  
**AIM Georgia, LLC** ) **to the U.S. EPA's Proceeding to Assess**  
**Joseph Zdrilich** ) **a Class II Civil Penalty Under**  
) **Section 309(g) of the Clean Water Act**

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4. Respondent denies the statements and allegations as set forth in paragraph 4 of U.S. EPA's Complaint.

5. Respondent denies the statements and allegations as set forth in paragraph 5 of U.S. EPA's Complaint.

6. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 6 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies that it violated those sections of the Clean Water Act cited and alleged by the U.S. EPA in paragraph 6 of its Complaint.

7. Respondent admits that he is an individual. Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 7 of U.S. EPA's Complaint.

8. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 8 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without knowledge or information as to the balance of the statements and allegations as set forth in paragraph 8 of U.S. EPA's Complaint.

9. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 9 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Moreover, Respondent denies that he added dirt, spoil, rock and sand to the waters and wetlands identified in paragraph 5 of U.S. EPA's Complaint.

10. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 10 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies the balance of the statements and allegations as set forth in paragraph 10 of U.S. EPA's Complaint.

11. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 11 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent denies the balance of the statements and allegations as set forth in paragraph 11 of U.S. EPA's Complaint.

12. Respondent denies the statements and allegations in paragraph 12 of U.S. EPA's Complaint.

13. To the extent that U.S. EPA cites and references a regulation that implements the Clean Water Act in paragraph 13 of its Complaint, Respondent admits that said regulatory section is currently in force and effect. The language in 40 C.F.R. 232.3 speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without information or knowledge as to the balance of the statements and allegations set forth in paragraph 13 of U.S. EPA's Complaint.

14. Respondent denies the statements and allegations in paragraph 14 of U.S. EPA's Complaint.

15. Respondent denies the statements and allegations in paragraph 15 of U.S. EPA's Complaint.

16. Respondent is without knowledge or information as to the statements and allegations in paragraph 16 of U.S. EPA's Complaint.



17. To the extent that U.S. EPA cites and references a regulation that implements the Clean Water Act in paragraph 17 of its Complaint, Respondent admits that said regulatory section is currently in force and effect. The language in 40 C.F.R. 230.3(s)(1) speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without knowledge and information as to the statements in paragraph 17 of U.S. EPA's Complaint.

18. Respondent denies the statements and allegations in paragraph 18 of U.S. EPA's Complaint.

19. Respondent denies the statements and allegations in paragraph 19 of U.S. EPA's Complaint.

20. Respondent admits that U.S. EPA issued an administrative order to respondents requiring respondents to develop and implement a Wetlands Restoration Plan on or about October 26, 2011. Otherwise, Respondent denies the remaining statements and allegations in paragraph 20 of U.S. EPA's Complaint.

21. Respondent admits that U.S. EPA approved the Wetlands Restoration Plan as submitted and amended, in January, 2012 and February, 2012, respectively. Otherwise, Respondent denies the remaining statements and allegations in paragraph 21 of U.S. EPA's Complaint.

22. Respondent is without knowledge and information as to the statements and allegations in paragraph 22 of U.S. EPA's Complaint.

23. To the extent that U.S. EPA cites and references provisions of the Clean Water Act in paragraph 23 of its Complaint, Respondent admits that the Clean Water Act is a law duly passed by Congress and is currently in force and effect. The language in the statute speaks for itself. However, Respondent specifically contests any conclusions of law asserted by U.S. EPA in its factual allegations. Otherwise, Respondent is without information or knowledge as to the balance of statements and allegations set forth in paragraph 13 of U.S. EPA's Complaint.

## **II. Respondent Joseph Zdrilich's Response to U.S. EPA's Proposed Civil Penalty**

24. Respondent Joseph Zdrilich contests U.S. EPA's proposed penalty and asserts that it is inappropriate for the following reasons:

- a. Respondent Zdrilich did not engage in any activity that would subject him to a penalty pursuant to the Clean Water Act, its implementation regulations, or any permit issued pursuant to the Clean Water Act.
- b. Imposition of a civil penalty is barred by the statute of limitations.

- c. U.S. EPA's application of the factors associated with its calculation of a civil penalty amount pursuant to Section 309(g) of the Clean Water Act results in an excessive penalty.
- d. The facts associated with this matter exonerate Respondent Zdrilich and render the assessment of a civil penalty inappropriate and the amount of a civil penalty inappropriate.
- e. U.S. EPA's imposition of a civil penalty and the amount and appropriateness of the civil penalty are barred by, or excessive when viewed in light of, the equitable principles and doctrines of estoppel, waiver, clean hands, laches, and other equitable considerations.
- f. U.S. EPA has failed to incorporate the requirements of the Small Business Regulatory Enforcement Fairness Act in its calculation of the proposed civil penalty.
- g. Respondent Zdrilich has no ability to pay the proposed civil penalty.

### **III. Affirmative Defenses**

25. U.S. EPA has failed to state a claim against Respondent Joseph Zdrilich for which relief can be granted.

26. Initial work performed at the Site was performed after receiving authorization from the U.S. Army Corps of Engineers, Pittsburgh District, pursuant to a nationwide permit.

27. Work performed at the Site in 2008, 2011, and 2012 was performed in good faith to comply with the directives of governmental officials.

28. U.S. EPA's institution of this administrative action and the imposition of a civil penalty are barred by the statute of limitations.

29. U.S. EPA's institution of this administrative action and the imposition of a civil penalty are barred by the equitable principles and doctrines of estoppel, waiver, clean hands, laches, and other equitable considerations.

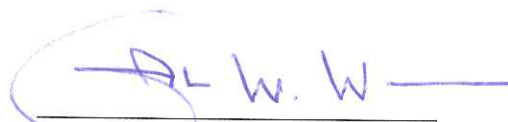
### **IV. Respondent Joseph Zdrilich's Request for a Hearing**

30. Pursuant to Section 309(g)(2)(B) of the Clean Water Act and Section 22.15 of U.S. EPA's Consolidated Rules of Practice, 40 C.F.R. 22.15, Respondent Joseph Zdrilich requests a hearing to contest material facts alleged in U.S. EPA's Complaint that he has specifically disputed in paragraphs 1 through 23 above, the assessment of a civil penalty and the appropriateness of the amount of the proposed civil penalty as set forth in paragraph 24 above, to provide mitigating and exonerating facts in support of his defenses in paragraphs 25 through

29above, and to consider whether he is entitled to judgment as a matter of law at any point in this proceeding, up to and including the completion of the hearing.

31. In the meantime, Respondent Joseph Zdrilich intends to engage in an informal settlement conference with U.S. EPA in an effort to resolve this matter.

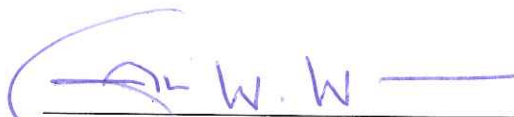
Respectfully submitted,



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Counsel for Respondent Zdrilich

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of a pleading titled "Answer of Respondent Joseph Zdrilich to the U.S. EPA's Proceeding to Assess a Class II Civil Penalty Under Section 309(g) of the Clean Water Act" was served by first class mail, postage prepaid, upon Richard J. Clarizio, Esq. (C-14J), Associate Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL, 60604-3590, this 9<sup>th</sup> day of February, 2013.



Grant W. Wilkinson, Esq.  
Counsel for Respondent Joseph Zdrilich

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