



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

MAY 7 2009

CERTIFIED MAIL 70082810000043168679  
RETURN RECEIPT REQUESTED

Mr. Jim Stoutamire  
Florida Department of Environmental Protection  
Twin Towers Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

Re: Notice of Proposed Administrative Complaint for Class II Penalty  
Pamela L. Long  
Docket No. CWA-04-2009-5502

Dear Mr. Stoutamire:

The purpose of this letter is to advise you that the U.S. Environmental Protection Agency (EPA) failed to properly file the Administrative Complaint in the above referenced case in accordance with EPA's filing procedures. Enclosed is a copy of the Administrative Complaint that has been properly filed with the Regional Hearing Clerk.

**Please note the following: The allegations as set forth in the Administrative Complaint (CWA-04-2009-5502) dated March 6, 2009, have not been altered in any way.**

We apologize for any inconvenience that this may have caused. If you have any questions, please contact Ms. Stephanie Fulton at (404) 562-9413.

Sincerely,

A handwritten signature in black ink that reads "Molly Davis".

Molly Davis, Chief  
Wetlands Enforcement Section  
Water Protection Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF:

PAMELA L. LONG,  
GULF BREEZE, FLORIDA,  
  
RESPONDENT.

)  
) ADMINISTRATIVE COMPLAINT  
) FOR CLASS II PENALTY  
) UNDER SECTION 309(g)  
) OF THE CLEAN WATER ACT,  
) 33 U.S.C. § 1319(g)  
) Docket No.: CWA-04-2009-5502

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RECEIVED  
EPA REGION 4

**ADMINISTRATIVE COMPLAINT**

**I. Statutory Authority**

1. This Administrative Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) under Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22, the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits*. The Administrator has delegated this authority to the Regional Administrator of EPA, Region 4, who has duly redelegated this authority to the Director of the Water Protection Division, Region 4, who hereby issues this Complaint and Notice.

**II. Statutory and Regulatory Background**

2. Section 309(g)(1)(A) of the CWA, 33 U.S.C. § 1319(g)(1)(A), states "[w]henever, on the basis of any information available, (a) the Administrator finds that any person has violated [section 301 of the CWA, 33 U.S.C. § 1311], . . . the Administrator . . . may, after consultation with the State in which the violation occurs, assess a Class I civil penalty or a Class II civil penalty under [33 U.S.C. § 1319(g)(2)(B)]."

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), states "[e]xcept as in compliance with . . . [Section 404 of the CWA, 33 U.S.C. § 1314], the discharge of any [dredged or fill material] by any person shall be unlawful." Section 404 of the CWA, 33 U.S.C. § 1344, authorizes the Secretary of the Army, acting through the Chief of Engineers, U.S. Army Corps of Engineers (COE), to issue permits for the discharge of dredged or fill material into navigable waters.

4. Section 502(12) of the CWA, 33 U.S.C. § 1362(12), defines a "discharge of pollutants" as "[a]ny addition of any pollutant to navigable waters from any point source . . . ."

5. Section 502(14) of the CWA, 33 U.S.C. § 1362(14), defines “point source” as “[a]ny discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit [or] discrete fissure . . . from which pollutants are or may be discharged.”

6. Section 502(7) of the CWA, 33 U.S.C. § 1362(7), defines “navigable waters” as “[t]he waters of the United States, including the territorial seas.”

7. Federal regulations under 40 C.F.R. § 232.2 define the term “waters of the United States” to include “wetlands.”

8. Federal regulations under 40 C.F.R. Part 232.2 and 33 C.F.R. Part 328.3(b) define “wetlands” as “[t]hose areas that are inundated or saturated by surface or groundwater 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.”

### **III. Allegations**

9. Respondent, Pamela L. Long, at all times relevant to this Complaint, was the owner and operator of a tract of land located at the end of Wild Roost Road, just east of the National Park Service’s Naval Live Oak Reservation, and adjacent to Villa Venice Subdivision in Gulf Breeze, Santa Rosa County, Florida, near 30.3698° north latitude and 87.1175° west longitude (the Site) (Exhibits A and B).

10. Respondent is a person within the definition set forth under section 502(5) of the CWA, 33 U.S.C. § 1362(5).

11. Commencing on or around April 5, 2005, Respondent, or those acting on behalf of the Respondent, discharged dredged and/or fill material into wetlands on the Site using earth moving machinery, during unauthorized activities associated with the clearing and filling of wetlands for residential development.

12. Respondent impacted approximately 0.53 acres of forested and herbaceous wetlands that are adjacent to Santa Rosa Sound, a navigable water of the United States.

13. The discharged dredged and/or fill material, including earthen material deposited at the Site, are “pollutants” as defined under the CWA § 502(6), 33 U.S.C. § 1362(6).

14. The earth moving machinery employed by the Respondent to deposit the dredged and/or fill material at the Site are “point sources” as defined under the CWA § 502(14).

15. Respondent’s placement of the dredged and/or fill material at the Site constitutes a “discharge of pollutants” as defined under the CWA § 502(12).

16. At no time during the discharge of dredged and/or fill material at the Site on or around April 5, 2005, did the Respondent possess a permit under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing the activities performed by Respondent. Each discharge by the Respondent of pollutants into navigable waters without the required permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, is a violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

17. Each day the material discharged by the Respondent remains in waters of the United States without the required permit under Section 404 of the CWA, 33 U.S.C. § 1344, constitutes a day of violation of Section 301 of the CWA, 33 U.S.C. § 1311.

#### **IV. Notice**

18. As required under Section 309(g) of the CWA, EPA has consulted with the Florida Department of Environmental Protection (FDEP) regarding this proposed action by mailing a copy of this document to the appropriate official of the State of Florida and offering an opportunity for the State to consult with EPA on the proposed penalty assessment. EPA, contemporaneously with the issuance of this proposed action, published a public notice regarding this proposed action on the web at [http://www.epa.gov/region4/water/wpeb/npdes\\_media.html](http://www.epa.gov/region4/water/wpeb/npdes_media.html).

#### **V. Penalty**

19. Based on the above Findings of Violation and under Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), the Administrator may assess a civil penalty of up to \$11,000 per violation per day, not to exceed a maximum of \$137,500, for violations of Section 301(a) and 404 of the CWA, 33 U.S.C. § 1311(a) and 1344. Consistent with the 2004 Civil Monetary Penalty Inflation Adjustment Rule, 69 Fed. Reg. 7121 (Feb. 13, 2004), based on the above Findings of Violation and under Section 309(g)(2) of the CWA, 33 U.S.C. § 1319(g)(2), the Administrator may assess a civil penalty of up to \$11,000 per violation per day, not to exceed a maximum of \$157,500, for violations of Section 301(a) and 404 of the CWA, 33 U.S.C. § 1311(a) and 1344 that occurred after March 15, 2004 through January 12, 2009. For violations occurring after January 12, 2009, under the 2008 Civil Monetary Penalty Adjustment Rule 73 Fed. Reg. 75340 (Dec. 11, 2008), the penalties are \$16,500 per day up to a maximum of \$177,500. Based upon the facts alleged in this Complaint, and based upon the nature, circumstances, extent and gravity of the violations alleged, as well as the Respondent's ability to pay, prior history of such violations, and such other matters as justice may require, EPA Region 4 hereby proposes to issue a Final Order Assessing Administrative Penalties to the Respondent for violations alleged in this Complaint. This Complainant proposes that Respondent pay a penalty in an amount of up to STATUTORY MAXIMUM for the violations stated in this Complaint.

## **VI. Hearing**

20. As provided under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Respondent has the right to request a hearing to contest any material fact contained in this Complaint, or to contest the appropriateness of the amount of the proposed penalty. If the Respondent wishes to avoid being found in default, Respondent must file a written Answer to this Complaint and a Request for Hearing within thirty (30) days of service of this Complaint with the:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303-3104

21. The Answer must clearly and directly admit, deny or explain each of the factual allegations contained in the Complaint with respect to which the Respondent has any knowledge, or clearly state that the Respondent has no knowledge as to particular factual allegations in the Complaint. The Answer also must state:

- a. the circumstances or arguments that are alleged to constitute grounds of defense, and
- b. the facts which the Respondent intends to place at issue.

22. Failure to deny any of the factual allegations in this Complaint constitutes admission of the those allegations. A copy of the Answer and any subsequent documents that the Respondent files in this action should be sent to:

Kevin B. Smith  
Senior Counsel  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia, 30303  
(404) 562-9525

23. Any hearing that Respondent requests regarding this Complaint will be held and conducted in accordance with the provisions of 40 C.F.R. Part 22. If Respondent fails to file a written Answer within thirty (30) calendar days of receipt of this Complaint, a Default Order may be issued against Respondent by the Regional Administrator. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of Respondent's right in this case to a hearing under the CWA. 40 C.F.R. § 22.17. The civil

penalty proposed in this Complaint will then become due and payable without further proceedings sixty (60) days after the Default Order becomes the Final Order of the Administrator. 40 C.F.R. § 22.31. Respondent's failure to fully pay the proposed penalty, as assessed by the Final Order, by its due date will result in a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty under section 309(g)(9)(B) of the CWA, 33 U.S.C. § 1319(g)(9)(B).

24. Should Respondent request a hearing on the proposed penalty amount, members of the public who have exercised their right to comment, and to whom EPA is obligated to give notice of this proposed action, will have a right under Section 309(g)(4)(B), 33 U.S.C. § 1319(g)(4)(B), to present evidence on the appropriateness of the penalty assessment. If Respondent does not request a hearing, EPA will issue a Final Order Assessing Administrative Penalties, and only members of the public who commented on this proposal during the thirty (30) day period following Respondent's receipt of this document 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 hold the 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.

## **VII. Settlement Conference**

25. Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, please contact:

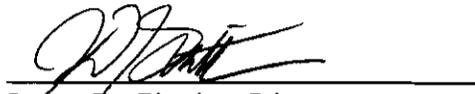
Stephanie Fulton  
Wetlands Enforcement Officer  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-9413

26. Respondent's request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and Request for Hearing must be submitted. Respondent may pursue the informal conference procedure, however, simultaneously with the adjudicatory hearing procedure. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. EPA, however, will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference will be embodied in a Final Order. Respondent's consent to a Final Order will constitute a waiver of the right to request a hearing on any matter stipulated to therein.

27. Neither assessment nor payment of an administrative civil penalty under this section of the CWA will affect Respondent's continuing obligation to comply with the CWA, or any other Federal, State, or local law or regulation.

28. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding: Kevin B. Smith, Senior Counsel, and may be reached at the address and number above.

29. Any settlement reached as a result of the informal conference will be finalized by the issuance of a written Consent Agreement and Final Order approved by U.S. EPA Region 4.



James D. Giattina, Director  
Water Protection Division  
U.S. Environmental Protection Agency, Region 4  
Atlanta, Georgia 30303-3104

Date: MAR 06 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
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 PAMELA L. LONG ) ADMINISTRATIVE COMPLAINT  
 GULF BREEZE, FLORIDA ) FOR CLASS II PENALTY  
 ) UNDER SECTION 309(g)  
 ) OF THE CLEAN WATER ACT,  
 RESPONDENT. ) 33 U.S.C. § 1319(g)  
 ) Docket No.: CWA-04-2009-5502  
 )

**CERTIFICATE OF SERVICE**

I certify that on May 7, 2009, I served a true and correct copy of the attached **ADMINISTRATIVE COMPLAINT** in the matter of Pamela L. Long, Docket No. CWA-04-2009-5502, to each of the persons listed below.

By hand-delivery: Kevin B. Smith  
Associate Regional Counsel  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303

By certified mail,  
return receipt requested: Pamela L. Long  
1206 Soundview Trail  
Gulf Breeze, Florida 32561

By certified mail,  
return receipt requested: Mr. Jim Stoutamire  
Florida Department of Environmental Protection  
Twin Towers Building  
2600 Blair Stone Road  
Tallahassee, Florida 32399-2400

2009 MAY -7 PM 2:17  
HEARING CLERK  
EPA REGION 4

Mary E. Halback  
Mary E. Halback  
U.S. EPA, Region 4  
61 Forsyth Street, SW  
Atlanta, GA 30303  
(404) 562-9778