



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
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CHICAGO, IL 60604-3590

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U.S. EPA REGION 5

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REPLY TO THE ATTENTION OF:

Ms. LaDawn Whitehead
Regional Hearing Clerk
United States
Environmental Protection Agency-Region V
77 West Jackson Blvd. - 19th Fl.
Chicago, IL 60604-3590

C-14J

Re: U.S. EPA v. Joseph L. Bollig and Sons, Inc.
Docket No. CWA-05-2011-0008 - Complainant's Rebuttal Prehearing Exchange

Dear Ms. Whitehead:

Enclosed please find an original and one copy of Complainant's Rebuttal Prehearing Exchange in the above-referenced case. I have served copies of this Status Report with the Administrative Law Judge (ALJ) and a copy on Respondent by certified mail, return receipt requested.

Sincerely yours,

Thomas P. Turner
Assoc. Regional Counsel

Enclosure

cc: Hon. M. Lisa Buschmann, ALJ (mail code: 1900L)
Greg Carlson, Water Division (WW-16J)
Kevin C Chow, Assoc. Regional Counsel (C-14J)

Joseph L. Bollig and Sons, Inc.
c/o: William T. Curran, Esq.
Curran, Hollenbeck & Orton, SC
111 Oak Street, PO Box 140
Mauston, WI 53948-0140

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)
)
Joseph L. Bollig and Sons, Inc.,)
New Lisbon, Wisconsin,)
)
)
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)
)
)
Respondent.)
_____)

DOCKET No. CWA-05-2011-0008
Honorable M. Lisa Buschmann
Administrative Law Judge

COMPLAINANT’S REBUTTAL PREHEARING EXCHANGE

In accordance with the Prehearing Order issued by this Honorable Court on February 29, 2012, Complainant, the United States Environmental Protection Agency, Region 5 (“U.S. EPA”), through its undersigned attorneys, hereby files the instant rebuttal prehearing exchange pursuant to Section 22.19 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, codified at 40 C.F.R. Part 22, § 22.19.

A. COMPLAINANT’S REBUTTAL PREHEARING EXCHANGE

I. LOCATION OF THE HEARING

Complainant notes that Respondent, in its April 30, 2012 Prehearing Exchange, asserted that Mauston, Wisconsin would be “the appropriate location for the hearing in this matter”, stating that all of the witnesses “unrelated to EPA” live in the Mauston area, and that some U.S. Army Corps of Engineers and Wisconsin Department of Natural Resources offices are located north of Mauston. Respondent’s Prehearing Exchange at 1. Complainant disagrees with the proposed location of Mauston, Wisconsin. Complainant reiterates its position that Madison,

Wisconsin would be the appropriate location for the hearing in this matter. See, Complainant's March 30, 2012 Initial Prehearing Exchange at 1. Complainant notes that Madison, Wisconsin would be relatively equidistant for U.S. EPA, Region 5-based litigation staff and witnesses, as well as those proposed potential witnesses identified in either Complainant's March 30, 2012 Initial Prehearing Exchange, or Respondent's April 30, 2012 Prehearing Exchange. Moreover, Complainant notes that Madison, Wisconsin is more proximate to major airports (Chicago, Illinois, Milwaukee and/or Madison, Wisconsin), and offers more necessary resource availability (courtroom, court reporter, overnight lodging availability, dining) for all of the parties involved in this proceeding than would likely be available if the hearing were held in Mauston, Wisconsin.

II.A. The names of the expert and other witnesses intended to be called at hearing, with a brief narrative summary of their expected testimony.

Complainant has no new witnesses intended to be called at hearing, to be identified at this time. However, pursuant to this Court's February 29, 2012 Prehearing Order at Section II, pp. 3-4, and Section 22.22(a)(1) of the Consolidated Rules of Practice, Complainant reserves the right to move to supplement its current list of witnesses, if necessary.

II.B. Copies of all rebuttal documents and exhibits intended to be introduced into evidence.

Complainant expects to offer the following documents into evidence in rebuttal of assertions or documents presented by Respondent in Respondent's April 30, 2012 Prehearing Exchange:

1. COMPLAINANT'S REBUTTAL EXHIBIT 1: April 27, 1998 Google Earth Pro Partial

Photograph of Unnamed Tributary 1, west of the railroad tracks, showing connection as an active and wet water course between the

Mauston-New Lisbon Union Airport Site wetlands and the Lemonweir River. This Exhibit is offered in further support (and to more graphically clarify and detail) Complainant's determination of Respondent's liability under Clean Water Act (CWA) Sections 301 and 404. The Exhibit is also offered to rebut Respondent's assertion in its April 30, 2012 Initial Prehearing Exchange at Section II.A., paragraphs 5 and 7, that it can produce witnesses who would testify that Unnamed Tributary 1 was not cleared or cleaned. The Exhibit photograph indicates evidence of dredging and side cast within the Unnamed Tributary 1 channel, i.e., cleaning.

2. COMPLAINANT'S REBUTTAL EXHIBIT 2: February 14, 2007 copy of U.S. Army Corps of Engineers (Corps) Letter to Mr. Greg Wonderly of New Lisbon, Wisconsin indicating Corps determination that any filling affecting adjacent wetlands to the tributaries of the Lemonweir or Wisconsin Rivers falls under Corps regulation and

requires a CWA Section 404 permit. And, that Wonderly (or a party acting for Wonderly, e.g., Respondent Bollig) had violated the applicable law at a time prior to the actions of the present case. This Exhibit is offered in further support of Complainant's calculation of a proposed penalty under proper factors of the CWA at Section 309.

3. COMPLAINANT'S REBUTTAL EXHIBIT 3: U.S. EPA Conversation Record between Mr. Greg Carlson (U.S. EPA) and Mr. David Donnelly, Juneau County (WI) Zoning Official dated December 16, 2009. This Exhibit is offered to rebut the irrelevant, unsubstantiated, and improper assertion made in Respondent's April 30, 2012 Prehearing Exchange at Section IIA, paragraph 2, pp. 2-3.

4. COMPLAINANT'S REBUTTAL EXHIBIT 4: Wisconsin Department of Natural Resources (WDNR) Conversation Records of Mr. Terrence Kafka, Waste and Nonpoint Source Water Specialist, Wausau Wisconsin and Mr. Doug Wells, Manager, Mauston-New

Lisbon Union Airport dated March 21, 2006.

This Exhibit is offered to refute

Respondent's assertion that it relied upon
information from Mr. Wells indicating that
no permit was required for the Airport

wetlands, as per a conversation with

WDNR. Mr. Kafka is further identified as a
witness in Complainant's March 27, 2012

Initial Prehearing Exchange, Section II.A,

pp. 4-5.

Copies of these exhibits are attached to this Rebuttal Prehearing Exchange.

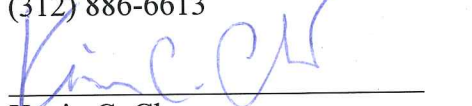
Complainant's Rebuttal Prehearing Exchange for In the Matter of Joseph L. Bollig and Sons, Inc.

is hereby respectfully submitted.

Respectfully Submitted,



Thomas Turner
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 886-6613



Kevin C. Chow
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. EPA, Region 5
77 W. Jackson Blvd.
Chicago, IL 60604
(312) 353-6181

CERTIFICATE OF SERVICE

I hereby certify that the original and one copy of the attached Complainant's Rebuttal Prehearing Exchange, for In the Matter of Joseph L. Bollig and Sons, Inc., Docket No. CWA-05-2011-0008, was filed with the Regional Hearing Clerk, U.S. EPA, Region 5, and that true, accurate and complete copies of Complainant's Rebuttal Prehearing Exchange were served by Certified Mail, Return Receipt Requested, on Administrative Law Judge M. Lisa Buschmann and Mr. William Curran, Counsel for Respondent, on the date indicated below.

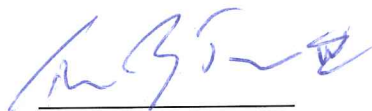
Administrative Law Judge

The Honorable M. Lisa Buschmann
Office of the Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Counsel for Respondent

William T. Curran, Esq.
Curran, Hollenbeck & Orton, SC
111 Oak Street, P.O. Box 140
Mauston, WI 53948-0140

Dated in Chicago, Illinois, this 11 day of May, 2012.



Thomas Turner
Associate Regional Counsel
U.S. EPA - Region 5

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Complainant's
Rebuttal
Prehearing
Exchange
~~Exhibit~~ 1



© 2012 Google
Image U.S. Geological Survey

Google earth

Google Earth Pro



Imagery
Date =
4/22/98

Complainant's
Rebuttal
Re hearing
Exchange
Exhibit 2



DEPARTMENT OF THE ARMY
St. Paul District Corps of Engineers
190 Fifth Street East
St. Paul, Minnesota 55101-1683

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

REPLY TO
ATTENTION OF

FEB 14 2007

Operations
Regulatory (2006-6729-CKK)

Mr. Greg Wonderly
N6840 N. Germantown Road
New Lisbon, WI 53950

Dear Mr. Wonderly:

It has come to our attention that you, or persons acting for you, may have discharged dredged or fill material into approximately 2 acres of a wetland. We have made a preliminary determination that this wetland is adjacent to an unnamed tributary to the Lemonweir River, a tributary of the Wisconsin River. The project site is located in the NE ¼, Sec. 10, T.16N., R. 3E., Juneau County, Wisconsin.

The Wisconsin River, its tributaries, and the wetlands adjacent to both, are regulated by the Corps of Engineers pursuant to Section 404 of the Clean Water Act (33 U.S.C. § 1344). A review of our records indicated that a Department of the Army permit has not been issued for this activity. Section 301 of the Clean Water Act (33 U.S.C. § 1311) prohibits discharges of dredged or fill material into Waters of the United States, including most wetlands, unless the work has been authorized by a Department of the Army permit. Persons violating Section 301 are subject to administrative, civil, and criminal penalties under Section 309 of the Clean Water Act (33 U.S.C. § 1319). Under the Clean Water Act, restoration of the site to its pre-violation condition may also be required.

You are advised not to perform any additional work that requires Department of the Army authorization without obtaining that authorization.

As per your conversation with Mr. Chris Knotts of our Stevens Point (Plover) field office, you have agreed to voluntarily restore the wetland area by removing the unauthorized fill material. The fill would be removed to an upland location, and the site regraded to pre-existing elevations. Mr. Knotts will contact you this spring to set up an onsite field visit to flag-out the wetland/fill boundaries for this restoration work. It was agreed that the excavated pond shall remain, and that the site shall be fully restored by October 31, 2007.

Please contact us when the work has been completed so we can conduct a compliance inspection. Once the unauthorized material is removed and the area is satisfactorily restored, we will close our case file. Should you fail to restore the waters of the U.S. on the site, we will consider referring the case to the U.S. Department of Justice or the Environmental Protection Agency (EPA) for enforcement.

~~Com~~plainant's
Rebuttal
Pre hearing
Exchange
Exhibit 3

CONVERSATION RECORD

TIME

DATE

12-16-08

TYPE

VISIT

CONFERENCE

TELEPHONE

INCOMING

OUTGOING

ROUTING

NAME/SYMBOL

INT

Location of Visit/Conference:

NAME OF PERSON(S) CONTACTED OR IN CONTACT WITH YOU

ORGANIZATION (Office, dept., bureau, etc.)

TELEPHONE NO.

David Donnelly

Zoning Admin.

608

SUBJECT

B. Hillyer's Request for Info.

SUMMARY

Looking to assist Brett Hillyer in responding, but he doesn't represent Polig in this matter

Best trying to be helpful w/ information

I should do whatever your public responsibilities require.

ACTION REQUIRED

NAME OF PERSON DOCUMENTING CONVERSATION

SIGNATURE

DATE

Grae Carlson

[Signature]

12-16-08

ACTION TAKEN

SIGNATURE

TITLE

DATE

Complainant's
Rebuttal
Pre hearing
Exchange
Exhibit 4

~~KAFKA~~

2006

3/20 R. Bottenman

3/21

- 3/21 ② call Paul de Buren
 3/21 ④ call Larry Koopman cubes qts.
 of dredge from ditch &
 where spills going.
 ✓ ~~3~~ delineate wetlands
 into Co. zoning (perp updated)

3/21

3/21 Mike Savage
 will start Bill & Janet's
 shoreline project

3/21

3/21 Shawn Puzos - WRPC
 ✓ Deeper than permit required.
 will just file app.

3/21 Doug Wells - (608) 847-6069
 Chairman - Wausau Airport
 Commission

✓ mtg. w/ Keith Ferroid & Jim
 Jensen - Bureau of aeronautics
 need to do some clearing
 approach clearing at the
 airport. just did this under
 maintenance program in winter
 under frozen conditions.

At. will the left message key, more info
 & als rec contact Agg, Co. zoning

3/21

3/21

3/21

3/21 Doug Wells - Tree Removal. NO Stream.
Harvest Logs

gals.

3/21 Chuck Pfeiffer - Big water cri Lake breakdown
(608) 339-3399

idea)

Lower Friendship Lake to accommodate
landfill requires. (Coffer dam)
ret. call 3/21 with message

3/21 Jim Arkdale (608) 547-0282
Concern - Lake Potomac well. rip rap
w/o permit. installed incorrectly
#3-we-1998-4049EW
ret. call 3/21 & get below.

3/21 Ray Diner - NRCS 423-3610 ex 3
Wetland Determination - T1-C Auto
Twin Pines, Hunt Club, LLC
Sent email

Time
is

3/21 Adolph Pavelic - Muskrat problem
Friendship Lake
(608) 339-6240 (M)
(608) 339-3388 (O)

e
under
water

ret. call 3/21. Ref to website for rip rap.

info

3/21 Ref Jim 3/21 entry above 120' / 1/2 acre
15050 W. No
Brookfield, WI
(414) 782-0830

Nelson, Tom
1912 Beaver Dr,
Arkdale, WI ZipCode
(608) 564-2596
Map | Driving Directions | What's Nearby©
Are you Tom Nelson? Update or remove this listing.