



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
1595 Wynkoop Street
DENVER, CO 80202-1129
Phone 800-227-8917
<http://www.epa.gov/region08>

MAY 23 2008

Ref: 8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7007 1490 0001 4785 7473

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 - Amended Complaint
Adding David Paulson as a Respondent
Docket No. CWA-08-2008-0009

Dear Mr. Paulson:

Enclosed is a document entitled First Amended Administrative Complaint and Notice of Opportunity for Hearing ("Amended Complaint"). The United States Environmental Protection Agency ("EPA") is issuing this Amended Complaint against Northeast Ridge Development Company and David J. Paulson (the "Respondents") pursuant to section 309 of the Clean Water Act (the "Act"), 33 U.S.C. § 1319. In the Amended Complaint, EPA alleges that the Respondents 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 Respondents in Richland County, North Dakota. The Amended Complaint proposes that a penalty of \$85,000 be assessed for these violations.

The Respondents have the right to a hearing to, among other things, contest the factual allegations in the Amended Complaint. We previously enclosed, with the original Complaint, 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 Amended Complaint in 40 C.F.R. § 22.15(b), and the additional time set forth in 40 C.F.R. § 22.14(c) for Respondent Northeast Ridge Development Company to file its answer to the Amended Complaint.

If Respondent David J. Paulson wishes to contest the allegations in the Amended Complaint or the penalty proposed in the Amended Complaint, he must file an answer within thirty (30) days of receipt of the enclosed Amended Complaint to the EPA Region 8 Hearing Clerk at the following address. If Respondent Northeast



Printed on Recycled Paper

Ridge Development Company wishes to contest the allegations in the Amended Complaint or the penalty proposed in the Amended Complaint, it must file an answer within twenty (20) days of receipt of the enclosed Amended Complaint to the EPA Region 8 Hearing Clerk at the following address:

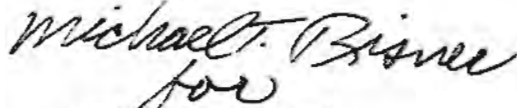
Regional Hearing Clerk (8RC)
U.S. EPA Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

If the Respondents do not file an answer by the applicable deadline, they may be found in default. 40 C.F.R. § 22.17(a). A default judgment may impose the full penalty proposed in the Amended 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 Respondents will be bound by the terms of the Consent Agreement and will waive their right to a hearing on, and judicial appeal of, the agreed upon civil penalty. Respondents have 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 Respondents of the need to file a timely answer to EPA's Amended Complaint. If Respondents wish 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. Amended Administrative Complaint
2. Certificate of Service

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

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2008 MAY 23 12:11 PM 50

IN THE MATTER OF:)	FIRST AMENDED ADMINISTRATIVE
)	COMPLAINT AND NOTICE OF
David J. Paulson, and)	OPPORTUNITY FOR HEARING
Northeast Ridge Development Company)	
16621 94 ½ R Street, SE)	Proceedings to Assess a Civil
Hankinson, North Dakota 58041)	Penalty Under Section 309(g)
)	of the Clean Water Act,
)	33 U.S.C. § 1319(g)
)	
Respondents.)	Docket No. CWA-08-2008-0009
)	

I. STATUTORY AUTHORITY

1. This First Amended Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") is issued pursuant to section 309(g) of the Clean Water Act (the "Act"), 33 U.S.C. § 1319(g), and 40 C.F.R. § 22.13. Section 309(g) of the Act authorizes the Administrator of the United States Environmental Protection Agency ("EPA") to make findings and to assess civil penalties for violations of section 301 of the Act, 33 U.S.C. § 1311. This proceeding is subject to 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 ("Consolidated Rules"), 40 C.F.R. Part 22, a copy of which accompanies this Complaint. Complainant in this action is the Assistant Regional Administrator for the Office of Enforcement, Compliance, and Environmental Justice, EPA Region 8, who has been properly delegated the authority to issue this Complaint.

2. Since Respondent Northeast Ridge Development Company has not filed an answer, Complainant files this first amended complaint as a matter of right. 40 C.F.R. § 22.14(c).

II. STATUTORY AND REGULATORY FRAMEWORK

3. 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).

4. 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.

5. 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.

6. 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.

7. 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).

8. 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).

9. "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"

10. "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."

11. "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;"

12. "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.”

13. “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).

14. “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).

15. “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.”

16. “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.”

17. “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.’”

18. "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).

19. 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

20. Respondent Northeast Ridge Development Company ("Northeast Ridge") 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.

21. David J. Paulson is an individual residing in North Dakota and is the president, a director, and registered agent of Respondent Northeast Ridge Development Company.

22. Respondents are and were at all times relevant to the Complaint "persons" within the meaning of section 502(5) of the Act, 33 U.S.C. § 1362(5).

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

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

25. On or about April 27, 1998, Respondent 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 Northeast Ridge.

26. 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.

27. 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. Respondents are developing a marina and residential subdivision on the Site.

28. At all times relevant to the Complaint, Respondents 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.

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

30. 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.

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

32. 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.

33. 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).

34. 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

35. On or about February 5, 1997, Respondent 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.

36. 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.

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

38. 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.

39. On or about January 14, 1999, Respondents 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.

40. In reference to permit application #199960033, the Corps sent letters to Respondents 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 Respondents dated April 21, 1999.

41. In a letter dated April 28, 1999, from Respondents' 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.

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

43. In a letter to the Corps dated June 14, 1999, Respondents 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.

44. In a letter to Respondents 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 Respondents submit a conceptual mitigation plan to the Corps for review and evaluation.

45. 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.

46. On February 17, 2000, Respondents 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.

47. In a letter to Respondents dated December 7, 2001, the Corps withdrew permit application #199960033 from its permit review process due to Respondents' 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.

48. 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 Respondents and or their 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.

49. Respondent David Paulson personally directed the unauthorized activities described in paragraph 48 of this Complaint.

50. The discharges of dredged and/or fill material described in paragraph 48 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.

51. By letter dated November 1, 2004, addressed to Respondents, the Corps found, and EPA hereby alleges, that Respondents' actions, as described in paragraph 48 of this Complaint, required prior Corps authorization and that the required authorization had not been granted. Further, the Corps directed Respondents to "cease and desist any further work within Lake Elsie and its adjacent wetlands."

52. The unauthorized activities set forth in paragraph 48 of this Complaint were components of Mr. Paulson's proposed project under permit application #199760033 and Respondents' 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.

53. The activities described in paragraph 48 of this Complaint were performed using common earthmoving vehicles and equipment, all of which were operated by Respondents and/or by one or more individuals on behalf of Respondents.

54. Under cover of a letter dated September 1, 2005, EPA issued Respondents a Findings of Violation and Administrative Order for Compliance, Docket No. CWA-08-2005-0046, requiring Respondents 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).

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

56. On or about October 21, 2005, June 15, 2006, September 28, 2006, and December 22, 2006, Respondents 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.

57. Respondent David Paulson conducted the business activities of Respondent Northeast Ridge and used Respondent Northeast Ridge in a manner such that the corporate form of Northeast Ridge should be disregarded, rendering Respondent David Paulson personally liable for Respondent Northeast Ridge's actions.

58. On February 23, 2007, EPA approved Respondents' December 22, 2006 Restoration Plan.

59. Respondents' Restoration Plan has not yet been implemented.

V. VIOLATION - DISCHARGE OF POLLUTANTS WITHOUT A PERMIT

60. Paragraphs 1 through 59 are realleged and incorporated herein by reference.

61. The discharged materials described in paragraph 48 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).

62. The discharged materials described in paragraph 48 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).

63. The vehicles and equipment described in paragraph 53 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).

64. 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).

65. 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).

66. The discharges of pollutants from a point source by Respondents into waters of the United States described in Paragraph 48 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).

67. 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

68. 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 Respondents assessing a penalty in the amount of Eight-Five Thousand Dollars (\$85,000).

69. 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; Respondents' prior compliance history and degree of culpability for the cited violations; any economic benefit or savings accruing to Respondents by virtue of the violations; Respondents' 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 Respondents' receipt of this Notice, unless Respondents, within that time, request 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

70. 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), either Respondent has the right to request a hearing in this matter. If either 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/he is entitled to judgment as a matter of law, then the Respondent contesting any such matter must file a written answer in accordance with 40 C.F.R. § 22.15 within thirty (30) days after service of the Complaint.

71. Respondents' 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 Respondents' dispute; (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).

72. Respondents' 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 Respondents' 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

73. Be aware that should either Respondent or both 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 RESPONDENTS FAIL TO REQUEST A HEARING, THEY WILL WAIVE THEIR RIGHT TO CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF RESPONDENTS FAIL 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.

74. Should Respondents 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

75. If Respondents do 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, Respondents 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.

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

77. Neither assessment nor payment of an administrative civil penalty pursuant to section 309 of the Act, 33 U.S.C. § 1319, shall affect Respondents' 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

78. 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:

5/23/08

for Michael T. Bivner

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 FIRST AMENDED 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, and
Northeast Ridge Development Company
16621 94 ½ R Street, SE
Hankinson, North Dakota 58041

Certified Return Receipt No. 7007 1490 0001 4785 7473

and to:

Fred Strege, Esq.
Smith Strege & Fredericksen, LTD
321 Dakota Ave.
Wahpeton, ND 58075

Certified Return Receipt No. 7004 1350 0001 5669 5093

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. 7004 1350 0001 5669 7820

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: 5/23/08 Judith M. Mc Ternan