



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

**WW-16J**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Robert Heser  
Heser Farms  
623 East 4<sup>th</sup> Street  
Centralia, Illinois 62801

Re: Notice of Proposed Assessment of an Administrative Penalty  
Docket No. **CWA-05-2006-0002**

Dear Mr. Heser:

I have enclosed a Complaint filed against you and Heser Farms under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). The Complaint alleges violations of Section 301 of the Clean Water Act, in that the Respondents filled a stream and adjacent wetlands without first obtaining a permit to do so. Attached to the Complaint is a copy of the rules of the procedure applicable to this proceeding.

By law, you have a right to request a hearing regarding the violations alleged in the Complaint, as well as the proposed administrative civil penalty. Please pay particular attention to Section III, entitled "Notice of Opportunity to Request a Hearing." Note that should you fail to request a hearing within 30 days of your receipt of the Complaint, you will waive your right to such a hearing and the proposed civil penalty may be assessed against you without further proceedings. You have the right to be represented by an attorney, or to represent yourself at any stage of these proceedings.

The U.S. EPA encourages all parties against whom it files a Complaint proposing assessment of a penalty to pursue the possibility of a settlement. If a mutually satisfactory settlement can be reached, it will be formalized by the issuance of a Consent Agreement signed by you and by the U.S. EPA, Region 5. The issuance of such a Consent Agreement shall constitute a waiver by you of your right to a hearing on, and to a judicial appeal of the proposed civil penalty.

A request for an informal conference does not extend the 30 days by which you must request or waive a hearing on the proposed penalty assessment. If you have any questions, or wish to discuss the possibility of settlement of this matter, please contact Mr. Greg Carlson, Enforcement

Officer, Water Division (WW-16J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may reach Mr. Carlson by telephone at 312/886-0124.

Sincerely yours,



Jo Lynn Traub  
Director, Water Division

Enclosure

cc: Regional Hearing Clerk (w/encl.), E-13J  
Ward Lenz (w/encl.), U.S. Army Corps of Engineers-St. Louis District  
Michael Brazier (w/encl.), U.S. Army Corps of Engineers-St. Louis District  
Bruce Yurdin (w/ encl.), IEPA, Springfield, IL  
Joyce Collins (w/encl.), U.S. Fish & Wildlife Service, Marion, IL



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

REPLY TO THE ATTENTION OF:

**WW-16J**

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Andrew Hesper  
224 South Pine Street  
Centralia, Illinois 62801

Re: Notice of Proposed Assessment of an Administrative Penalty  
Docket No. **CWA-05-2006-0002**

Dear Mr. Hesper:

I have enclosed a Complaint filed against you under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). The Complaint alleges violations of Section 301 of the Clean Water Act, in that the Respondents filled a stream and adjacent wetlands without first obtaining a permit to do so. Attached to the Complaint is a copy of the rules of the procedure applicable to this proceeding.

By law, you have a right to request a hearing regarding the violations alleged in the Complaint, as well as the proposed administrative civil penalty. Please pay particular attention to Section III, entitled "Notice of Opportunity to Request a Hearing." Note that should you fail to request a hearing within 30 days of your receipt of the Complaint, you will waive your right to such a hearing and the proposed civil penalty may be assessed against you without further proceedings. You have the right to be represented by an attorney, or to represent yourself at any stage of these proceedings.

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Officer, Water Division (WW-16J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may reach Mr. Carlson by telephone at 312/886-0124.

Sincerely yours,



Jo Lynn Traub  
Director, Water Division

Enclosure

cc: Regional Hearing Clerk (w/encl.), E-19J  
Ward Lenz (w/encl.), U.S. Army Corps of Engineers-St. Louis District  
Michael Brazier (w/encl.), U.S. Army Corps of Engineers-St. Louis District  
Bruce Yurdin (w/ encl.), IEPA, Springfield, IL  
Joyce Collins (w/encl.), U.S. Fish & Wildlife Service, Marion, IL

**U.S. ENVIRONMENTAL PROTECTION AGENCY - REGION 5  
PUBLIC NOTICE**

**ANDREW HESER, ROBERT HESER and HESER FARMS**

The U.S. Environmental Protection Agency (USEPA) Region 5, is hereby giving notice of the issuance of an Administrative Complaint to Andrew Hesper, Robert Hesper and Hesper Farms and its intention to assess an administrative penalty of \$120,000.00 under Section 309(g) of the Clean Water Act, 33 U.S.C. Section 1319(g).

USEPA alleges and is seeking administrative penalties for the past filling of approximately 1,885 feet of Martin Branch, its tributaries and approximately 2.1 acres of adjacent forested wetlands for the expansion of crop land without first obtaining authorization under Section 301 of the Clean Water Act, 33 U.S.C. Section 1311. Martin Branch and adjacent wetlands are located within the northwest quarter of Section 11, in Raccoon Township, Marion County, Illinois.

Interested parties may contact the Agency representative for this action at the following address or by phone to obtain further information or additional copies of USEPA's Complaint:

Mr. Gregory Carlson  
USEPA-Region 5 (WW-16J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
312-886-0124

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Any person wishing to comment on the proposed penalty order within the complaint must submit comments in writing to the Regional Hearing Clerk at the address listed below within 30 days of the date of this notice. The respondents, Andrew Hesper, Robert Hesper and Hesper Farms, may request a hearing within 30 days of receipt of this notice by sending a written request for a hearing to:

**CWA-05-2006-0002**  
Regional Hearing Clerk  
USEPA-Region 5 (E-13J)  
77 West Jackson Boulevard  
Chicago, Illinois 60604

If a hearing is held, those submitting written comments will be advised of the date and time of the hearing and may appear to present evidence on the appropriateness of the proposed penalty assessment. The final administrative penalty order will be issued after the close of the 30 day comment period, unless a hearing is requested.

The Administrative Record, including information submitted by the respondent, is on file at the USEPA regional office identified above. The file will be open for public inspection between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Jo Lynn Traub  
Director, Water Division

WW-16J  
U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGIONAL OFFICE  
REGIONAL HEARING CLERK  
MAY -1 3 2006  
REGIONAL HEARING CLERK

CERTIFICATE OF SERVICE

This is to certify that the original and one copy of this Class II Section 309(g) Complaint and Notice of Opportunity of Hearing, was filed with the Regional Hearing Clerk on May 1, 2006 and that a true and correct copy was mailed, with the Consolidated Rules of Practice, 40 C.F.R. Part 22, to Respondents, on May 1, 2006, at:

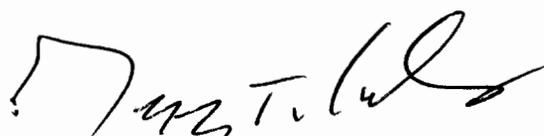
Mr. Robert J. Hesper  
623 East 4<sup>th</sup> Street  
Centralia, Illinois 62801,

Mr. Andrew Hesper  
224 South Pine Street  
Centralia, Illinois 62801

and

Hesper Farms  
623 East 4<sup>th</sup> Street  
Centralia, Illinois 62801.

May 1, 2006  
Date



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

**CWA-05-2006-0002**

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

|                             |   |  |
|-----------------------------|---|--|
| <b>In the Matter of:</b>    | ) | <b>Proceeding to Assess a Class II Civil</b> |
|                             | ) | <b>Penalty Under Section 309(g) of the</b>   |
| <b>Robert J. Heser,</b>     | ) | <b>Clean Water Act, 33 U.S.C. § 1319(g)</b>  |
| <b>Centralia, Illinois,</b> | ) |  |
|                             | ) |  |
| <b>Heser Farms,</b>         | ) | <b>Docket No. CWA-05-2006-0002</b>           |
| <b>Centralia, Illinois,</b> | ) |  |
|                             | ) |  |
| <b>and</b>                  | ) |  |
|                             | ) |  |
| <b>Andrew Heser,</b>        | ) |  |
| <b>Centralia, Illinois,</b> | ) |  |
|                             | ) |  |
| <b>Respondents.</b>         | ) |  |

REGISTRATION  
MAY -1 03:06  
REGISTRATION

**ADMINISTRATIVE COMPLAINT**

**I. General Allegations**

1. This is an administrative action instituted by Region 5 of the United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 309(g) of the Clean Water Act ("the Act"), 33 U.S.C. § 1319(g), and 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," 64 Fed. Reg. 40137 (codified at 40 C.F.R. Part 22). The Administrator of U.S. EPA has delegated the authority to take this action to the Regional Administrator of Region 5, who has redelegateed this authority to the Water Division Director.

2. The Respondents in this matter are:

Mr. Robert Heser  
623 East 4<sup>th</sup> Street  
Centralia, Illinois 62801,

Heser Farms  
623 East 4<sup>th</sup> Street  
Centralia, Illinois 62801

and

Mr. Andrew Heser  
224 South Pine Street  
Centralia, Illinois 62801.

3. Section 301 of the Act provides that the discharge of any pollutant from a point source into navigable waters by any person shall be unlawful. 33 U.S.C. § 1311.

4. Section 404 of the Act authorizes the Secretary of the Army, acting through the Chief of Engineers, Corps of Engineers (Corps), to issue permits for the discharge of dredged or fill material into navigable waters. 33 U.S.C. § 1344.

5. Section 502(5) of the Act defines "person" 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).

6. Section 502(12) of the Act defines "discharge of pollutants," as, inter alia, any addition of any pollutant to navigable waters from any point source. 33 U.S.C. § 1362(12).

7. 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).

8. Section 502(14) of the Act defines "point source," as "any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or

other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14).

9. Section 502(7) of the Act defines "navigable waters," in part, as the waters of the United States, including the territorial seas. 33 U.S.C. § 1362(7).

10. The regulation at 40 C.F.R. § 230.3(s) defines the term "waters of the United States" as "all other waters such as . . . streams . . . , wetlands . . . "; and "Wetlands adjacent to waters [such as lakes, rivers and streams]."

11. The regulation at 40 C.F.R. § 232.2 defines "Wetlands" as "those 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."

12. In August and September 1999, and at other times known to the Respondents, the Respondents, using a scraper, paddlewheel and bulldozers, discharged approximately 3,000 cubic yards of dredged spoil and organic debris into approximately 13,195 square feet of Martin Branch, its tributaries and approximately 2.1 acres of adjacent forested wetlands located in the southeast quarter of the southwest quarter of the northwest quarter of Section 11, Township 1 North, Range 2 East, Raccoon Township, Marion County, State of Illinois ("the Site"). Respondents reconstructed Martin Branch as a straight line channel on or near portions of the east and south Site boundaries.

13. The wetlands identified in paragraph 12 are adjacent to Martin Branch, which flows through Lake Centralia (an impoundment of Martin Branch), which flows into the Crooked Creek, which flows to the Big Muddy River which flows into the Mississippi River, which is an interstate stream.

14. The land described in paragraph 12, above, is owned by Respondents Robert J. Heser and Andrew Heser and is part of Respondent Heser Farms' operation.

15. Between August and September 1999, and continuing to the present, the Respondents did not have a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344, to add approximately 3,000 cubic yards of dredged material and organic debris from scrapers, paddlewheels or bulldozers into the waters of the United States on Site.

16. Respondents Robert J. Heser and Andrew Heser are individuals residing in the State of Illinois.

17. Respondent Heser Farms is owned by Respondent Robert J. Heser and does business within the State of Illinois.

18. Respondents are "persons" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

19. The dredged spoil and organic debris discharged into the Site constitute "pollutants" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

20. The addition of dredged spoil and organic debris from scrapers, paddlewheels and bulldozers into the Site constitutes a "discharge of a pollutant" as defined by Section 502(12) of the Act, 33 U.S.C. § 1362(12).

21. A scraper, paddlewheel and bulldozer are discernible, confined and discrete conveyances, specifically rolling stock, and constitute "point sources" as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

22. Martin Branch, its tributaries and adjacent forested wetlands on the Site are "waters of the United States" as defined by the regulations at 40 C.F.R. § 232.2, and constitute "navigable

waters" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

23. Therefore, Respondents are persons who discharged pollutants from a point source into waters of the United States, without a permit, in violation of Section 301 of the Act, 33 U.S.C. § 1344.

24. Each day the pollutants remain in the waters of the United States constitutes a continuing violation of the Act and an additional day of violation of Section 301 of the Act, 33 U.S.C. § 1311.

## **II. Notice of Proposed Penalty Assessment**

Pursuant to Section 309(g)(2) of the Act, 33 U.S.C. § 1319(g)(2), the Administrator may assess a Class II civil penalty not to exceed \$11,000 per day for each day during which the violation continues, to a maximum amount of \$137,500, for violations of Section 301 of the Act, 33 U.S.C. § 1311, up until March 14, 2004. After March 14, 2004, the maximum total penalty for violations of Section 301 of the Act increased to \$157,500.

Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as Respondent's ability to pay, prior history of such violations, culpability, economic benefit or savings (if any) resulting from the violations, and such other matters as justice may require, U.S. EPA proposes to issue a Final Order to Respondents assessing a penalty in the amount of **\$120,000.00**.

This amount of civil penalty was determined based upon an analysis of relevant evidence now known to Complainant, in consideration of the statutory penalty criteria identified at Section 309(g)(3) of the Act, 33 U.S.C. § 1319(g)(3).

In considering Respondent's "ability to pay" the proposed \$120,000 penalty, Complainant

has presumed that Respondents do have an ability to pay the penalty amount. However, should Respondents make available in a timely fashion to Complainant relevant and credible financial records which demonstrate that they do not have an ability to pay the amount of penalty proposed, Complainant will set aside the presumption and reduce the amount of penalty proposed, consistent with what is revealed in Respondent's financial records. Likewise, should Respondents provide Complainant credible information relevant to any other issue regarding the appropriate amount of penalty, on review of that information Complainant will amend the amount of penalty proposed if, and as, warranted.

Respondents shall pay this penalty by certified or cashiers' check payable to "Treasurer, the United States of America," and shall send it, with a transmittal letter identifying the Complaint to:

Region 5  
U.S. Environmental Protection Agency  
P.O. Box 70753  
Chicago, Illinois 60673

Copies of the transmittal letter and check shall be sent to:

Greg Carlson  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (WW-16J)  
Chicago, IL 60604-3590

and

Thomas Martin  
Senior Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
77 West Jackson Boulevard (C-14J)  
Chicago, IL 60604-3590

### **III. Notice of Opportunity to Request a Hearing**

As provided in Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and Section 22.15 of the Consolidated Rules of Practice, 64 Fed. Reg. 40137, at 40182 (1999) (to be codified at 40 C.F.R. § 22.15), Respondents have the right to request a hearing to contest any material fact alleged in this Complaint, and/or to contest the appropriateness of the amount of the proposed penalty. To request a hearing, Respondents must specifically make such request in the Answer, which is discussed below.

Any hearing Respondents request regarding this Complaint will be held and conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Order, and the Revocation, Termination or Suspension of Permits," 64 Fed. Reg. 40137 (1999) (to be codified at 40 C.F.R. Part 22), a copy of which accompanies this Complaint.

### **IV. Answer**

If Respondents contest any material fact alleged in this Complaint, contend that the proposed penalty is inappropriate, or contend that they are entitled to judgment as a matter of law, Respondents must file the original and one copy of a written Answer to this Complaint with the Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (E-13J), Chicago, IL, 60604-3590, within 30 days after service of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such, in which case the time period shall be extended to the next business day.

Respondent's Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint with respect to which that Respondent has any knowledge, or must clearly state that Respondent has no knowledge of a particular factual allegation. Where a Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

Respondent's Answer must also state:

- a. The circumstances or arguments that Respondent alleges constitute grounds of defense;
- b. The facts that Respondent disputes;
- c. The basis for opposing the proposed penalty, including but not limited to a claim of financial inability to pay; and
- d. Whether Respondent requests a hearing.

Respondents' failure to admit, deny or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation.

A copy of the Answer and all subsequent documents filed in this action must be sent to Thomas Martin, Senior Attorney, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (C-14J), Chicago, IL, 60604-3590, who may be telephoned at (312) 886-4273.

If Respondents fail to file written Answers within 30 days after service of this Complaint, the Presiding Officer may issue a Default Order, after motion, under Section 22.17 of the Consolidated Rules of Practice, 64 Fed. Reg. 40137, at 40182 (1999) (codified at 40 C.F.R.. § 22.17). Default by a Respondent constitutes an admission of all factual allegations made in the Complaint and a waiver of Respondent's right to contest the factual allegations made in the Complaint. A Respondent must pay any penalty assessed in a Default Order without further

proceedings 30 days after the Order becomes a Final Order of the Administrator of U.S. EPA under 40 C.F.R. § 22.27(c). A Respondent's failure to pay the entire proposed penalty assessed by the Default Order by its due date may result in a civil action to collect the assessed penalty, plus interest, attorneys' fees, costs of collection proceedings, and an additional quarterly nonpayment penalty pursuant to Section 309(g)(9) of the Act, 33 U.S.C. § 1319(g)(9).

If Respondents request a hearing on the Complaint, members of the public who have exercised their right to comment will have a right under Section 309(g)(4)(B) of the Act, 33 U.S.C. § 1319(g)(4)(B), to present evidence on the appropriateness of the penalty assessment. If a hearing is not held, U.S. EPA may issue a Final Order assessing penalties and only members of the public who commented on the proposed penalty assessment during the 30-day period following issuance of the public notice will have an additional 30 days to petition U.S. EPA to set aside the Final Order assessing penalties and to hold a hearing thereon. U.S. EPA will grant the petition and hold the hearing only if the petitioner's evidence is material and was not considered by U.S. EPA in the issuance of the Final Order assessing penalties.

#### **V. Settlement Conference**

Whether or not Respondents request a hearing, Respondents may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement conference, please write to Greg Carlson, Enforcement Officer, United States Environmental Protection Agency, 77 West Jackson Boulevard (WW-16J), Chicago, IL, 60604-3590, or telephone him at (312) 886-0124.

Respondents' request for an informal settlement conference will not extend the 30-day period during which that Respondent must submit a written Answer and Request for Hearing. A

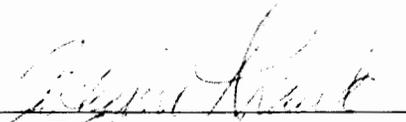
Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure. U.S. EPA encourages all parties against whom a penalty is proposed to pursue settlement through an informal conference. U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such conference will be embodied in a Consent Agreement and Final Order. Respondents' consent to a Consent Agreement and Final Order shall constitute a waiver of the right to request a hearing on any matter stipulated to therein.

#### **VI. Notice to the State and Public**

U.S. EPA has consulted with the State of Illinois regarding this action by contemporaneously mailing a copy of this Complaint to Marcia Willhite, Chief, Bureau of Water, Illinois Environmental Protection Agency and by offering Illinois an opportunity to comment on the proposed penalty. U.S. EPA, contemporaneously with the issuance of this Complaint, caused a public notice to be posted on the U.S. EPA - Region 5 website regarding this action.

#### **VII. Continuing Obligation to Comply**

Neither assessment nor payment of a penalty pursuant to Section 309(g) of the Act, 33 U.S.C. § 1319(g), shall affect Respondent's continuing obligation to comply with the Act, with any other Federal, State or local law or regulation and with any Compliance Order issued under Section 309(a) of the Act, 33 U.S.C. § 1319(a).

  
\_\_\_\_\_  
Jo Lynn Traub  
Director, Water Division  
U.S. Environmental Protection Agency  
Region 5 CWA-05-2006-0002

  
\_\_\_\_\_  
Date