



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

MAR 18 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:
WW-16J

Gerald M Fedorchak, President
Outlook Cove, LLC
100 Outlook Cove Drive
LaPorte, Indiana 46350

Re: In the Matter of Outlook Cove, LLC
Docket No.: **CWA-05-2009-0004**

Dear Mr. Fedorchak:

I have enclosed an amended complaint filed against your company, Outlook Cove, LLC, under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). The complaint alleges Outlook Cove violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, when it developed the property known as Outlook Cove Condominiums in LaPorte, LaPorte County, Indiana. We have dropped G M Fedorchak & Associates, Inc. as a defendant in this matter which was originally filed in March 2009.

As provided in the amended complaint, if you would like to request a hearing, you must do so in your answer to the complaint. Please note that if you do not file an answer with the Regional Hearing Clerk within 30 days of your receipt of this complaint, a default order may be issued and the proposed civil penalty will become due 30 days later.

In addition, whether or not you request a hearing, you may request an informal settlement conference. If you wish to request a conference, or if you have any questions about this matter, please contact Gregory T. Carlson, Enforcement Officer, 77 West Jackson Boulevard, Chicago, Illinois 60604, at (312) 886-0124.

Sincerely,

A handwritten signature in black ink, appearing to read "Tinka G. Hyde".

Tinka G. Hyde
Director, Water Division

Enclosure

RECEIVED
MAR 13 2010

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
Outlook Cove, LLC,)
100 Outlook Cove Drive,)
LaPorte, Indiana,)
)
)
)
)
Respondent.)
_____)

Proceeding to Assess a Class II Civil
Penalty Under Section 309(g) of the
Clean Water Act, 33 U.S.C. § 1319(g)

Docket No.

CWA-05-2009-0004

AMENDED ADMINISTRATIVE COMPLAINT

I. Nature of the Action

1. This amends an administrative action instituted by Region 5 of the United States Environmental Protection Agency ("U.S. EPA") on March 5, 2009, pursuant to Section 309(g) of the Clean Water Act ("the Act" or "CWA"), 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 redelegated this authority to the Water Division Director.

2. The Respondent in this matter is:

Outlook Cove, LLC
100 Outlook Cove Drive
LaPorte, Indiana 46350

II. Statutory and Regulatory Background

3. Section 301(a) of the Act, 33 U.S.C. §1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, inter alia, a permit issued pursuant to CWA Section 404, 33 U.S.C. §1344.

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 at specified disposal sites. 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" 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" to include "all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce,...intrastate lakes, rivers, streams (including intermittent streams) rivers, streams,...wetlands...the use of which could affect interstate or foreign commerce,...tributaries of [such other] waters,... [and] wetlands adjacent to [all such] waters."

11. The regulation at 40 C.F.R. § 230.3(t) 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."

III. Allegations

12. Respondent, Outlook Cove, LLC, is a limited liability partnership under the authorities of the State of Indiana.

13. Therefore, Respondent is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. §1362(5).

14. On April 25, 2001, Outlook Cove, LLC applied for a permit to the U.S. Army Corps of Engineers under 33 U.S.C. § 401. G M Fedorchak & Associates, Inc. represented Outlook Cove, LLC during this process.

15. On March 29, 2004 the U.S. Army Corps of Engineers denied without prejudice the permit application referenced in Paragraph 14.

16. Between September 2004 and October 31, 2004, and at times better known to Respondent, J & H Construction, Inc., acting on behalf of the Respondent, discharged

approximately 13,000 cubic yards of fill and dredged material and organic debris from excavators and bulldozers into a 700 feet length of shoreline wetlands of varying width that abut the open waters of "Outlook Cove" of Pine Lake (the "site"), within the city of LaPorte, LaPorte County, Indiana (or formerly 1310 Pine Lake Avenue; in the northeast quarter of the northwest quarter of the northeast quarter of Section 27, Township 37 North, Range 3 West, Center Township "). An outline of the discharge areas are digitized on Exhibit #1.

17. On April 8, 2005 the U.S. Army Corps of Engineers issued to Outlook Cove, LLC an order to cease and desist from further unauthorized activities.

18. The addition of dredged and fill material and organic debris from excavators, or earth moving equipment, into waters of the United States constitutes a "discharge of a pollutant" as defined by Section 502(12) of the Act, 33 U.S.C. §1362(12).

19. At no time did Respondent have a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344, to discharge fill or dredged material and organic debris into the wetlands on the site.

20. The fill or dredged material and organic debris discharged into the wetlands on the site constitute "pollutants" as defined by Section 502(6) of the Act, 33 U.S.C. §1362(6).

21. An excavator 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. The wetlands 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. Pine Lake is an intrastate lake used recreationally by boaters, sightseers and anglers.

24. Therefore, Respondent is a person 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.

25. 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.

IV. Proposed Civil Penalty

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 available information as to 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 Respondent assessing a penalty in the amount of **\$40,000.00**.

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).

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

and;

Robert L. Thompson
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

V. 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), Respondent has 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, Respondent must specifically make such request in the Answer, which is discussed below.

Any hearing Respondent requests 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.

VI. Answer

If Respondent contests 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, Respondent 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-19J), 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; and

d. Whether Respondent requests a hearing.

Respondent's 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 Robert Thompson, Senior Attorney, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (C-14J), Chicago, IL, 60604-3590, who may be telephoned at (312) 353-6700.

If Respondent fails 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 Respondent requests 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.

VII. Settlement Conference

Whether or not Respondent requests a hearing, Respondent 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 (WW-16J), Enforcement Officer, United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL, 60604-3590, or telephone him at (312) 886-0124.

Respondent's 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. Respondent's 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.

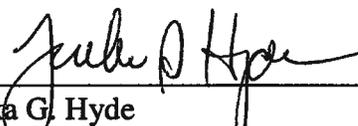
VIII. Notice to the State and Public

U.S. EPA has consulted with the State of Indiana regarding this action and mailed a copy of this Complaint to Bruno Pigott, Assistant Administrator, Office of Water Quality, Indiana

Department of Environmental Management and by offering Indiana 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 Region 5 web page ([www.epa.gov/R5/public notices](http://www.epa.gov/R5/public_notices)) regarding this action.

IX. 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).



Tinka G. Hyde
Director, Water Division
U.S. Environmental Protection Agency
Region 5

3-17-2010
Date

CWA-05-2009-0004

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PROTECTION AGENCY



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

REPLY TO THE ATTENTION OF:

WW-16J

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 March 18, 2010, and that a true and correct copy was mailed, with the Consolidated Rules of Practice, 40 C.F.R. Part 22, to Respondent, on March 18, 2010, at:

Gerald M. Fedorchak, Jr., President
Outlook Cove, LLC
100 Outlook Cove Dr.
LaPorte, Indiana 46350

March 18, 2010

Date

A handwritten signature in black ink, appearing to read "Gregory T. Carlson", written over a horizontal line.

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

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