

PUBLIC NOTICE

**U.S. Environmental Protection Agency
Region 5**

In the matter of: Lake Erie Shores Development, LLC

Docket No. CWA-05-2007-0005

The U.S. Environmental Protection Agency (EPA), Region 5, hereby provides notice of the proposed issuance of a Consent Agreement and Final Order (CAFO) to Lake Erie Shores Development, LLC (Respondent) for alleged violations of Section 301 of the Clean Water Act (CWA), 33 U.S.C. § 1311.

EPA has alleged in the CAFO that Respondent discharged fill material from point sources into approximately 1,384 linear feet of streams and 4.035 acres of wetlands in association with the development of Lake Erie Shores Phases I, II, III, and IVa, and North Shore Estates residential developments, located north and south of Lake Road and west of Bacon Road in the Township of Painesville, Lake County, Ohio. None of the aforesaid fill activities have been authorized by a Department of the Army permit, under Section 404 of the CWA, 33 U.S.C. § 1344. All of the fill activities occurred in McKinley Creek, unnamed tributaries thereof, and adjacent wetlands. McKinley Creek is a tributary of Lake Erie, a navigable water of the United States. Therefore, the affected streams and wetlands are subject to federal jurisdiction under the CWA.

EPA and Respondent have agreed to settle this matter without further litigation. Under the CAFO, Respondent has agreed to pay \$103,000 in civil penalties. In a separate settlement not subject to this public notice, EPA and Respondent have also agreed on a proposed wetland restoration and mitigation plan for the above site. The Respondent will propose this plan as part of its application for an after-the-fact (ATF) CWA Section 404 permit from the Department of the Army. This ATF permit, if issued, will provide authorization for the unauthorized filling activities alleged by EPA, as well as provide a vehicle for wetland restoration and mitigation activities at the site.

Before issuing an order assessing a civil penalty, EPA is providing an opportunity for the public to comment on the appropriateness of the civil penalty. Any person wishing to comment on the proposed civil penalty must submit comments in writing to the Regional Hearing Clerk at the address listed below within 30 days from the date of this notice.

Regional Hearing Clerk
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

In accordance with 40 C.F.R. § 22.45, EPA will provide to each commenter a copy of the proposed CAFO. Within 30 days of receipt of the CAFO, a commenter may petition the Regional Administrator of Region 5 to set aside the proposed CAFO on the basis that material evidence was not considered.

Interested parties may contact the Agency representative for this action at the following address or by phone to obtain further information on the proposed civil penalty:

Melissa Gebien
Enforcement Officer
Water Division (WW-16J)
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590
(312) 886-6833