



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 WYNKOOP STREET

DENVER, CO 80202-1129

Phone 800-227-8917

http://www.epa.gov/region08

2009 JUN 11 PM 12:29

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DOCKET NO.: CWA-08-2009-0004

IN THE MATTER OF:	)	
	)	
INREIT PROPERTIES, LLLP	)	FINAL ORDER
And	)	
GOLDMARK DEVELOPMENT CORP.	)	
	)	
RESPONDENTS	)	

Pursuant to 40 C.F.R. §22.18, of EPA’s Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby **ORDERED** to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

SO ORDERED THIS 11<sup>th</sup> DAY OF June, 2009.

Elyana R. Sutin  
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

2009 JUN 11 PM 12:30

IN THE MATTER OF )  
)  
)  
INREIT Properties, LLLP, and )  
Goldmark Development Corporation, )  
)  
)  
Respondents )  
)  
Proceeding under section 309(g) )  
of the Clean Water Act, )  
33 U.S.C. §1319(g) )  
\_\_\_\_\_ )

) Docket No. CWA-08-2009-0004

) **CONSENT AGREEMENT**

Complainant United States Environmental Protection Agency, Region 8 (EPA) and INREIT Properties, LLLP and Goldmark Development Corporation (Respondents) hereby consent and agree as follows:

1. On December 31, 2008, EPA issued an Administrative Penalty Complaint (complaint) alleging that the Respondents violated sections 301(a), 308 and 402(p) of the Clean Water Act (the Act), 33 U.S.C. §1311(a), 1318, and 1342(p), and 40 C.F.R. §122.26(c). The complaint proposed that the Respondents pay an administrative civil penalty for those violations, pursuant to section 309(g) of the Act, 33 U.S.C. §1319(g).
2. The Respondents admit the jurisdictional allegations of the complaint and neither admit nor deny the specific factual allegations of the complaint. The Respondents do not admit to any violations of the Act or EPA regulations or to any wrongdoing.

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3. The Respondents waive their right to a hearing before any tribunal to contest any issue of law or fact set forth in the complaint or in this consent agreement.

4. This consent agreement, upon incorporation into a final order, applies to and is binding upon EPA and upon Respondents and Respondents' successors and assigns. Any change in the ownership or operation of the site at issue, including, but not limited to, any transfer of assets or real or personal property, shall not alter the Respondents' responsibilities under this agreement. This consent agreement contains all terms of the settlement agreed to by the parties.

5. The Respondents consent and agree to pay a civil penalty in the amount of eighteen thousand and five hundred dollars (\$18,500.00) in the manner described below:

- a. Payment shall be made in a single installment due no later than thirty calendar days from the date of the final order, issued by the Regional Judicial Officer, that adopts this consent agreement. If the due date for the payment falls on a weekend or legal federal holiday, then the due date is the next business day. The date payment is made is considered to be the date processed by U.S. Bank, described below. Payment must be received by 11:00 AM Eastern Standard Time to be considered received that day.
- b. Payment shall be made by remitting a cashier's or certified check, or making a wire transfer or on-line payment, including the name and docket number of this case, for the amount stated in part "a," above, payable to "Treasurer, United States of America," as follows:

If sent by regular U.S. mail:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

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If sent by any overnight commercial carrier:

U.S. Bank  
Government Lockbox 979077  
U.S. E.P.A. Fines & Penalties  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101

If sent by wire transfer: Any wire transfer must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA: 021030004 / Account Number: 68010727

Payment may also be made on-line by accessing "www.pay.gov," searching for "sfo 1.1," and completing the required fields.

A copy of the check (or notification of wire transfer or on-line payment) shall be sent simultaneously to:

Amy Clark  
Enforcement Officer  
Water Enforcement Program (8ENF-NP)  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

and

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

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final order, not the due date, at a rate established by the Secretary of the Treasury pursuant to 31 U.S.C. §3717, and will continue to accrue until payment in full is received (i.e., on the 1<sup>st</sup> late day, 30 days of interest will have accrued).

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- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed the 31<sup>st</sup> day from the due date of any payment, and for each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per annum penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date. Payments are first applied to outstanding handling charges, 6% penalty interest, and late interest. The remainder is then applied to the outstanding principal amount.
      - e. The Respondents agree that the penalty shall never be claimed as a federal or other tax deduction or credit.
6. Nothing in this consent agreement shall relieve the Respondents of the duty to comply with the Act and its implementing regulations.
7. Any failure by the Respondents to comply with any of the terms of this consent agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this consent agreement and for such other relief as may be appropriate.
8. Nothing in this consent agreement shall be construed as a waiver by the EPA or any other federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of the Respondents' failure to perform pursuant to the terms of this consent agreement.
9. The parties agree to submit this consent agreement to the Regional Judicial Officer, with a request that it be incorporated into a final order.
10. Each party shall bear its own costs and attorney fees in this matter.

INREIT Properties, LLLP and Goldmark Development Corporation  
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11. This consent agreement, upon incorporation into a final order by the Regional  
Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of  
the specific violations alleged in the complaint.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant

Date: 8 June 2009

By: *Diane S. Sipe*  
Diane Sipe, Director  
Water Enforcement Program  
Office of Enforcement,  
Compliance and Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

Date: June 8, 2009

By: *David Rochlin*  
Michael T. Risner, Director  
David Rochlin, Supervisory Enforcement Attorney  
Legal Enforcement Program  
Office of Enforcement,  
Compliance and Environmental Justice  
U.S. EPA Region 8  
1595 Wynkoop Street  
Denver, CO 80202-1129

INREIT PROPERTIES, LLLP,  
Respondent

Date: 5-14-09

By: *Peter Winger*  
Peter Winger, Chief Financial Officer

GOLDMARK DEVELOPMENT CORPORATION,  
Respondent

Date: 5/13/09

By: *Dale D. Lian*  
Dale D. Lian, President

**CERTIFICATE OF SERVICE**

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter **INREIT PROPERTIES, LLLP, and GOLDMARK DEVELOPMENT CORP.; DOCKET NO.: CWA-08-2009-0004** was filed with the Regional Hearing Clerk on June 11, 2009.

Further, the undersigned certifies that a true and correct copy of the documents were delivered to Peggy Livingston, Senior Enforcement Attorney, U. S. EPA – Region 8, 1595 Wynkoop Street, Denver, CO 80202-1129. True and correct copies of the aforementioned documents were placed in the United States mail certified/return receipt requested and e-mailed on June 11, 2009, to:

Attorney for INRIET PROPERTIES, LLLP.

Jon W. Backes  
McGee, Hankla, Backes & Dobrovolny  
Wells Fargo Bank Center  
15 Second Avenue, SW, Suite 305  
Minot, ND 58702-0998  
[jbackes@mcgeelaw.com](mailto:jbackes@mcgeelaw.com)

Attorney for GOLDMARK DEVELOPMENT CORP.

Michael L. Gust  
Anderson, Bottrell, Sanden & Thompson  
4132 30<sup>th</sup> Avenue South, Suite 100  
Fargo, ND 58106-0247  
[Andersonbottrell.com](http://Andersonbottrell.com)

E-mailed and Pouch Mailed

Honorable Spencer Nissen  
Administrative Law Judge (1900L)  
U. S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

E-mailed to:

Michelle Angel  
U. S. Environmental Protection Agency  
Cincinnati Finance Center

June 11, 2009

  
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Tina Artemis, Paralegal/Regional Hearing Clerk