



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

OCT 29 2009

REPLY TO THE ATTENTION OF:

WW-16J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Calvin M. Akin, President
Premier Real Estate Management, LLC
19105 West Capitol Drive (Suite 200)
Brookfield, Wisconsin 53045

Re: In the Matter of Premier Real Estate Management, LLC
Docket No.: CWA-05-2010-0002


Dear Mr. Akin:

I have enclosed a complaint filed against your company, Premier Real Estate Management, LLC (Premier), under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g). The complaint alleges Premier violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, when it developed the property known as Cranberry Estates in Eagle River, Vilas County, Wisconsin. During the development, Premier used contractors that filled wetlands in three locations that abut Mud Creek, a tributary to the Wisconsin River, without first obtaining a permit issued pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344.

As provided in the 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,


for Tinka G. Hyde
Director, Water Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Proceeding to Assess a Class II Civil
)	Penalty Under Section 309(g) of the
Premier Real Estate Management, LLC,)	Clean Water Act, 33 U.S.C. § 1319(g)
Brookfield, Wisconsin,)	
)	
)	Docket No.
Respondent.)	
<hr/>		CWA-05-2010-0002

RECEIVED
OCT 29 2009

**ADMINISTRATIVE COMPLAINT AND
NOTICE OF PROPOSED PENALTY ASSESSMENT**

**REGIONAL HEARING CLERK
USEPA
REGION 5**

I. Nature of the Action

1. This is an administrative action instituted by Region 5 of the United States Environmental Protection Agency (“EPA”), pursuant to Section 309(g) of the Clean Water Act (“the Act”), 33 U.S.C. § 1319(g), and 40 C.F.R. Part 22, the “*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits.*”
2. The Administrator of EPA has delegated the authority to take this action to the EPA Regional Administrator of Region 5, who has duly redelegated this authority to the Water Division Director of Region 5 (“Complainant”), who hereby issues this Complaint and Notice.
3. The Respondent in this matter is Premier Real Estate Management, LLC (“Premier or Respondent”), of Brookfield, Wisconsin. Premier is a limited liability company doing business in the State of Wisconsin, and was at all times relevant to this Complaint the owner and operator of a real estate development firm.
4. Complainant has consulted with the State of Wisconsin as required by Section 309(g)(1) of the Act, 33 U.S.C. § 1319(g)(1).

II. Statutory and Regulatory Background

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

6. 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, to issue permits for the discharge of dredged or fill material into navigable waters at specified disposal sites.

7. Pursuant to Section 309(g)(1)(A) of the Act, 33 U.S.C. § 1319(g)(1)(A), whenever on the basis of any information available the Administrator finds that any person has violated Section 301 of the Act, 33 U.S.C. § 1311, the Administrator may, after consultation with the State in which the violation occurs, assess a Class II civil penalty under 33 U.S.C. § 1319(g)(2)(B).

8. Section 309(g)(2)(B) of the Act, 33 U.S.C. § 1319(g)(2)(B), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, authorize the Administrator to assess a Class II civil penalty of up to \$11,000 per day for each day during which a violation continues, up to a maximum amount of \$157,500.

9. Each day that 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.

III. General Allegations

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

11. At all times relevant to this Complaint, Respondent was the owner of an approximately 27 acre parcel of land located in the northwest quarter of the northwest quarter of Section 33, Township 40 North, Range 10 East, Town of Lincoln, Vilas County, Wisconsin ("the Property").

12. The Property contains approximately six (6) acres of land ("the Wetlands") which is inundated or saturated by 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. This area of the Property is a "wetland" as defined at 40 C.F.R. § 230.3(t), and is depicted on the survey for the Property attached to this Complaint and Notice and Exhibit 1.

13. The Wetlands on the Property connect to and abut Mud Creek, which drains into the Wisconsin River.

14. The Wisconsin River is a "water of the United States," as defined by 40 C.F.R. § 230.3(s), and thus is a "navigable water" as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7). The Wisconsin River is depicted on an aerial photograph attached to this Complaint and Notice as Exhibit 2.

15. Mud Creek is a "water of the United States," as defined by 40 C.F.R. § 230.3(s), and thus is a "navigable water," as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

Mud Creek is graphically represented in Exhibit 3 to this Complaint and Notice, and is also depicted on Exhibit 2.

16. The Wetlands on the Property are "waters of the United States," as defined by 40 C.F.R. § 230.3(s), and thus constitute a "navigable water," as defined by Section 502(7) of the Act, 33 U.S.C. § 1362(7).

17. Prior to August 2007, Respondent contracted with Nicolet Lumber Company to develop, improve, and construct a multi-family residential development on the Property commonly known as "Cranberry Estates" and "Pinewood Estates."

18. Between August 2007 and December 2007, Respondent, its contractors, subcontractors, or other duly-authorized individuals or entities, used excavators, bulldozers, or other earth moving equipment to add dredged or fill material into the Wetlands at three separate locations on the Property. An outline of the three areas is depicted on Exhibit 1.

19. Each of Respondent's additions of dredged or fill material in the three locations were "discharges," as defined by Section 502(12) of the Act, 33 U.S.C. § 132(12).

20. The dredged or fill material discharged into the Wetlands at the three locations on the Property was a "pollutant," as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

21. Excavators, bulldozers, or other earth moving equipment are a "point source," as defined by Section 502(14) of the Act, 33 U.S.C. § 1362(14).

22. At all times relevant to this Complaint and Notice, Respondent did not have a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344, authorizing it to discharge fill and dredged material into the Wetlands on the Property.

IV. Count I

23. Complainant incorporates paragraphs 1 through 22 of this Complaint and Notice as though set forth in this paragraph.

24. In October 2007, Respondent, or its duly-authorized agent, allowed Stibbe Excavating and Grading, Inc. ("Stibbe") to use an excavator, bulldozer, or other earth moving equipment, to discharge dredged or fill material over an approximately 2,627 square foot area of the Wetlands on the Property ("Site 1") for the purpose of creating a paved access road to the Property. An outline of the Site 1 discharge area in the Wetlands on the Property is depicted and labeled "Site 1" on Exhibit1.

25. The addition of dredged or fill material from an excavator, bulldozer, or other earth moving equipment into Site 1 of the Wetlands constituted a "discharge of a pollutant," as defined by Section 502(12) of the Act, 33 U.S.C. §1362(12).

26. Site 1 is in the Wetlands, which connect to and abut Mud Creek, and is a "navigable water."

27. By allowing the "discharge of a pollutant" from a "point source" into "navigable waters" without a permit, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311.

V. Count Two

28. Complainant incorporates paragraphs 1 through 22 of this Complaint and Notice as though set forth in this paragraph.

29. Between August 2007 and November 2007, Respondent, or its duly-authorized agent, allowed R. Veese Construction. Inc. ("Veese") to use an excavator, bulldozer, or other earth moving equipment to discharge dredged or fill material over an approximately 3,762 square

foot area of the Wetlands on the Property ("Site 2") for the purpose of installing a utility line. An outline of the Site 2 discharge area in the Wetlands on the Property is depicted and labeled "Site 2" on Exhibit 1.

30. The addition of dredged or fill material from an excavator, bulldozer, or other earth moving equipment into Site 2 of the Wetlands constituted a "discharge of a pollutant," as defined by Section 502(12) of the Act, 33 U.S.C. §1362(12).

31. Site 2 is in the Wetlands, which connect to and abut Mud Creek, and is a "navigable water."

32. By allowing the "discharge of a pollutant" from a "point source" into "navigable waters" without a permit, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311.

VI. Count Three

33. Complainant incorporates paragraphs 1 through 22 of this Complaint and Notice as though set forth in this paragraph.

34. Between August 2007 and December 2007, Respondent, or its agents, allowed Veesser to use an excavator, bulldozer, or other earth moving equipment to discharge dredged or fill material over an approximately 487 square foot area of the Wetlands on the Property ("Site 3") for the purpose of installing a utility line on the Property. An outline of the Site 3 discharge area in the Wetlands on the Property is depicted and labeled "Site 3" on Exhibit 1.

35. The addition of fill and dredged material from an excavator, bulldozer, or other earth moving equipment into Site 3 of the Wetlands constituted a "discharge of a pollutant," as defined by Section 502(12) of the Act, 33 U.S.C. §1362(12).

36. Site 3 is in the Wetlands, which connect to and abut Mud Creek, and is a “navigable water.”

37. By allowing the “discharge of a pollutant” from a “point source” into “navigable waters” without a permit, Respondent violated Section 301 of the Act, 33 U.S.C. § 1311.

VII. Proposed Civil Penalty

Based upon the facts alleged in this Complaint and Notice, 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, EPA proposes to issue a Final Order to Respondent assessing a penalty in the amount of **\$35,000.00**.

Complainant determined the civil penalty amount based upon an analysis of the 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 stating Respondent’s name, the case title, Respondent’s complete address, and the case docket number, 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

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

VIII. 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 40 C.F.R. § 22.15, Respondent has the right to request a hearing to contest any material fact alleged in this Complaint and Notice, and/or to contest the appropriateness of the amount of the proposed penalty. To request a hearing, Respondent must specifically make such a request in the Answer, which is discussed below.

Any hearing Respondent requests regarding this Complaint and Notice will be held and conducted in accordance with the "*Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits*," codified at 40 C.F.R. Part 22, a copy of which accompanies this Complaint.

IX. Answer

If Respondent contests any material fact alleged in this Complaint and Notice, contends that the proposed penalty is inappropriate, or contends that it is entitled to judgment as a matter of law, Respondent must file the original and one copy of a written Answer to this Complaint and Notice 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 and Notice. In computing any period of time allowed under this Complaint and Notice, 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 and Notice, or must clearly state that Respondent has no knowledge of a particular factual allegation. Where 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 which 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 and Notice constitutes an admission of the allegation.

A copy of the Answer and all subsequent documents filed in this action must be sent to John Matson, Associate Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (C-14J), Chicago, IL, 60604-3590, who may be telephoned at (312) 886-2243.

If Respondent fails to file its written Answer within 30 days after service of this Complaint and Notice, the Presiding Officer may issue a Default Order, after motion, under 40 C.F.R. § 22.17. Default by a Respondent constitutes an admission of all factual allegations made in the Complaint and Notice and a waiver of Respondent's right to contest the factual allegations made in the Complaint and Notice. 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 EPA under 40 C.F.R. § 22.27(c). 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 and Notice, 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, 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 EPA to set aside the Final Order assessing penalties and to hold a hearing thereon. EPA will grant the petition and hold the hearing only if the petitioner's evidence is material and was not considered by EPA in the issuance of the Final Order assessing penalties.

X. 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, Enforcement Officer, United States Environmental Protection Agency, 77 West Jackson Boulevard (WW-16J), 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 for Respondent to file a written Answer and Request for Hearing. Respondent may pursue the informal conference procedure simultaneously with the adjudicatory hearing procedure. EPA encourages all parties against whom a penalty is proposed to pursue settlement through an informal conference. 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.


XI. Notice to the State and Public

EPA has consulted with the State of Wisconsin regarding this action by mailing a draft copy of this Complaint and Notice to Todd Ambs, Administrator, Division of Water, Wisconsin Department of Natural Resources, and by offering Wisconsin an opportunity to comment on the proposed penalty. Contemporaneous with the issuance of this Complaint and Notice, EPA posted a public notice on the Region 5 web page ([www.epa.gov/R5/public notices](http://www.epa.gov/R5/public_notices)) regarding this action.

XII. 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).

Date 27 OCTOBER 2009


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

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

REPLY TO THE ATTENTION OF:

WW-16J

CWA-05-2010-0002

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 October 29, 2009, and that a true and correct copy was mailed, with the Consolidated Rules of Practice, 40 C.F.R. Part 22, to Respondent, on October 29, 2009, at:

Calvin M. Akin, President
Premier Real Estate Management, LLC
19105 West Capitol Drive (Suite 200)
Brookfield, Wisconsin 53045

10/29/09
Date

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

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