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# Evergreen Development, Inc. and Mark Schmidt – Clean Water Act Public Notice

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In accordance with Section 309(g)(4)(A) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), the Environmental Protection Agency (“EPA”) is providing notice of a proposed Administrative Penalty Assessment against Evergreen Development, Inc. and Mark Schmidt for alleged violations at the residential construction site located in the Northwest Quarter of Section 11, Township 8 South, Range 8 East, in the Village of Bennet, Lancaster County, Nebraska.

Under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the EPA is authorized to issue orders assessing civil penalties for various violations of the CWA. The EPA may issue such orders after filing a Complaint commencing either a Class I or Class II penalty proceeding. The EPA provides notice of the proposed assessment of a Class II civil penalty pursuant to 33 U.S.C. §1319(g)(4)(A). Class II proceedings are conducted under the EPA’s Consolidated Rules, 40 C.F.R. Part 22.

In this case, the EPA alleges that Respondents violated the requirements of their construction stormwater National Pollutant Discharge Elimination System Permit (Permit # CSW-201903475) and discharged fill material into the waters of the United States, in violation of Sections 301, 402, and 404 of the CWA, 33 U.S.C. §§ 1311, 1342, and 1344. The EPA alleges that Respondents failed to install and maintain best management practices, conduct and document periodic inspections, and take corrective action at the site as required by their NPDES Permit, and that Respondents conducted clearing and grading activities using heavy equipment in a tributary to the Little Nemaha River and its abutting wetlands without authorization pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. The EPA is seeking a penalty of \$138,458 for these violations.

Persons wishing to comment on or participate in the proceedings must notify the Regional Hearing Clerk, in writing, pursuant to 40 CFR § 22.45 at the address provided below. The procedures by which the public may comment on or otherwise participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. Persons wishing to obtain additional information on the proceeding, receive a copy of the EPA's Consolidated Rules [☑ <https://www.gpo.gov/fdsys/pkg/fr-2017-01-09/pdf/2016-31638.pdf>](https://www.gpo.gov/fdsys/pkg/fr-2017-01-09/pdf/2016-31638.pdf), or review the Complaint, should contact Regional Hearing Clerk, at R7\_Hearing\_Clerk\_Filings@epa.gov or 913-551-7972. Please reference Docket No. CWA-07-2022-0134. **For Technical questions contact Dr. Delia Garcia, Enforcement and Compliance Assurance Division, at [garcia.delia@epa.gov](mailto:garcia.delia@epa.gov) or 913-551-7262. Persons with legal questions may contact Shane McCain, Office of Regional Counsel, at [mccoin.shane@epa.gov](mailto:mccoin.shane@epa.gov) or 913-551-7955.**

2022.10.20 Date	/s/David Cozad David Cozad Director Enforcement and Compliance Assurance Division U.S. EPA, Region 7
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## Summary

The EPA is providing notice of a proposed Administrative Penalty Assessment against Evergreen Development, Inc. and Mark Schmidt for alleged violations at the residential construction site located in the Northwest Quarter of Section 11, Township 8 South, Range 8 East, in the Village of Bennet, Lancaster County, NE.


**Program/Statute:** Clean Water Act (CWA)

**Applicant/Respondent(s):**

Evergreen Development, Inc., and Mark Schmidt  
Village of Bennet, Nebraska

**Proposed action:** Public Notice of Clean Water Act Administrative Penalty Settlement

**Docket ID:** CWA-07-2022-0134

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-  Evergreen Development, Inc. and Mark Schmidt Proposed Complaint (pdf) <<https://epa.gov/system/files/documents/2022-10/evergreen-development-complaint.pdf>> (373.24 KB)

## How to Comment

**Comments due date**

11/26/2022

**How to comment**

Persons wishing to obtain additional information on the proceeding, receive a copy of EPA's Consolidated Rules, review the proposed Complaint, comment upon the proposed penalty assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 7, at [r7\\_hearing\\_clerk\\_filings@epa.gov](mailto:r7_hearing_clerk_filings@epa.gov) or 913-551-7972. Please reference Docket No. CWA-07-2022-0134.

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