



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

JUN 7 2012

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**HAND DELIVERED**

Ms. LaDawn Whitehead  
Regional Hearing Clerk  
United States  
Environmental Protection Agency-Region V  
77 West Jackson Blvd. - 19th Fl.  
Chicago, IL 60604-3590

REPLY TO THE ATTENTION OF:  
C-14J

Re: U.S. EPA v. Joseph L. Bollig and Sons, Inc.  
Docket No. CWA-05-2011-0008 - Complainant's Amended Complaint

Dear Ms. Whitehead:

Pursuant to the May 30, 2012 order of the Court, enclosed please find an original and one copy of Complainant's Amended Complaint in the above referenced case. I have also filed copies of this Amended Complaint with the Administrative Law Judge and Respondent by certified mail, return receipt requested.

Sincerely yours,

Thomas P. Turner  
Associate Regional Counsel

Enclosure

cc: Hon. M. Lisa Buschmann, ALJ (mail code: 1900L)  
Greg Carlson, Water Division (WW-16J)  
Kevin C Chow, Assoc. Regional Counsel (C-14J)

Joseph L. Bollig and Sons, Inc.  
c/o: William T. Curran, Esq.  
Curran, Hollenbeck & Orton, SC  
111 Oak Street, PO Box 140  
Mauston, WI 53948-0140

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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

<b>In the Matter of:</b>	)	
	)	
<b>Joseph L. Bollig &amp; Sons, Inc.,</b>	)	<b>Proceeding to Assess a Class II Civil</b>
<b>New Lisbon, Wisconsin,</b>	)	<b>Penalty Under Section 309(g) of the Clean</b>
	)	<b>Water Act, 33 U.S.C. § 1319(g)</b>
<b>Respondent.</b>	)	
<hr/>	)	<b>Docket No. CWA-05-2011-0008</b>

**AMENDED ADMINISTRATIVE COMPLAINT**

**I. Nature of the Action**

1. This is an administrative action instituted by Region 5 of the United States Environmental Protection Agency ("U.S. EPA"), pursuant to Section 309(g) of the Clean Water Act ("CWA" or "the Act"), 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," 40 C.F.R. Part 22, to obtain civil penalties against Joseph L. Bollig & Sons, Inc. ("Respondent") for filling wetlands without a permit pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. The Administrator of U.S. EPA has delegated the authority to take this action to the Regional Administrator of Region 5, who has re-delegated this authority to the Water Division Director.

2. Complainant in this action is the Director, Water Division, Region 5, United States Environmental Protection Agency ("U.S. EPA" or "the Agency").

3. Respondent Joseph L. Bollig & Sons, Inc. ("Bollig"), is a corporation organized under the laws of Wisconsin with a business address of N5990 State Road 58, New Lisbon, Wisconsin.

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

## 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 except in compliance with, inter alia, a permit issued pursuant to CWA Section 404, 33 U.S.C. § 1344.

6. 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.

7. 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).

8. 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)

9. 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).

10. 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).

11. 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).



12. 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."

13. 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. General Allegations**

14. Respondent Bollig is a corporation located in and doing business in the State of Wisconsin.

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

16. The Mauston-New Lisbon Union Airport ("Airport") is located at W7493 Ferdon Road, Mauston, Wisconsin (Juneau County).

17. The Airport is an airfield, created by public ordinance (City of Mauston, WI, Mauston-New Lisbon Union Airport Ordinance, Chapter 10, September 27, 2005) and operated as a joint public venture by a 'Union Airport Commission', located in the southeast quarter, Section 28, Township 16 North, Range 3 East, Town of Lisbon, Juneau County, Wisconsin. The area of disturbance is an approximately seven (7) acre portion of forested and scrub/shrub wetland, as defined above in Paragraphs 12 and 13, to the immediate southwest of

the principal airstrip of the Airport. The seven acre portion of forested and scrub/shrub wetland immediately abuts a relatively permanent water (“RPW”), unnamed tributary number 1 (see Maps as Attachments A, B).

18. The Airport is owned and operated by the Mauston-New Lisbon Union Airport Commission.

19. Unnamed tributary number 1 is a relatively permanent water which flows into the Lemonweir River. The Lemonweir River is historically a Traditional Navigable Water. Unnamed tributary number 1 is labeled on Attachment A, which is incorporated herein.

20. The Lemonweir River is a tributary to the Wisconsin River, an interstate water body.

21. Prior to Respondent Bollig’s filling activities, unnamed tributary number 1 exhibited seasonal characteristics of water flow during the winter thaw, spring and summer rain or thunder storms.

22. Unnamed tributary number 1 is a water of the United States, as defined at 33 C.F.R. § 328.3(a) and 40 C.F.R. § 232.2 and thus a “navigable water” as defined at Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

#### Count I

23. The statements in Paragraphs 1 through 22 are hereby incorporated by reference as if set forth in full.

24. Beginning in February 2008 and continuing into approximately March 2009, and at times better known to Respondent Bollig, Respondent Bollig, working on behalf of the Airport, performed or directed the discharge of dredged and fill material and organic debris from

excavators and bulldozers into approximately seven (7) acres of forested and scrub/shrub wetland occupying the portion of Airport property described above in Paragraph 17. An outline of the discharge areas is included on Attachment A, which is incorporated herein.

25. At no time did Respondent have a permit issued pursuant to Section 404 of the Act, 33 U.S.C. § 1344, to discharge dredge material and organic debris into the forested and scrub/shrub wetland area referenced in Paragraphs 17 and 24.

26. The dredge material and organic debris discharged into the unnamed tributary on the Property constitute "pollutants" as defined by Section 502(6) of the Act, 33 U.S.C. § 1362(6).

27. Excavators and bulldozers 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).

28. The addition of dredge material and organic debris from excavators and bulldozers, or earth moving equipment, into wetlands and/or 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).

29. 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 404 of the Act, 33 U.S.C. § 1344.

30. 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 of up to \$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. Effective January 12, 2009, the Administrator may assess a Class II civil penalty not to exceed \$16,000 per day for each day during which the violation continues, to a maximum amount of \$177,500.

Based upon the facts alleged in this Complaint, and upon the nature, circumstances, extent and gravity of the violations alleged, as well as 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 will propose to issue a Final Order to Respondent assessing a penalty of \$11,000 per day of violation up to a maximum of \$60,000.00 against Respondent.

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 cashier's check payable to "Treasurer, the United States of America," and shall send it, with a transmittal letter identifying the

Complaint to:

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

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

Tom Turner (C-14J)  
Associate Regional Counsel  
Office of Regional Counsel  
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, 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 on Respondent's request 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," 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, 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 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 Respondent has any knowledge, 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 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 Tom Turner, Associate Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (C-14J), Chicago, IL, 60604-3590, who may be telephoned at (312) 886-6613.

If Respondent fails to file a written Answer 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, 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, attorney's 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**

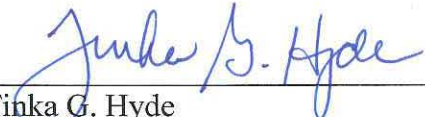
Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts of this case and to arrive at a settlement. To request a settlement

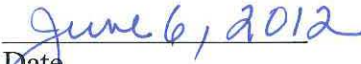
conference, please write to Greg Carlson, Enforcement Officer, United States Environmental Protection Agency, 77 West Jackson Boulevard (WW-16J), Chicago, IL, 60604-3590, or telephone him at (312) 886-0124.

Respondent's request for an informal settlement conference will not extend the 30 day period during which 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. 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 Respondents' 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

  
\_\_\_\_\_  
Date



CERTIFICATE OF SERVICE

I hereby certify that the original of the foregoing Complainant's Amended Administrative Complaint was served on the Regional Hearing Clerk, U.S. EPA Region 5 and that true and correct copies were served on Administrative Law Judge M. Lisa Buschmann and Counsel for Respondent (service by certified mail, return receipt requested). Dated in Chicago this 7<sup>th</sup> day of June, 2012.



Thomas P. Turner  
Associate Regional Counsel  
U.S. EPA - Region 5