

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH *

OZAUKEE COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 2009-CX-00000

Complex Forfeiture: 30109

REGENCY HILLS
DEVELOPMENT CORP.
5008 Green Bay Road
Kenosha, Wisconsin 53142

and

POWERS LAKE
CONSTRUCTION CO., INC.
8790 Karow Road
Twin Lakes, Wisconsin 53181,

Defendants.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

CIVIL COMPLAINT

The plaintiff State of Wisconsin, by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General JoAnne F. Kloppenburg, brings this complaint against the defendants Regency Hills Development Corp. and Powers Lake Construction

Co., Inc., at the request of the Wisconsin Department of Natural Resources pursuant to Wis. Stat. §§ 30.03(2), 281.98, 283.89 and 299.95, and alleges as follows:

ALLEGATIONS RELEVANT TO ALL CLAIMS

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin. It has enacted in Wis. Stat. chs. 30, 281 and 283 statutes intended to prevent and minimize water pollution in the state, to protect public rights in navigable waters, and to protect, maintain and improve the quality and management of all waters of the state. Its Department of Natural Resources administers regulations and issues permits authorized by those statutes.

2. Defendant Regency Hills Development Corp. is a Wisconsin corporation that at all times relevant to this complaint owned and was developing property west of Highway 57 in T12N, R21E, Section 26, Village of Fredonia, Ozaukee County, Wisconsin. This property is referred to as the Village Green site in this complaint. Regency Hills Development Corp.'s principal office is located at 5008 Green Bay Road, Kenosha, Wisconsin 53142, its owner and registered agent is James Duerrwaechter at the same address, and its Development Coordinator is Nancy L. Washburn.

3. Defendant Powers Lake Construction Co., Inc. is a Wisconsin corporation that was hired to and did perform grading, landscaping, erosion control and excavation activities at the Village Green site. Its principal office is located at 8790 Karow Road,

Twin Lakes, Wisconsin 53181, and its owner and registered agent is Mark P. Karow at the same address.

4. From some time since after August 2006 through at least November 2008, defendants disturbed the Village Green site without the proper erosion control best management practices required by their permits and state regulations, in persistent and continuing violation of Wis. Stat. chs. 30, 281 and 283, Wis. Admin. Code chs. NR 151, 216, 341 and 343 and storm water discharge and waterway permits, resulting in the discharge of sediments into Sauk Creek, Fredonia Creek and adjacent wetlands.

APPLICABLE STATUTES AND RULES

A. Storm water pollution discharges.

5. Under Wis. Stat. § 283.31, no person may discharge a pollutant into a water of the state without a permit.

6. Under Wis. Stat. § 283.33, the Department of Natural Resources has authority to designate sources of storm water runoff for which a Water Pollution Discharge Elimination System (WPDES) storm water discharge permit may be required, and in Wis. Admin. Code ch. NR 216, the Department requires storm water discharge permits for construction sites on which one or more acres of land disturbing activities occur.

7. Under Wis. Stat. § 283.33(1)(a), an owner or operator may not discharge storm water from a construction site without a permit.

8. The Department of Natural Resources promulgated Wis. Admin. Code ch. NR 216 pursuant to Wis. Stat. § 283.33 "to minimize the discharge of pollutants carried by storm water runoff from certain industrial facilities, construction sites and municipal separate storm sewer systems."

9. Under Wis. Admin. Code § NR 216.42, activities at construction sites of one acre or more, with exceptions not relevant to this case, are required to be covered by storm water discharge permits.

10. Wisconsin Admin. Code §§ NR 216.46 and 216.48 set forth erosion control plan and reporting requirements for storm water discharge permits.

11. Under Wis. Admin. Code § NR 216.44(2) and 216.46(1), owners required to obtain coverage under storm water discharge permits for construction sites must "develop a site-specific erosion control plan for each construction site regulated by this subchapter."

12. Under Wis. Admin. Code § NR 216.46(9), owners required to obtain coverage under storm water discharge permits for construction sites or their representatives "shall inspect erosion and sediment control practices weekly, and within 24 hours following a rainfall of 0.5 inches or greater," and shall maintain detailed written documentation of each inspection.

13. Under Wis. Admin. Code § NR 216.46(1) and (2), owners required to obtain coverage under storm water discharge permits for construction sites or their representatives are required to "implement and maintain as appropriate all best management practices specified in the erosion control plan from the start of land

disturbing construction activities until final stabilization," and the erosion control plan must meet the applicable performance standards in Wis. Admin. Code § NR 151.11.

14. Under Wis. Admin. Code §§ NR 151.11(4) and 151.12(3), the persons responsible for complying with the storm water permit performance standards and post-construction management plan include the landowner and other persons performing services to meet those standards through a contract or other agreement.

15. Under Wis. Admin. Code § NR 216.456, the permittee, owner and operator that has a contract or other agreement with the owner must comply with the requirements in Wis. Admin. Code ch. NR 216 Subchapter III governing construction site storm water discharge permits: "An operator shall comply with this subchapter where the operator has a contract or other agreement with the landowner to meet the requirement."

B. Waterway protection activities.

16. Under Wis. Stat. § 30.19(1g)(am), no person may construct a storm water management pond that is located within 500 feet of a navigable water without a permit.

17. Under Wis. Stat. § 30.19(1g)(c), no person may grade or remove topsoil from more than 10,000 square feet on the bank of a navigable water without a permit.

18. Under Wis. Stat. § 30.19(3r)(a), general permits to construct a storm water management pond within 500 feet of a navigable water and to grade more than 10,000 square feet on the bank of a navigable water must require compliance with Best Management Practices/Technical Standards for Erosion and Sediment Control required for storm water discharge permits under chapter 283.

19. Wisconsin Admin. Code ch. 343 was promulgated pursuant to Wis. Stat. ch. 30 and requires that construction of storm water ponds follow Best Management Practices/Technical Standards for Erosion and Sediment Control consistent with Wis. Admin. Code § NR 216.46(6), and that storm water pond construction permits meet the construction site performance standards of Wis. Admin. Code § NR 151.11.

20. Wisconsin Admin. Code ch. 341 was promulgated pursuant to Wis. Stat. ch. 30 and requires that grading on the bank of a navigable water follow Best Management Practices/Technical Standards for Erosion and Sediment Control consistent with Wis. Admin. Code § NR 216.46(6), and that grading permits meet the construction site performance standards of Wis. Admin. Code § NR 151.11.

C. Wetland discharges.

21. Under 33 U.S.C. § 1311(a), no person may discharge a pollutant into navigable waters without a permit. Where the United States has issued general nationwide permits for certain discharges, a person must comply with applicable state water quality certification requirements before the permit will be issued. 33 U.S.C. § 1341(a)(1).

22. Activities that might result in the discharge of fill material into less than 2 acres of wetlands are subject to federal jurisdiction in Wisconsin and covered by United States Army Corps of Engineers General Permit GP-002-WI/LOP-06-WI.

23. Under Permit GP-002-WI/LOP-06-WI, with exceptions not applicable to this case, no person may conduct any activity resulting in a discharge of fill material into

a wetland without first providing notice to and obtaining written confirmation from the Department that the proposed activity will be consistent with the requirements of the applicable state water quality certification.

24. Under Wis. Stat. §§ 281.11-12 and 281.15, the Department of Natural Resources has promulgated rules and standards that protect the public interest in the waters of the state. Wisconsin Stat. § 281.01(18) defines "Waters of the state" as:

all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

25. The Department promulgated Wis. Admin. Code chs. NR 103 and 299, setting forth water quality standards and requirements of water quality certification, pursuant to Wis. Stat. ch. 281 to protect Wisconsin's wetland and water resources.

26. Under Wis. Stat. § 281.17(10)(b), no person may violate a condition imposed by the Department in a water quality certification required by Wis. Admin. Code chs. NR 299 and 103.

27. Under Wis. Admin. Code § NR 299.03, no person may conduct any activity that may result in a discharge into a water of the state without providing notice to and obtaining certification from the Department of Natural Resources that the discharge will comply with state water quality standards set forth in Wis. Admin. Code § NR 299.04 and wetland project requirements set forth in Wis. Admin. Code § NR 103.08(3) and (4). That regulation provides in part, "No person may conduct any activity which may result

in any discharge into the waters of the state unless the person has received a certification or waiver under this chapter."

PRIOR CONSTRUCTION SITE WATER PROTECTION VIOLATIONS BY
DEFENDANTS

28. On March 23, 1987, defendant Powers Lake Construction Co., Inc. was adjudged guilty and paid forfeitures on a citation for illegal enlargement of a waterway in Walworth County. *State v. Powers Lake Construction Company, Inc.*, Walworth County Case No. 18402.

29. On September 24, 2001, the Department of Natural Resources issued Regency Hills Development Corp. a Notice of Violation for failure to implement Best Management Practices as required by its WPDES permit and to obtain a Chapter 30 permit prior to grading more than 10,000 square feet adjacent to a waterway at the Emerald Hills Estates construction site in Ozaukee County.

30. On July 29, 2004, the Department of Natural Resources issued defendant Regency Hills Development Corp. a Notice of Violation for multiple failures to maintain Best Management Practices at a construction site in Washington County, which was followed by an enforcement conference on August 5, 2004.

31. On August 9, 2004, the Department of Natural Resources issued defendant Regency Hills Development Corp. a Notice of Violation for multiple failures to maintain Best Management Practices at the Overlook Estates site in Washington County.

32. On October 7, 2004, defendant Regency Hills Development Corp. was adjudged guilty and paid forfeitures on a citation for failure to maintain Best

Management Practices at the Overlook Estates site. *State v. Regency Hills Development Corp.*, Washington County Case No. 2004FO000881.

33. On November 5, 2004, Mark Karow, registered agent and president of defendant Powers Lake Construction Co., Inc. was adjudged guilty and paid forfeitures on a citation for construction site storm water discharge violations. *State v. Mark Karow*, Kenosha County Case No. 11834.

34. On November 8, 2004, defendant Powers Lake Construction Co., Inc. was adjudged guilty and paid forfeitures on a citation for failure to maintain Best Management Practices at the Stone Creek site. *State v. Powers Lake Construction Company, Inc.*, Kenosha County Case No. 2004FO001630.

35. On November 8, 2004, defendant Regency Hills Development Corp. was adjudged guilty and paid forfeitures on a citation for failure to maintain Best Management Practices at the Stone Creek site. *State v. Regency Hills Development Corp.*, Kenosha County Case No. 2004FO001633.

36. On October 26, 2005, the Department of Natural Resources issued a Notice of Violation to JJD MasterCraft Builders, Inc. which is a related corporate entity to defendant Regency Hills Development Corp., with the same principal address, registered agent and Development Coordinator, for erosion control violations at a construction site in Kenosha County, which was followed by an enforcement conference on November 1, 2005.

37. On October 20, 2006, JJD MasterCraft Builders, Inc., which is a related corporate entity to defendant Regency Hills Development Corp., with the same principal

address, registered agent and Development Coordinator, was adjudged guilty and paid forfeitures on a citation for failure to maintain erosion control measures in *City of Mequon v. Master Craft Builders*, Ozaukee County Case No. 2006FO000879.

38. At the same time as the State files this complaint, it is filing a complaint against defendant Regency Hills Development Corp. and JJD MasterCraft Builders, Inc., concerning storm water erosion control and water regulation violations at a construction and development site in Kenosha County in 2005.

VILLAGE GREEN DEVELOPMENT SITE PERMITS

39. The Village Green site comprises a 60-acre residential development that includes or is adjacent to portions of Fredonia Creek, which is part of the Milwaukee River Basin, and Sauk Creek, which is part of the Sheboygan River Basin.

40. The Village Green site is on the watershed divide between Fredonia Creek and Sauk Creek, which is in the Sheboygan River Basin. Drainage that flows east goes to Sauk Creek, and drainage that flows west goes to Fredonia Creek.

41. Fredonia Creek and Sauk Creek and their adjacent wetlands are waters of the state within the meaning of Wis. Stat. §§ 281.01(18) and 283.01(20).

42. In July 2006, defendant Regency Hills Development Corp. submitted a Notice of Intent to the Department of Natural Resources prior to grading 35.5 acres at the Village Green site, and identified defendant Powers Lake Construction Co., Inc. as the grading contractor at the site.

43. In July 2006, defendant Regency Hills Development Corp. also submitted a Notice of Intent to the Department of Natural Resources prior to disturbing an additional 60.79 acres at the Village Green site, including land along Fredonia Creek.

44. On July 26, 2006, defendant Regency Hills Development Corp. was granted coverage under WPDES General Permit No. WI-S067831-2 for Phase I Pre-Grading construction work on the eastern 35.3 acres of the Village Green site. A permit amendment on September 12, 2006, allowed the disturbance of additional acres on the western portion of the site. On September 29, 2006, the permit and amendment became WPDES General Permit No. WI-S067831-3.

45. On February 7, 2007, defendant Regency Hills Development Corp. was granted coverage under WPDES General Permit No. WI-S067831-3 for the entire Phase 1 "Pre-Grading Area" and "Amendment for Western Portion of Site" work covered in September 2006 plus construction of Deer Meadow Court.

46. On September 7, 2006, defendant Regency Hills Development Corp. submitted an application for a Chapter 30 Waterway General Permit for disturbing more than 10,000 square feet on the bank of Fredonia Creek at the Village Green site, and the Department approved the permit GP-SE-2006-0655 on October 5, 2006.

47. On November 20, 2006, defendant Regency Hills Development Corp. submitted a second application for a Chapter 30 Waterway General Permit for disturbing more than 10,000 square feet on the bank of Fredonia Creek at the Village Green site, and the Department approved the permit GP-SE-2006-755 on November 27, 2006.

48. Defendant Regency Hills Development Corp. submitted a third application for a Chapter 30 Waterway General Permit for grading of more than 10,000 square feet on the bank of Fredonia Creek at the Village Green site, and the Department approved the permit GP-SE-2007-0071 on February 12, 2007.

49. Defendants' WPDES General Permit requires compliance with a construction site erosion control plan that addresses pollution caused by soil erosion and sedimentation during construction and through final stabilization of the site, and which conforms to the *Technical Standards for Erosion and Sediment Control*.

50. Defendants' Waterway General Permits require compliance with the approved erosion control plan and construction sequencing, and require that all erosion control measures "meet or exceed the approved Stormwater Construction Technical Standards found on the Department's Runoff Management Website <http://dnr.wi.gov/org/water/wm/nps/stormwater/techstds.htm#Construction> developed by the Department under Wis. Admin. Code chs. NR 151.31." Permits Conditions 5 and 13.

51. Land disturbing activities at the Village Green site began with the installation of Sediment Basin #1 (West Pond) in August 2006 and continued through at least November 2008.

VILLAGE GREEN DEVELOPMENT SITE NONCOMPLIANCE

52. On March 22, 2007, the Department of Natural Resources received complaints about significant sediment runoff from the Village Green site into Fredonia

Creek and across State Highway 57, and Department staff inspected the site on March 22, 23, and 30, and April 3, 2007.

53. In March and early April 2007, soil movement overwhelmed erosion controls, erosion controls were improperly installed or not maintained, inactive disturbed areas were not stabilized, the construction sequence was not being followed, and storm water discharge and sedimentation entered Sauk Creek, Fredonia Creek and adjacent wetlands.

54. More specifically, on March 22, 2007, a properly stabilized construction site clean water diversion was not in place to prevent offsite impacts at East Pond 1 (Sediment Basin #2), and turbid, sediment-laden water discharged from the Village Green construction site under State Highway 57 and into Sauk Creek and adjacent wetlands.

55. On March 23, 2007, sediment-laden discharges were overwhelming the silt fence and erosion matting at the clean water diversion from East Pond (Sediment Basin #2) on the Village Green site, and brown, turbid, muddy, sediment-laden water was draining off the Village Green site under State Highway 57 and into wetlands and Sauk Creek.

56. On March 23, 2007, on the southwest side of the Village Green site, the southwest Sediment Trap #2 had no outlet structure, causing water to overflow out of the basin over unstabilized soils, and the clean water diversion inlet by South Milwaukee Street near the southwest basin was buried in sediment, causing sediment-laden water to flow off the site and into Fredonia Creek and adjacent wetlands.

57. On March 23, 2007, on the southwest side of the Village Green site, channelized flow was improperly directed at a silt fence, the silt fence was down, and the northwest tracking pad had not been properly maintained.

58. On March 23, 2007, on the north side of the Village Green site, the northwest Sediment Basin #1, which had been constructed in fall 2006, lacked the outlet structure shown in the plan submitted for permit amendment, and water overflowed from the pond and discharged from the side of the berm across exposed soils, depositing sediment into a wetland and Fredonia Creek.

59. On March 23, 2007, large areas of the site that had been disturbed since at least December 2006 were not stabilized since their last disturbance, and stockpile sides were not stabilized.

60. Department staff notified defendant Regency Hills Development Corp. of the erosion control issues at the Village Green site on March 23 and met with representatives of defendant Regency Hills Development Corp. and JJD MasterCraft Builders, Inc. on March 30, 2007.

61. On March 30, 2007, active grading and land disturbance was occurring; the South Milwaukee Street Inlet was still completely silted in, Sediment Trap #1 had no outlet structure, and the channelized flow was directed improperly to a downed silt fence; construction site runoff was backing up at the sediment-filled clear water storm sewer and was discharging into Fredonia Creek and adjacent wetlands; the northwest Sediment Basin #1 was still without any outlet structure and sediment discharged from the northwest sediment basin into Fredonia Creek and adjacent wetlands; the clean water

diversion swale near Highway 57 was still not properly stabilized, resulting in the discharge of sediment east into Sauk Creek and adjacent wetlands.

62. On March 23 and 30, 2007, swales to Sediment Basin #1 and the clean water diversion near Highway 57 on the Village Green site were not properly maintained with erosion matting and erosion ditch checks, erosion matting was not placed near Milwaukee Street according to the permitted construction plans, silt fences were not maintained and were overwhelmed by sediment-laden discharges, there were bare soils gouged by rills and ruts, and there were recent deposits of clay from the Village Green site in Fredonia Creek and adjacent wetlands.

63. On April 3, 2007, the sides of the stockpile on the Village Green site were not stabilized, and outlet structures were still not installed in the southwest sediment trap and northwest Sediment Basin #1, resulting in water overwhelming the banks of the sediment basins and discharging over bare soils, and erosion matting was still not placed near Milwaukee Street according to the permitted construction plans.

64. On April 3, 2007, as on March 23 and 30, 2007, swales on the Village Green site were not properly stabilized or maintained with erosion matting and ditch checks, the culvert under Milwaukee Street was receiving sediment, and the storm sewer inlet at that location was buried under accumulated clay.

65. On April 3, 2007, the clean water diversion that had been constructed to divert water away from the Village Green Site, was still discharging sediment-laden water into a culvert under Highway 57 toward Sauk Creek and adjacent wetlands.

66. On April 3, 2007, Department staff issued Nancy Washburn a Notice of Noncompliance for violations on the Village Green site.

67. On April 10, 2007, Department staff issued defendants a Notice of Violation for violations on the Village Green site.

68. On April 17, 2007, large areas of the Village Green site that had been disturbed since at least December 2006 were still not stabilized.

69. On April 30, 2007, the Department of Natural Resources held an enforcement conference with defendants concerning the violations identified at the Village Green development site.

70. On and before April 30, 2007, defendants were not conducting formal erosion control inspections of the Village Green site, and defendants had no records of erosion control inspections at the Village Green site, except for inaccurate and incomplete inspections between March 12 and 24, 2007, and defendants did not perform erosion control inspections within 24 hours after rainfall events on at least March 21, 22 and 25, 2007.

71. On May 2, 2007, areas of the Village Green site had still not been properly stabilized.

72. On July 26, 2007, areas of the Village Green site still had not been properly stabilized causing rills on and near the stock piles.

73. On September 21, 2007, stock piles on the Village Green site still had not been properly stabilized, and these stockpiles had been inactive since at least some time in July 2007.

74. On November 15, 2007, stock piles on the Village Green site still had not been properly stabilized causing large rills and overwhelming of the silt fence.

75. On May 12, 2008, the areas where utilities had been placed along Milwaukee Street and Deer Meadow Court were not revegetated, stock piles were not properly stabilized, in areas near the Deer Meadow Court cul-de-sac there was no stabilization and silt fence was ineffective and in need of repair, in areas on the north side of the site the silt fence was washing out, and sediment had accumulated in the diversion swale to Sediment Basin #1.

76. On August 29, 2008, stock piles on the Village Green site had still not been properly stabilized causing large rills and down silt fence.

CHAPTER 299 CLAIM OF VIOLATIONS

A. Failure to implement and maintain Best Management Practices in violation of Wis. Admin. Code § NR 216.46(1).

77. From some time after August 2006, and from at least March 22, 2007, through at least August 29, 2008, defendants failed to install and maintain erosion control methods that met Best Management Practice standards, contrary to items 2, 13 and 14 of the January 25, 2007, Erosion Control Plan, in violation of WPDES General Permits Nos. WI-S067831-2 and 3 and Wis. Admin. Code § NR 216.46, and the Waterway General Permits GP-SE-2006-0655, GP-SE-2006-755 and GP-SE-2007-0071.

78. From some time after August 2006, and from at least March 22, 2007, through April 3, 2007, defendants failed to place a properly stabilized construction site cleanwater diversion or incorporate additional runoff into the erosion control plan to

prevent offsite impacts near northwest Sediment Trap #1, contrary to Technical Standard 1066, Construction Site Diversion, in violation of WPDES General Permits Nos. WI-S067831-2 and 3 and Wis. Admin. Code § NR 216.46, and the Waterway General Permits.

79. From some time after August 2006, and from at least March 22, 2007, through at least August 28, 2008, defendants failed to stabilize disturbed areas left inactive throughout the site for more than 30 days, contrary to Technical Standard 1059 and items 9 and 16 of the permitted Erosion Control Plan, in violation of WPDES General Permits Nos. WI-S067831-2 and 3 and Wis. Admin. Code § NR 216.46, and the Waterway General Permits.

80. From some time after August 2006, and from at least March 22, 2007, through April 3, 2007, defendants failed to complete installation of the northwest sediment basin outlet before disturbance of upslope areas and during all other phases of construction, contrary to Technical Standard 1064, Sediment Basin, and before rough-grading the surrounding area, contrary to items 5.b and 14.5 of the permitted August 15, 2005, Erosion Control Plan, in violation of WPDES General Permits Nos. WI-S067831-2 and 3 and Wis. Admin. Code § NR 216.46.

81. From some time after August 2006, and from at least March 22, 2007, through at least April 17, 2007, defendants failed to properly cover slopes with bare soils with protective soil cover near SW Sediment Trap # 1, contrary to Technical Standard 1053, Channel Erosion Matting and the erosion control plan, in violation of WPDES

General Permits Nos. WI-S067831-2 and 3 and Wis. Admin. Code § NR 216.46, and the Waterway General Permits.

82. From some time after August 2006, and from at least March 22, 2007, through April 3, 2007, defendants failed to install or maintain channel erosion matting prior to utilizing swales leading to Northwest Sediment Basin #1, contrary to item 7 of the permitted Erosion Control Plan, in violation of WPDES General Permits Nos. WI-S067831-2 and 3 and Wis. Admin. Code § NR 216.46.

83. From some time after August 2006, and from at least March 22, 2007, through April 3, 2007, defendants failed to install outlet structures in Southwest Sediment Trap #1, contrary to the permitted Erosion Control Plan and technical standards 1063, in violation of WPDES General Permits Nos. WI-S067831-2 and 3 and Wis. Admin. Code § NR 216.46, and Waterway General Permit GP-SE-2006-755.

84. From some time after August 2006, and from at least March 22, 2007, through April 3, 2007, defendants failed to place properly stabilized construction site cleanwater diversion or incorporate additional runoff into erosion control plan to prevent offsite impacts near East Sediment Basin #2, contrary to Technical Standard 1066, Construction Site Diversion, in violation of WPDES General Permits Nos. WI-S067831-2 and 3 and Wis. Admin. Code § NR 216.46, and the Waterway General Permits.

B. Discharge into wetlands without certification of compliance with state water quality standards.

85. From some time after August 2006, and from at least March 22, 2007, through April 3, 2007, defendants discharged sediment-laden water into wetlands at the

Village Green site without having obtained certification of compliance with state water quality standards, in violation of Wis. Admin. Code § NR 299.03.

C. Failure to perform and maintain inspections in violation of Wis. Admin. Code § NR 216.46(9).

86. From August 2006 through April 2007, defendants failed to perform and maintain erosion control inspections at the Village Green site, in violation of Wis. Admin. Code § NR 216.46(9).

SIGNIFICANCE OF VIOLATIONS

87. "[R]unoff pollution [is] the major cause of polluted waters in Wisconsin and the United States." *Non-Agricultural Performance Standards for Construction Erosion Control and Storm Water Management* (DNR Publication). "From an average construction site, 30 tons of sediment per acre is eroded into nearby waterways." *The Nonpoint Source Control Plan for the Menomonee River Priority Watershed Project*, DNR Publication No. WR-244, March 1992, p. 79.

88. When water from rainfall or melting snow flows across disturbed ground, it washes soil particles, bacteria, pesticides, fertilizer and other toxic materials into lakes, streams and groundwater. Runoff pollution contributes to habitat destruction, fish kills, reduction in drinking water quality, stream siltation, and a decline in recreational use of lakes. Runoff pollution degrades or threatens an estimated 40 percent of streams, many wetland areas and substantial groundwater resources in Wisconsin.

89. Defendants' failure to follow the storm water discharge permits at the Village Green construction site resulted in the discharge of contaminated storm water from the site into Sauk and Fredonia Creeks and adjacent wetlands, and degraded and threatened water quality, aquatic vegetation, fish and wildlife habitat, and harmed public interests in the preservation of and protection of quality water resources.

90. Defendants' failure to perform inspections resulted in the failure to identify problems with the installation and maintenance of erosion control measures, which resulted in turn in discharges of sediment-laden water into wetlands and streams.

91. The wetlands into which defendants discharged have important wildlife habitat values, storm and flood water storage capacity, important hydraulic and hydrologic functions for navigable waters and wetlands, and the ability to store nutrients and sediments for the benefit of area water quality. Defendants' activities have compromised these values.

92. Wisconsin is losing approximately 300 acres of wetlands a year, and defendants' fill had added to the cumulative loss of wetlands in the state.

PENALTY PROVISIONS

93. Wisconsin Stat. §§ 30.03(2), 30.294 and 30.298 authorize the Wisconsin Attorney General to enforce violations of Wis. Stat. ch. 30 and any permits issued under that chapter, by the imposition of forfeitures and injunctive relief.

94. Wisconsin Stat. §§ 30.292 and 30.99 provide that any person who is concerned in the commission of a violation of chapter 30 is a principal and may be

charged with and convicted of the violation. A person "concerned in" the commission of a violation means a person who "[d]irectly commits the violation" under Wis. Stat. § 30.292(2)(a) and a person who "[a]ids and abets the commission of the violation" or "advises, hires, counsels or otherwise procures any person to commit" the violation under Wis. Stat. § 30.292(2)(b)-(c).

95. Wisconsin Stat. § 30.298(1) provides for a forfeiture of not more than \$10,000 but not less than \$100 for a first offense under Wis. Stat. §§ 30.123 and 30.19 and for a forfeiture of not more than \$10,000 but not less than \$500 for subsequent offenses. Wisconsin Stat. § 30.298(5) authorizes the Court to order appropriate action designed to eliminate or minimize any environmental damage caused by the defendants. Wisconsin Stat. §§ 281.98, 283.91 and 299.95 authorize the attorney general to enforce chapters 281 and 283 and all rules promulgated and permits issued under those chapters by seeking forfeitures and injunctive relief, and authorize the circuit court for the county where the violations occurred to enforce chapters 281 and 283 and all rules promulgated and permits issued under those chapters.

96. Wisconsin Stat. § 281.98(1) provides that any person who violates chapter 281 or any rule promulgated under that chapter, or any water quality certification issued under that chapter, shall forfeit not less than \$10 nor more than \$5,000 for each day of violation.

97. Wisconsin Stat. § 281.98(2) and (3) provide that the court may, in addition to imposing penalties, order a defendant to abate any nuisance and take any action necessary to eliminate or minimize environmental damage caused by a defendant, and to pay to the

Department of Justice the reasonable and necessary expenses of the investigation and prosecution, including attorney fees, of the defendant's violation of the chapter.

98. Wisconsin Stat. § 283.91(2) provides that any person who violates chapter 283 or any rule promulgated or any permit issued under that chapter, shall forfeit not less than \$10 nor more than \$10,000 for each day of violation.

99. Wisconsin Stat. § 283.91(5) provides that the Court may, in addition to imposing penalties, order the defendants to pay to the Department of Natural Resources its reasonable costs of investigation of the defendants' violation of the chapter, and to pay to the Department of Justice the reasonable and necessary expenses of the investigation and prosecution of the defendants' violation of the chapter, including attorneys fees.

100. Wisconsin Stat. § 299.95 provides that any violation of a provision of chapters 281 and 283 that prohibits pollution is a public nuisance.

WHEREFORE, plaintiff asks for judgment as follows:

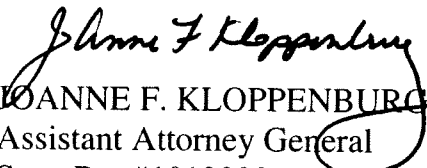
1. The forfeitures provided for in Wis. Stat. §§ 30.298(1), 281.98(1) and 283.91(2), the 26 percent penalty surcharge provided for in Wis. Stat. § 814.75(18), the 10 percent environmental surcharge provided for in Wis. Stat. § 814.75(12), the \$25 court costs pursuant to Wis. Stat. § 814.63(1), the \$13 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68 court support services surcharge pursuant to Wis. Stat. § 814.75(2), the 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15).

2. The reasonable and necessary expenses of the prosecution, including attorney fees, and the costs of investigation provided for in Wis. Stat. §§ 281.98(2) and 283.91(5).

3. Such other relief as the Court deems appropriate.

Dated this 22 day of July, 2009.

J.B. VAN HOLLEN
Attorney General


JOANNE F. KLOPPENBURG
Assistant Attorney General
State Bar #1012239

Attorneys for Plaintiff State of Wisconsin

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