

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \_\_\_\_

MARINETTE COUNTY

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

Plaintiff,

v.

Case No. 09-CX-\_\_\_\_\_

RICHLIN EXCAVATING, INC.,  
a domestic corporation  
W8983 County Road A  
Crivitz, Wisconsin 54114,

Complex Forfeiture: 30109

and

STEVEN W. STOCK  
3834 Hidden Trails  
Oneida, Wisconsin 54155,

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

Defendants.

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### COMPLAINT

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The State of Wisconsin by its counsel, Attorney General J.B. Van Hollen and Assistant Attorney General Mary Batt, brings this complaint seeking forfeitures against the defendants Steven W. Stock and Richlin Excavating, Inc., at the request of the Wisconsin Department of Natural Resources ("DNR"), and alleges as follows:

## ALLEGATIONS RELEVANT TO ALL CLAIMS

1. The plaintiff State of Wisconsin is a sovereign state of the United States of America with its seat of government and offices at the State Capitol in Madison, Dane County, Wisconsin. The plaintiff has enacted in Wis. Stat. chs. 30, 281, and 283 statutes governing navigable waters, water and sewage, and pollution discharges.

2. Defendant Richlen Excavating, Inc. ("Richlen") is a registered domestic business with its principal offices located at W8983 County Road A, Crivitz, Wisconsin 54114, and its registered agent is James M. Richlen, W8983 County Road A, Crivitz, Wisconsin 54114.

3. Defendant Steven W. Stock ("Stock") is an adult residing at 3834 Hidden Trails, Oneida, Wisconsin 54155.

4. Stock and Lisa R. Stock own approximately five parcels of land totaling around two hundred acres. The parcels are located in Section 34, T32N-R19E, Town of Stephenson, Marinette County, Wisconsin. The property was purchased on or about July 2005. These parcels will be referred to in this complaint as "the Stock property."

5. At all times relevant to this proceeding, two main streams flowed through the Stock property. The first is the headwaters of the North Branch of Beaver Creek, above the 19<sup>th</sup> Road dump, which is a navigable Class 1 brook and brown trout stream. The Class 1 designation is the highest quality trout stream classification, which denotes a self-sustaining population of naturally reproducing trout. This stream provides critical habitat for both trout and insect life and reproduction. The second stream flowing

through the Stock property is an unnamed navigable feeder stream to the North Branch of Beaver Creek.

6. Prior to Stock purchasing the land, four dams were built on the streams, creating artificial ponds on the Stock property.

7. Dams 1, 2, and 4 are located on non-navigable portions of the first stream described in paragraph 5. Dam 3 was located on the second stream described in paragraph 5.

8. Stock contracted with Richlen to dredge two of the existing ponds on the property to minimize vegetation growth and create pond conditions suitable for rearing trout. The dredging project began in early January 2006.

9. Citizens complained to DNR about the dredging activity. On February 2, 2006, DNR Conservation Warden Matt Meade ("Meade") and DNR Water Management Specialist Robert Rosenberger ("Rosenberger") inspected the dredging project site. Stock and Richlen were present for this inspection.

10. During the February 2, 2006, inspection, Rosenberger noted that Stock and Richlen dewatered the two ponds to facilitate the dredging activities and enlargement of the ponds. As a result, eroded soil had been deposited in the wetlands and on the streambed. Rosenberger informed Stock and Richlen that their dredging project required a permit, but that a permit would not have been approved for the project in the manner it was being performed. He also informed them that a fish biologist would assess the site the next day.

11. On February 3, 2006, Rosenberger, Meade, and DNR Fisheries Technician Cliff Sebero ("Sebero") visited the property to assess the environmental impact of the project and determine a corrective course of action. Both Stock and Richlen were present for this visit.

12. Soil was deposited into two wetland areas as a result of the dewatering and pumping activity. The adverse environmental effects on the wetlands included: decreased productivity for wildlife, diminished water discharge from the springs to the trout streams, and a significant adverse impact to the functional values of the wetland areas, namely a decreased ability to provide critical habitat for fish and wildlife, water storage for flood control, and decreased water quality. Since these wetlands are located in an area of natural springs, they provide a tremendous discharge of groundwater to the streams. The filling of the wetlands has reduced the storm water and flood water attenuation and reduces groundwater recharge, meaning it slows the movement of water downstream to give it time to soak into the ground and recharge the aquifer. If the wetland is filled, the ability to accept runoff and precipitation is reduced. In addition, land disturbance in wetlands increases the risk of exotic or invasive species, such as phragmites, reed canary grass, and purple loosestrife, becoming established and dominating a wetland complex.

13. The unauthorized stream dredging and enlargement project of the two ponds resulted in a large amount of eroded soil from the construction site being washed downstream to the North Branch of Beaver Creek, a Class I brook and brown trout stream. The discharged soil in the stream smothered any trout eggs that were incubating

on the streambed, decreased the amount of habitat for trout in the stream, and negatively effected the insect productivity that trout rely upon for food. As a result, all brook trout and brown trout spawning for a year in this stretch of the stream where trout eggs were incubating was lost, as well as loss of habitat for amphibians, reptiles, invertebrates, songbirds, and other species, some of which are state threatened or endangered species. The discharge of silt downstream decreased the productivity of the stream by converting the natural streambed habitat from a natural functioning system to a relatively sterile streambed that is choked with silt. This has reduced the productivity and quality of the trout stream system. The loss of fish reproduction and degraded habitat that resulted will have direct long-term detrimental impacts to the recreational enjoyment of the angling public who pursue trout.

14. On February 6, 2006, Rosenberger, Meade, and Sebero met with Stock and Richlen. They discussed Stock's dredging project as well as a site reclamation proposal and permit requirements. Stock agreed to discontinue construction of the project, stabilize the area, and complete grading by February 9, 2006.

15. On March 1, 2006, Meade confirmed the pond work had been completed.

16. On May 12, 2006, Stock met with Rosenberger to discuss the next steps for resolving the issues at his property.

17. On June 16, 2006, DNR gave Stock and Richlen notice of the violations of Wisconsin's navigable waters and wastewater discharge statutes at the Stock property.

18. On July 6, 2006, DNR met with Stock, Richlen, and Mike Liebman of Foth and Van Dyke ("Liebman"), Stock's environmental consultant, in an enforcement conference. Stock and Liebman agreed to create a restoration plan. The plan was submitted for DNR approval on July 18, 2006.

19. On January 18, 2007, DNR issued a permit to Stock for dewatering the pond, removal of one berm, and refilling the pond with water.

20. On July 20, 2007, Rosenberger and DNR Fisheries Team Supervisor Mike Donofrio met with Stock, Richlen, and Liebman to determine the status of the site. At that time necessary improvements to the dam had been made and the stream area impacted by the upstream pond dredging was improving, but further maintenance and changes to the site were required. Stock and Richlen agreed to take the required measures for restoration of the stream and wetland areas.

#### UNAUTHORIZED ENLARGEMENT OF PONDS

21. At no time before commencing the dredging project on or about January 10, 2006, did Stock or Richlen or anyone else apply for, receive, or possess a permit under Wis. Stat. § 30.19(1g).

22. The February 2, 2006, inspection revealed that Richlen had used excavators to dredge and enlarge the beds of the ponds. Stock contracted with Richlen to complete the dredging project. The ponds connect to and are located within five hundred feet of the North Branch of Beaver Creek, a navigable waterway.

23. In the course of conducting unlawful dredging referred to in this complaint, Stock and Richlen significantly impacted the North Branch of Beaver Creek downstream from the site by releasing silt during the dredging process, as described in paragraphs 12 and 13.

24. Contrary to §§ 30.19(1g)(a) and (am), in January 2006 Stock and Richlen, either directly or as parties to the violation, dredged ponds referred to in paragraph 8 without a DNR permit authorizing such activity or authorization from the Wisconsin Legislature.

25. Pursuant to Wis. Stat. §§ 30.292 and 30.99, whoever is concerned in the commission of a violation of Wis. Stat. ch. 30 may be charged with and convicted of the violation as a party to the violation even though he or she did not directly commit it.

26. Pursuant to Wis. Stat. § 30.294, violations of Wis. Stat. § 30.19 are deemed public nuisances which may be abated by order of this Court.

27. Pursuant to Wis. Stat. § 30.03(2), the Wisconsin Attorney General is authorized to enforce violations of Wis. Stat. ch. 30 and to seek temporary and permanent injunctions.

28. Pursuant to Wis. Stat. § 30.298(1), Stock's and Richlen's violations of Wis. Stat. §§ 30.19(1g)(a) and (am) subject them to mandatory forfeitures ranging from not less than \$100 to not more than \$10,000 for the first offense, and forfeitures of not less than \$500 to not more than \$10,000 for a second or subsequent conviction for the same offense.

## DISCHARGE OF POLLUTANTS WITHOUT A PERMIT

29. The February 2, 2006, inspection revealed the ponds had been dewatered to facilitate dredging and enlargement of the ponds. Water pumps were installed in the ponds and the water was pumped through hoses to two wetland areas. This dewatering resulted in a significant discharge of silt to two wetland areas located on the property and, as described in paragraphs 12 and 13, resulted in significant adverse affects to the wetland and streams. The discharged silt is a pollutant under Wis. Stat. § 283.01(13).

30. Neither Stock nor Richlen or anyone else applied for, received, or possessed a short duration discharge general permit under Wis. Stat. § 283.31 prior to the dewatering, which took place beginning on or about January 10, 2006, and continued until on or about February 2, 2006.

31. Under Wis. Stat. § 283.31(1), no person may discharge any pollutant into any waters of the state without a permit issued under that section or under Wis. Stat. § 283.33.

32. Pursuant to Wis. Stat. § 283.89, DNR has authority to refer this matter to the Department of Justice for enforcement.

33. Wisconsin Stat. § 283.91(2) provides for forfeitures of not less than \$10 and not more than \$10,000 for each day of violation.

34. In addition, Wis. Stat. § 283.91(5) authorizes the Court to award the Department of Justice the reasonable and necessary expenses of the investigation and prosecution, including attorney fees.



## UNAUTHORIZED FILL IN FEDERAL WETLANDS

35. The February 2, 2006, inspection revealed that the dewatering activities conducted to facilitate dredging and enlargement of the ponds resulted in a large amount of suspended soils being washed downstream and causing fill to be deposited into two separate wetland areas that are connected or within fifty feet of the North Branch of Beaver Creek, a navigable waterway pursuant to 33 U.S.C. § 1342(a). This fill of wetlands on the property occurred without giving notice to and receiving written confirmation from DNR that the activities would comply with the requirements of Wis. Admin. Code ch. NR 299.

36. During the February 2, 2006, inspection, Rosenberger informed Stock and Richlen that the dredging activities required a permit and the dewatering and dredging activities as conducted were not in accordance with the requirements for water quality certification, and therefore, DNR would not have confirmed certification for dewatering to the wetlands.

37. The project began on or about January 10, 2006, and the fill in the wetlands continued until about August 14, 2006, when Rosenberger visited the site and noted the fill in the wetlands area near the driveway had been removed, for a total of approximately 216 days of violation.

38. Stock's and Richlen's dewatering activities negatively impacted the wetlands and streams, as described in paragraphs 12 and 13.

39. Under Wis. Stat. §§ 281.11, 281.12, and 281.15, DNR has promulgated rules and standards that protect the public interest in the waters of the state. DNR 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.

40. Under Wis. Admin. Code § NR 299.03(1), no person may conduct any activity that may result in any discharge into a water of the state without a certification from DNR 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).

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

42. Wis. Stat. § 299.95 authorizes the Attorney General to enforce Wis. Stat. ch. 281 and administrative rules adopted by DNR under the authority of that chapter. Wis. Stat. § 299.95 also provides that the circuit court for Dane County or the circuit court of any other county where a violation has occurred shall have jurisdiction to enforce Wis. Stat. ch. 281.

43. Wis. Stat. § 281.98(1) provides that any person who violates Wis. Stat. ch. 281 or any rule promulgated under that chapter, or any water quality certification issued under that chapter, shall forfeit not less than \$10 and not more than \$5,000 for each violation. Each day of continued violation is a separate offense.

44. In addition, Wis. Stat. § 281.98(2) authorizes the Court to award the Department of Justice the reasonable and necessary expenses of the investigation and prosecution, including attorney fees.

WHEREFORE, the plaintiff asks for judgment as follows:

1. The forfeitures provided for in Wis. Stat. §§ 30.298(1), 283.91(2), and 281.98(1);

2. The 26% penalty surcharge provided for in Wis. Stat. §§ 814.75(18) and 814.77(11), the 10% environmental surcharge provided for in Wis. Stat. §§ 814.75(12) and 814.77(5), the \$25.00 court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. §§ 814.75(3) and 814.77(2), the \$68.00 court support services surcharge pursuant to Wis. Stat. §§ 814.75(2) and 814.77(1m), the 1% jail surcharge pursuant to Wis. Stat. §§ 814.75(14) and 814.77(7), and the \$21.50 justice information system surcharge pursuant to Wis. Stat. §§ 814.75(15) and 814.77(8);

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

4. Such other relief as the Court may deem appropriate.

Dated this 18<sup>TH</sup> day of August, 2009.

J.B. VAN HOLLEN  
Attorney General

A handwritten signature in cursive script that reads "Mary Batt". The signature is written in black ink and is positioned above the printed name and title of the signatory.

MARY BATT  
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