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☞ Details: Complaint

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2003-04

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
(**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)

FAX TRANSMITTAL COVER SHEET



DEPARTMENT OF NATURAL RESOURCES

Fax #608-264-9200

TO: Ralph Augustine St. Paul COE

FAX NO. 612-290-5330

FROM: Dale Simon DATE: 2/11/97

NUMBER OF PAGES: 12 including this cover page.

COMMENTS: State WQ Cert Decision for
NWPs published 12/13/96.

Hand copy to follow w/ cover letter.

PC sent to Ben

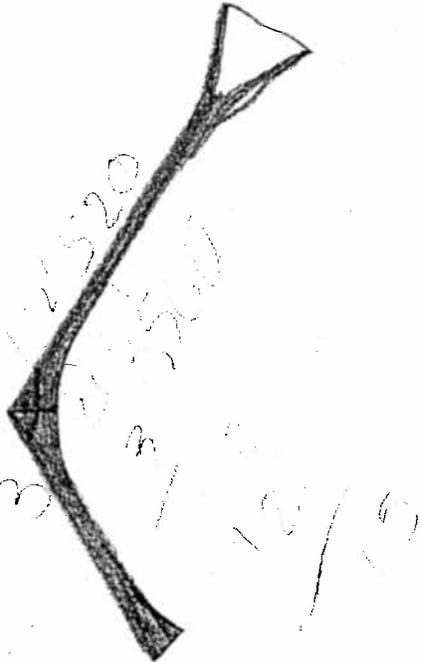


Exhibit
4

BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Application of the United States Department of the Army for Water Quality Certification and Coastal Consistency Determination for Final Regulations Pertaining to the Issuance, Re-issuance, and Modifications of Nationwide Permits

On December 13, 1996, the Department of Army, Corps of Engineers (COE), Office of the Chief of Engineers, 20 Massachusetts Avenue NW, Washington, D.C., 20314-1000 published its Final Notice of Issuance, Re-issuance, and Modifications of Nationwide Permits in the Federal Register. The publication includes 39 revised and new nationwide permits (NWP). The NWPs will become effective on February 11, 1997. Publication of this regulation served as the Corps' application to the State for water quality certification under Section 401 of the Federal Clean Water Act (CWA) and request for a consistency determination for the Wisconsin Coastal Zone Management program.

The St. Paul District/COE, Wisconsin Department of Natural Resources (WDNR) and Wisconsin Coastal Zone Management Program/Department of Administration (WCZMP/DOA) are presently in the process of developing general permits for Wisconsin that will replace the NWP's that are conditionally certified or denied in this document. The WDNR and WCZMP/DOA have examined the final regulations pursuant to Section 401, CWA, Chapter NR 299, Wisconsin Administrative Code (Wis. Adm. Code) and the Wisconsin Coastal Zone Management Plan. The WDNR and WCZMP/DOA have made the determination that the following conditions are required to ensure compliance with state water quality standards enumerated in s. 299.04, Wis. Adm. Code and Wisconsin's Coastal Zone Management Plan. The certification contained herein shall expire on December 31, 1997 or upon revocation of the NWP's by the Corps, whichever comes first.

(Note: The specific language in the NWPs have been either paraphrased or not included in this document. Copies of the complete nationwide permits published in the Federal Register on December 13, 1996 may be obtained from your local COE field office.

STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

GENERAL CONDITIONS:

- 1. The applicant shall allow the WDNR reasonable entry and access to the discharge site to inspect the discharge for compliance with the certification and applicable laws.
2. If any conditions are found to be invalid or unenforceable, certification for all activities to which that condition applies is denied.
3. Activities not eligible for state water quality authorization under this certification:

- A. Fills in navigable waters subject to jurisdiction under Chapters 30 or 31, Wis. Stats.
B. Activities likely to jeopardize the continued existence of a state designated threatened or endangered species or a species proposed for such designation or which is likely to destroy or adversely modify the habitat of such species.
C. Activities affecting 2 or more acres of waters of the state including wetlands.
D. Activities that would result, overall, in adverse impacts to fishery spawning habitat or adversely affect avifauna breeding areas or substantially disrupt the movement of those species which normally migrate from open water to upland or vice versa (i.e. amphibians, reptiles and mammals).

how does the imp come into compliance

Fills under State Law



- E. Activities detrimental to the public interest in waters of the state including wetlands.
- F. Activities involving the temporary stockpiling of fill or dredge spoils in waters of the state including wetlands that are not reviewed and approved by the WDNR under the WDNR/WDOT cooperative agreement.

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4. Applicants seeking authorization under these NWP's shall complete form 3500-53 (Joint State/Federal Permit Application) and submit a copy to the appropriate local Corps office and local WDNR Water Management Specialist. Applications must contain sufficient location and design information. Please note a \$100,000 non-refundable application fee is required for state water quality certification activities identified under Section II below.

5. If WDNR permits, approvals or coordination in accordance with established WDNR/Wisconsin Department of Transportation (WDOT) liaison procedures are NOT required for the entire activity an individual Department of the Army permit is required in the following waters of the United States:

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- A. Calcareous fens identified by WDNR.
- B. Waters of the United States located within state scientific and natural areas.
- C. Class I, II, and III trout streams identified in WDNR publication 6-3600(80), *Wisconsin Trout Streams*, including wetlands within 1,000 feet of the centerline of the stream.
- D. Trout lakes including wetlands with 1,000 of the lake's ordinary high water mark (OHWM).
- E. State or federal wild and scenic rivers, including wetlands within 1,000 feet of the OHWM.

I. The WDNR GRANTS water quality certification for the following NWP's subject to compliance with the General Conditions above:

USE Numbers

- A. Aids to Navigation. Allows the placement of U. S. Coast Guard (USCG) approved navigational aids.
- B. Structures in Artificial Canals. Allows any structure in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized.
- C. Maintenance. Allows repair, rehabilitation, or replacement of any previously authorized, serviceable, structure or fill provided that use of the structure or fill does not change.
- D. Fish and Wildlife Harvesting, Enhancement and Attraction Devices and Activities. Allows fish and wildlife harvesting devices and activities, including shellfish seeding (but not in wetlands or sites that support submerged aquatic vegetation).
- E. Scientific Measurement Devices. Allows gages, recording devices, water quality testing and improvement devices, and similar structures. Up to 25 cubic yards of fill is authorized for weirs and flumes constructed to water quantity and velocity. Notification is required for fill of greater than 10 cubic yards.
- F. Survey Activities. Allows core sampling, seismic exploration, and plugging of exploration holes.
- G. Outfall Structures. Allows all activities related to construction of outfall and associated intake structures where the effluent from the outfall is in compliance National Pollutant Discharge Elimination System regulations.
- H. Oil and Gas Structures. Allows structures for offshore oil, gas, and mineral development and production within areas leased by the Department of the Interior.
- I. Structures in Fleeting and Anchorage Areas. Allows placement of structures to facilitate mooring of vessels within anchorage areas established by the U.S. Coast Guard.
- J. Mooring Buoys. Allows non-commercial, single boat, mooring buoys.
- K. Temporary Recreational Structures. Allows temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events. Structures must be removed within 30 days after use has been discontinued.
- L. Bank Stabilization. Allows bank stabilization of up to 500 linear feet with up to one cubic yard of material per foot placed below the OHWM without notification. Notification is required for projects of greater length or discharge volumes. Discharges to a special aquatic site is not permitted.



M. USCG Approved Bridges. Allows discharge of fill material incidental to construction of bridges, including cofferdams, foundations, piers, and temporary construction fill, provided discharge is approved by the USCG.

N. Return Water From Upland Contained Disposal Areas. Allows the discharge of return water from an upland, contained, dredge disposal area.

O. Minor Dredging. Allows dredging of up to 25 cubic yards. Dredging or siltation of submerged aquatic vegetation, anadromous fish spawning areas, or wetlands is not permitted.

P. Oil Spill Cleanup. Allows cleanup of oil and hazardous substances provided work is done in accordance with federal regulations and any existing state contingency plans, and has the concurrence of the Federal Regional Response Team.

Q. Removal of Vessels. Allows minor discharges of fill in connection with removal of disabled or abandoned vessels or man-made obstructions to navigation.

R. Structural Discharge. Allows discharges to sealed forms used as a structural member for pile-supported structures such as piers and docks and for linear projects. Discharges to special aquatic sites are permitted.

S. Wetland and Riparian Restoration and Creation Activities. Allows restoration of former non-tidal wetlands and riparian areas, the enhancement of degraded wetlands and riparian areas, and creation of wetlands and riparian areas: (1) on non-federal public lands and private lands in accordance with the terms and conditions of a binding wetland restoration or creation agreement between the landowner and the U.S. Fish and Wildlife Service or the NRCS or voluntary wetland restoration, enhancement, and creation actions documented by the NRCS pursuant to NRCS regulations; or (2) on any federal land; or (3) on reclaimed surface coal mined lands in accordance with a Surface Mining Control and Reclamation permit; or (4) on any public or private land provided the permittee notifies the District Engineer in accordance with the "Notification" general condition.

T. Modifications of Existing Marinas. Allows the reconfiguration of existing docking facilities within an authorized marina. No dredging or expansion of any kind is permitted.

U. Moist Soil Management for Wildlife. Allows discharge of dredged or fill material into non-tidal wetlands necessary to manage, construct, and/or maintain habitat and feeding areas for wildlife. NWP applies to federally-owned or managed and state-owned or managed property.

V. Maintenance of Existing Flood Control Projects. Allows the excavation and removal of accumulated sediment and associated vegetation for maintenance of existing flood control facilities including debris basins, retention/detention basins and channels not to exceed previously authorized depths and configurations provided the dredged material is disposed of at an upland site or a currently authorized disposal site in waters of the U.S., and proper siltation controls are used.

W. Maintenance Dredging of Existing Basins. Allows maintenance of existing marina basins, canals, and boat slips to previously authorized depths, provided disposal of spoils into an upland site and proper siltation controls are used.

X. Boat Ramps. Allows construction of boat ramps, provided that (1) the discharge does not exceed 50 cubic yards of rock; (2) the ramp is not wider than 20 feet; (3) the base is of stone or other "suitable" material; (4) the excavation is limited to the area necessary and excavated material is removed; and (5) no material is placed in special aquatic sites including wetlands.

Y. Emergency Watershed Protection and Rehabilitation. Allows (1) work done or funded by NRCS qualifying as an "exigency" situation pursuant to NRCS's Emergency Watershed Protection Program; and (2) work done or funded by the U.S. Forest Service under its Burned-Area Emergency Rehabilitation Handbook.

Z. Cleanup of Hazardous and Toxic Waste. Allows cleanup of hazardous or toxic waste, performed, ordered, or sponsored by an authorized governmental entity or resulting from a court order or settlement.

II. The WDNR Grants water quality certification for the following NWPs subject to compliance with the general conditions above and any other activity specific condition:

A. Utility Line Backfill. Allows discharges associated with excavating and backfilling trenches for gas, liquid, electrical, or other utility lines. Sidecast material could be discharged for up to three months (or six months with approval of the District Engineer). Stabilization of exposed slopes and stream banks would

be required on completion of the utility line. Notification to the Corps is required for specified circumstances.

Specific Conditions:

- 1) Utility crossings located outside those waters of the U.S. identified in the General Conditions but located in primary environmental corridors are certified subject to the applicant providing written notice to WDNR at least 30 days prior to beginning construction of the crossing. The notice must show the location of the crossing and explain why the utility must cross the wetland.
- 2) All other projects are certified subject to the applicant providing written notice to WDNR, at least 10 days prior to beginning construction of the crossing. The notice must show the location of the crossing, explain why the utility must cross the wetland, and contain a certification from the local unit of government (county, city or village) or the appropriate Regional Planning Commission that the crossing is not located in a primary environmental corridor.

B. Road Crossings. Allows fills up to 1/3 acre and 200 linear feet for road crossings, including discharges to special aquatic sites, provided the fill does not restrict low flows or the passage of aquatic organisms. This NWP may not be combined with NWP 18 or NWP 26 for the purpose of increasing the foot print of the road crossing.

Specific Conditions:

- 1) If WDNR permits, approvals, or coordination in accordance with established WDNR/WDOT liaison procedures are required for the entire crossing, the work is authorized by this nationwide permit.
- 2) Roads and streets in incorporated areas, located outside those waters of the U.S. identified under the general conditions, resulting in a loss of less than 200 linear feet or 1/3 acre per crossing, are certified subject to the conditions that:
 - a. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the road. The notice shall contain:
 1. The name, address, and telephone (and telefax, if applicable) number of the applicant;
 2. An explanation why the road cannot, as a practical matter, be located outside the wetland;
 3. Information demonstrating that the road is designed to minimize the adverse impacts on wetland functions;
 4. The road is designed with the minimum practical cross-sectional area;
 5. Construction activities will be carried out in the immediate area of the road only;
 6. Any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the road;
 7. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the road is not located in a primary environmental corridor.
 - b. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
 - c. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 3) Roads and streets in subdivisions, located outside those waters of the U.S. identified under the general conditions, and designated for sewer service in an area wide water quality management plan or plan amendment which was approved by WDNR on or after August 1, 1991 are certified subject to the conditions that:
 - a. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the road. The notice shall contain:
 1. The name, address, and telephone (and telefax, if applicable) number of the applicant;
 2. Information on the location and design standards for the road;

3. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the road is not located in a primary environmental corridor; and:
 4. A copy of the applicable sewer service area approval.
- b. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
 - c. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 4) Private driveways necessary to provide access for motor vehicles licensed to travel on public highways from a road or street to one or more upland parcels, located outside those waters of the U.S. identified under the general conditions and resulting in a loss of less than 200 linear feet and 1/3 acre.
- a. Crossings of roadside ditches (defined as wetlands which do not extend beyond 30 feet from the outer edge of the shoulder of the roadway and which are not located in the shore land area of any navigable waterway) are certified subject to the condition that:
 1. The applicant provides written notice, at least 10 days prior to beginning construction of the driveway. Notice must show the location of the driveway, explain why the driveway must cross the wetland, and contain a certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a primary environmental corridor.
 - b. Driveways crossing other wetlands are certified subject to the conditions that:
 1. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the driveway. The notice shall contain:
 - (i) The name, address, and telephone (and telefax, if applicable) number of the applicant;
 - (ii) An explanation why the driveway cannot, as a practical matter, be located outside the wetland;
 - (iii) Information demonstrating that the driveway is designed to minimize the adverse impacts on wetland functions;
 - (iv) The driveway is designed with the minimum practical cross-sectional area;
 - (v) Construction activities will be carried out in the immediate area of the driveway only;
 - (vi) Any filling, flooding, draining, dredging, ditching, silt or excavating is necessary for the construction or maintenance of the driveway; and
 - (vii) A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a designated environmental corridor.
 - c. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
 1. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 5) Crossings of all other waters of the United States, are authorized by this nationwide permit, but work may not proceed until the permittee has received individual water quality certification from the WDNR.

C. Isolated and Headwater Discharges. Allows discharges into headwaters and isolated waters provided the discharge does not cause loss of more than 3 acres of waters. Notification to the Corps is required if more than 1/3 acre is lost.

Specific Conditions:

- 1) An individual Department of the Army permit is required when the discharge is for the construction of an access path or yard fill.
- 2) An individual Department of the Army permit is required when the discharge affects more than 2 acres of wetlands.
- 3) If WDNR permits, approvals, or coordination in accordance with established WDNR/WDOT liaison procedures are required for the entire crossing, the work is authorized by this nationwide permit.
- 4) Roads and streets in incorporated areas, located outside those waters of the U.S. identified under the general conditions, resulting in a loss of less than 200 lineal feet or 1/3 acre per crossing, are certified subject to the conditions that:
 - a. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the road. The notice shall contain:
 1. The name, address, and telephone (and telefax, if applicable) number of the applicant;
 2. An explanation why the road cannot, as a practical matter, be located outside the wetland;
 3. Information demonstrating that the road is designed to minimize the adverse impacts on wetland functions;
 4. The road is designed with the minimum practical cross-sectional area;
 5. Construction activities will be carried out in the immediate area of the road only;
 6. Any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the road;
 7. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the road is not located in a primary environmental corridor.
 - b. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
 - c. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 5) Roads and streets in subdivisions, located outside those waters of the U.S. identified under the general conditions, and designated for sewer service in an area wide water quality management plan or plan amendment which was approved by WDNR on or after August 1, 1991 are certified subject to the conditions that:
 - a. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the road. The notice shall contain:
 1. The name, address, and telephone (and telefax, if applicable) number of the applicant;
 2. Information on the location and design standards for the road;
 3. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the road is not located in a primary environmental corridor; and;
 4. A copy of the applicable sewer service area approval.
 - b. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.
 - c. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.
- 6) Private driveways necessary to provide access for motor vehicles licensed to travel on public highways from a road or street to one or more upland parcels, located outside those waters of the U.S. identified under the general conditions and resulting in a loss of less than 200 lineal feet and 1/3 acre.
 - a. Crossings of roadside ditches (defined as wetlands which do not extend beyond 30 feet

from the outer edge of the shoulder of the roadway and which are not located in the shore land area of any navigable waterway) are certified subject to the condition that:

1. The applicant provides written notice, at least 10 days prior to beginning construction of the driveway. Notice must show the location of the driveway, explain why the driveway must cross the wetland, and contain a certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a primary environmental corridor.

b. Driveways crossing other wetlands are certified subject to the conditions that:

1. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the driveway. The notice shall contain:

- (i) The name, address, and telephone (and telefax, if applicable) number of the applicant;
- (ii) An explanation why the driveway cannot, as a practical matter, be located outside the wetland;
- (iii) Information demonstrating that the driveway is designed to minimize the adverse impacts on wetland functions;
- (iv) The driveway is designed with the minimum practical cross-sectional area;
- (v) Construction activities will be carried out in the immediate area of the driveway only;
- (vi) Any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the driveway; and
- (vii) A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a designated environmental corridor.

c. The crossing of the waterway or wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.

1. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.

7) Crossings of all other waters of the United States, are authorized by this nationwide permit, but work may not proceed until the permittee has received individual water quality certification from the WDNR.

8) Ponds proposed to enhance wetland functional values, located outside those waters of the U.S. identified under the general conditions and resulting in a loss of less than 2 acres of wetlands are certified subject to the conditions that:

- a. The applicant provides written notice to the WDNR at least 30 days prior to beginning construction of the pond. The notice shall contain the following:

1. The name, address and telephone (and telefax, if applicable) number of the applicant;
2. A description of the project, including dimensions and side slopes of the pond and disposition of excavated materials; and
3. A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the pond is not located in a primary environmental corridor.

- b. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.

9) For all other projects:

- a. Discharges resulting in the loss of less than 2 acres of waters of the United States, including wetlands, are authorized after receiving an individual water quality certification from WDNR.

D. Single-Family Housing. Allows discharges of dredged or fill material into non-tidal waters of the U.S. for the construction or expansion of a single-family home and attendant features for an individual permittee subject to certain conditions and limitations.)

Specific Conditions:

1) If WDNR permits are not required for the entire project, the following applies:

a. Projects involving the discharge of any dredged or fill material located in wetlands adjacent to areas of special natural resource interest as defined in NR 103.04, Wis. Adm. Code, require an individual Department of Army permit.

b. Projects involving the discharge of any dredged or fill material located in shore land wetlands (all wetlands located within 300 feet of any river or stream, and/or those wetlands within the floodplain of a river or stream, whichever distance is greater; and all wetlands within 1000 feet of a lake pond or flowage require an individual Department of Army Permit.

c. Projects involving the discharge of any dredged or fill material located in any wetland for the purpose of constructing a sewage system, access path or yard fill (not associated with minimum flood proofing requirements under NR 116, Wis. Adm. Code) require an individual Department of Army permit.

d. Private driveways necessary to provide access for motor vehicles licensed to travel on public highways from a road or street to upland parcels, located outside those waters of the U.S. identified under conditions a. and b. above are granted water quality certification subject to the following conditions:

1. Driveways crossing roadside ditches (defined as wetlands which do not extend beyond 30 feet from the outer edge of the shoulder of the roadway and which are not located in the areas identified in a. and b. above are certified subject to the condition that:

(i) The applicant provides written notice to the appropriate WDNR office, at least 10 days prior to beginning construction of the driveway.

(ii) Notice must show the location of the driveway, explain why the driveway must cross the wetland, and contain a certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a shore land wetland or primary environmental corridor.

2. Driveways crossing other wetlands are certified subject to the conditions that:

(i). The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction of the driveway.

The notice shall contain:

(a) The name, address, and telephone (and telefax, if applicable) number of the applicant;

(b) An explanation why the driveway cannot, as a practical matter, be located outside the wetland;

(c) Information demonstrating that the driveway is designed to minimize the adverse impacts on wetland functions;

(d) Information that the driveway is designed with the minimum practical cross-sectional area;

(e) A statement that the construction activities will be carried out in the immediate area of the driveway only;

(f) A statement that any filling, flooding, draining, dredging, ditching, tiling or excavating is necessary for the construction or maintenance of the driveway; and

(g) A written certification from the local unit of government (county, city or village) or the appropriate regional planning

commission that the crossing is not located in a designated shore land wetland or primary environmental corridor.

3. The crossing of the wetland provides for maintenance of water exchange through the use of culverts or other devices which provide effective flow capacity.

4. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.

e. Crossings of all other waters of the United States, are authorized by this nationwide permit, but work may not proceed until the permittee has received individual water quality certification from the WDNR.

f. Expansion of existing single family homes are granted state water quality certification subject to the following conditions:

1. The applicant provides a written notification to the appropriate WDNR office at least 30 days prior to construction. The notice shall contain:

(i) The name, address, and telephone (and telefax, if applicable) number of the applicant;

(ii) An explanation why the expansion of the residence cannot, as a practical matter, be located outside the wetland;

(iii) Information demonstrating that the expansion of the residence is designed to minimize the adverse impacts on wetland functions;

(iv) A written certification from the local unit of government (county, city or village) or the appropriate regional planning commission that the crossing is not located in a designated shore land wetland or primary environmental corridor.

2. WDNR does not inform the applicant prior to the expiration of the 30-day period that an individual water quality certification is required for the project.

g. All other projects authorized by this nationwide permit require individual state water quality certification.

h. Mitigation may not be used to authorize an activity under this nationwide permit if the activity, without the mitigation, does not comply with the terms and conditions of the applicable nationwide permit.

E. Completed Enforcement Actions. Allows any structure, work, or discharge which is in compliance with a final federal court decision, consent decree, or settlement agreement resulting from a federal enforcement action under Section 10 or 404.

Specific Conditions:

1) Settlement agreements are authorized by this NWP only if WDNR is a party to the agreement or if WDNR has reviewed and approved the settlement agreement.

F. Temporary Construction, Access and Dewatering. Allows temporary fills, including to special aquatic sites, for construction, access, or dewatering of construction sites, provided that the associated permanent activity has authorized by the Corps or the USCG, or involves bridge construction not subject to federal regulation. The permit specifies that near normal flows must be maintained, that flooding must be minimized, that fill material must be non-erodible, that temporary fill must be removed and the affected areas restored to pre-project conditions, and that wetlands and other aquatic areas cannot be dewatered with cofferdams so as to change their use.

G. Cranberry Production Activities. Allows discharges associated with expansion or modification of existing cranberry operations. The total affected area cannot exceed 10 acres and there can be no net loss of wetlands.

Specific conditions:

1) In all waters of the United States, other than those listed in the general conditions and limitations, discharges associated with the expansion, enhancement and modification of existing cranberry production operations are authorized, provided that:

a. Total acreage disturbance does not exceed 2 acres (cumulative for the life of the NWP)

- b. The work does not result in a net loss of wetland acreage (mitigation used to offset impacts/losses)
- c. The applicant notifies the Corps in accordance with 33 CFR Part 330 and WDNR determines within 45 days after notification that:
 - 1. There are no practicable alternatives to the project as proposed, and
 - 2. That the project will not result in significant adverse impacts on wetland functional values.
- d. Discharges do not take place during fish spawning periods or at times when nursery areas would be adversely impacted.
- e. Reservoir dikes and embankments have side slopes of three horizontal to one vertical (3H:1V) or flatter.
- f. Excess excavated material not used for construction is removed to an upland site and not stockpiled in waters or wetlands.

NOTE: If additional information is needed, or if heavy snow or ice cover prevents WDNR from completing their review, the 45 day time-limit may be extended.

H. Farm Buildings. Allows discharges of fill up to one acre into the wetlands that were farmed prior to December 23, 1985 to allow construction of "agriculturally related" structures "necessary for farming". Fills must be the "minimum necessary". Discharges to prairie potholes, playa lakes, and vernal pools are not authorized.

Special Conditions:

- 1) Requires state individual water quality certification.

III. The following NWP's are hereby denied water quality certification:

- A. NWP 17. Hydropower Projects.
- B. NWP 18. Minor Discharges.
- C. NWP 21. Surface Coal Mining Activities.
- D. NWP 23. Approved Categorical Exclusions.
- E. NWP 24. State Administered Section 404 Program.
- F. NWP 39. Reserved.

IV. NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources.

This determination becomes final in accordance with the provisions of NR 299.05(7), Wisconsin Administrative Code, and is judicially reviewable when final. For judicial review of a decision pursuant to Sections 227.52 and 227.53, Wisconsin Statutes, you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

This notice is provided pursuant to section 227.48(2), Stats.

Dated at Madison, Wisconsin 2/11/97

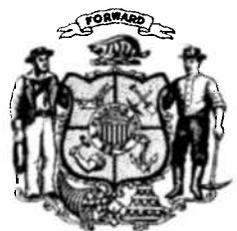
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By George E Meyer
George E. Meyer, Secretary

(SEAL)



WISCONSIN STATE LEGISLATURE



How K

75 Ft Road way
Buffer zone

HOUSE

Shed Garage

15' wide fill Here

Grading will not exceed
10,000 sq. ft.

477.44' N 00° 18' 49" W 834.26'
(11 0° 18' - 18" W 635.04')

563.79' S 89° 18' 56" W

Yes: 100' LINE

195.79'

2623.32

W 100'

N ↑

partial logging

full scope of logging

- WCD IN E
- 1" 1"
- 1" 1"
- 1" 1" PLAC
- 1" 1" COMP
- () BEAR

Fill material
12" peck
12" gravel
4" sand

1" = 100 FT

LITTLE STAR LAKE

Shoreline Buffer Zone

35 FT X 50 FT SHAPING REC. AREA

Shoreline Buffer Zone

223.45
5 00° 25' 12" W

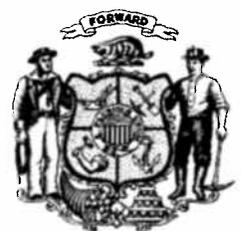
5 30° 47' 57" W
116.70

450.74
5 06° 18' 49" E 203.61

Yes: 100' LINE



WISCONSIN STATE LEGISLATURE



Main Identity

From: "Selk, Robert A." <selkra@doj.state.wi.us>
To: <stpaul@anet.com>
Cc: "Simon, Byron D" <Byron.Simon@dnr.state.wi.us>
Sent: Wednesday, July 16, 2003 1:46 PM
Subject: Document Review

Paul,

I left a message with your assistant yesterday regarding review of documents of DNR. Since I have not heard back from you, I want to repeat what the State has agreed to do in response to your subpoena duces tecum.

The DNR is gathering documents in the following categories:

1. All documents in the possession or control of DNR, including legal analysis, that relate to the 1996 and 1997 U.S. Army Corps of Engineers request for Water Quality Certification for the 1997 Nationwide Permit Program.
2. All documents in the possession or control of DNR that relate to Paul Heinrich and/or the property of Paul Heinrich located at 8125 Hwy. K, Star Lake, Wisconsin in Vilas County. Included are all documents that relate to any significant impairment of water quality caused by the activities of the defendants in this action.
3. All documents in the possession or control of DNR that relate to the decision of the U.S. Army Corps of Engineers to "deem" the State of Wisconsin as having denied Water Quality Certification for all or part of the 1997 Nationwide Permits issued by the U.S. Army Corps of Engineers.
4. Field Training Manuals related to Water Quality Certification determinations issued or used by DNR staff during 1997 and 1998.

DNR will attempt to have most if not all of the documents available for your inspection on July 17 at 1:00 pm at the Central Offices of DNR at 101 S. Webster (GEFII), Madison. Upon arrival in the building you should go to the 3rd floor to the Bureau of Fisheries Management and Habitat Protection and ask for Dale Simon. Dale will assist you. The estimated search and retrieval cost is \$550. A check for this amount made payable the Wisconsin Department of Natural Resources must be paid and delivered to Mr. Simon before any documents may be inspected.

Please confirm that you will be coming to Madison as scheduled.

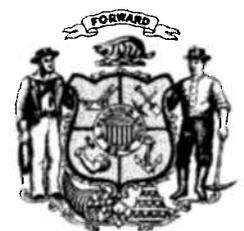
Bob Selk

Exhibit
6

5/16/2004



WISCONSIN STATE LEGISLATURE



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

2009 FEB 11 11:14:55

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
)
 v.)
)
)
 PAUL A. HEINRICH and CHARLES)
)
)
 VOGEL ENTERPRISES, INC.,)
)
)
 Defendants.)

Case No.

03 C 0075 S

COMPLAINT

The United States of America, by its attorney, J.B. Van Hollen, United States Attorney for the Western District of Wisconsin, by Leslie K. Herje, Assistant United States Attorney for that District, hereby states and alleges as follows:

1. This is a civil action brought against Paul A. Heinrich ("Heinrich") and Charles Vogel Enterprises, Inc. ("Vogel") (collectively "Defendants"), in accordance with Sections 309(b), (d) of the Clean Water Act ("CWA"), 33 U.S.C. §§ 1319(b), (d), for civil penalties and injunctive relief resulting from the discharge of pollutants into waters of the United States without a permit, in violation of Sections 301(a) and 404 of the CWA, 33 U.S.C. §§ 1311(a), 1344. This action is also brought against Heinrich in accordance with Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), in connection with his failure to implement restoration requirements established by the United States Environmental Protection Agency ("EPA"), pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

Exhibit
7

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355; and 33 U.S.C. §§ 1319(b) and 1344(s).

3. Venue is proper in this District pursuant to 33 U.S.C. §§ 1319(b), 1344(s) and 28 U.S.C. §§ 1391(b), (c) and 1395(a), because the Defendants conduct business in the District, the subject property is located in the District, and the violations occurred within the District.

NOTICE

4. In accordance with Section 309 of the CWA, 33 U.S.C. § 1319(b), notice of the commencement of this action has been given to the State of Wisconsin.

THE PARTIES

5. The Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice under 28 U.S.C. §§ 516 and 519, and in accordance with Sections 309(b), (d) and 506 of the CWA, 33 U.S.C. §§ 1319(b), (d) and 1366.

6. Defendant Heinrich is an individual who is the owner of record of property located at 8125 Highway "K", Star Lake, Vilas County, Wisconsin. Upon information and belief, Heinrich operates, or has operated, a "Scenic Seaplane Rides" business from this property.

7. Defendant Vogel is a corporation incorporated under the laws of the State of Wisconsin. Vogel does business at 6351 State Highway 70E, Saint Germain, Wisconsin 54558.

STATUTORY AND REGULATORY BACKGROUND

8. Sections 301(a) and 404(a) of the CWA, 33 U.S.C. §§ 1311(a), 1344(a), prohibit the discharge of pollutants, including dredged or fill material, by any person into navigable waters, except, to the extent relevant here, in compliance with a valid permit issued by the Secretary of the Army, acting through the Chief of Engineers, United States Army Corps of Engineers ("Corps").

9. Section 309(a) of the CWA, 33 U.S.C. § 1319(a), authorizes the Administrator of EPA to issue administrative compliance orders to any person found to be in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

10. Section 309(a)(3) and (b) of the CWA, 33 U.S.C. § 1319(a)(3) and (b), authorizes the Administrator of EPA to issue an order requiring compliance or to commence a civil action in federal district court for appropriate relief, including a temporary or permanent injunction and/or an assessment of a civil penalty, when she finds that any person is in violation of Sections 301 or 404 of the CWA, 33 U.S.C. §§ 1311 and 1344.

11. The term "person" is defined in Section 502(5) of the CWA 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).

12. The term "pollutant" is defined in Section 502(6) of the CWA 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).

13. The terms "discharge of a pollutant" and "discharge of pollutants" are defined in Section 502(12) of the CWA as any addition of any pollutant to navigable waters from any point source, or any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft. 33 U.S.C. § 1362(12).

14. The term "discharge of dredged material" is defined by 40 C.F.R. § 232.2, in pertinent part, as "any addition of dredged material into, including redeposit of dredged material other than incidental fallback within, the waters of the United States." The term includes, but is not limited to, "[a]ny addition, including redeposit other than incidental fallback, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized land clearing, ditching, channelization, or other excavation."

15. The term "fill material" is defined by 40 C.F.R. § 232.2 as "any 'pollutant' which replaces portions of the 'waters of the United States' with dry land or which changes the bottom elevation of a water body for any purpose."

16. The term "discharge of fill material" is defined by 40 C.F.R. § 232.2 as "the addition of fill material into waters of the United States." The term generally includes, without limitation, "[p]lacement of fill that is necessary for the construction of any structure in a water of the United States; the building of any structure or impoundment

requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; [and] property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments[.]”

17. The term “point source” is defined in Section 502(14) of the CWA 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).

18. The term “navigable waters” is defined in Section 502(7) of the CWA as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7).

19. The term “waters of the United States” is defined at 40 C.F.R. §§ 230.3(s) and 232.2 as, *inter alia*, (a) all waters which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide; (b) all interstate waters, including interstate wetlands; and (c) wetlands adjacent to the waters listed above (other than waters that are themselves wetlands).

20. The term “wetlands” is defined at 40 C.F.R. §§ 230.3(t) and 232.2 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.”

21. The term "adjacent" is defined by 40 C.F.R. § 230.3 as "bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes, and the like are 'adjacent wetlands.'"

GENERAL ALLEGATIONS

22. The Defendants are "persons" as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

23. The real property which is the subject of this Complaint is located at Northwest ¼, Section 10, Township 41 North, Range 8 East, Star Lake, Vilas County, Wisconsin ("the Site").

24. At all times relevant to this Complaint, one or both of the Defendants either owned, leased or otherwise controlled the Site and/or otherwise controlled the activities that occurred on the Site.

25. The Site contains a white cedar swamp.

26. The white cedar swamp on the Site are wetlands within the meaning of 40 C.F.R. §§ 230.3(t) and 232.2.

27. The wetlands on the Site are adjacent and hydrologically connected to Little Star Lake in Vilas County, Wisconsin.

28. Little Star Lake drains into Star Lake, which drains through Star Creek to Plum Lake. Plum Lake drains through Plum Creek to Big St. Germain Lake. Big St. Germain Lake drains through the St. Germain River to Pickerel Lake. Pickerel Lake

drains to Rainbow Flowage, an impoundment of the Wisconsin River, an interstate water body which is a tributary of the Mississippi River, an interstate water body.

29. All of the water bodies described in Paragraphs 27 and 28 above are "navigable waters" as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7), and are "waters of the United States" within the meaning of 40 C.F.R. §§ 230.3(s) and 232.2.

FIRST CLAIM

30. The United States hereby realleges the allegations set forth in Paragraphs 1 through 29 above as if fully set forth herein.

31. On or about August 28 and 29, 1997, and again on or about September 2, 3, and 4, 1997, Vogel, at the instruction of Heinrich, used bulldozers, dump trucks, excavators, and other specialized heavy equipment to discharge soil, sand, woody vegetation and grass seed into wetlands located on the Site.

32. The Defendants made the discharges referred to in Paragraph 31 in connection with the construction of a lake access road across a white cedar swamp to Little Star Lake.

33. On or about October 22, 1998, Vogel, at the instruction of Heinrich, used excavators, dump trucks, and/or other specialized heavy equipment to discharge soil, rock, and woody vegetation in connection with the placement of two culverts beneath the access road at the Site.

34. In the early spring of 1999, and at other times known more specifically to Heinrich, Heinrich and/or persons operating at his direction operated dump trucks

and/or other mechanized equipment to place approximately 14 concrete-like, "Spancrete," blocks along the shoreline of and/or within Little Star Lake.

35. The soil, sand, woody vegetation, rock and grass seed, and "Spancrete" blocks referenced in Paragraphs 31 through 34 above, constitute "dredged material" and/or "fill material" within the meaning of 40 C.F.R. § 232.2, as well as "pollutants" within the meaning of Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

36. The bulldozers, dump trucks, excavators, and/or other specialized heavy equipment referenced in Paragraphs 31 through 34 above, constitute "point sources" within the meaning of Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

37. Each instance of the Defendants' placement of the soil, sand, woody vegetation, rock and grass seed and "Spancrete" blocks into the wetlands referenced in Paragraphs 31 through 34 above, constitutes a discharge of a pollutant within the scope of Section 404 of the CWA, 33 U.S.C. § 1344.

38. The Defendants do not have, and never have had, a permit issued under Section 404 of the CWA, 33 U.S.C. § 1344, authorizing discharges of dredged or fill material into navigable waters as described in Paragraphs 31 through 34 above.

39. Each day that unpermitted discharges of dredged or fill material continues to fill wetlands on the Site constitutes a day in violation of Section 301 of the CWA, 33 U.S.C. § 1311.

40. Pursuant to Section 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), the Defendants are subject to injunctive relief and civil penalties of not more than

\$25,000 per day for each violation. Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and corresponding EPA regulations, the Defendants are also subject to a civil penalty of not more than \$27,500 per day for each violation occurring on or after January 30, 1997. 61 Fed. Reg. 69,360, 69,361 (Dec. 31, 1996).

41. Unless restrained by order of this court, the Defendants will continue to violate Section 301 of the CWA.

SECOND CLAIM

42. The United States hereby realleges the allegations set forth in Paragraphs 1 through 41 above as if fully set forth herein.

43. Upon discovery of the discharge activities at the Site, described in Paragraphs 31 through 34 above, EPA issued Heinrich an Administrative Compliance Order on November 20, 2000 ("Compliance Order"), pursuant to CWA Section 309(a), 33 U.S.C. § 1319(a). The Compliance Order required Heinrich to conduct activities to restore the wetlands in question to their condition prior to construction of the road.

44. The Compliance Order directed Heinrich, *inter alia*, to advise EPA of his intent to comply with the Order within fifteen (15) days of his receipt of the Order, *i.e.*, by December 22, 2000, and further directed Heinrich to submit a restoration plan to EPA for approval within thirty (30) days of his receipt of the Order, *i.e.*, by January 6, 2001.

45. Following his receipt of the Order, Heinrich failed to give timely notice of his intent to comply with the Order and failed to timely submit a restoration plan, as required by the Compliance Order.

46. Each day that Heinrich fails to comply with the terms of the Compliance Order constitutes a day in violation of Section 309(a) of the CWA, 33 U.S.C. § 1319(a).

RELIEF REQUESTED

WHEREFORE, the United States respectfully requests that this Court grant the following relief:

1. Require the Defendants to immediately cease further discharges of dredged or fill material into the wetlands on the Site, except in compliance with a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344;
2. Require the Defendants to submit to EPA for approval a plan to restore the wetlands at the Site that have been affected by the Defendants' unlawful discharges;
3. Require the Defendants to restore the wetlands that have been affected by the Defendants' discharges of pollutants to their original contours in accordance with a plan approved by EPA;
4. Impose civil penalties upon the Defendants, jointly and severally, for each day of violation at the Site, in an appropriate amount pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), and the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; and
5. Grant such other relief as this Court deems appropriate.

Dated this 11th day of February, 2003.

Respectfully submitted,

J.B. VAN HOLLEN
United States Attorney

By:



LESLIE K. HERJE
Assistant United States Attorney
Chief, Civil Division
P.O. Box 1585
Madison, Wisconsin 53701-1585
(608) 264-5158
TTY (608) 264-5006

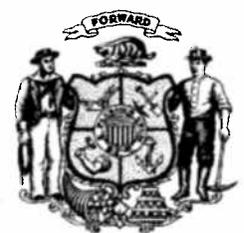
OF COUNSEL:

Ignacio L. Arrázola, Esq.
U.S. Environmental Protection Agency
Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Amanda Gibson, Esq.
U.S. Environmental Protection Agency
Office of Compliance and Enforcement
401 M Street, S.W.
Washington, D.C. 20460



WISCONSIN STATE LEGISLATURE



IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JUL - 3 2003

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL A. HEINRICH and CHARLES
VOGEL ENTERPRISES, INC.,

Defendants.

FILED
JOSEPH W. SKUPNIEWITZ CLERK
CASE #

Case No. 03 C 0075 S

DEFENDANT HEINRICH'S FIRST AMENDED COUNTER-CLAIM

NOW COMES THE DEFENDANT, PAUL HEINRICH, *pro se*, and for his First Amended Counter-Claim against the United States of America, states and alleges as follows:

JURISDICTION PURSUANT TO 28 U.S.C. §1331

The jurisdiction of this claim is based upon issues raised by the Federal Clean Water Act (33 U.S.C. 1344) and the Fifth and Fourteenth Amendment to the United States Constitution.

COUNT ONE –Declaratory Judgment

1. The COUNTER-CLAIMANT, Paul Heinrich (HEINRICH), is a Wisconsin homeowner residing at 8125 County Highway K, Star Lake, Wisconsin, 54561.
2. The full legal description of the HEINRICH parcel of land is as follows:

A parcel of land being a part of Gov't. Lot 4, Section 10, T 41 N, R 8 E, Town of Plum Lake, Vilas County, Wisconsin, and being more particularly described as follows:

Commencing at the West 1/4 corner of said Section 10 being marked by a W.C.D. monument, thence N 89°-18'-58" E 632.08 feet along the South line of said Gov't. Lot 4 to an iron pipe and the Place of Beginning, thence N 0°-18'-49" W 634.26

Exhibit
8

feet (N 0°-18'-18" W 635.04 feet of record) to an iron pipe on the Southerly R/W line of County Trunk Hwy. K, thence Easterly along said Southerly R/W line 312.29 feet along the arc of a 5°-00'-00" curve to the Right (chord bearing N 84°-52'-49" E 311.26 feet) to a point, thence continuing Easterly along said Southerly R/W line 380.17 feet along the arc of a 3°-52'-05" curve to the Left (chord bearing N 85°-43'-36" E 379.17 feet to an iron pipe on the East line of said Gov't. Lot 4, thence S 0°-25'-12" W 225.45 feet along said East line to an iron pipe on the Shore of Little Star Lake, thence along said Shore S 30°-47'-57" W 126.70 feet, S 21°-07'-29" W 157.22 feet and S 6°-16'-49" E 203.61 feet to an iron pipe on the South line of said Gov't Lot 4, thence S 89°-18'-58" W 583.79 feet along said South line back to the place of beginning. Including all lands lying between the meander line and the lateral lot lines extended to the water's edge.

3. The HEINRICH parcel is held in fee simple and consists of approximately 9.5 acres of land with 480 feet of frontage on Little Star Lake.
4. Little Star Lake is a natural 100 acre lake to which no public boat access is available. Little Star Lake is considered a navigable water of the State of Wisconsin. Little Star Lake is located above the point on a river or stream where the average annual flow is less than five cubic feet of water per second.
5. Over 60 percent of the shoreline of Little Star Lake is owned by the State of Wisconsin. The State of Wisconsin is required by law to provide driving boat access to lakes between 50-100 acres in size and provide a parking area for at least five vehicles and trailers. The State of Wisconsin has failed to comply with its own law regarding boat access to Little Star Lake.
6. The HEINRICH parcel is generally Zoned R-1 Single Family Residential District by the local Vilas County, Wisconsin, General Zoning Ordinance. The parcel is further regulated by the Vilas County Shoreline Zoning Ordinance because of its proximity to navigable waters of Wisconsin.
7. The upland portion of the HEINRICH parcel contains a single family home and two garages located on approximately one and one-half acres. In the larger of the two garages, which was built in the Summer and Fall of 1999, HEINRICH stores his boats, motors, fishing and woodworking equipment, boat launch and forest management equipment, and a personal aircraft equipped to take-off and land only upon water. Such usage is in compliance with R-1 Zoning.
8. The remaining eight acres of the HEINRICH parcel is a forested wetland.¹ It is subject to

¹ The use of the descriptive word "wetland" does not imply, nor by its use does HEINRICH admit, that the HEINRICH parcel contains "jurisdictional wetlands" within the

the Vilas County Shoreland Zoning Ordinance "Shoreland-Wetland District" which limits the permitted uses of the property to activities such as hiking, fishing, trapping, hunting, swimming, boating, and the practice of silviculture, including the planting, thinning, and harvesting of timber.

9. During the year 1997, HEINRICH hired a local contractor to design and construct a forest road into the wetland to allow HEINRICH access to harvest and manage the marketable timber located therein. Forest roads are exempt from the provisions of the Clean Water Act. The construction of and runoff from the construction of forest roads are not considered point sources of pollution pursuant to 40 C.F.R. 122.27.
10. Prior to beginning construction of the forest road, HEINRICH notified the Army Corps of Engineers of his intention to construct a forest road. At all times thereafter, the Army Corps of Engineers was aware of the design, location, and progress of construction of the forest road.
11. During the year 1999, HEINRICH constructed a wooden elevated walkway connecting the forest road to and into the waters of Little Star Lake. The walkway, as well as the limited excavating, grading, and filling necessary to construct such walkway, is exempt from the provisions of the Clean Water Act pursuant to 33 CFR 323.3(c)(2).
12. During the Fall of 1999, HEINRICH began to utilize the forest road for purposes such as hiking, bird-watching, snow-shoeing, cross-country skiing, snowmobiling, and lake access activities such as fishing, swimming, boating, and the launching and retrieval of a boat and float plane, in addition to ongoing forest management activities.
13. No non-exempt fill is required to be placed, nor was any placed, in any jurisdictional water of the United States to conduct the non-forestry related activities listed above.
14. Reasonable access to the lakeshore is a valuable property right possessed by riparian property owners and protected by the Fifth and Fourteenth Amendment to the United States Constitution.
15. Reasonable access to navigable water is a valuable property right possessed by riparian property owners and protected by the Fifth and Fourteenth Amendment to the United States Constitution.
16. Vilas County's Shoreline Zoning Ordinance allows for private lake access roads on lakes where there is no publicly accessible boat landing. (See Vilas County Shoreland Zoning Ordinance Art. VII, 7-3(B))

meaning of the provisions of the Federal Clean Water Act (33 U.S.C. 1344).

17. The State of Wisconsin Department of Natural Resources regulations allow private lake access ramps in navigable waters of the State of Wisconsin where there is no publicly accessible boat landing. (See Wis. Stat. Chap 30.12(3)(5))
18. At all times relevant hereto, the United States Army Corps of Engineers routinely authorized linear roads, docks, piers, wharfs, and boat ramps to be placed in waters of the United States located in Wisconsin and other States.
19. As an owner of property in Vilas County in the State of Wisconsin, HEINRICH possesses the valuable property right to harvest timber and manage his wood-lot without Federal government permission, plans, or oversight.
20. On November 20, 2000 and thereafter, the United States Government, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344), claimed to possess a superior right, title, and interest in the HEINRICH parcel. In general, the government claimed the right to control and limit the manner in which HEINRICH manages his forested wetland, the manner in which a forest road is utilized, and the manner in which HEINRICH accesses his lakeshore and the navigable water beyond.
21. On November 20, 2000, and thereafter, the United States Government, by and through its agents and employees of the Army Corps of Engineers and the Environmental Protection Agency, has threatened to file suit against HEINRICH for violating the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344) because HEINRICH occasionally used the forest road for non-forestry related purposes, including lake access.
22. The United States Government has similarly threatened to file suit against the contractor who designed and constructed the forest road for the HEINRICH in an attempt to interfere with the past, present, and future contractual agreements between the HEINRICH and the contractor.
23. The claims and threats of suit made by the United States Government on an after November 20, 2000, has the effect of clouding the title to HEINRICH's real property and the HEINRICH is prevented from exercising his personal and property rights attendant thereto.
24. The United States of America did, in fact, bring suit against the Contractor and the Counter-claimant on February 11, 2003, for alleged violation of the Clean Water Act and has filed a *Lis Pendens* notice with the state of Wisconsin.
25. HEINRICH wishes to modify the lake and boat access portion of his property but the permitting authorities will not address any permit application while the United States Government's claim is outstanding.
26. In response to the United States Government's claims and threats of suit, HEINRICH

removed his float plane from the storage building in May of 2002 and moored it at his dock on the shore of Little Star Lake. HEINRICH did not utilize the forest road again for lake access until after the events of July 30, 2002.

27. On or about July 30, 2002, a violent thunderstorm erupted over the HEINRICH parcel and the float plane suffered severe hail damage which rendered the aircraft unairworthy. Repair to the aircraft will cost HEINRICH in excess of \$125,000.00 Dollars.
28. Were it not for the claims and threats of suit made by the United States Government, HEINRICH's aircraft would have been in safe storage on the HEINRICH parcel on July 30, 2002.
29. The aircraft is presently being repaired and HEINRICH needs to know if he can access his storage facility so that future damage to his personal property can be avoided.
30. The forested wetlands on the HEINRICH parcel are not adjacent to waters of the United States other than waters that are themselves wetlands.

WHEREFORE, THE COUNTER-CLAIMANT, PAUL HEINRICH, respectfully prays that this Honorable Court enter a Judgment in favor of the Counter-Claimant and against the United States of America and to find and declare the respective rights of the parties as follows:

- a. That no United States "jurisdictional wetlands" exist on the HEINRICH parcel or, alternatively, assuming "jurisdictional wetlands" exist on the HEINRICH parcel then the uses to which HEINRICH has subjected the parcel constitute the reasonable exercise of riparian rights to access his wood-lot, the lakefront, and navigable water;
- b. That driving access to, and the installation of a boat ramp into, a navigable water of the State of Wisconsin by a riparian landowner is reasonable on a natural 100 acre lake where there is no publicly accessible boat ramp;
- c. That the forest road located upon the HEINRICH parcel was designed and constructed in accordance with the best management practices for forest products and is exempt from the provisions of the Clean Water Act;
- d. That a forest road may be used, subsequent to installation, for other purposes such as hiking, bird-watching, snow-shoeing, cross-county skiing, snowmobiling, and lake access activities such as fishing, swimming, boating, and the launching and retrieval of boats and float planes, in addition to forest management without invalidating the forest road exemption;
- e. That the United States Government possesses no authority to regulate the

manner in which HEINRICH manages his wood-lot;

- f. That HEINRICH may manage his wood-lot using his own tools and equipment and may construct exempt forest roads without regard to whether large scale commercial logging contractors with specially designed equipment would require such roads;
- g. That the contractor who designed and constructed the forest road cannot be held liable under the provisions of the Clean Water Act for conduct of the property owner years after the road was designed and installed;
- h. That the United States Government be Ordered to issue any and all permits, after-the-fact permits, and/or letters of permission necessary to effectuate the findings of this Honorable Court;
- i. That the United States Government be Ordered to pay Counter-claimant's costs of suit;
- j. That this Honorable Court Order any other relief that it deems necessary and proper to do substantial justice between the Parties.

COUNT TWO – Mandamus

JURISDICTION PURSUANT TO 28 U.S.C. §1361

The jurisdiction of this claim is based upon issues raised by the Federal Clean Water Act (33 U.S.C. 1344) and is in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Counter-Claimant.

Factual Background

1. The COUNTER-CLAIMANT, Paul Heinrich (HEINRICH), is a Wisconsin homeowner residing at 8125 County Highway K, Star Lake, Wisconsin, 54561.
2. The full legal description of the HEINRICH parcel of land is as follows:

A parcel of land being a part of Gov't. Lot 4, Section 10, T 41 N, R 8 E, Town of Plum Lake, Vilas County, Wisconsin, and being more particularly described as follows:

Commencing at the West 1/4 corner of said Section 10 being marked by a W.C.D. monument, thence N 89°-18'-58" E 632.08 feet along the South line of said Gov't. Lot 4 to an iron pipe and the Place of Beginning, thence N 0°-18'-49" W 634.26 feet (N 0°-18'-18" W 635.04 feet of record) to an iron pipe on the Southerly R/W

line of County Trunk Hwy. K, thence Easterly along said Southerly R/W line 312.29 feet along the arc of a 5°-00'-00" curve to the Right (chord bearing N 84°-52'-49" E 311.26 feet) to a point, thence continuing Easterly along said Southerly R/W line 380.17 feet along the arc of a 3°-52'-05" curve to the Left (chord bearing N 85°-43'-36" E 379.17 feet to an iron pipe on the East line of said Gov't. Lot 4, thence S 0°-25'-12" W 225.45 feet along said East line to an iron pipe on the Shore of Little Star Lake, thence along said Shore S 30°-47'-57" W 126.70 feet, S 21°-07'-29" W 157.22 feet and S 6°-16'-49" E 203.61 feet to an iron pipe on the South line of said Gov't Lot 4, thence S 89°-18'-58" W 583.79 feet along said South line back to the place of beginning. Including all lands lying between the meander line and the lateral lot lines extended to the water's edge.

3. The HEINRICH parcel is held in fee simple and consists of approximately 9.5 acres of land with 480 feet of frontage on Little Star Lake.
4. Little Star Lake is a natural 100 acre lake and is located above the point on a river or stream where the average annual flow is less than five cubic feet of water per second..
5. The upland portion of the HEINRICH parcel contains a single family home and two garages located on approximately one and one-half acres.
6. The remaining eight acres of the HEINRICH parcel is a forested wetland located above the Ordinary High Water Mark of Little Star Lake.²
7. During the years 1997 and 1998, HEINRICH placed fill covering less than one-third of an acre for a length less than 200 linear feet in the wetland to allow HEINRICH access, with a vehicle licenced to operate on the roads of the state of Wisconsin, from one upland portion of his property to another upland portion of his property.
8. The HEINRICH wetland site does not contain any aquatic feature which would disqualify it from the Nationwide Permit program.
9. The United States Army Corps of Engineers issued Nationwide Permit 26, in effect during the years 1997 and 1998, which permitted the road fill activities of HEINRICH.
10. Nationwide Permit number 26 was granted state water quality certification by the state of Wisconsin for the road fill activities of HEINRICH.

² The use of the descriptive word "wetland" assumes, but HEINRICH does not admit, for the purpose of this claim only that the HEINRICH parcel contains "jurisdictional wetlands" within the meaning of the provisions of the federal Clean Water Act (33 U.S.C. 1344). The Clean Water Act prohibits the discharge of fill material into a water of the United States without a permit issued by the United States Army Corps of Engineers.

11. Alternatively, state water quality certification for Nationwide Permit number 26 was waived by the state of Wisconsin.
12. Alternatively, state water quality certification for Nationwide Permit number 26 could not be denied by the state of Wisconsin for fill activities in wetlands not lake bed and for fill placed above the Ordinary High Water Mark.
13. Alternatively, the state of Wisconsin failed to comply with federal and state regulatory requirements for making and publishing state water quality certification determinations for the Nationwide Permits issued in 1997 and has waived its rights, if any, to do so.
14. Alternatively, the St. Paul District Office of the United States Army Corps of Engineers failed to timely and meaningfully publish Regional Conditions, including requiring state water quality certification, for the 1997 Nationwide Permits for fill activities in Wisconsin and has waived its right, if any, to require the regulated public comply with such Regional Conditions.
15. Nationwide Permit number 26 does not contain a Pre-Discharge Notification requirement to the United States Army Corps of Engineers for fills covering less than one-third of an acre.
16. HEINRICH's road fill activities of 1997 and 1998 comply with all of the procedural and substantive requirements necessary to qualify for a Nationwide Permit number 26.
17. The Secretary of the United States Army Corps of Engineers owes HEINRICH a non-discretionary duty to issue him a Nationwide Permit number 26 covering the road fill activities of HEINRICH during the years 1997 and 1998.

WHEREFORE, THE COUNTER-CLAIMANT, PAUL HEINRICH, respectfully prays that this Honorable Court enter a Judgment in favor of the Counter-Claimant and against the United States of America and enter an Order compelling the Secretary of the United States Army Corps of Engineers to issue HEINRICH any and all permits, after-the-fact permits, and/or letters of permission for the road construction activities conducted by HEINRICH and his contractor at the site during the years 1997 and 1998.

Dated this 30th day of June, 2003.

PAUL HEINRICH, *pro se*