

☛ **07hr_JC-Au_Misc_pt17c**



☛ Details: Public Hearing: Audit Report 07-6: An Evaluation: Wetland Regulatory Programs,
Department of Natural Resources

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee on Audit...

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) (October 2012)



DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
SIBLEY SQUARE AT MEARS PARK
190 FIFTH STREET EAST, SUITE 401
ST. PAUL, MN 55101-1638

REPLY TO
ATTENTION OF

2 August 2006

Office of Counsel

Mr. Dennis M. Grzezinski
312 East Wisconsin Avenue
Suite 210
Milwaukee, MN 53202-4305

Subject: Freedom of Information Act Request
Re: Highway 164 Widening Project

Dear Mr. Grzezinski:

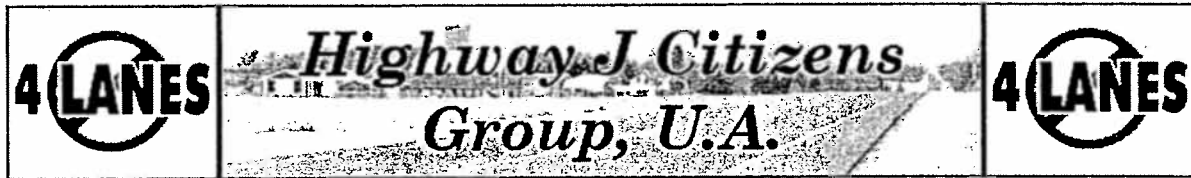
This is in response to your Freedom of Information Act Request dated 27 July 2006 for documents "relating to a natural gas fire which occurred on July 6, 2006". We have searched our records and were not able to find any documents or records "relating to a natural gas fire which occurred on July 6, 2006".

A "no records" response was held in Ogelsby v. Department of the Army, 920 F. 2d 57 (D.C. Cir 1990) to constitute a denial. Since we have no records responsive to your request, this letter constitutes a denial of your request.

An appeal of this denial must be made within 60 days of the date of this letter. Your appeal must be in writing and addressed to the U.S. Army Corps of Engineers, St. Paul District, Attention: CEMVP-OC, Mr. Ed Bankston, 190 Fifth Street East, St. Paul, Minnesota 55101-1638. I can be reached at (651) 290-5500 if you have any questions.

Sincerely,

Edwin C. Bankston
District Counsel



2668 Highway 164, Slinger, WI 53086

Phone: (262)-644-8334

E-Mail: jmgonyo@execpc.com

October 23, 2006

Attorney Thomas J. Dawson,
Director, Environmental Protection Unit
Wisconsin Department of Justice
17 West Main Street, P.O. Box 7857
Madison, WI 53707-7857

**SENT BY PRIORITY MAIL WITH
DELIVERY CONFIRMATION REQUESTED**

RE: Request for the Wisconsin Department of Justice to Investigate and Prosecute Both the Wisconsin Department of Transportation and Its Hired Roadbuilding Contractors for Environmental Violations Committed During the Course of Their Construction Activities Along State Highway 164 in Waukesha County During Both Year 2005 and Year 2006.

Dear Mr. Dawson:

As a follow-up to my telephone conversation with you today, I am sending this letter along with the enclosed documents to officially request that the Wisconsin Department of Justice **immediately investigate and prosecute** the Wisconsin Department of Transportation (WisDOT) and its hired roadbuilding contractors (**Payne & Dolan, Inc.** and **Hoffman Construction Company**) for very serious environmental violations committed during the course of their construction activities along **State Highway 164** in Waukesha County during both Year 2005 and Year 2006.

I am making this request in my capacity as a steering committee member of the **HIGHWAY J CITIZENS GROUP, U.A. (HJCG)**, an unincorporated non-profit association whose stated mission is to: **1) Stop** unnecessary, fiscally-irresponsible and environmentally-damaging road expansion projects in our neighborhoods, **2) Protect** our groundwater quality, **3) Promote** proper land use decisions, and **4) Preserve** our overall "quality of life" in this beautiful Kettle Moraine area of Southeastern Wisconsin. The HJCG currently has **over 15,000 members statewide** who support these core principles.

In support of this request, I have enclosed the following key documents (**101 pages in total**):

1) Exhibit "A" (27 Pages) – This exhibit includes: a) Detailed maps of the Year 2006 Construction Section along Highway 164 in the Sussex/Lisbon area of Waukesha County, b) A WisDOT press release announcing the start of the Year 2006 road construction along Highway 164, and c) A formal complaint (dated October 20, 2006) which was filed on our behalf by Cedarburg Science,

LLC with both the **Wisconsin Department of Natural Resources (WisDNR)** and **U.S. Army Corps of Engineers (USACE)** to report ongoing and continuous environmental violations committed by the **WisDOT** and its hired road contractor, **Hoffman Construction Company** in the Year 2006 Construction Section of Highway 164. Cedarburg Science's complaint here includes: **a) A cover letter** summarizing these environmental violations, **b) A Best Management Practices Inspection Report** (complete with comments and photographs), and **c) An Affidavit (with many photographs showing these violations)** by concerned local resident and HJCG member, Charles N. Petrie.

2) Exhibit "B" (36 pages) – This exhibit includes: **a) Detailed maps** of the **Year 2005 Construction Section** along Highway 164 in the Pewaukee/Sussex area of Waukesha County, **b) A formal complaint** (dated December 2, 2005) filed on our behalf by Attorney Dennis Grzezinski with the U.S. Army Corps of Engineers (the USACE then forwarded a copy to the WisDNR) to report ongoing and continuous environmental violations committed by the WisDOT and its hired road contractor, **Payne & Dolan, Inc.** in the Year 2005 Construction Section of Highway 164, **c) Numerous communications** between Cedarburg Science's Ginny Plumeau, Attorney Dennis Grzezinski and USACE agency officials during the four months following the filing of our December 2, 2005 complaint which repeatedly requested that prompt action be taken on this matter, and **d) Documents obtained from the USACE** under the Freedom of Information Act (which also include WisDOT and WisDNR documents) relating to our December 2, 2005 complaint.

3) Exhibit "C" (38 pages) – Documents relating to the July 6, 2006 gas line rupture, explosion and fire along Highway 164 in the Year 2006 Construction Zone (Sussex/Lisbon area of Waukesha County) which negatively impacted federally-protected wetlands near the roadway and the Sussex Creek tributary. These documents include: **a) Three pieces of news coverage** from the July 7, 2006 **Waukesha Freeman**, the July 11, 2006 **Lake Country Reporter** and **WTMJ Channel 4's** July 6, 2006 on-air news coverage, **b) Open records and FOIA requests** made by Attorney Dennis Grzezinski to the WisDNR, WisDOT, USACE and the Public Service Commission (PSC) for specific agency documents on this very serious environmental matter (including the extremely few documents we received from these agencies in response to our requests).

As we discussed during our telephone conversation today, both the USACE and WisDNR apparently have given the WisDOT and its hired road contractors (Hoffman Construction Company and Payne & Dolan, Inc.) **"a free pass"** when it comes to taking enforcement action (or, in this case, enforcement inaction) on these well-documented environmental violations.

First, it took these agencies four months to finally respond to our December 2, 2005 complaint which reported numerous violations of the USACE's Section 404 permit requirements and WisDNR's Best Management Practices committed by the WisDOT and Payne & Dolan, Inc. as part of the Year 2005 Highway 164 construction in the Pewaukee/Sussex area. I found the USACE's delayed response to be especially troubling because, while this agency ignored our pending complaint, they had granted yet another Section 404 Clean Water Act permit for the next construction section along Highway 164 (i.e. the section to be expanded to four-lanes in Year 2006).

When the USACE finally did respond with its April 3, 2006 letter, this agency (along with the WisDNR), essentially **"took the word of the WisDOT officials" without doing any independent investigation themselves**. After receiving this letter, I filed a FOIA request on April 4, 2006 with the USACE requesting all underlying documents concerning this agency's decision not to take any action on this matter, and was absolutely shocked to learn that **the file on this matter consisted of just six pages of material which consisted of mostly "self-serving agency statements" without any real investigation being done**. (For more details, please see the documents in **Exhibit "B"** as enclosed with this letter.)

Second, on July 6, 2006, Hoffman Construction Company (the WisDOT's construction contractor for the Year 2006 Section of Highway 164 road widening) caused a major gas line rupture, explosion and fire which burned for over seven hours. According to the enclosed articles from the Waukesha Freeman, Lake Country Reporter and WTMJ Channel 4 website, the fire raging from this ruptured gas pipe was so strong that it pushed back water from the fire crews. Over 320,000 gallons of water and foam had to be used to keep this fire from spreading. This water and foam then ran into the nearby wetland areas and Sussex Creek tributary, taking with it a substantial amount of soil and other debris from the Highway 164 road construction zone.

To gauge the magnitude of this environmental disaster, the HJCG's attorney (Dennis Grzezinski) filed open records and FOIA requests with the WisDNR, WisDOT, PSC and USACE requesting all documents related to their investigation of this gas line rupture, explosion and fire. Despite the seriousness of this matter, the WisDNR and WisDOT responded with only a few pages of material, the USACE responded by saying they had no documents in their files (even though this construction and wetland filling were governed by a previously-granted Section 404 Clean Water Act permit), and the PSC never responded at all.

Perhaps most disturbing here is the fact that all of these agencies (WisDNR, WisDOT, USACE and PSC) failed to conduct even a minimal investigation into the environmental damage caused by the raging fire and runoff of water, foam, soil and other construction zone debris into the nearby wetlands and Sussex Creek tributary. In a July 11, 2006 e-mail to the WisDNR's Maureen Millmann, the WisDOT's Robert Schmidt referred to this major event as just "a little incident" while, in that same e-mail, Dale Oldenburg (the WisDOT's on-site project manager) made "a big joke" about the water runoff into the wetlands. When the fire department was pouring water onto the fire, Mr. Oldenburg laughingly asked the fire chief "if he had a permit for pumping water into the wetland." Mr. Schmidt then said in his e-mail to Ms. Millmann, "Ha-ha, such a funny guy" and "you just never know what's going to happen next!" This e-mail (which is enclosed) demonstrates the WisDOT's and WisDNR's total lack of concern about this matter. (For more details on this gas line rupture, explosion and fire and the agencies' responses – or lack thereof, please refer to the documents in Exhibit "C" enclosed with this letter.)

Finally, on October 20, 2006, Cedarburg Science (the HJCG's ecological experts) filed a formal complaint with both the WisDNR (Maureen Millmann) and USACE (Rebecca Gruber) which informed them of ongoing and continuous environmental violations in the Year 2006 Construction Section of Highway 164 (Sussex/Lisbon area of Waukesha County) being committed by the WisDOT and its contractor, Hoffman Construction Company. This complaint is supported by both a detailed Best Management Practices Inspections Report and an affidavit from Charles Petrie who witnessed and photographed these violations in this environmentally-sensitive area. The enclosed photographs were taken over a four-month period from May thru August, 2006 and show the WisDOT's and Hoffman Construction Company's failure to correct these serious violations of both state and federal law. The bottom line here is that "they just didn't care" about correcting these obvious violations and, as a result, the wetlands and Sussex Creek tributary probably were seriously damaged because of the pollution runoff. (See Exhibit "A" for more details.)

Over the past seven years, we have repeatedly witnessed the WisDNR's and USACE's apparent pattern of "looking the other way" and not vigorously enforcing state and federal environmental laws when it comes to WisDOT's Highway 164 four-lane expansion project in both Waukesha and Washington Counties. Given these agencies' past track records of either minimizing or ignoring the HJCG's environmental complaints, I am sending this letter and enclosed materials (Exhibits "A," "B" and "C") to your office in the hope that you will immediately investigate and prosecute both the WisDOT and its hired road contractors (Hoffman Construction Company and Payne & Dolan, Inc.) for the numerous environmental violations specified above.

To assist you in this effort, I am providing the following contact information for the key parties and companies referenced in the enclosed documents:

1) **Cedarburg Science, LLC**, Attn: Ginny Plumeau, Principal Ecologist, P.O. Box 72020, Cedarburg, WI 53012, Phone: (262)-376-0735 or (262)-909-0735, E-Mail: CEDSCI@aol.com or gplumeau@cedarburgscience.com.

2) **Law Office of Dennis M. Grzezinski**, Attn: Attorney Dennis Grzezinski, 312 East Wisconsin Avenue, Suite 210, Milwaukee, WI 53202-4305, Phone: (414)-289-9200, E-Mail: dennisglaw@execpc.com.

3) **Wisconsin Department of Transportation (WisDOT)**, Southeast Region, Attn: Dale Oldenburg, Highway 164 on-site project manager, 141 North Barstow Street, Waukesha, WI 53187-0798, Phone: (414)-750-1729, E-Mail: Dale.Oldenburg@dot.state.wi.us.

4) **Hoffman Construction Company**, 123 County Trunk Highway A, Black River Falls, WI 54615, Phone: (715)-284-2512.

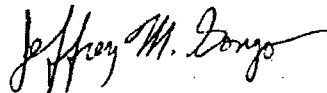
5) **Payne & Dolan, Inc.**, N3 W23650 Badinger Road, P.O. Box 781, Waukesha, WI 53187, Phone: (262)-524-1700.

6) **Wisconsin Department of Natural Resources (WisDNR)**, Southeast Region Headquarters, Attn: Maureen Millmann, Environmental Coordinator, 2300 North Martin Luther King, Jr. Drive, P.O. Box 12436, Milwaukee, WI 53212-0436, Phone: (414)-263-8613, E-Mail: Maureen.Millmann@dnr.state.wi.us.

7) **United States Army Corps of Engineers (USACE)**, St. Paul District, 1617 East Racine Avenue, Room 101, Waukesha, WI 53186, Phone: (262)-547-6986, E-Mail: Rebecca.M.Gruber@mvp02.usace.army.mil

After you receive these materials, please give me a call at (262)-644-8334, and I will gladly answer any of your questions to assist in your investigation and prosecution of this complaint against the WisDOT and its road construction contractors (Hoffman Construction Company and Payne & Dolan, Inc.). Thank you for your prompt and diligent attention to this very important environmental matter in our communities.

Sincerely,



Jeffrey M. Gonyo, Steering Committee Member
HIGHWAY J CITIZENS GROUP, U.A.
2668 Highway 164, Slinger, WI 53086
Phone: (262)-644-8334
E-Mail: jmgonyo@execpc.com

Enclosures



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

PEGGY A. LAUTENSCHLAGER
ATTORNEY GENERAL

Daniel P. Bach
Deputy Attorney General

17 W. Main Street
P.O. Box 7857
Madison, WI 53707-7857
www.doj.state.wi.us

Thomas J. Dawson
Assistant Attorney General
dawsonjt@doj.state.wi.us
608/266-8987
FAX 608/266-2250

November 27, 2006

Jeffrey M. Gonyo
Highway J Citizens Group
2668 Highway 164
Slinger, Wisconsin 53086

Dear Mr. Gonyo:

Thank you for your October 23, 2006, letter in which you express environmental concerns about highway construction along State Highway 164 in Waukesha County during 2005 and 2006. The Wisconsin Department of Justice (DOJ) vigorously enforces laws governing erosion control at construction sites, and appreciates you bringing this to our attention.

You sent a packet of materials, including photos, reports and correspondence, in support of your allegations that the Wisconsin Department of Transportation (DOT), and contractors Payne & Dolan, Inc., and Hoffman Construction Company, have caused "serious environmental violations committed during the course of their construction activities." They include an October 20, 2006, letter and report to DNR and the U.S. Army Corps of Engineers by Ginny Plumeau and Chris Heston of Cedarburg Science, LLC, with accompanying photos, documenting erosion control problems within the construction corridor. Submission of the report to DNR and the Army Corps appears intended to spur further investigation and regulatory action enforcement by those agencies. I have reviewed those materials and contacted the Wisconsin Department of Natural Resources (DNR) regarding your letter.

By letter dated November 16, 2006 (enclosed), DNR Environmental Coordinator Maureen Millman responded to Ms. Plumeau at Cedarburg Science in response to the report. According to that letter, erosion control plans were developed and consulted on before construction. Periodic inspections were done by DNR in which minor problems were observed and corrected. Most alleged erosion control problems have been remedied, while DNR is consulting with DOT to resolve potentially persisting problems. Further inspections will take place. As for more serious problems depicted in the report, Millman states she did not observe them or have them brought to her attention at the time they allegedly occurred. The impacts from the pipeline fire suppression efforts were temporary. Millman is, however, currently "coordinating with ... DNR staff to identify the correct regulatory framework and work to resolve" the erosion depicted in several Cedarburg Science photos.

Jeffrey M. Gonyo
November 27, 2006
Page 2

Erosion control violations are referred to DOJ upon the investigation and documentation by the DNR. DOJ does not have investigators for the collection of evidence and depends on trained DNR investigators to collect all necessary evidence to present and prove all elements of the offenses in a court of law.

We compliment you for the documentation presented in the Cedarburg Science report. The report presents evidence that may lead to the conclusion that there was non-compliance with best management practices and the law. However, this is not sufficient to prove a case. Persons who violate the law must be proven as well. The role of DOT, its two contractors, and the utility that performed work unrelated to the road work would have to be sorted out and proven. That information is not documented in the Cedar Science report. This is not in any way a criticism of the report, as the report's intended purpose appears to be to spur further investigation that may lead to enforcement. Nevertheless, if you have information or evidence that links specific problems with specific persons or entities, you should share it with DNR and the Army Corps.

In the meantime, we will anticipate the completion of DNR's coordination "to identify the correct regulatory framework" by which DNR intends to address the erosion depicted in several of the Cedarburg Science photos.

Thank you for bringing this to my attention.

Sincerely,

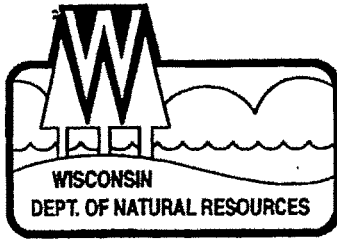


Thomas J. Dawson
Assistant Attorney General

TJD:drm

Enclosure

c w/o enc.: Maureen Millman – DNR Environmental Coordinator
Marty Ringquist – WDNR Bureau of Law Enforcement
Dale Pfeiffle – U.S. Army Corps of Engineers



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Gloria L. McCutcheon, Regional Director

Southeast Region Headquarters
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee, Wisconsin 53212-3128
FAX 414-263-8606
Telephone 414-263-8500
TTY Access via relay - 711

November 16, 2006

Ginny Plumeau, Principal Ecologist
Cedarburg Science
P.O. Box 72020
Cedarburg, WI 53012

Subject: STH 164, Prospect Court to Howard Lane – Response to BMP Complaint
WisDOT# 2748-03-70, Waukesha County

Dear Ms. Plumeau:

Thank you for your October 20, 2006 letter and photographs expressing your concerns about erosion controls and emergency response at the WisDOT STH 164 (Prospect Court to Howard Lane) project.

It is difficult to specifically address some of your concerns because the incidents you cite occurred during May 31 to August 31, 2006, in areas where DOT, non-DOT utility construction, and private development work were taking place concurrently. Timely notification can help improve DNR response to erosion control issues.

Your letter and observations indicate inadequate culvert protection, silt fence, soil stockpile management, soil stabilization, and coffer dam maintenance. I have contacted DOT and reviewed DOT's erosion control inspection records for the WisDOT STH 164, Prospect Court to Howard Lane project. WisDOT requires that erosion control reports are written weekly and after rain events on all projects. I have also discussed the specifics of your complaint with Dale Oldenburg, WisDOT project engineer for STH 164, the Engineering Technician for STH 164 and the WisDOT Regional Stormwater and Erosion Control Engineer. DNR staff inspected the project area on November 15, 2006.

DNR commented on DOT's design and erosion control plans to minimize temporary and permanent environmental impacts from the STH 164 transportation projects. I performed several cursory erosion control inspections during Summer 2006 project construction. I observed minor erosion control and maintenance issues during my inspections. I did not witness large scale erosion control failures or impacts to wetlands or the waterways during my inspections.

I have information on your eight observations and related photos. I have attached a copy of the DOT erosion control plan to illustrate specific locations.

- 1) Based on the information available to me, I believe that private utility work, not coordinated with the DOT project, was responsible for erosion controls at the existing culvert east of STH 164 near station 408 shown in your photos 5-31-06 02; 6-26-06 06; 7-15-06 08; and 8-31-06 10. The area near the culvert is seeded and matted at this time.

The slope erosion shown in your photos 5-31-06 01; 5-31-06 03, 04; 6-26-06 06, 07; and 8-31-06 10 is outside of the DOT project limits. I am coordinating with other DNR staff to identify the correct regulatory framework and work to resolve the issue.

- 2) There are several storm sewer outfalls west of STH 164 near stations 444, 446, 447, and 450 that look similar to your photos 6-15-06 11 and 12. Slopes near those outfalls are currently vegetated.
- 3, 6, and 7) There are several locations within the project area where DOT obtained approval to place fill in wetlands. Wetland fill locations were protected by silt fence and snake exclusion barrier (a second row of silt fence). I am unable to tell from your photos and Exhibit A if one or both lines of silt fence are in place. Vegetative cover is present on the eastern slopes of STH 164 between Indiagrass Lane and the northern project limit station 458 near Howard Lane. DNR has requested DOT inspect and maintain erosion controls in areas that have recently been seeded and matted and where vegetation will not likely be re-established before Spring.
- 4) There are several storm sewer outfalls east of STH 164 near stations 447 and 450 that look similar to your photos 7-15-06 14, 15, 16; 8-31-06 17. Slopes near those outfalls are currently seeded and matted.
- 5) Local emergency response agencies responded to a natural gas explosion on the east side of STH 164 near Indiagrass Lane on July 7, 2006. The fire department used a large quantity of water in the response. The DNR determined that the fire suppression water that flowed away from the site did not enter Sussex Creek and did not cause permanent damage to nearby wetlands or waterways. Sussex Creek was diverted into a temporarily channel north of the normal location as part of the roadway reconstruction project at the time of that incident. Photos from the incident site showing an oily sheen appear to be in the old creek area, not the live flow temporary channel. DNR staff have reinspected the incident site and determined that the incident had no significant long term environmental impacts.
- 8) The stream is now flowing in the permanent channel and sand bags have been removed. DNR staff will continue to monitor the stabilization of the waterway.

Please contact me if you have additional questions about erosion control or emergency response. If you observe failing silt fence, unprotected culverts, or other erosion control concerns in the future please contact me at (414) 263-8613. Prompt notification will improve my ability to correct problems as they occur.

Sincerely,

Maureen Millmann
Environmental Coordinator

CC: Marty Ringquist, WDNR Bureau of Law Enforcement
Michael Thompson, WDNR Environmental Analysis Supervisor
Dale Pfeiffle, US Army Corps of Engineers
Reem Shana, WisDOT Regional Stormwater / Erosion Control Engineer
Dale Oldenburg, WisDOT Project Engineer



DEPARTMENT OF THE ARMY
ST. PAUL DISTRICT, CORPS OF ENGINEERS
190 FIFTH STREET EAST
ST. PAUL, MN 55101-1638

Rec'd
1/15/07
Plumeau

JAN 10 2007

REPLY TO

Operations
Regulatory (2004-161651-DJP)

Ms. Ginny Plumeau
Cedarburg Science
P.O. Box 72020
Cedarburg, Wisconsin 53012

Dear Ms. Plumeau:

This is in response to your letter dated October 20, 2006, regarding potential non-compliance with GP/LOP-98 General Permit conditions for the work the Wisconsin Department of Transportation completed under Department of the Army permit 2004-161651-DJP. The project site is located in Sections 16, 21, and 22, T. 8N., R. 19E., Waukesha County, Wisconsin.

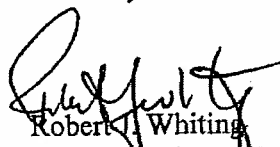
An inspection of the project area was conducted on November 8, 2006. Our inspection revealed that the major earthwork associated with the project has been completed, the side slopes of the filled areas have revegetated or were seeded and matted, and that the majority of the silt fence has been removed. It appeared that the erosion hazards depicted in the photographs provided with your letter have since been corrected. We also observed that erosion control measures were in place and in good condition along the selected segments of the project corridor where earth work was ongoing.

The Wisconsin Department of Natural Resources (WDNR) has conducted a more thorough investigation of this matter and reported their findings in a letter addressed to Cedarburg Science, dated November 16, 2006. The Corps concurs with the WDNR findings and does not intend to take further action.

The decision regarding this action is based on information found in the administrative record, which documents the District's decision-making process, the basis for the decision, and the final decision.

If you have any questions, contact Dale Pfeifle in our Waukesha office at (262) 547-0868. In any correspondence or inquiries, please refer to the Regulatory number shown above.

Sincerely


Robert J. Whiting
Chief, Regulatory Branch

Jeff Gonyo

From: "Ginny Plumeau" <gplumeau@cedarburgscience.com>
To: "Jeff Gonyo" <jmgonyo@execpc.com>; <CEDSCI@aol.com>
Cc: <cheston@cedarburgscience.com>; <chuck@hwyjcitizensgroup.org>; <tag51@execpc.com>
Sent: Wednesday, December 20, 2006 2:29 PM
Subject: RE: Please take a look at these two recent Milwaukee Journal Sentinel articles on the WisDOJ's and WisDNR's vigorous prosecution of erosion control violations.

Jeff, been at meetings so could not take calls. I am catching up on emails.
 You bring up a good point that I will be happy to discuss with Maureen!

Ginny Plumeau, REM

Cedarburg Science, LLC - President, Principal Ecologist

Main Office Phone (262)376-0735, Fax (262)376-0754

Mobile Phone (262)909-0735

E-mail: gplumeau@cedarburgscience.com

Street Address: 1555 Wisconsin Avenue, Grafton WI 53024

Mailing Address: PO BOX 72020, Cedarburg WI 53012

Cedarburg Science, LLC is a full-service wetlands and natural areas management firm, established in 1998.

We are a registered small business and DBE. We offer a hands-on, consultative approach for enhancement and restoration of natural communities. Core services include wetland delineation; habitat assessment and stewardship planning; invasive species control; restoration & enhancement of wetlands, woodlands and prairies; native tree, shrub and forb plantings; and Endangered and Threatened species - habitat evaluations and surveys.

Visit us at www.cedarburgscience.com or call 262-376-0735.

From: Jeff Gonyo [<mailto:jmgonyo@execpc.com>]

Sent: Wednesday, December 20, 2006 11:40 AM

To: CEDSCI@aol.com

Cc: gplumeau@cedarburgscience.com; cheston@cedarburgscience.com; chuck@hwyjcitizensgroup.org; tag51@execpc.com

Subject: Please take a look at these two recent Milwaukee Journal Sentinel articles on the WisDOJ's and WisDNR's vigorous prosecution of erosion control violations.

Importance: High

Dear Ginny, Chris and Chuck:

In today's **Milwaukee Journal Sentinel** (article is attached along with a previous related article), it was reported that the Wisconsin Department of Justice (WisDOJ) and Wisconsin Department of Natural Resources (WisDNR) vigorously prosecuted the Village of Menomonee Falls and a private developer for failing to follow erosion control laws which resulted in sediment flowing into nearby wetlands populated by the Butler's Garter Snake. Does this sound familiar?

In that case, the village and city will have to pay a \$90,000 fine to avoid further prosecution by the WisDOJ in Waukesha County Circuit Court. However, in our case, it appears that the WisDOJ and WisDNR are giving the WisDOT and Hoffman Construction Company "a free pass" on their repeated, ongoing violations of a very similar nature. Why is the WisDNR and WisDOJ "looking the other way" when it comes to state DOT road projects like ours but aggressively prosecuting similar cases when it comes to private developers breaking the same laws involved here? Why the different treatment?

7/25/2007

These are the questions that need to be put to WisDNR's Maureen Milmann when you meet with her on this matter. Please make it very clear to her that we want these well-documented erosion control violations committed by the WisDOT and Hoffman Construction Company to be **vigorously prosecuted** -- just like they did with the private developer in the case referenced in these two attached news articles. Thank you.

Sincerely,

Jeff Gonyo,
HIGHWAY J CITIZENS GROUP, U.A.
2668 Highway 164, Slinger, WI 53086
Phone: (262)-644-8334 or (414)-750-8334
E-Mail: jmgonyo@execpc.com



www.jsonline.com | [Return to regular view](#)

Original Story URL:

<http://www.jsonline.com/story/index.aspx?id=429785>

Falls, developers sued over erosion, snake habitat rules

By DAVE SHEELEY

dsheeley@journalsentinel.com

Posted: May 30, 2006

Waukesha - The Village of Menomonee Falls and other entities failed to follow state erosion control laws in developing land here and disturbed a wetlands that is home to the threatened Butler's garter snake, the state alleges in a civil complaint.

The action filed in Waukesha County Circuit Court by the Wisconsin attorney general's office also says that Gustafson Construction Corp., the village-hired general contractor for the project, removed portions of the "required snake fence" intended to prevent garter snakes in wetlands along Lilly Creek from slithering into construction areas where they could be killed.

Although construction moved forward in this case despite the close-by presence of the reptiles, other projects in southeastern Wisconsin have been delayed as developers struggle to build without endangering the habitat of the Butler's, one of five garter snakes known in Wisconsin.

The latest case brought by the Justice Department alleges violations of erosion control laws in 2004 at the estimated 30-acre "Marketplace Triangle," a residential and commercial development just northwest of Good Hope Road and Appleton Ave. It's currently known as "Woodlands Marketplace."

In addition to the village, Gustafson of Belgium and Fussville Development, a limited liability company in Menomonee Falls, are named as defendants in the case, which the Justice Department took on at the request of the state Department of Natural Resources.

Erosion control

The erosion control measures, such as silt traps and berms, "were intended to minimize the erosion of soil because that could destroy wetlands or important wildlife habitat, or pollute our streams," Attorney General Peg Lautenschlager said in a press release. "The need to ensure compliance is especially important in sensitive areas, like this one."

According the Justice Department, the defendants:

- Disturbed land during construction for five weeks before installing state-required erosion control measures.
- Failed to install other erosion control measures at the end of each working day in those weeks.
- Failed to follow state practices to reduce or eliminate sediment, thereby causing it to flow from the site into the nearby wetlands.

The state is seeking forfeitures as high as \$10,000 per offense, and expenses for the prosecution.

Several village officials declined to comment, saying they hadn't known about the Justice Department's charges until they were informed by a reporter Tuesday. Attempts to reach representatives at Fussville and Gustafson were unsuccessful.

The village and Fussville were owners and developers of the project site at various times, and the village sold the property to Fussville, which split the property into multiple parcels and sold them, according to the Justice Department and village officials.

Snake complaints

Developers in the past have labeled the snakes an economic impediment and complained about how the DNR-protected species has snarled and stalled building projects.

The Butler's has caused problems for other developers in Wisconsin.

Elsewhere in Menomonee Falls, Bill Carity had to wait five years until 2004 to develop land into the Ravenswood subdivision, near W. Silver Spring Drive and Pilgrim Road. He spent an additional \$25,000 in engineering and planning expenses and eventually set aside six acres of the 34-acre parcel for Butler's habitat.

And in far northeast Waukesha, headway on a new acute care hospital slowed earlier this month because of potential snake habitat.

[Buy a link here](#)

From the May 31, 2006 editions of the Milwaukee Journal Sentinel
Have an opinion on this story? [Write a letter to the editor](#) or start an [online forum](#).

Subscribe today and receive 4 weeks free! [Sign up now](#).

© 2006, Journal Sentinel Inc. All rights reserved. | Produced by [Journal Interactive](#) | [Privacy Policy](#)
Journal Sentinel Inc. is a subsidiary of [Journal Communications](#).



www.jsonline.com | [Return to regular view](#)

Original Story URL:

<http://www.jsonline.com/story/index.aspx?id=543637>

Snake lawsuit could be settled

Falls, developers could pay \$90,000

By DAVE SHEELEY
dsheeley@journalsentinel.com

Posted: Dec. 19, 2006

Menomonee Falls - The village and real estate developers would pay \$90,000 under an agreement to end a court case over state allegations they failed to follow erosion control laws and disturbed territory of the threatened Butler's garter snake.

A judge is expected to have the final say on the proposed settlement of a court action filed by the Wisconsin attorney general's office against Menomonee Falls and the developers of the estimated 30-acre Marketplace Triangle, a residential and commercial development.

The project is now called Woodlands Marketplace, just northwest of Good Hope Road and Appleton Ave. The court action was filed at the request of the state Department of Natural Resources.

Although the village approved the pact at the recommendation of village attorneys, village officials haven't admitted to wrongdoing in the case, Village President Richard Rechlicz, an attorney, said Tuesday. By approving the agreement, village officials would avoid a potential costly court case, Rechlicz said. Still, he isn't happy the village will have to pay \$23,000 as part of the agreement.

"I think the board looked at this as a compromise," he said Tuesday.

Under the agreement, Fussville Development would pay \$12,000 and Gustafson Construction Corp. would pay \$55,000.

The attorney general's office filed a civil complaint in Waukesha County Circuit Court earlier this year. It names as defendants the village, Fussville and Gustafson, the village-hired general contractor for the project.

Thomas Dosch, state assistant attorney general, said the Justice Department supports the agreement. He said the defendants have agreed to the pact, which likely will be submitted to

Waukesha County Circuit Judge James Kieffer this week for approval.

Attorneys for Fussville and Gustafson declined to comment on the agreement. "Until it's approved, it's really inappropriate for me to say anything," said Donald Gallo, attorney for Fussville.

The state contends that in 2004, the defendants disturbed land for weeks during construction before installing state-required erosion control measures. The state also alleges that the defendants failed to follow state practices to reduce or eliminate sediment, thereby causing it to flow from the work site into nearby wetlands where the threatened snakes live.

The complaint says that Gustafson removed portions of a "required snake fence" intended to keep the snakes in wetlands along Lilly Creek from wriggling into construction areas where they could be killed.

State officials say that erosion control measures, such as silt traps and berms, work to minimize the erosion of soil, which could in turn destroy wetlands and wildlife habitat and pollute streams.

According to village officials and the Justice Department, the village and Fussville were owners and developers of the project at various times, and the village sold the property to Fussville, which split the property into parcels and sold them.

Rechlicz said the village would pay its portion of payment under the agreement with funds from the tax incremental financing district in which the project is located.

Under tax incremental financing, for a set period, all property taxes paid within a district's boundaries are diverted for public improvements in the district, usually sewer and water lines. That leaves no property tax revenue from the financing district to benefit the county, schools or other taxing bodies. Eventually, the enhanced value of the improved property returns to the general tax rolls.

[Buy a link here](#)

From the Dec. 20, 2006 editions of the Milwaukee Journal Sentinel
Have an opinion on this story? [Write a letter to the editor](#) or start an [online forum](#).

Subscribe today and receive 4 weeks free! [Sign up now](#).

© 2006, Journal Sentinel Inc. All rights reserved. | Produced by [Journal Interactive](#) | [Privacy Policy](#)
Journal Sentinel Inc. is a subsidiary of [Journal Communications](#).

Cedarburg Science's Meeting Notes

for its

January 16, 2007 WisDNR Meeting

(see next two pages)



Meeting Date: January 16, 2006

Subject: Highway J/Highway 164 Phase 2 & 3
WDNR Meeting Notes

Attendees: Ginny Plumeau, Chris Heston, Cedarburg Science
Maureen Millmann and Michael Thompson, WDNR

Cedarburg Science requested the meeting to discuss the most effective way to notify the WDNR of noncompliance and potential violations. We also wanted to determine if action would be taken against WisDOT and/or its contractors based on the observations and reports submitted by the Hwy J Citizens Group and Cedarburg Science.

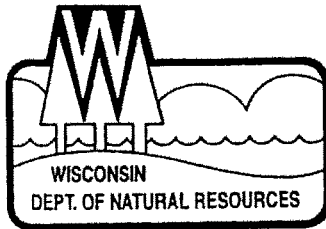
Cedarburg Science provided an overview of our role to WDNR during Phase 2 (Swan Road in Pewaukee to Prospect Court in Sussex) and 3 (Prospect Court in Sussex to Howard Lane in Lisbon) construction work, from approximately summer 2004 until present. Our role was to assess habitat, inspect wetlands and BMPs, provide documentation, and submit reports based on our observations.

Main discussion points from the meeting are listed below.

- Cedarburg Science explained that in the previous construction phase (Phase 2, 2005), we submitted a report and complaint to the agencies and no strong action was taken. The inspection observations of non-compliance and sediment release were reviewed, but we were much later informed that the work was basically in compliance and/or was already corrected.
- Cedarburg Science explained that, as a result of the aforementioned experience, we decided to document such non-compliance over a long period to demonstrate a lack of attention, routine compliance and action. Therefore, during the most recent phase (Phase 3, 2006), observations were documented throughout the summer and then submitted to the WDNR and ACOE in September 2006 and still, no strong action was taken. WDNR conducted an inspection, and issued a letter to state that the deficiencies had been handled.
- Cedarburg Science stated its concern that it appears WisDOT and its contractors are apparently held to a different standard. Many developers and contractors are vigorously prosecuted by the WDNR (recent news articles support this claim). We shared our concern that it appears WDNR seems to minimize noncompliance/violations when they're related to a WisDOT project.
- WDNR said WisDOT construction contractors typically perform the routine inspections and the WDNR only checks periodically as available.
- WDNR can be more effective in ensuring permit compliance if they know of specific problems or areas of impact, otherwise they have limited resources to conduct routine inspections.
- Cedarburg Science and WDNR discussed ways to improve the opportunity for WDNR to more fully require compliance with such projects. WDNR (Maureen Millmann) asked to be kept informed on a per incident basis, and inform them as soon as possible about potential violations or noncompliance so that they may investigate right away.
- WDNR said that after-the-fact photos/reports may not be strong enough to allow the WDNR to develop enough evidence to share with DOJ to move forward with prosecuting a case.
- Citizens or consultants can relay concerns and observations about potential or actual noncompliance and violations to WDNR immediately with a phone call, or may email with photographs.
- Both Mike Thompson and Maureen Millmann encouraged anyone to contact and interact with them in such an event.



- WDNR pointed out that through the Cooperative Agreement (WDNR and WisDOT), the WisDOT construction process is handled differently from Chapter 30 permit violations. However, the agreement is meant to avoid or to minimize environmental impacts.
- WisDOT is exempt from Chapter 30 under the Cooperative Agreement.
- Construction and violations that Cedarburg Science pointed out are subject to Ch 30 and NR116 and are outside the WisDOT project limits, such as at the entrance to Culver's. The information was provided to the appropriate WDNR staff.
- Mike Thompson explained the framework of the Highway Construction Process:
 - Planning Process – MPO (Different at local levels)
SEWRPC RTP 2030 (Land Use, Transit, and Economic Development); Freeways and Surface arterials of 4 lanes; WisDOT selects projects unless a project comes from state legislature; Opportunity for public hearing and comment (often many years before the project is initiated)
 - Preliminary Design
Need for environmental documents is determined (EIS); Public can still be involved, but their comments have limited weight; WDNR can provide recommendations.
 - Final Design
Little opportunity for changes by the public; Specifics for minimizing environmental impacts are negotiated (ex. Snake fencing) especially based on recommendation by WDNR.
- Michael Thompson pointed out that Hwy J is now a state highway and WisDOT will likely continue its expansion when traffic counts increase to a designated point. EIS and SEWRPC planning for the expansion have been completed. Expansion can be contested by the public generally only during the initial construction planning, therefore, there will not be a good opportunity for the public to stop or alter the plan for the future construction phase.
- WDNR (Michael Thompson) stated that it does not intend to pursue or recommend enforcement action regarding the recent complaint issued by Cedarburg Science.
- Cedarburg Science shared its frustration that citizens tell us (on this and other projects) that they feel they do not have an effective avenue for providing meaningful comment in later phases of construction planning and design, when the majority of citizens finally realize that a project is going to take place.
- Cedarburg Science also shared its frustration that no matter which method of inspection and complaint venue we (or citizens) utilize to report potential water quality violations along highway construction projects, it feels like such complaints will not be taken seriously by WisDOT. As per the advice of WDNR in this meeting, in the future, Cedarburg Science will immediately notify WDNR directly if a problem or a potential problem is spotted.
- At the meeting close, Cedarburg Science shared that we believed that the Highway J Citizens Group would expect to see more meaningful action taken when such complaints are lodged. The Citizens Group may continue to pursue an aggressive course of action regarding the complaints lodged September 2006 and previously, in 2005.



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Gloria L. McCutcheon, Regional Director

Southeast Region Headquarters
2300 N. Dr. Martin Luther King, Jr. Drive
Milwaukee, Wisconsin 53212-3128
FAX 414-263-8606
Telephone 414-263-8500
TTY Access via relay - 711

February 13, 2007

File: 1600

Ginny Plumeau
Cedarburg Science
P.O. Box 72020
Cedarburg, WI 53012

Dear Ms. Plumeau:

Thank you and Chris Heston of Cedarburg Science for meeting with Mike Thompson and me on January 16, 2007 to discuss your concerns about erosion control and emergency response at the Wisconsin Department of Transportation (DOT) STH 164, Prospect Court to Howard Lane project (Project) that was constructed during May to October 2006. Our discussion included Dennis M. Grzezinski's December 2, 2005 letter to the US Army Corps of Engineers (USACOE); Robert J. Whiting's, USACOE April 3, 2006 response letter to Mr. Grzezinski; your October 20, 2006 letter to Rebecca Gruber, US Army Corps of Engineers and me; and my November 16, 2006 response letter to you. The letters and a general overview map of the STH 164 corridor are attached.

The Department is committed to environmental protection and, does initiate enforcement action for violations of erosion control and other environmental laws when needed.

The Department has recommended DOT continue to maintain erosion controls along the STH 164 eastern right-of-way boundary north of the Bark River to Hillside Rd. to ensure that the final vegetative cover is successfully established there. The Department will re-inspect the project area through the winter and spring 2007. The Department is not recommending other action.

The stream bank erosion shown in photos 5-31-06 01; 5-31-06 03, 04; 6-26-06 06, 07; and 8-31-06 10 of your October 20, 2006 letter is outside of the DOT project area. The Department may have regulatory authority if the waterway is navigable and the private riparian property owner proposes a shoreline stabilization project. The Department can not require the private riparian property owner to conduct a shoreline stabilization project. The current unstable shoreline condition may persist until vegetation establishes itself or the riparian property owner takes action.

I recommend the following three steps to improve communication and coordination:

- 1) Contact me for information about the Department's role in regional transportation system planning. I may be able to identify local government, Southeastern Wisconsin Regional Planning Commission (SEWRPC), and DOT transportation planning contacts.

The *Transportation Improvement Program for Southeastern Wisconsin: 2007-2010* (TIP) <http://www.sewrpc.org/tip/> is a listing of all arterial highway, public transit, and other transportation improvement projects proposed to be carried out by State and local governments over the next four years (2007-2010) in the seven-county Southeastern Wisconsin Region.

Currently, there are no projects scheduled for the expansion of STH 164 to four lanes in Washington County. Expansion to four lanes is not warranted by the current traffic volumes and is not expected until 2025 or beyond. Contact Ms. Christine Rawson, DOT (262) 548-6428 for more information about long range transportation planning for the STH 164, I-94 to STH 60 corridor.

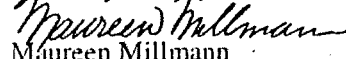
- 2) Contact me about specific individual transportation design or construction projects. I can provide information about the current studies and project design plans, alternatives being considered, and assessment of environmental impacts. I can communicate concerns to transportation designers for their consideration. I can also provide information about construction project plans, sequencing, and schedules. There may be opportunities for you to comment on proposed erosion control measures and their effectiveness. Construction project information may allow you to anticipate when work will occur in environmentally sensitive areas distinguish between different construction projects that may be occurring in close proximity.

During our meeting, you expressed interest in the proposed West Bend Airport expansion and stormwater management at a previously constructed STH 32 project near Port Washington. The Federal Aviation Administration (FAA) website <http://www.westbendeis.com/> provides information about the status of the West Bend Airport expansion Environmental Impact Statement (EIS). NR 151 and TRANS 401 guidelines for stormwater management at transportation projects were established in 2002. I am not sure if these guidelines were in effect when the STH 32 project near Port Washington was designed and constructed. Current transportation projects are designed and constructed to achieve NR 151 and TRANS 401 standards.

- 3) Contact me promptly if you note an active erosion control problem. Prompt notification allows the Department to identify responsible parties, initiate corrective actions, and minimize environmental impact. Prompt notification and response can also be important to successful enforcement actions.

Thank you for meeting and sharing your concerns. The Department shares your regard for resource protection and stewardship. If you have any more questions, please contact me at (414)263-8613 or maureen.millmann@wisconsin.gov.

Sincerely,



Maureen Millmann
Environmental Coordinator

CC: Ken Yunker, SEWRPC,
Christine Rawson, DOT-SER
Mike Thompson, DNR-SER
Don Berghammer, DOT-SER

Jeff Gonyo

From: "D'Antuono, James R - DNR" <James.DAntuono@Wisconsin.gov>
To: "Jeff Gonyo" <jmgonyo@execpc.com>
Cc: "McNelly, James - DNR" <James.McNelly@wisconsin.gov>; "Thompson, Michael C - DNR" <MichaelC.Thompson@wisconsin.gov>; "D'Antuono, James R - DNR" <James.DAntuono@wisconsin.gov>
Sent: Friday, April 27, 2007 4:23 PM
Subject: RE: Citizen Complaint Regarding STH 164 project

Hello Mr. Gonyo - Thanks for the prompt reply to my e-mail. I talked with my supervisor about your replay and he plans on speaking with Mike Thompson about this next week. I believe one of us will be getting back to you as soon as possible. Thank you .

-----Original Message-----

From: Jeff Gonyo [mailto:jmgonyo@execpc.com]
Sent: Thursday, April 26, 2007 2:15 PM
To: D'Antuono, James R - DNR
Cc: McNelly, James - DNR; Thompson, Michael C - DNR
Subject: Re: Citizen Complaint Regarding STH 164 project
Importance: High

Dear Mr. D'Antuono:

Thank you for forwarding your e-mail summary to me below regarding our citizens group's concerns about the environmental violations we witnessed and documented during the Highway 164 four-lane expansion last year in the Sussex/Lisbon area. We appreciate your interest in helping us obtain a proper resolution of this very important matter.

In your e-mail summary below, you refer to Mike Thompson's comments where he acknowledged that there "did appear to be some violations" but that he believed that some of these violations could have been "utility project related off the project right of way." However, the WisDOT's own newsletter, new releases and project scheduling documents (copies attached here to this e-mail) show that no utility work was being done in that area at the time Cedarburg Science was documenting these environmental violations.

Please refer to the WisDOT's own February 10, 2006 news release where it clearly states that "Utility relocation work has begun and is scheduled for completion in March" [i.e. that's March of 2006]. Also, under the "Construction Schedule" heading of the WisDOT's February, 2006 newsletter for the WIS 164 Reconstruction Project [Prospect Court to Howard Lane], it states, "Present to March, 2006: Utility relocation work has begun and is scheduled to be complete this March."

In our October 20, 2006 complaint to the WisDNR concerning this matter, you will note that the violation dates specified in the BMP inspection report and supported by the photographs are: 5/31/06,

6/15/06, 6/26/06, 6/29/06, 7/7/06, 7/15/06, 7/16/06, 7/23/06, 7/25/06, 8/6/06, and 8/31/06 respectively. According to the WisDOT's own project schedule for the Year 2006 section of Highway 164 road construction (attached here), NO UTILITY WORK WAS BEING DONE ON THOSE DATES when the environmental violations occurred. All utility work in this area already had been completed several months before (i.e. in March, 2006).

However, Hoffman Construction Company [under the supervision of the WisDOT] was, in fact, performing road construction work on ALL of those violation dates. Therefore, the evidence here is very strong that Hoffman Construction Company and nobody else committed these environmental violations which Mr. Thompson, by his own admission below, acknowledges occurred in this area of Highway 164 (as supported by our complaint).

We hope that this additional information will help the WisDNR promptly move forward with the vigorous prosecution of Hoffman Construction Company for committing these well-documented environmental violations committed during the course of the Highway 164 four-lane expansion in the Sussex/Lisbon area last year. If we can be of any further assistance in this matter, please let us know.

Thank you again for your diligent attention and review of this very important matter.

Sincerely,

Jeff Gonyo,
Steering Committee Member for the
HIGHWAY J CITIZENS GROUP, U.A.
2668 Highway 164, Slinger, WI 53086
Phone: (262)-644-8334
E-Mail: jmgonyo@execpc.com

P.S. If you have specific questions about the scientific methodology used to prepare the Cedarburg Science report in this matter, please contact our Principal Ecologist, Ginny Plumeau, at (262)-909-0735 or (262)-376-0735 or e-mail her at: CEDSCI@aol.com.

----- Original Message -----

From: "D'Antuono, James R - DNR" <James.DAntuono@Wisconsin.gov>
To: <jmgonyo@execpc.com>
Cc: "McNelly, James - DNR" <James.McNelly@wisconsin.gov>; "Thompson, Michael C - DNR" <MichaelC.Thompson@wisconsin.gov>
Sent: Thursday, April 26, 2007 8:50 AM
Subject: FW: Citizen Complaint Regarding STH 164 project

4/27/2007

> Mr. Gonyo - Per your April 25, 2007 telephone request, I am forwarding
> my e-mail summary.

>
>

> From: D'Antuono, James R - DNR
> Sent: Wednesday, April 25, 2007 8:00 AM
> To: McNelly, James - DNR
> Cc: D'Antuono, James R - DNR; Thompson, Michael C - DNR
> Subject: Citizen Complaint Regarding STH 164 project

>
>

> Jim - As we have discussed, last week I had a call from Jeff Gonyo. He
> talked with Marty Ringquist about the Hoffman Case and Marty gave him
> my name as the project is in the Fox Basin. He belongs to a citizen
> group which is opposed to the expansion of STH 164 (CTH J) as it goes
> north through Waukesha and Washington Counties. The third phase of the
> expansion was completed last summer in the Sussex/Lisbon area. The
> citizen group hired Cedarburg Science last summer to conduct field
> inspections and monitor compliance for erosion control and stormwater
> management. Mr. Gonyo explained that after 3.5 months of monitoring,
> Cedarburg Science prepared a report and had a meeting with Mike
> Thompson and Maureen Millman late in 2006 to discuss their findings.
> Mr. Gonyo stated that Cedarburg Science presented evidence of poor
> erosion control and stormwater management practices and illegal
> wetland filling. Mr. Gonyo explained that Mike Thompson indicated that
> there was nothing DNR could do about these problems.

>

> Mr. Gonyo expressed frustration to me on the phone given that the
> contractor for this project (Hoffman Construction) was the same
> company recently fined \$100,000 by the State for a DOT project in NE
> Region. It was his opinion that these violations were similar to those
> which occurred last summer on the 164 project constructed by Hoffman.
> Mr. Gonyo has spoken with DOJ and they indicated they need a request
> from DNR to pursue enforcement against Hoffman. Mr. Gonyo is demanding
> that DNR reconsider our options for pursuing enforcement against
> Hoffman. I told Mr. Gonyo that I would discuss this with you and Mike
> Thompson and get back to him.

>

> Last Friday, I had a chance to talk with Mike Thompson about this
> case. Mike is familiar with Mr. Gonyo and his group. Mike indicated
> that he did participate in the meeting with Cedarburg Science and that
> there did appear to be some violations. Mike also explained there was
> a significant amount of utility work associated with the project and
> that it was possible that some of the problems identified by Cedarburg
> Science were utility project related off the DOT right of way. Mike
> explained that it would be difficult to go back now that the project
> is finished and pursue any enforcement. Cedarburg Science apparently
> did not make DNR aware of the problems at the project site at the time

> they were occurring. Mike suggested that the 3 of us talk about this
> after I had prepared this short summary. Please call if you want to
> discuss further. Thanks

>

>

> P Jim D'Antuono
> Southeast Fox Basin Team Leader
> Waukesha Service Center
> Wisconsin Department of Natural Resources
> (*) phone: (262) 574-2122
> (*) fax: (262) 574-2177
> (*) e-mail: James.D'Antuono@dnr.state.wi.us

>



Home | News | About Us | Research & Library | A-Z Index

Search DOT



[Drivers & Vehicles](#) | [Safety](#) | [Travel](#) | [Plans & Projects](#) | [State Patrol](#) | [Doing Business](#) | [Programs for Local Gov't](#)

- News
- Event calendar
- Fast facts
- Newsletters
- Campaigns
- Request a speaker

News > Public hearings and meetings >

Public meeting set for last phase of WIS 164 reconstruction

Waukesha County, February 10, 2006

The Wisconsin Department of Transportation (WisDOT) Waukesha office has announced that a public meeting is scheduled for Wednesday, February 22 to discuss the construction schedule, staging, traffic handling, property access, local road treatments and other aspects of reconstructing WIS 164 from Prospect Court (just south of County VV) to Howard Lane (just north of Good Hope Road) in Waukesha County.

The meeting will be held from 5 to 7 p.m. at the Richmond Elementary School (cafeteria), N56 W26530 Richmond Road. Interested persons may stop in anytime during these hours to visit with the project team and learn more about the proposed construction.

Work will begin in spring 2006 and continue through fall 2006. Planned construction along WIS 164 will proceed as follows:

- Utility relocation work has begun and is scheduled for completion in March.
- During April and May, roadwork will include clearing and grubbing, demolition, preliminary grading, storm sewer work, temporary pavement widening, and installation of temporary traffic signals at the County VV intersection.
- In late spring through summer 2006, the new southbound roadway lanes will be constructed. WIS 164 traffic will use the existing roadway and temporary pavement during this time.
- In summer through fall 2006, the new northbound roadway lanes will be constructed. WIS 164 traffic will use the new southbound lanes during this time.
- The new four-lane highway is scheduled for completion in November 2006.

The public is encouraged to attend this information meeting to learn about the project.

[More information on the WIS 164 project...](#)

For more information, contact:
Emlynn Grisar, Communications Manager, (262) 521-5373


Other news releases:

[Law of the month](#)

[News release archives](#)

[Public hearings and meetings](#)

[WisDOT media contacts](#)

 [Back to public hearings and meetings](#)

Questions about the content of this page:
Southeast Transportation Region, SEW1Commuter@dot.state.wi.us
Last modified: February 10, 2006

[Drivers & Vehicles](#) | [Safety](#) | [Travel](#) | [Plans & Projects](#) | [State Patrol](#) | [Doing Business](#) | [Programs for Local Gov't](#)

[Air](#) | [Bicycles](#) | [Bus/transit](#) | [Cars](#) | [Motorcycles](#) | [Pedestrian](#) | [Rail](#) | [Trucks](#) | [Waterways](#)

[Home](#) | [News](#) | [About Us](#) | [Research & Library](#) | [A-Z Index](#)

Waukesha County

The project

The 1.2 mile WIS 164 segment from Prospect Court (just south of County VV) to Howard Lane (just north of Good Hope Road) will be reconstructed to a four-lane urban roadway. To minimize impacts to existing development, the existing highway will be widened along both sides from Prospect Court to the Union Pacific Railroad (UPRR). The roadway widening will be along the west side of the existing highway north of the UPRR. Existing local road connections to WIS 164 will be rebuilt to provide safe sight distance and new turn lanes. Good Hope Road will be extended west of Hillside Road to connect with WIS 164 and this new intersection will be signalized. The existing Hillside Road intersection with WIS 164 will be removed and will end in a cut de esac. WIS 164 will remain open to traffic during construction with the exception of a one weekend detour. (See Stage 1 Traffic Handling.)

WIS 164 Reconstruction Newsletter

Enhancements

- An egress passage for the state threatened species, Butler's garter snake, will be constructed under WIS 164. The egress passage will provide a connection between known Butler's garter snake habitats located along both sides of the highway.
- A five foot wide concrete sidewalk will be constructed along the west side of WIS 164 from Prospect Court to just north of County VV.
- A five foot wide concrete sidewalk will be constructed along the east side of WIS 164 from Prospect Court to the Bugline Trail.
- A 10 foot wide asphalt shared use path will be constructed along the east side of WIS 164 from the Bugline Trail to Good Hope Road.
- A grade separated crossing of WIS 164 will be constructed at the Bugline Trail.
- A five foot wide concrete sidewalk will be constructed along the north side of County VV east of WIS 164.
- A five foot wide concrete sidewalk will be constructed in the Village of Pewaukee along the east side of WIS 164 between the Swan Road and Chestnutwood Lane intersections.
- New tree plantings will be placed along the east side of WIS 164 between Chestnutwood Lane and Lindsay Road. Planting beds will be completed in the WIS 164 median between County K and Prospect Court.

Public information meeting set

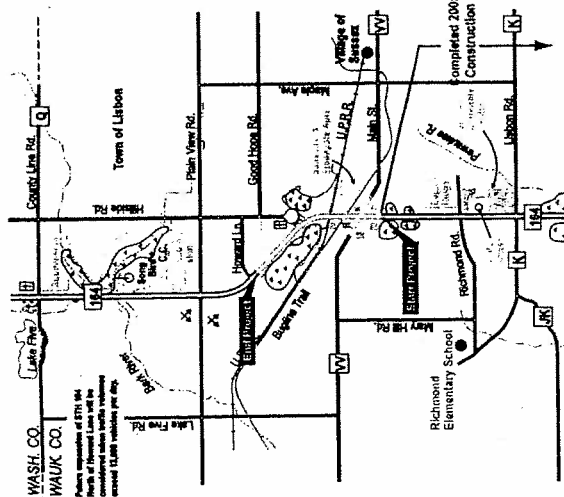
The WisDOT project team will hold a public meeting on construction schedule, staging, local road treatments, and other aspects of reconstructing WIS 164 between Prospect Court and Howard Lane. The open house meeting will be held on **Wednesday, February 22, 2006**, at Richmond Elementary School, N55W28530 Richmond Road. The meeting will run from 5 p.m. to 7 p.m. You may stop in anytime between these hours to visit with the project team, learn about the proposed construction and share your thoughts.

Contact information
For more information about the WIS 164 reconstruction project, contact
Bruce Barnes, Project Manager
WisDOT Southeast Region
141 N.W. Barstow Street, Box 798
Waukesha, WI 53187-0798
262-546-6892
bruce.barnes@dot.state.wi.us

Brad Helmrich,
Consultant Project Manager
CH2M HILL
135 South 84th Street, Suite 325
Milwaukee, WI 53214
414-272-2428
brad.helmrich@ch2m.com

Public meeting scheduled
A public meeting will be held on
Wednesday, February 22, 2006,
at Richmond Elementary School,
N55W28530 Richmond Road from 5 p.m.
to 7 p.m. See back page for details.

Mission Statement:
To provide leadership in the development and operation of a safe and efficient transportation system.



Construction schedule

Work in the Prospect Court to Howard Lane segment will start this spring and is scheduled to complete in fall 2006. In general, construction will proceed as follows:

- Present to March 2006: Utility relocation work has begun and is scheduled to be complete this March.
- April to May 2006: Clearing and grubbing, demolition, preliminary grading and storm sewer work, temporary pavement widening, and installation of temporary traffic signals at the intersection with County VV.
- Spring to summer 2006: New southbound roadway lanes will be constructed. WIS 164 traffic will use the existing roadway and temporary pavement during this time.
- Summer to fall 2006: New northbound roadway lanes will be constructed. WIS 164 traffic will use the southbound lanes during this time.
- November 2006: New four-lane highway is scheduled to complete.

Property access

- Traffic on WIS 164 will be maintained during construction using a combination of old and new driving lanes and temporary pavement.
- Local and emergency vehicle access to all properties will be provided at all times.
- Commercial driveways will be maintained at all times through a combination of staged construction and temporary access as needed.
- Residential driveways may be closed for short periods of time while the new connections to WIS 164 are being made. The contractor will provide 48 hours notice prior to when a driveway needs to be closed.

Construction staging and traffic handling

The following staged construction and traffic handling will take place during the 2006 construction season:

Stage 1 (April to May 2006)

Construction

- Complete clearing and grubbing, temporary pavement widening, storm sewer work, divert pipe for temporary diversion of Sussex Creek, and installation of temporary traffic signals at the County VV intersection.
- Grade and pave northbound WIS 164 north of Good Hope Road and eastbound County VV at the east and west construction limits.

Traffic handling

- WIS 164 will be open to traffic by using the existing roadway, but will be reduced to one lane with flagging operations at various locations for short durations during the off peak period (9 a.m. to 3 p.m.). WIS 164 will be closed during one weekend to perform work at the UP railroad crossing with traffic routed along a signed detour route east of WIS 164 using County K, WIS 74, County V, and County Q.
- All local road intersections to remain open to traffic. Single lane closures with flagging operations may be required for short durations.
- Bugline Recreation Trail will be closed.

Stage 2 (May to August 2006)

Construction

- Grade and pave the new WIS 164 southbound lanes. Complete intersection, driveway, and UP Railroad crossing improvements located west of the existing highway. Complete Good Hope Road and the new driveway at Indiangrass Lane east of the existing highway.
- Construct the westbound lanes of County VV east and west of WIS 164.
- Construct the new pond in the northwest quadrant of the County VV intersection.

Traffic handling

- WIS 164 and County VV will remain open to traffic by using the existing roadways and the temporary pavement constructed in Stage 1.
- Local roads west of WIS 164 will remain open to traffic with closures as necessary to complete construction operations at Indiangrass Lane.
- Bugline Recreation Trail will remain closed.

Stage 3 (August to October 2006)

Construction

- Grade and pave the new WIS 164 northbound lanes. Complete intersection, driveway, and UP Railroad crossing improvements located east of the existing roadway.
- Construct the eastbound lanes of County VV located east and west of WIS 164.

Traffic handling

- WIS 164 and County VV will remain open to traffic by using the new roadways constructed in Stage 2.
- Local roads east of WIS 164 will remain open to traffic with closures as necessary to complete construction operations at Stonegate Court.
- Hillside Road will be permanently closed and a cul de sac will be constructed at the existing intersection with WIS 164.
- Bugline Recreation Trail will remain closed.

Stage 4 (October to November 2006)

Construction

- Construct the raised median and inside lanes of WIS 164 north and south of the intersection with County VV.
- Pave the final asphalt surface for southbound WIS 164.
- Complete traffic signal installations, railroad signal installations, signing, marking, and landscaping.

Traffic handling

- WIS 164 will remain open to traffic with one lane open along both the new northbound and southbound roadways.
- All local road intersections will remain open to traffic with possible short term closures as necessary to complete paving operations.
- Bugline Recreation Trail will re-open.



Search DOT



[Drivers & Vehicles](#) | [Safety](#) | [Travel](#) | [Plans & Projects](#) | [State Patrol](#) | [Doing Business](#) | [Programs for Local Gov't](#)

- WIS 164 project
- Maps
- Schedule
- Construction photos
- Contacts

Plans & Projects > Find by location > SE Region > WIS 164 project >

WIS 164 project schedule

Phase 1: Rockwood Drive to Swan Road February to late November 2004


Completed

Phase 2: Swan Road to Prospect Court April to November 2005

Completed

Phase 3: Prospect Court to Howard Lane April to November 2006

Stage I (April to May 2006)

- Complete clearing and grubbing, temporary pavement widening, storm sewer work, culvert pipe for temporary diversion of Sussex Creek, and installation of temporary traffic signals at the County VV intersection.
- Grade and pave northbound WIS 164 north of Good Hope Road and eastbound County VV at the project's east and west construction limits.
- [Map of construction work](#)  (43 KB)


WIS 164 will be open to traffic using the existing roadway, but will be reduced to one lane with flagging operations at various locations for short periods of time during the off peak period (9 a.m. to 3 p.m.). WIS 164 will be closed during one weekend in May to perform work at the Union Pacific Railroad (UPRR) crossing with traffic routed along a signed detour route east of WIS 164.

All local road intersections will remain open to traffic, though single lane closures may be required for short periods of time. The Bugline Recreation Trail will be closed at its existing crossing of WIS 164.

Stage II (May to August 2006)


- Grade and pave the new WIS 164 southbound lanes.
- Complete intersection, driveway and UPRR improvements along the west side of the existing highway.
- Complete the Good Hope Road extension to WIS 164 and the new commercial driveway at Indiangrass Lane east of the existing highway.
- Construct the westbound lanes of County VV

east and west of WIS 164.

- Complete the pond in the northwest quadrant of the County VV intersection.
- [Map of construction work](#)  (54 KB)


WIS 164 and County VV will remain open to traffic using the existing roadways and the temporary pavement constructed in stage 1. Local roads west of WIS 164 will remain open to traffic with closures as necessary to complete construction operations at Indiangrass Lane. The Bugline Recreation Trail will be closed at its existing crossing of WIS 164.

Stage III (August to October 2006)


- Grade and pave the new WIS 164 northbound lanes.
- Complete intersection, driveway, and UPRR improvements along the east side of the existing roadway.
- Construct the eastbound lanes of County VV east and west of WIS 164.
- [Map of construction work](#)  (51 KB)


WIS 164 and County VV will remain open to traffic using the new roadways constructed in stage 2. Local roads east of WIS 164 will remain open to traffic with closures as necessary to complete construction operations at Stonegate Court and Good Hope Road. Hillside Road will be permanently closed with a cul de sac constructed at its intersection with WIS 164. The Bugline Recreation Trail will be closed at its existing crossing of WIS 164.

Stage IV (October to November 2006)

- Construct the raised median and inside lanes of WIS 164 north and south of the intersection with County VV.
- Pave the final asphalt surface for southbound WIS 164.
- Complete traffic signal installations, railroad signal installations, signing, marking and landscaping.
- [Map of construction work](#)  (50 KB)

WIS 164 will remain open to traffic with one lane open along both the new northbound and southbound roadways. All local road intersections will remain open to traffic with possible short-term closures as necessary to complete paving operations. The Bugline Recreation Trail will be reopened with its new crossing under WIS 164.

 [Return to top](#)

 You will need the Adobe Reader (provided free of charge) to view

PDF files. For more information about getting your free copy of the Adobe Reader, visit WisDOT's [Software information page](#).

Questions about the content of this page:
Emlynn Grisar, SEW/Commuter@dot.state.wi.us
Last modified: March 10, 2006

[Drivers & Vehicles](#) | [Safety](#) | [Travel](#) | [Plans & Projects](#) | [State Patrol](#) | [Doing Business](#) | [Programs for Local Gov't](#)

[Air](#) | [Bicycles](#) | [Bus/transit](#) | [Cars](#) | [Motorcycles](#) | [Pedestrian](#) | [Rail](#) | [Trucks](#) | [Waterways](#)

[Home](#) | [News](#) | [About Us](#) | [Research & Library](#) | [A-Z Index](#)

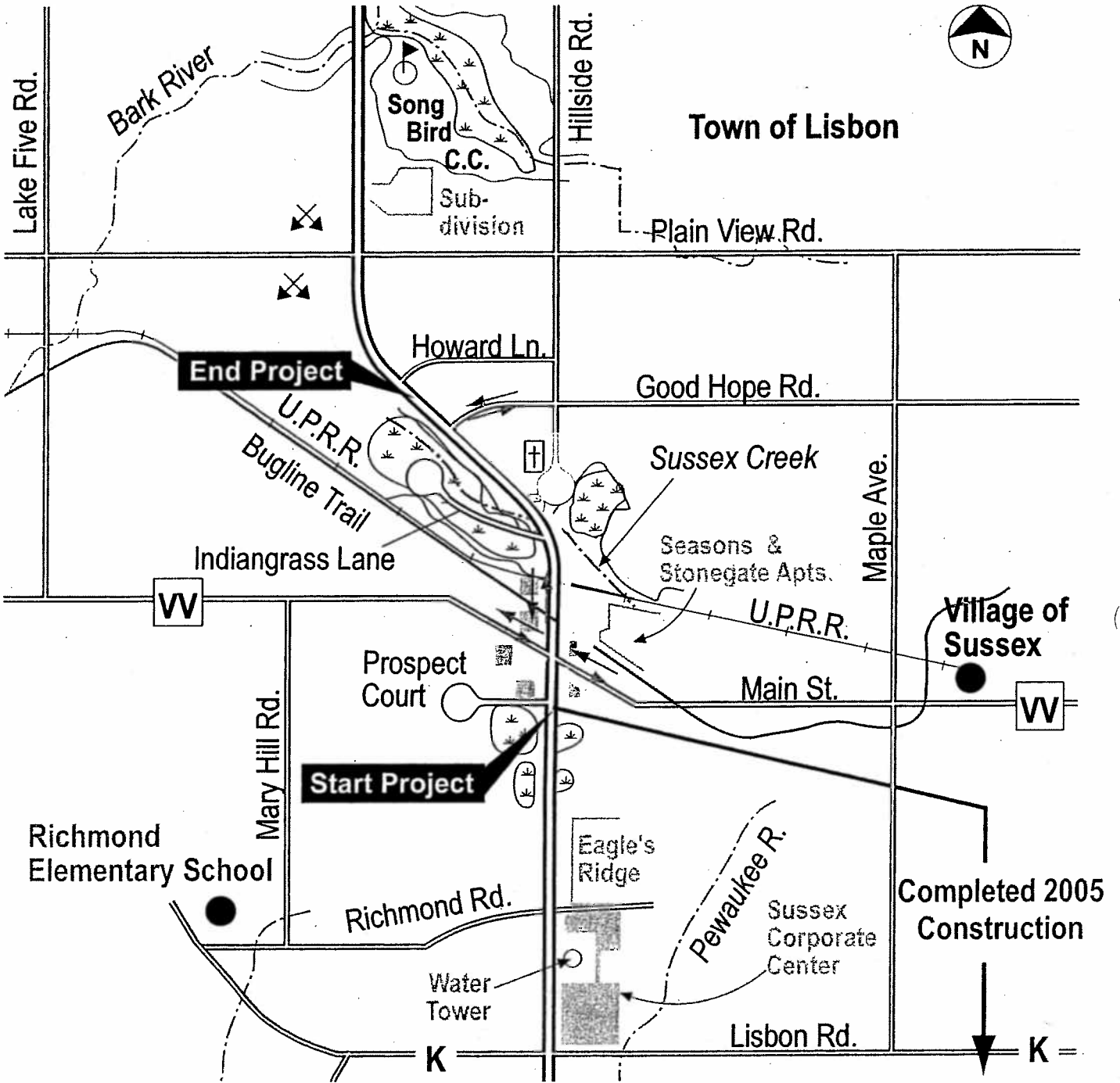


Stage I
April through May 2006
Preliminary Construction

Completed 2005
 Construction

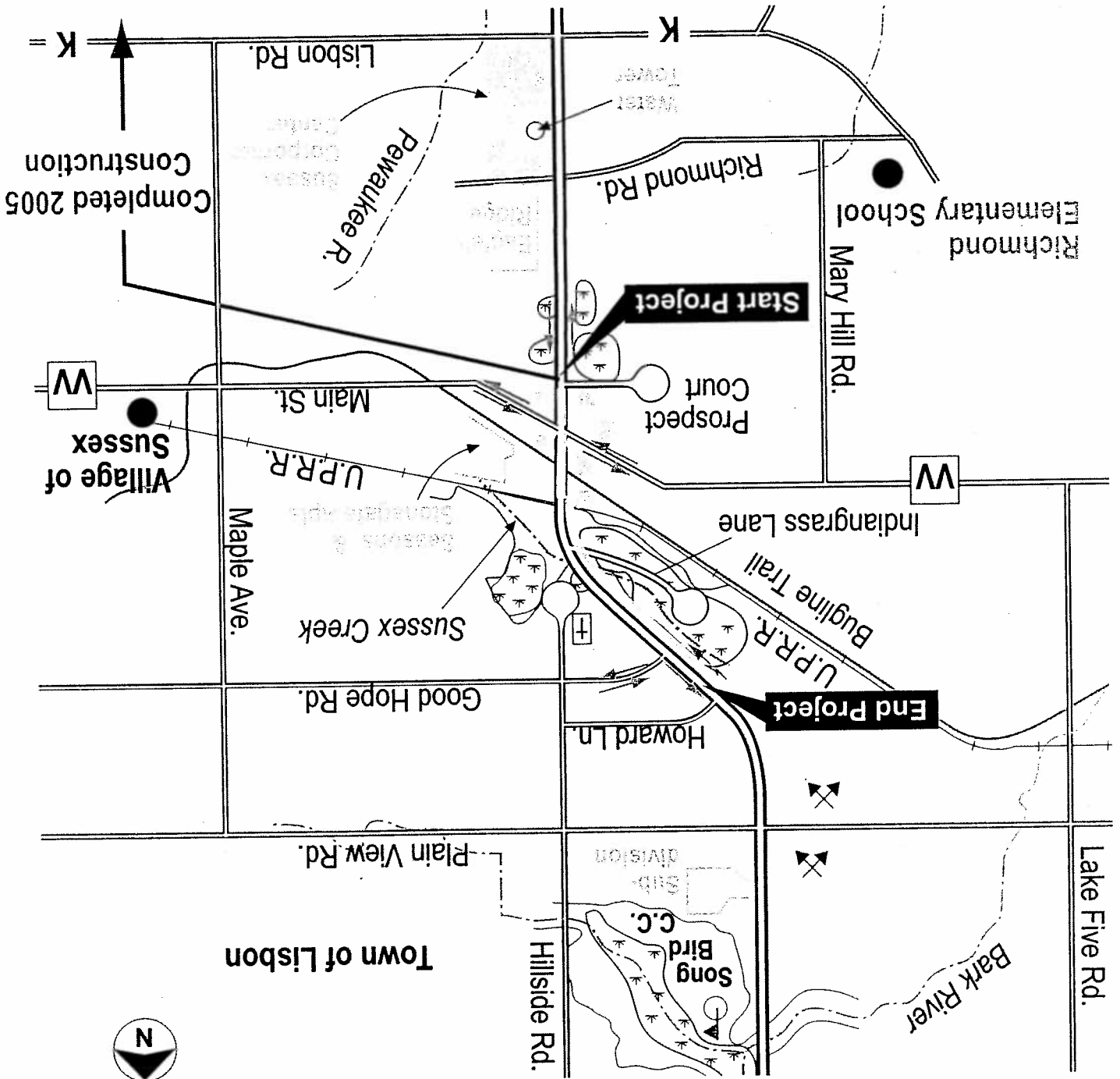


Stage II
 May through August 2006
 Southbound Construction



Stage III
August through October 2006
Northbound Construction

Stage IV
October through November 2006
Final Asphalt Surface



THE DAILY REPORTER

Wisconsin's Construction, Law and Public Record Authority Since 1897



We train.

Login

JobTrac ←

Construction News

Columnists

Wisconsin Builder

Hardhat Mail

Internet Links

Business Calendar

Public Notices

Sheriff Sales ←

Classifieds

Events

Advertising

Subscriptions

Contact Us

← Subscriber Only

Search our archive:



[Advanced search](#)
[View past issues](#)

Add The Daily Reporter RSS feed
[What's this?](#)

MY Yahoo!



[Click here for the latest issue of Wisconsin Builder](#)

HARDHAT MAIL

Get the latest construction news and top jobs by e-mail each day for FREE!
[FIND OUT MORE!](#)

Hoffman fined for environmental violations

Joe Grundle ,

Posted April 4, 2007

Hoffman Construction Co. will pay the state \$100,000 for environmental violations incurred on a Marinette County highway project in 2005.

The Wisconsin Department of Justice announced Tuesday it had reached a settlement with the Black River Falls company, which the state alleges broke laws governing wastewater, erosion control, depositing materials into navigable waterways and permissible uses for motor vehicles in a stream bed.

The complaint says that Hoffman, while working on an \$11 million state contract to expand an eight-mile stretch of U.S. Highway 141 from two lanes to four, cleared trees at a two-acre site near a Beaver Creek tributary and then deposited the trees and stumps into the stream bed, blocking and destroying part of the tributary. Hoffman did not have permission to dump any materials in the stream bed, the state says.

It is also illegal to drive a vehicle on the bed of a navigable waterway, but a Hoffman employee allegedly drove a backhoe back and forth across the stream bed, the state says.

Cooperated with state

Additional complaints include a failure to install erosion-control measures other than gravel bags and the discharge of dirty water from a hose into the tributary. Both actions violated the company's water-quality certification with the Department of Natural Resources, which discovered the environmental infractions and referred the case to the DOJ.

"Wisconsin's laws protecting navigable waters are in place for the safety of our citizens and preservation of our natural environment," Attorney General J.B. Van Hollen said in a statement. "Highway construction projects must comply with the rules and regulations adopted by the DOJ and DNR, consistent with the law."

[E-Mail This Article](#)
 [Printer-Friendly Version](#)



"Highway construction projects must comply with the rules and regulations adopted by the DOJ and DNR, consistent with the law."

Attorney General J.B. Van Hollen

RELATED LINKS

[Hoffman Construction Co.](#)

Have a
story idea?

**PROJECT
SHOWCASE**

Under the judgment, Hoffman has to pay Marinette County \$100,000 by Aug. 1. That amount stems from nearly \$73,000 in fines for breaking state statutes, as well as a 26 percent penalty surcharge (\$19,000) and 10 percent environmental surcharge (\$7,300).

Hoffman president Jim Hoffman did not return phone calls, but the DOJ noted in the settlement that the contractor cooperated with the state, investigated the allegations and determined that errors were made.

Furthermore, Hoffman accepted full responsibility for the errors.

The state had filed only one previous case against Hoffman Construction, a \$100 littering fine in Dunn County that Hoffman paid in July 2002. In 2004, the U.S. Department of Transportation named Hoffman its Prime Contractor of the Year for its promotion of disadvantaged and minority-owned businesses in Wisconsin's transportation construction industry.

[CONTACT US](#) | [ADVERTISING](#) | [SUBSCRIBE](#) | [ABOUT US](#)

 **DOLAN MEDIA
COMPANY**

ATTORNEY GENERAL J.B. VAN HOLLEN ANNOUNCES HOFFMAN CONSTRUCTION TO PAY \$100,000 FOR VIOLATIONS OF WISCONSIN'S ENVIRONMENTAL LAWS

FOR IMMEDIATE RELEASE:
April 3, 2007

MADISON – Attorney General J.B. Van Hollen announced today that the Wisconsin Department of Justice has filed and settled an environmental lawsuit in Marinette County Circuit Court. The State of Wisconsin brought this case against Hoffman Construction Company for violations of state laws that protect navigable water.

The violations occurred during the completion of a highway construction project in Marinette County – violations related to agreed-upon terms and rules for highway projects overseen by the state Department of Transportation (DOT) and Department of Natural Resources (DNR).

In addition to violating the state agreements specific to this project, the state alleged in its complaint that Hoffman Construction, while operating as a prime road-building contractor on a U.S. Highway 141 highway project in southern Marinette County, violated state laws governing wastewater permit requirements, erosion control, depositing materials into a navigable water, and permissible uses for motor vehicles in a stream bed.

Under the settlement stipulation, which the court has now adopted as its judgment in this case, Hoffman Construction agrees to pay a total of \$100,000 in forfeitures, surcharges, and costs for violations of Wisconsin environmental law.

“Wisconsin’s laws protecting navigable waters are in place for the safety of our citizens and preservation of our natural environment,” Van Hollen said. “Highway construction projects must comply with the rules and regulations adopted by DOJ and DNR, consistent with the law.”

The complaint alleged that in July 2005 Hoffman Construction violated Wisconsin laws on navigable waters when it:

- Cleared trees and placed them in a navigable tributary of Beaver Creek.
- Had an employee or agent drive a backhoe back and forth across the streambed of the Beaver Creek tributary.

The complaint further alleged that in July 2005 Hoffman Construction violated its DNR-issued water quality certification when the company discharged wastewater directly into the Beaver Creek tributary. The complaint also alleged that Hoffman Construction violated Wisconsin law by failing to adopt and implement an appropriate erosion control plan.

The Wisconsin Department of Natural Resources investigated the case and referred it to the Wisconsin Department of Justice for enforcement. Wisconsin Assistant Attorney General Philip Peterson represented the state. Marinette County Circuit Court Judge David G. Miron approved the settlement.

**ATTORNEY GENERAL J.B. VAN HOLLEN ANNOUNCES INJUNCTION
ORDERED IN ENVIRONMENTAL ENFORCEMENT LAWSUIT AGAINST
WAUKESHA COUNTY DEVELOPER**

FOR IMMEDIATE RELEASE:

April 11, 2007

MADISON - Attorney General J.B. Van Hollen announced today that the Wisconsin Department of Justice (DOJ) has obtained a preliminary injunction in an environmental protection enforcement lawsuit against Vespera LLC and Icon Development Corp. The injunction requires the companies to stop work at a development site on Silver Lake in Oconomowoc until they obtain a permit that authorizes the work under state water protection laws.

At the request of the Department of Natural Resources who had received citizen complaints about the development project, DOJ commenced the lawsuit in November 2006. The complaint alleged that Vespera and Icon Development violated state laws requiring erosion and storm water control measures on sites adjacent to navigable waters. According to the DOJ complaint, the violations took place at the Vespera at Porticello Condominium project on Silver Lake in Oconomowoc.

DOJ filed the preliminary injunction motion to stop unpermitted land disturbance and construction work that began in late February on the portion of the project closest to Silver Lake, lakeward of County Highway B. The law requires a permit for any disturbance of more than 10,000 square feet of soil from the bank of a waterway. DOJ presented evidence with its motion that the defendants were not in compliance with this requirement.

Upon consideration of DOJ's motion, the Court ordered Vespera and Icon Development to stop all land disturbance activity on the lakeward site, to submit an application for a water protection permit, and to implement an erosion control plan to protect Silver Lake from the disturbed site until the permit is issued.

"Developers are required by Wisconsin law to properly manage projects that affect the state's navigable waters," Van Hollen said. "These requirements extend to applying for, obtaining, and complying with appropriate DNR permits prior to engaging in construction activity on the banks of the State's waters. DOJ will continue to work with DNR to ensure the protection of the state's natural resources through compliance with the law."

Assistant Attorney General JoAnne F. Kloppenburg represents the state. Waukesha County Circuit Court Judge Mark S. Gempeler entered the order on April 10, 2007.

JSOnline

JOURNAL SENTINEL

www.jsonline.com | [Return to regular view](#)

Original Story URL:

<http://www.jsonline.com/story/index.aspx?id=590781>

Condo work must halt

State tells judge erosion controls lacking near Silver Lake

By DAVID DOEGE
ddoege@journalsentinel.com

Posted: April 12, 2007

Waukesha - A judge has ordered the developers of a condominium complex in Oconomowoc to stop all work on a portion adjacent to Silver Lake until they have obtained required state permits and implemented an approved erosion control plan.

Waukesha County Circuit Judge Mark Gempeler signed an injunction halting the work in a lawsuit filed by the state Department of Justice against the developers of the Vespera at Porticello project.

The lawsuit against Vespera LLC and Icon Development Corp. was filed in November after the department received complaints from area residents that proper erosion control measures were not in place at the construction site.

The project, on 10 acres, calls for 37 single-family condominiums and a renovated restaurant. Work on the condominiums began early last year after a series of public hearings culminated with city approval of the project.

In another lawsuit, the department has asked Circuit Judge Paul Reilly to overturn the city's approval of a variance allowing for renovation of the restaurant, a project that is also under way.

The runoff lawsuit contends the developers were guilty of "persistent and serious violations" of state water pollution laws at the site. The developers disagree, contending that they had spent more than \$70,000 on erosion control.

In addition, attorneys for the state sought an injunction halting work on the side of the project facing Silver Lake to protect it from runoff. The state contends that on at least two occasions "sediment laden storm water" was discharged from the site into the lake.

After a hearing last week, Gempeler concluded that the state had met the legal threshold for

the injunction stopping the work facing the lake to avoid "irreparable harm." The order signed this week halts any construction activity in that area, including moving any equipment and construction of retaining walls and fences.

The state also asked that the developers be fined \$1,000 for each day that part of the project violated state runoff laws, but Gempeler has not yet ruled on the request.

[Buy a link here](#)

From the April 13, 2007 editions of the Milwaukee Journal Sentinel
Have an opinion on this story? [Write a letter to the editor](#) or start an [online forum](#).

Subscribe today and receive 4 weeks free! [Sign up now](#).

© 2006, Journal Sentinel Inc. All rights reserved. | Produced by [Journal Interactive](#) | [Privacy Policy](#)
Journal Sentinel Inc. is a subsidiary of [Journal Communications](#).



www.jsonline.com | [Return to regular view](#)

Original Story URL:

<http://www.jsonline.com/story/index.aspx?id=610593>

DNR reviews Silver Lake plan

Permit would allow work to resume on condo, restaurant project

By AMY RINARD

arinard@journalsentinel.com

Posted: May 25, 2007

Oconomowoc - The state Department of Natural Resources is reviewing a permit application from the developer of a condominium-and-restaurant project on Silver Lake that would allow work to begin again after a judge ordered it halted last month.

Waukesha County Circuit Judge Mark Gempeler halted all work that would disturb the soil at the site of Club Porticello restaurant along County Highway B. Gempeler ruled that Icon Development Corp. violated state water pollution laws by not having adequate erosion controls at the project.

The state Justice Department had sued Icon, contending that the developer was guilty of "persistent and serious violations" of state pollution laws at the site. Icon officials disagreed, claiming they had spent more than \$70,000 on erosion controls.

Gempeler concluded that the state had met the legal threshold for an injunction stopping the work to avoid "irreparable harm" to the lake. He ordered the work stopped until Icon obtained the required state permits and implemented an approved erosion-control plan.

Jim D'Antuono, a supervisor at the DNR office in Waukesha, said his department was reviewing Icon's permit application.

"We have to determine whether all the information they've given us is complete," he said.

When that review is finished, a notice will be published announcing the start of a 30-day period during which the public may comment on the application, he said. If there is no comment, the department will decide whether to grant the permit, D'Antuono said.

If someone objects to the permit during the comment period, he said, the department will investigate the objection to determine whether it is valid. If it is found to be valid, another process would begin, which might involve meetings among all the parties to try to resolve the

objection.

If the permit is issued and an objection is raised, a contested-case process begins, which includes hearings to try to resolve the issue, D'Antuono said.

He said he did not know when the initial review of the application would be completed, but that it could be a long process before the permit was granted.

"This already has been going on for 15 months," he said of the state lawsuit against Icon.

Although work along the shoreline has been halted, construction has continued on the restaurant and the condominiums on the other side of Highway B, D'Antuono said.

Meanwhile, a related lawsuit that the Justice Department filed against the City of Oconomowoc and its Board of Zoning Appeals is pending before Waukesha County Circuit Judge Paul Reilly.

In that case, the state seeks a reversal of city-granted zoning variances that permitted renovation of the restaurant. That lawsuit says the board failed to follow state and county shore-land protection laws when it granted several variances from the county shore-land ordinance.

[Buy a link here](#)

From the May 25, 2007 editions of the Milwaukee Journal Sentinel
Have an opinion on this story? [Write a letter to the editor](#) or start an [online forum](#).

Subscribe today and receive 4 weeks free! [Sign up now](#).

© 2006, Journal Sentinel Inc. All rights reserved. | Produced by [Journal Interactive](#) | [Privacy Policy](#)
Journal Sentinel Inc. is a subsidiary of [Journal Communications](#).



www.jsonline.com | [Return to regular view](#)

Original Story URL:
<http://www.jsonline.com/story/index.aspx?id=609411>

Audit finds fault with DNR

Monitoring of wetlands poor, enforcing of protections uneven, it says

By DARRYL ENRIQUEZ
denriquez@journalsentinel.com

Posted: May 22, 2007

The extent of harm occurring to Wisconsin wetlands through ignorance or indifference is generally unknown because of the ineffective monitoring and poor tracking practices of the state Department of Natural Resources, a state audit released Tuesday says.

The audit also questions why staff members in some of the five DNR regions appear to check more aggressively for wetland violations than others.

"Without effective compliance monitoring, landowners may be more willing to risk undertaking projects without permits or to violate their permit conditions when constructing their projects," the audit says. "Moreover, the lack of compliance monitoring may lead to inconsistent enforcement, because violations may be more likely to be detected in some regions than in others."

The state Legislative Audit Bureau has spent about a year examining DNR records regarding its protection of wetlands, a resource that is constantly threatened through commercial and residential development.

In fiscal year 2005-'06, estimated expenditures for DNR wetland regulatory activities - including permitting, enforcement and mapping - totaled \$1.75 million, including \$1.43 million in salaries and fringe benefits for an estimated 19.3 full-time equivalent employees, the report says.

The DNR reported 40 inspections of approved projects in wetlands during that time, the report says.

"We recommend the Department of Natural Resources increase the number of compliance inspections conducted each year and develop a publicly accessible, statewide database to track wetland violations," the report says.

Most projects that disturb wetlands require approval from both the DNR and the federal government. Violations occur when wetlands are disturbed without a permit or when those with a permit ignore its conditions.

The DNR cannot fine violators. Instead, DNR staff must rely on cooperative compliance from landowners

on wetland violations, the report says. Uncooperative landowners have been referred to the state Department of Justice, where financial penalties as high as \$125,000 have been given.

"Over the past several years, we have taken action on a number of areas outlined in your recommendations," DNR Secretary Scott Hassett writes in response to the audit report. "In particular, we have increased the level of information we track about wetland decisions and more than tripled the number of compliance inspections from 2005 to 2006 and increased the proportion of staff time spent on compliance monitoring and enforcement."

Mary Ellen Vollbrecht, DNR waterway protection section chief, said wetland regulators are now required to enter information about complaints, their findings and site monitoring into a central tracking system.

Vollbrecht said the DNR's enforcement of wetland regulations and monitoring of wetlands were greater than determined by auditors, but they were never recorded properly.

"We really don't have any issues with the audit findings, and we've already put solutions in place," she said.

The Joint Legislative Audit Committee is expected to hold a public hearing on the audit findings in late summer. Comment will be taken.

Auditors looked into another point of contention with the DNR: its issuing of permits to develop or alter wetland areas.

"We need to have clearer guidelines and predictability for landowners," said Rep. Suzanne Jeskewitz (R-Menomonee Falls), co-chairman of the Audit Committee.

"DNR's approval rates vary widely from region to region, and that tells me that the DNR must do a better job educating property owners about the process and make sure that the process is consistent throughout the state," she said.

The report also says that the DNR could improve efforts to verify compliance with permit requirements.

From January 2005 through September 2006, DNR staff reported conducting only 27 inspections of completed projects that had state permits, Jeskewitz said. Violations were found at six of the project sites. Staff members logged another 13 that were not completed or under construction, the report says.

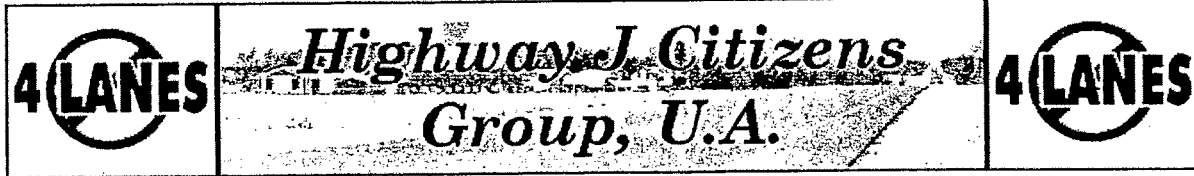
The DNR also identified 325 violations after receiving complaints from the public or government officials. In response to the violations, the agency issued 229 after-the-fact permits and 69 notices of violation for non-permitted activities. The audit found that staff lacked clear guidelines for resolving violations and recommended that the DNR take action to ensure consistent enforcement practices, Jeskewitz said.

[Buy a link here](#)

From the May 23, 2007 editions of the Milwaukee Journal Sentinel
Have an opinion on this story? [Write a letter to the editor](#) or start an [online forum](#).

Subscribe today and receive 4 weeks free! [Sign up now](#).

© 2006, Journal Sentinel Inc. All rights reserved. | Produced by [Journal Interactive](#) | [Privacy Policy](#)
Journal Sentinel Inc. is a subsidiary of [Journal Communications](#).



2668 Highway 164, Slinger, WI 53086
Jeffrey M. Gonyo, Steering Committee Member

June 29, 2007

Gloria McCutcheon, Southeast Regional Director
Wisconsin Department of Natural Resources (WisDNR)
Southeast Regional Headquarters
2300 North Dr. Martin Luther King, Jr. Drive
P.O. Box 12436
Milwaukee, WI 53212

**RE: Open Records Request with Respect to WisDNR Inspections of Highway 164
Construction in Waukesha County (Sussex/Lisbon area) During the Year 2006.**

Dear Ms. McCutcheon:

On behalf of the *Highway J Citizens Group, U.A.*, I am making this request for copies of public records pursuant to Wisconsin's Open Records Law, Sections 19.31 thru 19.39, Wis. Stats.

More specifically, I am hereby requesting copies of the following records concerning the Wisconsin Department of Natural Resources' (WisDNR) involvement with the Wisconsin Department of Transportation's (WisDOT) four-lane expansion of State Highway 164 in Waukesha County (Sussex/Lisbon area) during the Year 2006:

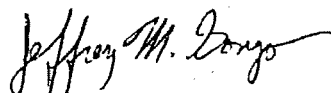
- 1) Copies of all records concerning **Maureen Millmann's** involvement with this above specified road expansion project which are dated from May 1, 2006 through September 30, 2006. These records shall include (but not be limited to) all documentation that shows: **a)** Which dates during this specified time period Ms. Millmann personally visited the Highway 164 road expansion site and the length time spent onsite during those visits, **b)** What Ms. Millmann specifically observed during each of those site visits, **c)** What notations and recommendations, if any, Ms. Millmann made as a result of those observations, and **d)** What steps, if any, were taken to ensure that both the WisDOT and its hired road construction contractor (Hoffmann Construction Company) implemented and complied with those notations and recommendations.
- 2) Copies of all records concerning any other WisDNR employee's involvement with this above specified road expansion project which are dated from May 1, 2006 through September 30, 2006. These records shall include (but not be limited to) all documentation that shows: **a)** Which dates during this specified time period these WisDNR employees personally visited the Highway 164 road expansion site and the length time spent onsite during those visits, **b)** What these employees specifically observed during each of those site visits, **c)** What notations and recommendations, if any, these employees made as a result of those observations, and **d)** What steps, if any, were taken to ensure that both the WisDOT and its hired road construction contractor (Hoffmann Construction Company) implemented and complied with those notations and recommendations.

As provided by the Open Records law, I will expect your response as soon as practicable and without delay. I will assume that if we do not hear from you by **July 14, 2007** that you have denied this request. If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that we are prepared to pursue whatever legal remedy necessary to obtain access to the requested records. I would note that violation of the open records law could result in the award of court costs, attorney fees and actual damages of not less than \$100. I would further note that if a court determines that your noncompliance with the law was arbitrary or capricious; it may award me punitive damages and attorney fees as well as fine you up to \$1,000.

Thank you in advance for your help. I can be reached at **(262)-644-8334** for any questions regarding this request.

Sincerely,



Jeffrey M. Gonyo,
HIGHWAY J CITIZENS GROUP, U.A.
2668 Highway 164, Slinger, WI 53086
Phone: (262)-644-8334

Millmann, Maureen A - DNR

From: Ringquist, Margaret L - DNR
Sent: Tuesday, November 07, 2006 12:39 PM
To: Dawson, Thomas J - DOJ
Cc: Millmann, Maureen A - DNR
Subject: Hoffman Construction - Hwy 164

Hi Tom,
I talked with Maureen Millman, who is the project manager for this site.

Maureen said this is a three phase project. First phase was completed 2 years ago, second phase completed in 2005 and third phase is being done this year.

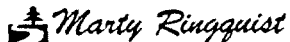
The Hwy J group has a not in my backyard attitude and looks for ways to squeeze the project. Maureen has not yet responded to the letter the group sent to her. She has contacted DOT and will review their log sheets to facilitate writing a response.

Maureen said she had been out to the site has not seen serious violations. In addition to Hoffman and Payne & Dolan, there have been utility work crews working on the site and various people were involved in erosion control. The stream had been diverted prior to the explosion so not much of anything reached the stream. There were no sediment problems and no problems downstream. Because there are Butler garter snakes in the wetland, silt fence had been installed to keep the snakes in the wetland during construction. It may have been that silt fence that the group saw down.

When Maureen responds, she will send a copy of her letter to me and I'll get it to you. Maureen, if I've reported anything incorrectly, please correct. Thanks!

Tom, I'll run your file over later this afternoon or tomorrow morning.

This message may contain information that is privileged, confidential or exempt from disclosure under applicable laws. It is intended solely for the use of the addressee and should not be distributed. If you have received this message in error, please notify the sender by email or telephone and immediately delete this message and all attachments.

 *Marty Ringquist*

Environmental Enforcement Specialist
Enforcement, Investigations & Emergency Mgmt.
Bureau of Law Enforcement
Wisconsin Department of Natural Resources
(☎) phone: (608) 267-7440
(☎) fax: (608) 266-3696
(✉) e-mail: Marty.Ringquist@dnr.state.wi.us