

STATE OF WISCONSIN

CIRCUIT COURT

OUTAGAMIE COUNTY

**Town of Greenville and
Town of Greenville Sanitary
District No. 1**
W6560 Parkview Dr.
Greenville, WI 54942

Plaintiffs,

v.

Case No. 18 CV ____
Case Code: 30301, 30106

Michael Woods
N1754 Greenwood Rd.
Greenville, WI 54942

and

Robert J. Immel Excavating, Inc
N1870 Municipal Dr.
Greenville, WI 54942

Defendants.

SUMMONS

THE STATE OF WISCONSIN

To the above-named defendants:

You are hereby notified that the Plaintiff above has filed a lawsuit against you. The Complaint, which is attached, states the nature and basis of such suit.

Within **45 days** of receiving this Summons, you must respond with a written answer, as that term is used in section 802 of the Wisconsin Statutes. The Court may disregard or reject an answer that does not conform to these requirements. The answer must be sent or delivered to the Court, located at 320 S. Walnut St., Appleton, WI 54166, and to the Plaintiff's attorney at 331 E. Washington, St. Appleton, WI 54911. You may have an attorney help or represent you.

If you do not provide an answer within 45 days, the Court may grant a default judgment against you for the amount of money and other relief sought in the complaint, and you may lose the right to object to anything that is incorrect in the complaint. A resultant judgment

may be enforced against you in any matter allowed by law. A judgment for money damages may become a lien against any real estate you own now or in the future, and may also be enforced by a garnishment or seizure or personal property.

Dated this 6th day of March 2018.

SILTON SEIFERT CARLSON, S.C.
Attorneys for the Plaintiff

Electronically Signed By:
Rodman Streicher

State Bar No. 1091415

P.O. Address

331 E. Washington St.
Appleton, WI 54911
P: (920) 739-2366
F: (920) 739-8893

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COMPLAINT

The plaintiffs Town of Greenville and Town of Greenville Sanitary District No. 1, as their complaint against the defendants, state as follows:

1. The plaintiff Town of Greenville is a Wisconsin municipality and body politic under Chapter 60 Wis. Stats. The plaintiff Town of Greenville Sanitary District No. 1 is a Wisconsin Sanitary District under Section 60.70 Wis. Stats. The Town of Greenville and Town of Greenville Sanitary District No. 1 are collectively referred to as the "Town." Principal offices are at W6560 Parkview Drive, Greenville, WI 54952.
2. The Defendant Michael Woods ("Woods") is an adult resident of the State of Wisconsin, residing at N1754 Greenville Road, Greenville, Wisconsin 54952. Woods is an elected Town Board Supervisor of the Town of Greenville, and has been for approximately 14 years. Woods is also a Commissioner for the Town of Greenville Sanitary District No. 1. His term is coterminous with Town Board Supervisor.

3. The defendant Robert J. Immel Excavating Inc., (“Immel”) is a Wisconsin corporation with its principal place of business at N1870 Municipal Drive, Greenville, WI 54952. Its registered agent is Todd Immel.
4. At all times relevant to this action, Woods was an elected Town Board Supervisor for the Town of Greenville and a Commissioner for the Town of Greenville Sanitary District No. 1 Commission.
5. Woods rents the South one half of the NE ¼ of Section 22 for the growing of crops. The property, approximately 75 acres in size, is owned by the Lin Family LLC (Hereinafter Lin).
6. The Lin property is traversed by a watercourse (“ditch”) running east-west across the property. The ditch is deemed navigable by the Wisconsin Department of Natural Resources. Wetlands are present along a portion of the watercourse.
7. The Lin property is also traversed by a sanitary sewer interceptor owned by the Town of Greenville Sanitary District No. 1. The sewer interceptor was constructed in 2015 in a location parallel to and just south of the ditch on an easement granted by Lin to the Town of Greenville.
8. The Lin property has erodible soils, poor drainage and is prone to flooding. Field tiles for drainage were impaired and ineffective.
9. Over the last several years, Woods suffered crop losses due to erosion, drainage problems, and flooding. Profitability for farming was problematic with recent market prices for crops.
10. To enhance the profitability of farming the Lin property, on April 22, 2016, Woods met with Quint Krueger a technician with Outagamie County Land Conservation Department seeking assistance for a ditch cleaning and tiling project through USDA National Resource Conservation Service (NRCS). A request to the NRCS was made on April 28, 2016. (See Exhibit 1 attached).
11. Woods also contacted Dan Klansky (Kalnsky), the Superintendent of the Town of Greenville Sanitary District No. 1 about contributing to the project because the sanitary sewer interceptor project of 2015 resulted in some sedimentation of the ditch, and that a ditch cleaning would reduce the risk of sewer manholes being flooded.
12. Krueger informed Woods that he (Krueger) would contact WDNR and Outagamie County to see what permits would be needed for the project. On May 2, 2016, Krueger made inquiries to WDNR about the project and required permits. (See Exhibit 2 attached).
13. By email dated May 13, 2016 WDNR informed Quint Krueger that the ditch was a navigable waterway, that the Lin property had wetlands on both sides of the waterway,

and that there would need to be a fair amount of effort to obtain permits. (See Exhibit 3 attached).

14. Quint Krueger notified Woods that WDNR permits would be required, whether Woods wanted to pursue the permits for the fall of 2016 or spring of 2017.

15. By letter dated June 27, 2016, NRCS informed Woods, *inter alia*, that:

Your request to install tile is allowable where indicated for USDA purpose per the Farm Bill. Your request to clean out the existing ditch is also allowable provided the hydrology of the wetland in the unnumbered field on the far west end is not altered for cropping purposes.

Manipulation of any wetland, stream, channel, shoreland, or floodplain area may require WI Department of Natural Resources and/or Town or County zoning permits. It is *your* responsibility to obtain any permits.

The NRCS letter is attached as Exhibit 4.

16. Woods provided Chris Pagels, Town of Greenville Storm Water Manager with a copy of the NRCS letter and asked Pagels whether DNR and County permits were necessary. Pagels responded, "yes."

17. Woods provided Klansky, Town Sanitary District Superintendent, with a copy of the NRCS letter and told Klansky that no DNR permits were required because the project was an agricultural project.

18. Woods tells Klansky that the Project would benefit the Town and Sanitary District, as the ditch would often flood and cause problems for the sewer intercept.

19. Woods never contacted either Quint Krueger of the Land Conservation Department or anyone with the NRCS after receiving the June 27, 2016 NRCS letter (Exhibit 4). Woods never contacted Outagamie County or WDNR about any required permits.

20. Woods induced Klansky to write to Lin extolling the benefits of the project, and that no DNR permits were required because it was an agricultural project to simply clean and agricultural ditch.

21. Woods induced Klansky to agree to participate in the project with the Town paying for the ditch cleaning as a maintenance project and Woods paying only for replacing and repairing field tile.

22. Both in his capacity as a Town Board Supervisor, and as the Sanitary District Superintendent, Woods is Klansky's superior.

23. Klansky has no expertise in the area of wetlands.
24. Woods solicited a proposal from the defendant Robert J. Immel Excavating, Inc (Immel). Defendants did not obtain any plans or written specifications or directions prior to beginning work.
25. The defendant Immel provided a written proposal entitled “Greenville Interceptor ditching and tile 2016” with a total cost of \$16,785.00, consisting of \$12,985.00 to excavate the ditch and \$3,800 for tiling. Woods and Klansky signed the proposal. The proposal is attached as Exhibit 5.
26. The defendant Immel excavated the ditch between December 20, 2016 and January 12, 2017. The Town paid the entire contract price. Woods approved Town payment as a Town Supervisor and Sanitary District Commissioner.
27. Under the direction and management of Woods, Immel excavated the ditch by enlarging the ditch from approximately one to two feet deep and two to three feet wide to approximately seven feet deep and ten feet wide.
28. Under the direction and management of Woods, wetlands were drained and filled with dredged material, substantially increasing the tillable acreage on the Lin property.
29. Neither Woods nor Immel disclosed to Klansky nor any other Town or Sanitary District official or employee the scope and extent of the dredging.
30. A Notice of Violation from the Wisconsin Department of Natural Resources, dated February 27, 2017 was served on the Town of Greenville, Woods, Immel and Lin in connection with the ditch excavation and wetland filling. A copy is attached as Exhibit 6.
31. A Notice of Violation from Outagamie County, dated January 30, 2017, was served on the Town of Greenville, Woods, and Lin in connection with the ditch excavation and wetland filling. A copy is attached as Exhibit 7.
32. The Town, Woods, and Immel have been ordered to stabilize the site, restore the ditch to its previous condition and remove fill from wetlands among other things.
33. Woods has refused to participate in any restorative actions or contribute any payment to the restorative actions.
34. Expected restoration costs are \$300,000.00. The Town is also subject to substantial forfeitures.

Jurisdiction and Venue

35. This Court has jurisdiction over the subject matter of this dispute pursuant to Article VII, sec. 8 of the Wisconsin Constitution, which provides for subject matter jurisdiction over all civil matters within this state.

36. This Court has personal jurisdiction over the defendants pursuant to Wis. Stat. sec. 801(1)(b).

37. Venue is proper in Outagamie County pursuant to Wis. Stat. sec. 801.50(2)(a), as the claims herein arose in Outagamie County, and (c), as the Defendant resides and does substantial business in Outagamie County.

Count 1: Misrepresentation – Intentional Deceit (As to Defendant Woods)

38. The Town incorporates by reference paragraphs 1 through 34, as if fully set forth herein.

39. Woods represented to Klansky that the project could proceed without any further permits.

40. Woods represented to Klansky that the project simply involved removing silt from the ditch. At no point did Woods inform Klansky or the Town that the project would result in a radical deepening or widening of the ditch, or in the elimination of the adjacent wetlands.

41. These representations constitute false statements of fact. The ditch was a navigable waterway and the project required both DNR and County permits. Further, the extent of the project went far beyond the mere cleaning of the ditch.

42. Woods made these misrepresentations either knowing of their falsity, operating with a reckless disregard for their truth, or operating knowing that he had no sufficient factual basis to justify the statements.

43. Woods was informed by Quint Krueger of Outagamie County that further permits were needed.

44. Woods was informed by Chris Pagels of the Town that further permits were needed.

45. Woods made no effort to verify with either the DNR or the County whether further permits were needed.

46. Woods made these misrepresentations with the intent of inducing Klansky, and therefore the Town, to agree to participate and help finance the project.

47. These misrepresentations actually induced Klansky, and thus the Town, to finance and participate in the Project.

48. Klansky, being Woods' subordinate, and thus being in a position of unequal bargaining power, not possessing expertise in wetlands, and navigable waterways, and trusting in Woods' expertise as an experienced farmer, detrimentally and justifiably relied on Woods' false statements.

49. Klansky's email to Lin demonstrates that Woods had convinced him of the legality of project without DNR or County permits

50. Klansky, and therefore the Town, would not have agreed to participate in or finance the project had Klansky or the Town known Woods did not have the proper permits.

51. Had Klansky and the Town known the project would result in a 7 ft. deep and 10 ft. wide excavation, neither would have agreed to involve the Town in the project.

52. But for the Klansky's reliance on Woods' statements, the Town would not have agreed to participate in and contribute to the cost of the Project. Accordingly, it would not have been a party to the DNR enforcement action, and would not be responsible for any forfeiture or restoration costs.

Count 2: Misrepresentation – Strict Responsibility (As to Defendant Woods)

53. The Town incorporates by reference paragraphs 1 through 34, as if fully set forth herein, and as an alternative to Count 1, alleges the following:

54. In representing to Klansky that the Project did not require DNR or County permits, and the project simply involved cleaning out sedimentation, Woods made false statements of fact.

55. Woods made these statements as matters of fact, based on his personal knowledge or under circumstances in which he ought to have known the truth or falsity of these statements.

56. Woods made these statements from his own personal knowledge, or was so situated that he had a particular means of ascertaining the pertinent facts. Further, his position as Town Board Supervisor and District Commissioner, plus his conversations with Pagels and Kruger, made possible complete knowledge of the necessity of permits. And his statements to Klansky fairly implied that he had complete knowledge.

57. As the project was expected to improve crop yield on the property, Woods had an economic interest in the project.

58. As stated in preceding paragraphs, The Town, through Klansky, believed Woods' statements that no further permits were needed, and that the Project simply involved the cleaning of the ditch and replacement of tiles. The Town detrimentally relied as these statements, as the Town would never have agreed to participate in and finance a project

that it knew lacked necessary permits or that it would result in such severe environmental damage.

59. But for Klansky's reliance on Woods' misrepresentations, the Town would not have participated in or paid for the Project. Accordingly, it would not have been a party to the DNR enforcement action, and would not be responsible for any forfeiture or restoration costs.

Count 3: Negligent Misrepresentation (As to Defendant Woods)

60. The Town incorporates by reference paragraphs 1 through 34 as if fully set forth herein, and as an alternative to Counts 1 and 2, hereby alleges the following:

61. In representing to Klansky that the project did not require DNR or County permits, and that the project simply involved cleaning out sedimentation, Woods made false statements of fact.

62. In the event Woods subjectively believed the project did not require these permits, Woods failed to exercise ordinary care with respect to determining the truth of his statements.

63. Woods made these statements under circumstances in which a person of ordinary intelligence and prudence ought reasonably to foresee that such misrepresentation would subject the Town's interests to an unreasonable risk of damages.

64. As stated in preceding paragraphs, The Town, through Klansky, believed Woods' statements that no further permits were needed, and that the Project simply involved the cleaning of the ditch and replacement of tiles. The Town detrimentally relied as these statements, as the Town would never have agreed to participate in and finance a project that it known it lacked necessary permits, or that it would result in such severe environmental damage.

65. But for Klansky's reliance on Woods' misrepresentations, the Town would not have participated in or paid for the Project. Accordingly, it would not have been a party to the DNR enforcement action, and would not be responsible for any forfeiture or restoration costs.

Count 4: Rescission: Fraud in the Inducement (As to Defendants Woods and Immel)

66. The Town incorporates by reference paragraphs 1 through 34, as if fully set forth herein.

67. Woods, through his misrepresentations, induced the Town to enter into the agreement with Immel.

68. These misrepresentations were material, as the Town would not have entered into the agreement with Immel, had it not believed the project had all necessary permits, and had it known the true extent of the project.

69. Due to this inducement, the Town suffered pecuniary loss in excess of \$300,000.00.

70. As such, Plaintiff is entitled to rescission of the agreement with Immel, and restitution of the amount paid to Immel, as well as restitution of the Town's out of pocket expenses, including the restoration costs and the forfeiture.

Count 5: Unjust Enrichment (As to Defendants Woods and Immel)

71. The Town incorporates by reference paragraphs 1 through 34, as if fully set forth herein.

72. By performing the following restoration measures, the Town has performed services and expended money, conferring a benefit upon both Woods and Immel.

- a. Stabilization of the dredge spoils;
- b. Commissioning of a geological study of the supposed karst feature;
- c. Commissioning of flood study, as requested by the DNR; and
- d. Hiring of an engineering consultant to prepare a restoration plan.
- e. Obtaining required permits for restoration.
- f. Restoring the Environment.

73. Upon information and belief, had the Town not performed and financed the above measures, Woods and Immel, as fellow parties to the Department of Natural Resources Order and Department of Justice forfeiture action, would have been responsible for undertaking and financing these measures.

74. Had Woods not fraudulently induced the Town into financially involving itself in the project, the Town would not have been impelled or compelled to undertake and finance these measures.

75. Upon information and belief, Woods was aware of and understood the measures taken by the Town. As a Town Board Supervisor and District Commissioner, it would be highly unlikely Woods did not have knowledge and appreciation of these benefits.

76. Upon information and belief, Immel gained knowledge and appreciation of these measures in the course of enforcement meetings and mediation.

77. Upon information and belief, Woods and Immel have accepted and retained these benefits, as neither has offered to reimburse the Town, to any extent, for its expenditures in connection with these measures.

78. As a result, the Town has conferred benefits upon Woods and Immel that would be unjust and inequitable for them to retain without paying their reasonable value. Therefore,

the Town is entitled to restitution in the amount of the reasonable value of these restoration measures.

79. Also, by paying the Immel invoice in full, the Town conferred a financial benefit upon Immel, amounting to the contract price. It also conferred a benefit upon Woods, in that Woods was allowed to profit from the improvements to the Property, without having to pay any of the contract price.

80. As the Town would not have agreed to finance the Project but for Woods' fraudulent misrepresentations, it would be unjust for both Woods and Immel to retain these benefits.

81. As such, the Town is entitled to restitution of the amount paid to Immel.

82. As part of the DOJ's enforcement action, the Town will be required to pay some or all of the levied forfeiture.

83. But for the Woods' misrepresentation, the Town would not have financially participated in the project, and therefore would not be a party to the forfeiture action. In such an event, only Woods and Immel would be liable for any forfeiture.

84. Due to Woods' misrepresentations, the Town will be forced to fully or partially satisfy the financial obligations of Woods and Immel, via payment of some or all of the forfeiture.

85. As any responsibility of the Town will correspondingly reduce responsibility of Immel and Woods, the Town has conferred a benefit upon Woods and Immel.

86. As Woods and Immel have received this benefit as purely as a result of Woods' misrepresentation, it would be unjust for Woods and Immel to retain this benefit without paying the Town its reasonable value.

87. As such, the Town is entitled to compensatory damages in an amount corresponding to the Town's eventual share of the forfeiture.

Jury Demand

88. The Plaintiff hereby requests these claims be tried to a jury of twelve (12) persons.

Wherefore, the Plaintiff hereby request the following relief:

- a. Compensatory damages in an amount to be determined by the trier of fact;
- b. Punitive damages in an amount to be determined by the trier of fact;
- c. Restitution in amount to be determined at trial;
- d. Costs, fees, and disbursements as allowed by law; and
- e. Any other relief that the Court believes to be equitable and just.

Dated this 6th day of March, 2018.

SILTON SEIFERT CARLSON, S.C.
Attorneys for the Plaintiff

Electronically Signed By:
Rodman Streicher

State Bar No. 1091415

P.O. Address

331 E. Washington St.
Appleton, WI 54911
P: (920) 739-2366
F: (920) 739-8893



United States Department
of Agriculture

Natural Resources
Conservation Service

NRCS-CFA-026e
9/2012

HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION DETERMINATION

Name Address:	Michael Woods N1754 Greenwood Road Greenville, WI 54942	Request Date:	4/28/16	County:	Outagamie
Agency or Person Requesting Determination:	FSA	Tract No:	3973	FSA Farm No.:	10121

Section I - Highly Erodible Land

Is a soil survey now available for making a highly erodible land determination?	
Are there highly erodible soil map units on this farm?	

Fields in this section have undergone a determination of whether they are highly erodible land (HEL) or not; fields for which an HEL Determination has not been completed are not listed. In order to be eligible for USDA benefits, a person must be using an approved conservation system on all HEL.

Field(s)	HEL(Y/N)	Sodbust (Y/N)	Acres	Determination Date

The Highly Erodible Land determination was completed in the

Section II - Wetlands

Fields in this section have had wetland determinations completed. See the Definition of Wetland Label Codes for additional information regarding allowable activities under the wetland conservation provisions of the Food Security Act and/or when wetland determinations are necessary to determine USDA program eligibility.

Field(s)	Wetland Label*	Occurrence Year (CW)	Acres	Determination Date	Certification Date
1	PC/NW		71.2	06/27/2016	08/04/2016
2	NW		0.1	06/27/2016	08/04/2016
un-numbered	W		.7	06/27/2016	08/04/2016
un-numbered	NW		2.4	06/27/2016	08/04/2016

The wetland determination was completed in the office. It was mailed to the person on 06/27/2016

Remarks:
Refer to the determination response letter.

I certify that the above determinations are correct and were conducted in accordance with policies and procedures contained in the National Food Security Act Manual.

Signature Designated Conservationist	Date
	6/27/2016

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Assistant Secretary for Civil Rights, 1400 Independence Avenue, S.W., Stop 9410, Washington, DC 20250-9410, or call toll-free at (866) 632-9992 (English) or (800) 877-8339 (TDD) or (866) 377-8642 (English Federal-relay) or (800) 845-6136 (Spanish Federal-relay). USDA is an equal opportunity provider and employer.

EXHIBIT 1



Mr. Woods is wondering if he can clean this main ditch out before he plants this field? T21N-R16E Section 22 Lin Family LLC

Quint Krueger

Conservation Technician
Outagamie County Land Conservation
3365 W. Brewster Street
Appleton, WI 54914
920-832-6074
Quint.Krueger@Outagamie.org

From: Krueger, Quint W.
Sent: Monday, May 02, 2016 6:55 AM
To: Swanson, Steve P.; Koehnke, Scott E - DNR
Cc: Szulczewski, Lynn - NRCS, Appleton, WI; Truymen, Nikki L.
Subject: ditch maintenance

*

This is the site in the Town of Greenville that is just south of the YMCA on Hwy 76. The renter is Mike Woods for the property and he would like to clean out the ag ditch which is drawn on the map with a black line by the parcel number 0807. Water is not staying in the ditch and it is causing erosion in the crop field. The spoils would be side casts out of the hydric soil zone. I would oversee the job as an ag project. There are a few other swales that need to be graded and seeded to help with gully erosion. The town just recently has put in storm sewer through the entire property on the south side of the channel. There is certainly potential for development on this site but until this happens the gully erosion and ditch maintenance needs to be worked on to keep the land in compliance. Please let me know what permits and fees are required for this project.

Quint Krueger

Conservation Technician
Outagamie County Land Conservation
3365 W. Brewster Street
Appleton, WI 54914
920-832-6074
Quint.Krueger@Outagamie.org

Connected to Microsoft Exchange



From: Koehnke, Scott E - DNR [<mailto:Scott.Koehnke@wisconsin.gov>]
Sent: Friday, May 13, 2016 9:52 AM
To: Krueger, Quint W.
Cc: Roach, Timothy P.; Domer, Nicholas T MVP
(Nicholas.T.Domer@wisconsin.gov); Swanson, Steve P.; Chris Pagels
(CPagels@townofgreenville.com); Rosenberger, Robert - DNR
Subject: RE: ditch maintenance - Section 22, Town Greenville

Quint,

Sorry, I've been out most of this week in the field.

The Department did a navigability determination on this property 10 years ago. The extent of the proposed dredging is in an area that the Department has determined to be navigable and has stream history so written approval will be necessary for the dredging project. Dredged material cannot be placed into any wetlands. There are a lot of wetlands on this site on both sides of the waterway – a formal delineation has not been done on the north side of the waterway.

I'm concerned that some of the gully erosion is located in wetland areas so that will also have to be addressed through the permit process. This gully erosion problem is not likely to be addressed properly until they stop farming through the downstream portion of the waterway in the SW corner of the property.

There is a karst feature in the middle of the property which can't handle all the water that comes down this waterway under heavy rain and snow melt conditions so it overtops its banks and runs overland to the SW. This same karst feature was a huge issue as it relates to developments to the east.

There will need to be a fair amount of effort put into permitting on this site in order to do what the renter is hoping to do. It's not possible for all of it to happen by the time the fields are to be planted.

Feel free to contact me with questions.

Thanks.

We are committed to service excellence.
Visit our survey at <http://dnr.wi.gov/customer-survey> to evaluate how I did.

Scott E. Koehnke

Senior Water Management Specialist – Bureau of Watershed/Water Division
Wisconsin Department of Natural Resources
647 Lakeland Road, Shawano, WI 54166
Phone: 715/526-4232
scott.koehnke@wisconsin.gov



June 27, 2016

Michael Woods
N1754 Greenwood Road
Greenville, WI 54942

Mr. Woods:

This letter is in response to the AD-1026 you completed with the Farm Service Agency in Appleton on April 28, 2016. You indicated on this form that you intend to maintain an existing ditch and install tile on tract 3973. Enclosed is the NRCS Preliminary/Certified Wetland Determination for the requested area including NRCS-CPA-026E form, wetland map, and the wetland definitions pages which explain the wetland labels and the restrictions that pertain to each label. Labels were assigned based upon a review of the published soil survey for Outagamie County, a review of historical aerial photography, and a review of the WI DNR Surface Water Data Viewer.

Your request to install tile is allowable when you file a permit with the State of Wisconsin. Your request to clear the existing ditch is also allowable. The wetland map shows the wetland labels and the numbered field on the river view is available for your information.

Any draining, dredging, filling, leveling, tiling, clearing, grubbing, or other manipulation for the intent or purpose (or to have the effect) of making crop production possible as a result of your activities on wetlands is not allowable per the Farm Bill.

Only the areas outlined in blue on the map are included in the determination. *Unlabeled areas may contain wetlands.*

The NRCS Wetland Determination will become a Final/Certified Determination in 35 days unless you request a second field review or appeal the determination in writing. Please refer to this document for a detailed explanation of your appeal rights.

The Wetland Determination has been conducted for the purpose of implementing the wetland conservation provisions of the Food Security Act of 1985 only. This determination may not be valid for identifying the extent of the US Army Corps of Engineers (COE) Clean Water Act jurisdiction for this site. If you intend to conduct any activity that constitutes a discharge of dredged or fill material into wetlands or other waters, you should request a jurisdictional determination from the local office of the COE prior to starting the work. Manipulation of any wetland, stream channel, shoreland or floodplain area may require WI Department of Natural Resources and/or Town or County zoning permits. It is your responsibility to obtain any necessary permits. An agency reference guide is attached.

The Wetland Conservation (WC) provisions of the Food Security Act of 1985 prohibit USDA program participants from converting wetlands to agricultural use on or after December 23, 1985. A converted wetland is defined as a wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including the removal of woody vegetation or any activity that results in impairing or reducing the flow or circulation of water) for the purpose or to have the effect of making possible the production of an agricultural commodity (7 CFR §12.2). If a person converted wetlands from December 23, 1985 – November 28, 1990, they are only eligible for program benefits if no annually tilled commodity crops are grown on these areas. Persons who convert wetlands after November 28, 1990 are ineligible for USDA program benefits, until the converted wetlands are restored or mitigated to their original functions and values.

The 2014 Farm Bill connected producer eligibility for Federal crop insurance premium subsidy to compliance with the wetland conservation provisions. Eligibility for most USDA programs is lost for any

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EXHIBIT 4



wetland conversions that have occurred after December 23, 1985. However, only wetland conversions that occur after February 7, 2014, result in ineligibility for Federal crop insurance premium subsidy.

Preliminary Appeal Rights:

This Preliminary Technical Determination meets the regulatory definition for an adverse decision as set forth in 7 CFR §11.1 and is appealable. This Preliminary Technical Determination will become final 30 days after receipt of this letter unless you waive your rights to an appeal or choose to appeal this preliminary determination in accordance with the laws and federal regulations as set forth in 7 CFR §614.7. If you choose to appeal, you must request in writing either of the following options:

- 1) You may contact our office and request reconsideration conducted as a field visit, office visit, or as a meeting at another designated location acceptable to you. During this meeting to discuss the wetland determination you will have an opportunity to ask questions of the NRCS and share any additional information that you have in accordance with 7 CFR §614.7(b)(c). Any request for a field review and reconsideration will be conducted with you or your authorized representative.
- 2) You may request mediation in accordance with 7 CFR §614.7(a)(2) by contacting the Wisconsin Department of Agriculture, Trade & Consumer Protection (DATCP) at the address listed below:

Wisconsin Department of Agriculture Trade & Consumer Protection
Farm Mediation and Arbitration
P.O. Box 8911
Madison, Wisconsin 53708-8911
(800) 942-2474 or (608) 224-5052

Mediation is a process in which a trained, impartial person (a neutral mediator) helps look at mutual problems, identify and consider options, and determine if we can agree on a solution. The mediator will help us work together to evaluate the information in your case and to identify alternatives that will assist us in resolving the dispute. The mediator has no decision-making authority. Unlike the appeal process, a mediator cannot decide what is "right" or "make" anyone do anything. If the mediation is successful the mediator will help us to reach an agreement and document that solution in writing. Each party will sign the agreement, and receive a copy. If an agreement is not reached, the mediation process ends, and you may continue to pursue your appeal.

- 3) You may request a waiver of your rights to this preliminary review and reconsideration or mediation in accordance with 7 CFR §614.7(d). In this case, you will immediately be issued a final technical determination.

Final Appeal Rights:

Once the Preliminary Technical Determination becomes final, whether through a field visit, mediation, or waiving your rights, you will have an additional 30 days from the date of the Final Determination to appeal to either the FSA County Committee or the National Appeals Division. You may appeal in accordance with the laws and federal regulations set forth in 7 CFR 614 "NRCS Appeals Procedures, 7 CFR 780 "FSA Appeals Procedures, and 7 CFR 11 "NAD Rules of Procedure, by choosing one of the following options:

1. You may request an informal appeal, in conformance with the regulation at 7 CFR §614.8(b)(1) from the County FSA Committee¹. Submit your written request for an appeal (including a copy of this notice and the reasons that you feel the determination is incorrect) to the following address:

Outagamie FSA County Committee
3369 West Brewster Street
Appleton, WI 54914

ROBERT J. IMMEL EXC., INC.
 P.O. BOX 135
 GREENVILLE, WI 54942
 PHONE (920) 757-5906
 FAX (920) 757-0189

Greenville, Interceptor ditching, and tile, 2016

Item No	Name of Item	Approx. Qty	Price per foot	Total Price
1	Excavate ditch & level spoils	2650 lf	\$4.90	\$12,985.00
2	4" drain tile w/sock	950 lf	\$4.00	\$3,800.00
Total Cost of Bid:				\$16,785.00

Bid Note:

Price does not include any clearing & grubbing of tree's, or brush.
 In areas where there is no ditch to be found, the new ditch will run on the edge of the field.
 Price includes a dozer to level all spoils from the ditch excavation.
 Drain tile includes one main 4" run to the ditch, and a wye off to a second existing tile location.
 No restoration included.
 If any excess erosion control is needed, it will be by owner, or Town.

Thank you for the opportunity to quote this project. Todd Immel

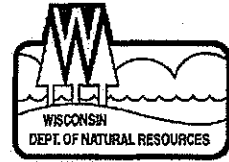
Mitchell C. Coats *Jan Flansky*
 12-5-16



Start
 12-9-16
 Contract # 2016-50-04006
 Monday, December 05, 2016

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Northeast Region Headquarters
2984 Shawano Avenue
Green Bay WI 54313-6727

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 920-662-5100
FAX 920-662-5413
TTY Access via relay - 711



February 27, 2017

Casetrack ID # 2017-NEEE-015
Outagamie County
CERTIFIED MAIL
Return Receipt Requested

JACK ANDERSON CHAIRMAN
TOWN OF GREENVILLE
W6860 PARKVIEW DRIVE
PO BOX 60
GREENVILLE, WI 54942

RAINIE WASMUND REGISTERED AGENT
ROBERT J IMMEL EXCAVATING INC
PO BOX 135
GREENVILLE, WI 54942

DER-HUA LIN REGISTERED AGENT
LIN FAMILY LLC
2845 CREEKWOOD CIRCLE
GREEN BAY, WI 54311

MIKE WOODS
N1754 GREENWOOD ROAD
GREENVILLE, WI 54942

Subject: **NOTICE OF VIOLATION / NOTICE OF CLAIM**
ENFORCEMENT CONFERENCE, March 14, 2017

Dear Chairman Anderson, Mr. Wasmund, Mr. Lin, Mr. Woods:

The Department of Natural Resources has reason to believe that the Town of Greenville, Lin Family, LLC, Robert J. Immel Excavating, Inc., and Mr. Mike Woods, (collectively, the Parties) are in violation of state navigable waters and water quality laws, and storm water laws and rules at property owned by the Lin Family, LLC and rented by Mr. Woods, located in the S ½, NE ¼, Sec. 22, T.21N.-R.16E., Town of Greenville, Outagamie County, Wisconsin (the Site). These violations were documented during a compliance inspection on January 27, 2017 (the Inspection).

The Department alleges the following violations:

- 1. Section 30.20(1)(b), Wisconsin Statutes: Removal of material from beds of navigable waters. Unless an individual or a general permit has been issued by the department under this section or authorization has been granted by the legislature, no person may remove any material from the bed of any lake or navigable stream that is not described under par. (a).**

During the Inspection, department staff observed dredging to have taken place on approximately 2,600 linear feet of an unnamed navigable tributary (the Tributary) to the Rat River at the Site. Through discussions with the Parties, the department learned that dredging was conducted between December 20, 2016 and January 12, 2017.

A review of department records indicates that a permit has not been issued for the dredging activities.

The department believes the Parties conducted dredging of the Tributary at the Site without an individual or general permit or authorization granted by the legislature, as required.



2. **Section 30.19(1g)(a), Wis. Stats: Unless an individual or a general permit has been issued under this section or authorization has been granted by the legislature, no person may do any of the following: Construct, dredge, or enlarge any artificial water body that connects with an existing navigable waterway.**

During the Inspection, department staff observed dredging to have taken place on the Tributary to a point at which the Tributary entered a karst feature and no longer flowed on the ground surface. The Parties dredged through the karst feature and continued dredging further, thereby constructing a waterway and connecting the Tributary to the waterway to the southwest. The Tributary was previously a rather small and shallow waterway; it has been significantly widened and deepened for approximately 2,600 linear feet. The downstream receiving water is considerably smaller in both width and depth when compared to the work that was recently completed.

A review of department records indicates that a permit has not been issued to the Parties to construct, dredge, or enlarge any artificial water body that connects with an existing navigable waterway.

The department believes the Parties constructed, dredged and enlarged an artificial waterbody at the Site and connected that waterbody to the Tributary and the waterway to the southwest without an individual or general permit or authorization granted by the legislature, as required.

3. **Section 30.195(1), Wis. Stats: Unless a permit has been issued under this section or authorization has been granted by the legislature, no person may change the course of or straighten a navigable stream.**

During the Inspection, department staff observed dredging to have taken place on the Tributary, the Tributary to have been straightened by the dredging activities, and the karst feature obliterated to the point that the Tributary no longer flows into the karst feature.

A review of department records indicates that a permit has not been issued to the Parties to change the course of or straighten the Tributary.

The department believes that the Parties changed the course of and straightened the Tributary without an individual or general permit or authorization granted by the legislature, as required.

4. **Section 281.36(3b)(b), Wis. Stats: Permits for discharges into wetlands; mitigation. PERMIT REQUIRED. No person may discharge dredged material or fill material into a wetland unless the discharge is authorized by a wetland general permit or individual permit issued by the department under this section or the discharge is exempt under sub. (4).**

During the Inspection, department staff observed dredge spoils discharged into mapped and previously delineated wetlands at the Site. The surface elevation of the waterway has been dropped significantly causing all shoreland wetlands adjacent to the Tributary to be effectively drained.

A review of department records indicates that a permit has not been issued for the wetland filling activities.

The department believes that the Parties discharged dredged material or fill material into wetlands at the Site without a wetland general permit or individual permit issued by the department, as required.

5. **Section 283.33(1)(am), Wis. Stats: Storm water discharge permits. Requirement. An owner or operator shall obtain a permit under this section for a discharge from a discernible, confined, and discrete conveyance of storm water associated with a construction site, including a construction site for a building, that meets criteria in rules promulgated by the department.**

During the Inspection, department staff observed that the Parties conducted regulated storm water activities, at the Site.

A review of department records indicates that a storm water discharge permit has not been issued for the Site.

The Parties failed to obtain a storm water discharge permit, as required.

6. **Section NR 216.43(1), Wisconsin Administrative Code: Notice of intent requirements. Forms. The landowner shall submit a notice of intent to the department on forms available from the department. Data submitted in the notice of intent forms shall be used as a basis for conferring coverage under a WPDES storm water permit.**

During the Inspection, department staff observed dredged material discharged into the farm field in an area roughly 40' X 2,650' (2.44 acres) in size.

A review of department records indicates that a notice of intent was not submitted prior to construction activities.

The department believes that the Parties failed to submit a notice of intent to the department, as required.

7. **Section NR 151.11(8)(a), Wis. Adm. Code: Construction site performance standard for sites of one acre or more. Erosion and sediment control practices shall be constructed or installed before land disturbing construction activities begin in accordance with the plan developed under sub. (5).**

During the Inspection, Department staff observed that no erosion control measures whatsoever had been installed to prevent sediment from entering the Tributary and no erosion controls were installed prior to land disturbing construction activities.

The department believes that the Parties failed to construct and install erosion and sediment control practices before land disturbing construction activities, as required.

8. **Section NR 151.11(8)(d), Wis. Adm. Code: Construction site performance standard for sites of one acre or more. Implementation. The BMPs used to comply with this section shall be implemented as follows: Temporary stabilization activity shall commence when land disturbing construction activities have temporarily ceased and will not resume for a period exceeding 14 calendar days.**

During the Inspection, Department staff observed that no temporary stabilization measures had been installed on the piles of dredged materials.

The department believes that the Parties failed to install temporary stabilization measures, as required.

We have scheduled an enforcement conference to discuss this matter in more detail:

Conference Date: Tuesday, March 14, 2017

Conference Time: 10:00 AM

**Conference Location: Department of Natural Resources, Green Bay Service Center
2984 Shawano Avenue, Green Bay, WI (map enclosed)**

We request you attend the enforcement conference, as it is an important opportunity to discuss the circumstances surrounding the alleged violations and to learn your perspective on this matter. Please note that in an effort to encourage a candid and productive conversation, attendance is limited to you, your legal counsel and others with the technical expertise necessary to understand, evaluate and correct the violation. A fact sheet describing an enforcement conference is enclosed.

In preparation for the meeting, **please be prepared to discuss steps you will take to return to compliance, exceptional steps you will take to quickly stabilize the Tributary and dredge materials piles, a detailed engineered plan for restoration of the Tributary and wetlands and a timeline that will be adhered to. Further, please bring to the meeting and be prepared to submit a copy of the property rental agreement, copies of any and all documents related to dredging of the Site including all proposals, bids, invoices, contracts and internal approvals.**

The Department's enforcement decision will be based upon available information if you do not attend the enforcement conference.

Notice of Claim

This Notice of Violation constitutes a Notice of Claim and fulfills the requirements of s. 893.80, Wis. Stats.

Pursuant to section 30.292(1), Wis. Stats., whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation. Pursuant to s. 30.292(2), Wis. Stats., a person is concerned in the commission of the violation if the person directly commits the violation, aids and abets the commission of the violation, is a party to a conspiracy with another to commit the violation or advises, hires, counsels or otherwise procures any person to commit it.

Pursuant to section 30.298(1), Wis. Stats., any person who violates any provision of ss. 30.12 to 30.21 for which a penalty is not provided under the applicable section or by sub. (2) or (3) shall forfeit not less than \$100 nor more than \$10,000 for the first offense and shall forfeit not less than \$500 nor more than \$10,000 upon conviction of the same offense a 2nd or subsequent time.

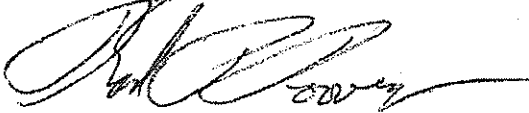
Pursuant to section 281.36(13), Wis. Stats: Parties to a violation. (a) Whoever is concerned in the commission of a violation of this section for which a forfeiture is imposed is a principal and may be charged and found in violation although he or she did not directly commit the violation and although the person who directly committed it has not been found in violation. (b) A person is concerned in the commission of the violation if the person directly commits the violation, aids and abets the commission of the violation, is a party to a conspiracy with another to commit the violation or advises, hires, counsels, or otherwise procures any person to commit it.

Per section 281.36(14)(a), Wis. Stats.: Permits for discharges into wetlands; mitigation. Except as provided in par. (b), any person who violates any provision of this section shall forfeit not less than \$100 nor more than \$10,000 for the first offense and shall forfeit not less than \$500 nor more than \$10,000 upon being found in violation of the same offense a 2nd or subsequent time. Each day of a continuing violation is a separate offense.

Section 283.91, Wis. Stats.: Civil and criminal remedies. (2) Any person who violates this chapter, any rule promulgated under this chapter, any term or condition of a permit issued under this chapter, or any rule promulgated or order issued under s. 200.45 (1) or (2) shall forfeit not less than \$10 nor more than \$10,000 for each day of violation. (3) Any person who willfully or negligently violates this chapter, any rule promulgated under this chapter or any term or condition of a permit issued under this chapter shall be fined not less than \$10 nor more than \$25,000 per day of violation, or imprisoned for not more than 6 months or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, the person shall be fined not less than \$10 nor more than \$50,000 per day of violation, or imprisoned for not more than one year in the county jail or both. In determining the amount of the fine under this subsection, the court shall assess an amount which represents an actual and substantial economic deterrent to the action which was the basis of the conviction.

If you have any questions or need to reschedule the enforcement conference, please contact me at (920) 662-5409.

Sincerely,

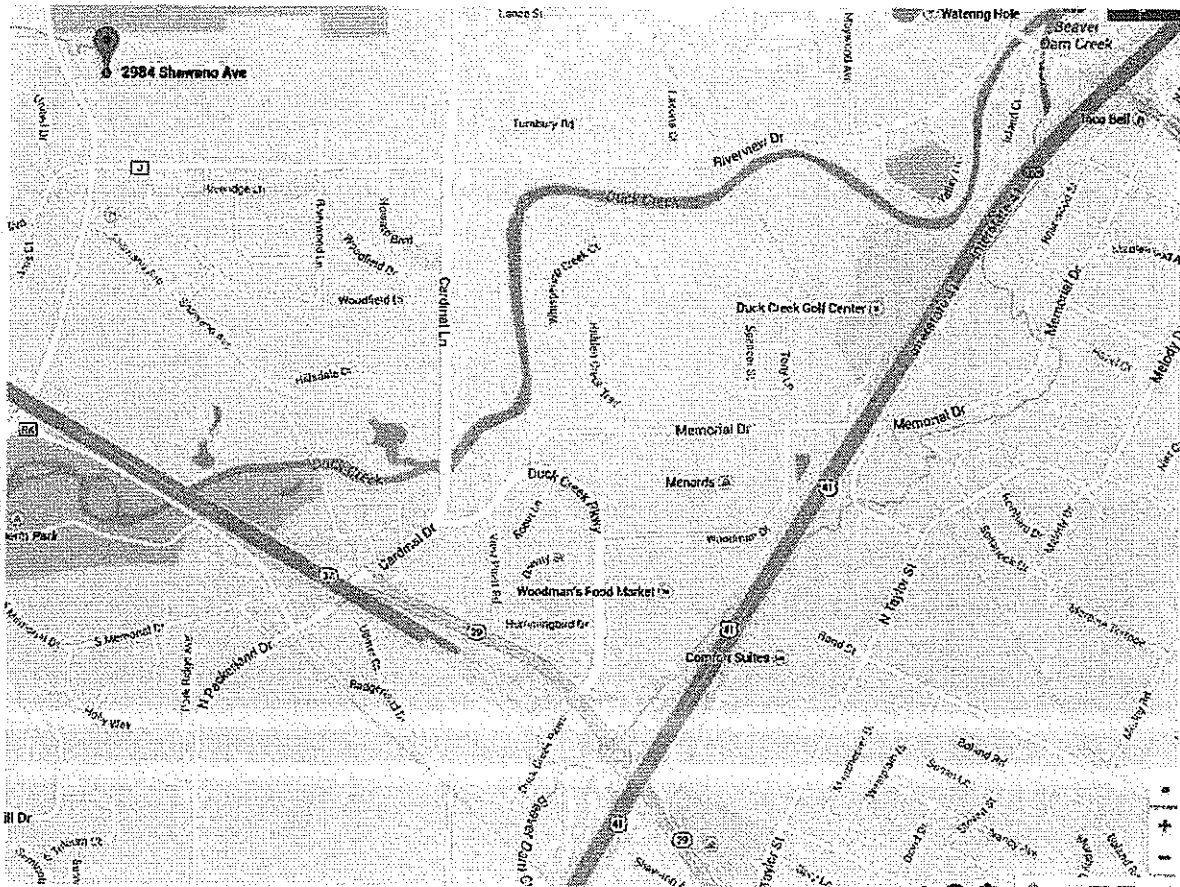


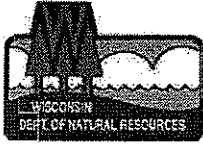
Karl P. Roovers
Environmental Enforcement Specialist

Enclosure: Map, EC Fact Sheet

C: S. Koehnke, Shawano
A. Fischer, Wautoma
C. Peterson, WT/3
Tim Roach, Outagamie County Zoning Administration
Dave Tebo, Town of Greenville
Todd Immel, Robert J. Immel Excavating, Inc.

Department of Natural Resources
Northeast Region Headquarters
2984 Shawano Avenue
Green Bay, WI





Environmental Enforcement Conference

An Enforcement Conference (EC) is a meeting between Department of Natural Resources (Department) staff and representatives of a person or business that the Department believes has violated an environmental law. The Department issues a Notice of Violation (NOV) when it has reason to believe that a violation of a permit condition, administrative rule or statutory requirement has occurred. The NOV either offers or schedules an EC.

Why Should I Attend?

The EC is an important opportunity to discuss the Department's basis for the alleged violation(s) and learn more about what happened, why it may have happened, and any factors you believe the Department should consider, such as steps that have been or will be taken to stop the violation, correct any effects of the violation, and prevent violations from occurring in the future. It is also your opportunity to explain why you might disagree with the factual and legal conclusions underlying the NOV.

Historic data shows that most violations are resolved at the EC level, without the need for court ordered compliance and/or penalties. In situations where the significance of the violation warrants further enforcement action, your cooperative efforts to resolve the violation and prevent future violations will help minimize your legal and financial liability.

Who Should Attend the EC?

Department staff involved in the EC typically consists of an Environmental Enforcement Specialist and regulatory staff that are familiar with the issues identified in the NOV.

While not required, you may seek representation by legal counsel or the assistance of an environmental consultant to prepare for and/or attend the EC. The EC is most productive when all involved are well-prepared to discuss the allegations and any corrective actions that may be necessary.

To ensure a productive candid discussion, participation in the EC is limited to the person or business involved and others with the legal or technical expertise necessary to understand, evaluate, mitigate and correct the violation. The EC is not an open meeting under state law and the Department will limit participation to those directly involved in the resolution of the matter.

What Happens if I don't Attend the EC?

If a party is unable to attend the EC, they should immediately contact the Environmental Enforcement Specialist at the phone number in the NOV to reschedule. When a party refuses to attend the EC and provides no further information to the Department, the Department's enforcement decision will be based upon available information.

What Happens Following the EC?

The EC is part of the Department's stepped enforcement process. At the EC, Department staff will explain the process and options available to address the alleged violation. Generally, the options range from closing the matter with no further action to referral to the Wisconsin Department of Justice (DOJ) or to U.S. EPA, for further enforcement action. In limited circumstances, the Department can issue citations, which are handled in local court similar to traffic offenses. If a case is referred to DOJ, the DOJ may initiate an action in court on behalf of the State. The State typically asks the Court to impose financial penalties and order completion of any necessary corrective actions. In most of the Department's cases, a cooperative return to compliance with any necessary restoration results in close out of the case. At close out, the Department will send a letter advising of no further enforcement action.



Planning and Zoning Administration
410 S. Walnut St. | Appleton, WI 54911
Administration Building, 3rd Floor
Phone: 920-832-5255 | Fax: 920-832-4770
www.outagamie.org

SCANNER

January 30, 2017

CERTIFIED MAIL
File A-5-17

Evan Lin
Lin Family LLC
2845 Creekwood Circle
Green Bay, WI 54311

RE: Violation of the Outagamie County Shoreland- Wetland Ordinance
Section 44-8.2(1).

Property Location: Southwest ¼ of the Northeast ¼ and the Southeast ¼ of the
Northeast 1/4, Section 22 Township 21 North; Range 16 East,
Town of Greenville, Outagamie County. Tax Parcel Numbers
110080600 and 110080700.

Dear Mr. Lin;

This letter is to inform you that you are in violation of Section 44-8.2(1) of the
Outagamie County Shoreland-Wetland Ordinance on the above described property. The
ordinance requires that a Conditional Use Permit be obtained through the County Zoning
Department prior to conducting a project such as yours.

The waterway that flows through your property is considered to be a Navigable Stream
with delineated wetlands adjacent to the stream. The stream has been dredged and re-
aligned/ re-routed. The spoils from the dredging have been side cast. I conducted an on-
site inspection of the project area on January 27, 2017. Mike Woods, the farmer that
rents the property from you, was present during part of the inspection and indicated to me
that he managed the project.

My on-site inspection confirmed that this project is in violation of the County Ordinance.

The proper Best Management Practices (BMP's) for erosion control have not been
installed and the site is extremely vulnerable to severe erosion.

Section 8.2 PERMIT REQUIRED. (1) For any filling or grading of any area which is
within 300 feet landward of the ordinary high water mark of navigable water and which
has surface drainage toward the water and on which there is either: (c) Filling or grading
of more than 2,000 sq. ft. on slopes less than 12%.



You are hereby ordered to obtain a Conditional Use Permit in order to correct the violation that has occurred on your property. The application will need to include a complete engineered plan for the dredging and re-alignment/re-routing of the stream channel, complete wetland delineation for the site and a restoration plan for the wetlands that have been negatively impacted by your activity. The complete application will need to be submitted to the Zoning Department prior to May 1, 2017. You will also need a recommendation from the Town Board and obtain all other State and Federal Permits that are required. The after the fact application fee for this permit is \$900.00.

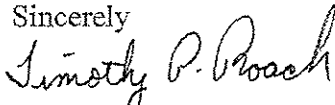
The navigable stream was a disappearing stream that was directly connected to the ground water on the western side of your property. The stream is now directly connected to an existing navigable stream to the west. You will also need to evaluate the impact of the connection to the steam to the west and the impact to the groundwater due to the re-alignment/re-routing.

Chris Pagels, from the Town of Greenville, indicated that the Town sponsored the project as a flood mitigation project. Extensive engineering supporting this as a flood mitigation project and evaluating the possible downstream impacts will need to be submitted with your application.

You are also hereby ordered to submit a complete temporary stabilization plan for the site prior to February 15, 2017. The plan will need to be provided by a qualified person and will include a detail of the proposed BMP's and installation schedule. The plan shall also include the BMP inspection schedule and the responsible party for the inspection.

If you feel you have grounds, an appeal to this order may be directed to the Outagamie County Board of Appeals. Forms for such an appeal may be obtained from this office. The fee for such an appeal is \$350. If appealed, this order shall be stayed until such appeal is decided. An appeal must be filed within 30 days of the date of receipt of this order.

Sincerely



Timothy P. Roach
Zoning Administrator
Outagamie County

Cc; Wendy Helgeson, Clerk Town of Greenville
Chris Pagels, Town of Greenville
Scott Koehnke, DNR
Nicholas Domer, USACE
Mike Woods, N1754 Greenwood Rd. Greenville, WI 54942
Lynn Szulczewski, NRCS District Conservationist, 3369 W. Brewster St.
Appleton, WI 54914
Joe Guidote, Corporation Counsel

SCANNED

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
Northeast Region Headquarters
2984 Shawano Avenue
Green Bay WI 54313-6727

Scott Walker, Governor
Cathy Stepp, Secretary
Telephone 920-662-5100
FAX 920-662-5413
TTY Access via relay - 711



March 20, 2017

Casetrack ID # 2017-NEEE-015
Outagamie County

JACK ANDERSON CHAIRMAN
TOWN OF GREENVILLE
W6860 PARKVIEW DRIVE
PO BOX 60
GREENVILLE, WI 54942

RAINIE WASMUND REGISTERED AGENT
ROBERT J IMMEL EXCAVATING INC
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LIN FAMILY LLC
2845 CREEKWOOD CIRCLE
GREEN BAY, WI 54311

MIKE WOODS
N1754 GREENWOOD ROAD
GREENVILLE, WI 54942

Subject: **Enforcement Conference Summary**

Dear Chairman Anderson, Mr. Wasmund, Mr. Lin, Mr. Woods:

The purpose of this letter is to provide a brief summary of the enforcement conference held to discuss alleged violations of state navigable waters and water quality laws, and storm water laws and rules at property owned by the Lin Family, LLC and rented by Mr. Woods, located in the S ½, NE ¼, Sec. 22, T.21N.-R.16E., Town of Greenville, Outagamie County, Wisconsin (the Site), as alleged in the February 27, 2017 notice of violation (NOV).

Meeting Date: March 14, 2017
Location: WDNR Green Bay Service Center
In Attendance: See Attached

Enforcement Conference Summary

Mr. Woods, and representatives of the Town of Greenville (the Town), Lin Family, LLC and Robert J. Immel Excavating, Inc. (Immel), (collectively, the Parties) described the circumstances surrounding the alleged violations. Immel stated that it is a family business that has been conducting sewer and water pipe installation for 30 years. Mr. Woods stated that he initially asked that Lin Family, LLC conduct the work at the Site but Lin Family, LLC would not pay for the work. The Town advised that NRCS approved the dredging project to improve crop production and erosion control, and the Town agreed to contribute to the construction costs. Immel stated that it was leery about dredging the unnamed navigable tributary (the Tributary) to the Rat River at the Site. The parties described dredging of the Tributary as an agricultural project and later as a project to protect the Town's easement by cleaning out the Tributary of fine grained material deposited when Feaker Construction installed the sewer interceptor line along the Tributary. Mr. Klansky of the Town advised that the Town was protecting the easement and fixing what was done by Feaker and that he "didn't know it was navigable." The Town advised that the sewer interceptor project was "closed" and it did not ask Feaker to come back and remove sediment from the Site. Immel stated that Mr. Woods directed the dredging operation at the Site. Immel set grade for the dredging operation using the top of the sewer manholes as benchmarks and dredged the Tributary. Immel agreed that the Tributary was dredged from the north side of the waterway, dredge spoils were placed in the field on the north side and spread with a bulldozer. The



channel was realigned west of the karst area curving to the south in the area of the western wetland. Mr. Tebo stated that he didn't know about the project until he was driving by and saw the work being conducted. The Town advised that other than Mr. Woods, nobody from the Town inspected the Site during the dredging operation. Mr. Klansky used Sanitary District funds from the sewer interceptor project to dredge the Tributary and Mr. Woods stated that Mr. Woods still owed ~ \$1,000 - \$1,500 for the work on drain tiles at the Site. The Town paid \$13,985 to Immel for the work at the Site. Immel stated that it submitted one invoice for the project billed by the hour, to the Town for work at the Site. Mr. Klansky stated that he didn't think about needing a permit from the department. None of the parties could recall a discussion about the dredging project needing a department permit and conducting the dredging under the June 27, 2016 NRCS letter. Mr. Woods advised that the NRCS approved dredging the Tributary in its June 27, 2016 letter. Mr. Woods further advised that he read the sixth paragraph of the June 27, 2016 NRCS letter advising that **"Manipulation of any wetland, stream channel, shoreland or flood plain area may require WI Department of Natural Resources and/or Town or County zoning permits. It is your responsibility to obtain necessary permits."** Mr. Woods stated it was an oversight as to why he failed to contact the department or any other agencies to inquire about permitting. Mr. Woods stated that he didn't talk to Mr. Quint Krueger of Outagamie County about needing permits to clean out the Tributary. Previously, Mr. Woods stated to the department that the farmland at the Site was losing money due to poor drainage. The June 27, 2016 NRCS letter states **"Any draining, dredging, filling, leveling, tiling, clearing, grubbing, or other manipulation for the intent or purpose (or to have the effect) of making crop production possible as a result of your activities on wetlands is not allowable per the Farm Bill."** Mr. Woods stated that granular fertilizer is used on the farm fields at the Site. Mr. Woods advised that he would submit fertilizer and pesticide records to the department. The Town advised that it drafted *Greenville Town Board Resolution 1-15*, dated February 16, 2015 for the County, as described in the resolution in order to *mitigate the risk of possible groundwater contamination of a potential karst located in section 22 from development within the watershed*, but the resolution was not meant to provide protections of the karst features resulting from dredging of the Tributary. Further, Mr. Tebo stated that we don't even know if it is a karst feature. Regarding the potential for groundwater impacts from development of the karst features of the Site, the Town advised that a public waterline runs past the homes in the "Churchill" neighborhood. No erosion controls were installed before the dredging and as of March 14, 2017, no erosion controls have been installed.

Discussions centered on the circumstances that gave rise to the NOV and actions taken to date to resolve the alleged violations. Forfeitures were discussed, as was referral to the Department of Justice. The department advised of its concerns over the degree of unpermitted dredging conducted at the Site, that no erosion controls were installed prior to the work and that even at the time of the meeting, erosion controls have not been installed. While there have been several contacts between the Town, County, the department and Davel Engineering, erosion controls have not been implemented at the Site. On March 15, 2017, 2:27 p.m., the department sent detailed comments on the Davel Engineering proposed February, 24, 2017 erosion control plan, to the Parties based on review of the plan and our discussion at the meeting.

Department staff advised that the Tributary has been found to be navigable as documented in its April 18, 2006 determination letter. Department staff presented the 1938 aerial of the Site showing the Tributary. The department also presented photos of the site taken prior to the project taking place.

Mr. Klansky advised that dredging of the Tributary was to remove sediment caused by installation of the sewer interceptor. Further, Mr. Klansky advised that the waterway was not navigable. As noted during the meeting, General Permit GP-NE-2015-45-03139 & 03140 issued to the Town on October 30, 2015 for installation of the sewer interceptor, identifies wetlands at the Site and the Tributary as navigable.

Mr. Domer of the Army Corps of Engineers described the layers of regulation of the Site between the ACOE and Department of Natural Resources.

Regarding the karst features of the Site, department Water Supply Specialist Ms. JaNelle Merry advised that the particular karst features of the Site have been confirmed by Dr. John Luczaj of the University of Wisconsin, Green Bay in a 2014 study when he was hired as a consultant by the County to provide information on the geology and karst features in the area. The department presented photos of the excavated karst area of the Site showing debris deposited in a swirl pattern. Ms. Merry also advised that karst features can be a direct conduit to groundwater and potentially contaminate nearby private drinking water wells.

By no later than Monday, March 27, 2017, please submit to me at the address in the letterhead:

1. Your individual written commitment to returning to and remaining in compliance and steps you will take to do so,
2. Commitment to not excavating, tilling, planting or otherwise disturbing the area of spoils placement, with the exception of very minor work to place erosion controls,
3. Mr. Woods, please do not apply fertilizer or herbicides/pesticides of any kind to the Site until such time that the Site is restored,
 - a. Provide a copy of completed form AD-1026 completed with the Farm Service Agency on April 28, 2016,
 - b. Provide land application records for years 2015 and 2016 including product name, volume and dates applied, and safety data sheets for each chemical including:
 - i. Chemical fertilizer,
 - ii. Manure,
 - iii. Industrial wastes and wastewaters,
 - iv. Biosolids,
 - v. Herbicides,
 - vi. Pesticides,
 - vii. Any other substances applied to the Site,
4. Report detailing installation of temporary erosion controls at the Site,
5. Letter from a qualified environmental consultant advising that they have been hired to restore the Site,
6. Timeline for submittal of an acceptable restoration plan and completion of restoration,
7. Restoration plan, which includes, at a minimum
 - a. Delineation of all wetlands at the Site,
 - b. Proposal for restoration of the Tributary to its pre-excavation condition,
 - c. Specific, measurable restoration success criteria,
 - d. Installation and maintenance of significant vegetated buffer strips extending as much as hundreds of feet or more from the banks of the Tributary with particular attention to the karst features,
 - e. Critical consideration given to protection of groundwater and the karst features of the Site and design specific to protection of the karst and shallow bedrock areas,
 - f. Restoration of the Site based on department acceptance and recommendations,
 - g. Removal of fill from wetlands,
 - h. Floodplain review (H&H) including a review to determine potential impacts of future planned development of lands east of the Site on the Tributary,
 - i. Provide a five-year and ten-year land use plan for the Site,

- j. Installation, inspection and maintenance of erosion control best management practices, prior to earthwork, during and after,
- k. Contact the department at least one week in advance of earthwork at the Site and after earthwork is complete but before heavy equipment is removed from the Site,
- l. By July 31, 2017, present a final report with photos and narrative from the environmental consultant documenting restoration of the Site as outlined above,
- m. Beginning in Spring 2018 and for the next four years, have a qualified environmental consultant specializing in the area of wetland restoration, conduct inspections of the Site to monitor for the presence of invasive plant species as defined by the department, and to determine the success of the restoration,
- n. If invasive species are detected, the consultant shall remove them from the Site,
- o. Submit from the environmental consultant reports of annual inspections of the Site, by no later than September 30 of 2018 – 2022,
- p. The annual reports will need to contain name and credentials of inspector, date and time of inspection, photos of the site from specific reference points, observations of plant community including a list of identified plant species, percent aerial coverage by vegetation, percent of vegetation that includes invasive species and steps taken to eradicate any invasive species detected.

If you have any questions about this letter, please contact me at (920) 662-5409.

Sincerely,



Karl P. Roovers
Environmental Enforcement Specialist

Enclosure: Sign in Sheet

C: S. Koehnke, Shawano
A. Fischer, Wautoma
C. Peterson, WT/3
J. Merry, Green Bay
P. O'Neel, Green Bay
Nick Domer, Army Corps of Engineers
Tim Roach, Outagamie County Zoning Administration
Steve Swanson, Outagamie County Zoning Administration
Joe Guidote, Outagamie County
Dave Tebo, Town of Greenville
Dan Klansky, Town of Greenville
Richard Carlson, Sifton Seifert Carlson, S.C.
Ashley Lehocky, Sifton Seifert Carlson, S.C.
Troy Immel, Robert J. Immel Excavating, Inc.
Todd Immel, Robert J. Immel Excavating, Inc.
Chuck Koehler, Herrling Clark Law Firm, Ltd.
David Van Straten, Lin.Liebmann LLC

Lin Family, LLC
ENFORCEMENT CONFERENCE

March 14, 2017

Present for Conference Representing Phone Number(s) Email

KARL ROOVERS WDMA 920-662-5409 KARL.ROOVERS@WISCONSIN.GOV

JANIS MERRY WDMR 920-662-5484 JANELLE.MERRY@WI.GOV

Tony Fischer WDNK 920-767-3017 Anthony.Fischer@wisconsin.gov

Joe Guidote Outagamie County Corporation Counsel 920-832-7522 guidotj@gmail.com

Steven Swanson Out County 920 832 5046 steve.swanson@outagamie.org

Tim Roach Outagamie Co 832-6033 Timothy.Roach@outagamie.org

Nick Damer USACE 651-290-5855 nicholas.f.damer@usace.army.mil

Dave Tebo Greenville 920-757-5757 dtebo@townofgreenville.com

Chuck Koehler IMMEL 920 882 3227

Troy Immel Immel 920 757-5906 elin@lathornes.com

David Van Straten Lin Family 920-393-1190 dvanstraten@lathornes.com

Dan Klansky Greenville 920 841-8550

Ashley Wrenkey Greenville (920) 739-2366

LEONARD J CARLSON (920) 739 2366

Michael Woods 920 410-1914

Present for Conference

Representing

Phone Number(s)

Email

Paul o'Neil

WDNR

920-306-6518

Scott Koehnke

WDNR

715/506-4232