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NORTHERN OZAUKEE SCHOOL  
DISTRICT,

Plaintiff,

v.

Case No. 11-CV-0144

KENDALL J. THISTLE AND  
CARLA G. THISTLE,

Defendants.

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**DEFENDANTS' RESPONSE TO PLAINTIFF'S SECOND MOTIONS *IN LIMINE* AND  
RENEWED MOTION *IN LIMINE***

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Defendants Kendall J. Thistle and Carla G. Thistle, by their attorneys, Elizabeth Gamsky Rich of Elizabeth Gamsky Rich & Associates SC and Corrado Cirillo of Olsen, Kloet, Gunderson & Conway, hereby respond to the Plaintiffs' Motions *in limine* filed on January 10, 2014. Because the motions and the underlying issues are closely related, they will be addressed together.

1. Motion to prevent testimony or references by any of the Thistles' witnesses regarding flooding on the north side of the Defendants' property and alleged damages regarding the same.
2. Renewed motion, previously denied by the Court, to prevent testimony regarding or references to the construction practices or any alleged lack of compliance in those practices by the developer who developed the land to the west and north of Defendants' property.

Once again, the Plaintiff seeks the Court's assistance in keeping the jury in the dark about the whole story of this case. The aerial photo (attached as Exhibit A) makes it obvious that it

makes no sense to bifurcate evidence relating to the north, versus the west, side of the Thistle property. The drainage areas, tributaries, wetlands, and waterways of the area are interconnected, and any impact to one of these interconnected parts of necessity affects the whole.

The Court recognized this when it ruled on the Plaintiff's first five Motions *In Limine* at the hearing on August 20, 2013. At that time, with respect to the Plaintiff's now renewed motion to exclude testimony regarding the developer's construction practices and lack of compliance with applicable law, the Court noted, "I think that's a huge issue here, because what may have started out as just a very workable project, due to sloppy grading or a sloppy infrastructure, ... may have really contributed to a major problem here." Transcript of 8-20-13 hearing at 22. The Court hit the nail on the head.

It is apparent that Mastercraft is inextricably intertwined with the parties to this lawsuit and to the events that led to the filing of the complaint against the Thistles. Numerous facts support this statement, and form the basis for the Defendants' objections to the Plaintiff's motions:

- The Northern Ozaukee School District ("NOSD") property that retained the excess water only became NOSD property through the land swap agreement with Mastercraft. The area in question was not NOSD property prior to the subdivision.
- NOSD had to issue a final approval of the Mastercraft storm water management plan, pursuant to the parties' agreement.<sup>1</sup> That plan addressed the entire area, not just the part adjacent to the western boundary of the Thistle property.
- Subsequently, NOSD approved a binding agreement to accept additional storm water from the area previously excluded from draining onto NOSD property.

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<sup>1</sup> Paragraph 9A of the land swap agreement provides, "The storm water and drainage system will be designed, graded and installed so that surface water is retained on site within the Subdivision and will not drain upon the property of the District (including both the property being acquired by the District pursuant to this Agreement and the adjoining existing school site of the District). The District shall have the right to review the Master Grading Plan and Stormwater Management Report to verify the plans adequately serve the Districts [sic] needs for the future."



- The initial flooding of the Thistle property was predominantly on the north property line, caused by the 10+ acres of NOSD property draining onto the Thistle yard from the redirected storm water plan that Mastercraft had designed.
- The temporary fix along the Thistle north property line was designed by Mastercraft and approved by NOSD, and included straw bales and silt fences put in place to hold back storm water from the NOSD property. (See two photos of this “temporary fix” attached as Exhibit B) It was this temporary fix that actually exacerbated the flooding in the Thistle yard from the west property line.
- NOSD acknowledged that excess storm water from the Mastercraft development was entering the Thistle property from the west (see, for example, attached letter from NOSD Superintendent William Harbron to Mr. Thistle dated May 1, 2007 attached as Exhibit C).
- The fines imposed on Mastercraft and its subcontractor, Powers Lake Construction, for noncompliance with managing storm water discharge from this development are relevant as the NOSD land swap agreement is part of the overall storm water management plan. Much of the silt and pollution discharged into the Sauk Creek tributary described in the complaint against Mastercraft came both from and through the NOSD property, then onto the Thistle property at both the north and west property lines.
- NOSD held multiple meetings with Mastercraft to address excess storm water both prior to and after the berm that is the subject of this lawsuit was built.
- NOSD attempted to include both the Thistles and Mastercraft in mediation sessions to resolve the matter.
- NOSD included Mastercraft representatives in the ad hoc committee charged with finding a solution to the excess storm water issue.
- When NOSD implemented its “drainage fix” to resolve the ponding after the berm was constructed, Mastercraft granted NOSD an easement to drain the excess storm water into Mastercraft’s existing detention pond.
- When NOSD ultimately decided to file suit to recover damages for its “drainage fix,” the Board voted to sue both Mastercraft and the Thistles.

Based on the foregoing, it is apparent that the flooding on the Thistle property, both from the north and the west, is certainly relevant to the issues in this case. Equally relevant is the developer’s non-compliance with legal requirements regarding containment of stormwater

during construction of the residential development to both the west and north of the Thistle property.

The developer failed to follow legal requirements in the management of storm water at the development adjacent to the District and Thistle property. In fact, the developer's violations were so egregious, numerous and ongoing that a complaint was filed (and ultimately judgment entered against the developer pursuant to a Stipulation and Consent Order) by the Wisconsin Department of Justice (DOJ) on behalf of the Wisconsin Department of Natural Resources (DNR). The DOJ complaint describes how the developer's failure to install and/or maintain proper erosion controls, stabilize construction areas, install required outlet structures, maintain silt fences, and numerous other violations caused turbid, sediment-laden water to overwhelm the area and discharge under State Highway 57 and then into Fredonia Creek, Sauk Creek, and adjacent wetlands. The DOJ Complaint and Judgments are attached hereto as Exhibit D.

All of this occurred immediately adjacent to the Thistle and District properties during 2007, with impact and disruption to precisely the areas that are the subject of this lawsuit. Certainly, the developer's violations impacted the flow of storm water through its historical drainage way. According to the Plaintiff's Amended Complaint, "[h]istorically, storm water runoff has flowed through a natural drainage way across the District Property and a portion of the Thistle property toward drainage facilities located on the other side of Highway 57." Pl's Amended Complaint at ¶7. The Complaint further alleges that the Thistles' berm "prevented storm water runoff from flowing through its natural drainage way across the Thistle property to its appropriate drainage facilities on the other side of Hwy 57." Pl's Amended Complaint at ¶9.

Included among the affirmative defenses alleged by the Defendants is that the Plaintiff's damages were caused by a superseding event. In order to support this affirmative defense, and to



show that the Plaintiff failed to mitigate its damages, the Defendants must be allowed to present the evidence that the Plaintiff seeks to exclude.

The evidence Plaintiff seeks to exclude is critical to respond to the allegations in the Plaintiff's Amended Complaint (including assessment of comparative fault) and to show the jury that the developer created significant impediments to the "historical" storm water flow in the area.

For all of the reasons stated above, the Plaintiff's motions should be denied.

Respectfully submitted this 15<sup>th</sup> day of January, 2014.



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State Bar # 1019123

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Ex B p 2



# NORTHERN OZAUKEE SCHOOL DISTRICT

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DISTRICT OFFICE (262) 692-2489  
D.O. FAX (262) 692-6257  
OES FAX (262) 692-2441  
OMS FAX (262) 692-2313  
WIVA FAX (262) 692-3952

SUPERINTENDENT  
(262) 692-2489 EXT. 402  
WILLIAM R. HARBRON

FINANCE DIRECTOR  
(262) 692-2489 EXT. 407  
ROBERT W. THOM

PUPIL SERVICES DIRECTOR  
(262) 692-2464 EXT. 411  
BARBARA A. PETERKA

HIGH SCHOOL PRINCIPAL  
(262) 692-2453 EXT. 419  
KEVIN D. PARKER

MIDDLE SCHOOL PRINCIPAL  
DIR. OF CURRICULUM, ASSESSMENT & INSTR.  
(262) 692-2463 EXT. 301  
PAMELA L. WARNER

ELEMENTARY SCHOOL PRINCIPAL  
(262) 692-2401 EXT. 201  
CYNTHIA C. DALLMAN

WISCONSIN VIRTUAL ACADEMY PRINCIPAL  
(262) 692-3988  
DANIEL J. HANRAHAN

DIRECTOR OF BUILDINGS & GROUNDS  
(262) 692-6174  
ROGER L. SINNEN

May 1, 2007

Reference: Water Drainage Issue

Mr. Kendall Thistle  
P O Box 7  
Fredonia, WI 53021

Dear Kendall:

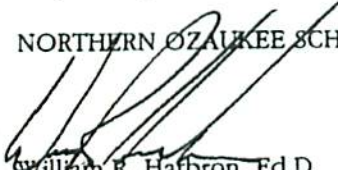
I met with Roger Sinnen on May 1 to again review the water drainage issue concerning the MasterCraft construction and your property. A meeting was held with Nancy Washburn on Thursday, April 19. During the meeting, we physically reviewed the problem. At the time of the meeting, Nancy had indicated that MasterCraft would work to find a solution to the drainage problem. Furthermore, she indicated that she would write a letter to you to that effect.

Because of no action to date, I have written a letter to Nancy (copy enclosed for your review and record). It is my hope that the Northern Ozaukee School District and MasterCraft can work to find a solution to the water drainage issue. I recognize that you are frustrated by the time and process that is needed to bring closure to the issue. It is my hope that the best solution to the problem may be found to bring long-term resolution to the issue.

I thank you for your continued patience and understanding as the problem continues to be addressed.

Respectfully,

NORTHERN OZAUKEE SCHOOL DISTRICT

  
William R. Harbron, Ed.D.  
Superintendent

WRH:vld

cc: Connie Conine, President, Board of Education  
Robert Thom, Finance Director  
Roger Sinnen, Buildings and Grounds Director

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \*

OZAUKEE COUNTY

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

Plaintiff,

v.

Case No. 2009-CX-000002

Complex Forfeiture: 30109

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

and

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

Defendants.

JUL 24 2009

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

CIVIL COMPLAINT

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

Ex 0



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

#### ALLEGATIONS RELEVANT TO ALL CLAIMS

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

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

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

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

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

#### APPLICABLE STATUTES AND RULES

A. Storm water pollution discharges.

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

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

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



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

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

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

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

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

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

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

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

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

B. Waterway protection activities.

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

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

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



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

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

C. Wetland discharges.

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

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

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

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

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

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

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

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

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



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

PRIOR CONSTRUCTION SITE WATER PROTECTION VIOLATIONS BY  
DEFENDANTS

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

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

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

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

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

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

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

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

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

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

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



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

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

#### VILLAGE GREEN DEVELOPMENT SITE PERMITS

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

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

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

42. In July 2006, defendant Regency Hills Development Corp. submitted a Notice of Intent to the Department of Natural Resources prior to grading 35.5 acres at the

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

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

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

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

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



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

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

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

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

#### VILLAGE GREEN DEVELOPMENT SITE NONCOMPLIANCE

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

#### CHAPTER 299 CLAIM OF VIOLATIONS

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

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

#### SIGNIFICANCE OF VIOLATIONS

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

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

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

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

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

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

#### PENALTY PROVISIONS

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

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



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

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

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

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

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

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

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

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

WHEREFORE, plaintiff asks for judgment as follows:

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



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

3. Such other relief as the Court deems appropriate.

Dated this 22 day of July, 2009.

J.B. VAN HOLLEN  
Attorney General

  
JOANNE F. KLOPPENBURG  
Assistant Attorney General  
State Bar #1012239

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice  
Post Office Box 7857  
Madison, Wisconsin 53707-7857  
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(608) 266-2250 (Fax)  
kloppenburgjf@doj.state.wi.us

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 2

OZAUKEE COUNTY

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

Plaintiff,

v.

Case No. 2009-CX-0002

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

and

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

Defendants.

**FILED**  
OZAUKEE COUNTY, WISCONSIN

DEC 16 2009

JEFFREY S. SCHMIDT  
CLERK OF COURTS

2009 DEC -7 PM 1:20

CLERK OF CIRCUIT COURT

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JUDGMENT AS TO REGENCY HILLS DEVELOPMENT CORP.

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Based on the Stipulation between the plaintiff and the defendant, and on the Court's order, the terms of both of which are incorporated into this judgment in their entirety, judgment is granted in favor of the plaintiff, State of Wisconsin, and against the defendant, Regency Hills Development Corp., in the amount of \$200,000. This amount is comprised of forfeitures of \$140,052.92 for the violations described in the complaint, plus \$36,413.76 for the 26% penalty surcharge under Wis. Stat. § 814.75(18), \$14,005.29 for the



10% environmental surcharge under Wis. Stat. § 814.75(12), the \$25 court costs under Wis. Stat. § 814.63(1), the \$13 crime laboratories and drug law enforcement surcharge required by Wis. Stat. § 814.75(3), the \$68 court support services surcharge as required by Wis. Stat. § 814.75(2), the \$1,400.53 jail surcharge under Wis. Stat. § 814.75(14), the \$21.50 justice information system surcharge required by Wis. Stat. § 814.75(15), plus \$5,000.00 for the costs of the Department of Natural Resources' investigation and \$3,000.00 as attorney fees for the Department of Justice under Wis. Stat. § 283.91(5).

Based on the defendant Regency Hills Development Corp.'s representations concerning its financial situation, the defendant Regency Hills Development Corp. shall pay the total amount of \$200,000 described above in installments of \$2,000 for each lot in the future phases of the Village Green subdivision upon which there is a successful real estate closing. Notwithstanding the sale of lots, the total amount due shall be paid no later than five years after entry of judgment.

Defendant Regency Hills Development Corp. shall pay the first \$5,000 by check made payable to the Department of Natural Resources and delivered to counsel for plaintiff Assistant Attorney General JoAnne F. Kloppenburg at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857, shall pay the next \$3,000 by check payable to the Department of Justice and delivered to counsel for plaintiff at the address listed above; and shall pay the balance by checks payable to the Ozaukee County Clerk of Circuit Court and delivered to the clerk of court. Defendant shall send a photocopy of each check submitted to the clerk of court, and of the cover letter to the

clerk identifying the case by name and number, to counsel for plaintiff at the address listed above.

Dated this 16<sup>th</sup> day of December, 2009.

BY THE COURT:

/s/ Tom R. Wolfgram



AUTHENTICATED COPY  
CLERK OF COURTS

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH \*

OZAUKEE COUNTY

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STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 2009-CX- 00000 2

Complex Forfeiture: 30109

REGENCY HILLS  
DEVELOPMENT CORP.  
and  
POWERS LAKE  
CONSTRUCTION CO., INC.,

Defendants.

FILED  
OZAUKEE COUNTY, WISCONSIN

JUL 28 2009

JEFFREY S. SCHMIDT  
CLERK OF COURTS

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STIPULATION AND ORDER FOR JUDGMENT AS TO DEFENDANT POWERS  
LAKE CONSTRUCTION CO., INC.

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The plaintiff State of Wisconsin brought this action against the defendants Regency Hills Development Corp. and Powers Lake Construction Co., Inc., seeking forfeitures, costs and injunctive relief for defendants' violations of Wisconsin's water pollution laws related to development activity at the Village Green site west of Highway 57 in T12N, R21E, Section 26, Village of Fredonia, Ozaukee County, Wisconsin. The plaintiff State of Wisconsin and defendant Powers Lake Construction Co., Inc., now wish to settle this action by agreement and avoid further litigation and, therefore, enter into this stipulation.

IT IS STIPULATED AND AGREED by the plaintiff State of Wisconsin and defendant Powers Lake Construction Co., Inc. that this case shall be settled on the merits, with prejudice, on the following terms and conditions:

1. The defendant Powers Lake Construction Co., Inc. shall pay a judgment in the amount of \$85,000, comprising forfeitures of \$54,651.46 for the violations described in the complaint, plus \$14,209.38 for the 26% penalty surcharge under Wis. Stat. § 814.75(18), \$5,465.15 for the 10% environmental surcharge under Wis. Stat. § 814.75(12), the \$25 court costs under Wis. Stat. § 814.63(1), the \$13 crime laboratories and drug law enforcement surcharge required by Wis. Stat. § 814.75(3), the \$68 court support services surcharge as required by Wis. Stat. § 814.75(2), the \$546.51 jail surcharge under Wis. Stat. § 814.75(14), the \$21.50 justice information system surcharge required by Wis. Stat. § 814.75(15), plus \$5,000.00 for the costs of the Department of Natural Resources' investigation and \$5,000.00 as attorney fees for the Department of Justice under Wis. Stat. § 283.91(5).

2. Based on the defendant Powers Lake Construction Co., Inc.'s representations concerning its financial situation, the defendant Powers Lake Construction Co., Inc. shall pay the total amount of \$85,000 according to the following schedule:

a. Payment in the amount of \$5,000 shall be made by the defendant Powers Lake Construction Co., Inc. by check payable to the Department of Natural Resources and delivered to counsel for plaintiff at the address listed below by October 15, 2009.



b. Payment in the amount of \$5,000 shall be made by the defendant Powers Lake Construction Co., Inc. by check payable to the Department of Justice and delivered to counsel for plaintiff at the address listed below by October 15, 2009.

c. Payment in the amount of \$10,000 shall be made by defendant Powers Lake Construction Co., Inc. by check payable to the Ozaukee County Clerk of Circuit Court and delivered to the clerk of court by October 15, 2009. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed below.

d. Payment in the amount of \$20,000 shall be made by defendant Powers Lake Construction Co., Inc. by check payable to the Ozaukee County Clerk of Circuit Court and delivered to the clerk of court by October 15, 2010. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed below.

e. Payment in the amount of \$20,000 shall be made by defendant Powers Lake Construction Co., Inc. by check payable to the Ozaukee County Clerk of Circuit Court and delivered to the clerk of court on or before October 15, 2011. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed below.

f. Payment in the amount of \$25,000 shall be made by defendant Powers Lake Construction Co., Inc. by check payable to the Ozaukee County Clerk of Circuit

Court and delivered to the clerk of court on or before October 15, 2012. Defendant shall send a photocopy of the check submitted to the clerk of court, and of the cover letter to the clerk identifying the case by name and number, to counsel for plaintiff at the address listed below.

3. If the defendant Powers Lake Construction Co., Inc. fails to mail a check for the required amount on or before a payment date set forth in this stipulation, or if defendant Powers Lake Construction Co., Inc. fails to comply with any other term in this stipulation, then defendant Powers Lake Construction Co., Inc. shall be in default of this stipulated judgment. If defendant Powers Lake Construction Co., Inc. is in default in any respect, all obligations remaining under this stipulation shall be accelerated and shall be immediately due and payable as set forth under this stipulation.

4. Except as between the parties to this action, nothing contained in this stipulation and order for judgment shall be construed as an admission of liability by the defendant Powers Lake Construction Co., Inc. in any proceeding now pending or hereafter commenced.

5. Defendant Powers Lake Construction Co., Inc. shall not be jointly or severally liable for any forfeitures imposed on other defendants in this action.

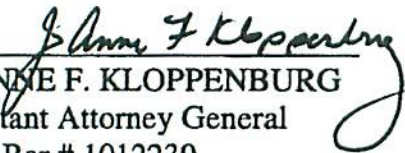
6. Entry and satisfaction of the judgment based on this stipulation shall fully release defendant Powers Lake Construction Co., Inc. and its officers, directors, employees, and agents, of all liability for all violations based on the facts in the complaint.

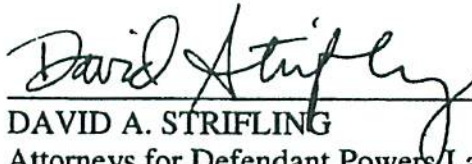


7. The accompanying order for judgment and judgment may be entered incorporating the terms of this stipulation and docketed without further notice.

Dated: 22 July 2009  
J.B. VAN HOLLEN  
ATTORNEY GENERAL

Dated: 7-17-09  
QUARLES & BRADY LLP

  
JOANNE F. KLOPPENBURG  
Assistant Attorney General  
State Bar # 1012239  
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Wisconsin Department of Justice  
P. O. Box 7857  
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(608) 266-9227

  
DAVID A. STRIFLING  
Attorneys for Defendant Powers Lake  
Construction Co., Inc.  
State Bar # 1049923  
411 East Wisconsin Avenue  
Milwaukee, WI 53202-4497  
(414) 277-5527

#### ORDER FOR JUDGMENT

The court approves the terms of the foregoing stipulation in *State v. Regency Hills Development Corp. and Powers Lake Construction Co., Inc.*, Case No. 09-CX-2, which provides for the entry of judgment in favor of the State and against the defendant Powers Lake Construction Co., Inc., along with the payment of forfeitures and statutory surcharges totaling \$85,000 according to a payment schedule ending in October, 2012, and directs the clerk to enter the judgment incorporating the terms of this stipulation, and to

docket the judgment, this 29<sup>th</sup> day of July, 2009. This is a Final Order under Wis. Stat. § 808.03(1).

IT IS SO ORDERED.

BY THE COURT:

/s/ Tom R. Wolfgram

\_\_\_\_\_  
Circuit Court Judge