

STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY
BRANCH 6

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

Plaintiff,

v.

Case No. 18-CX- 4
Complex Forfeiture: 30109

TOWN OF GREENVILLE,
W6860 Parkview Drive
Post Office Box 60
Greenville, Wisconsin 54942,

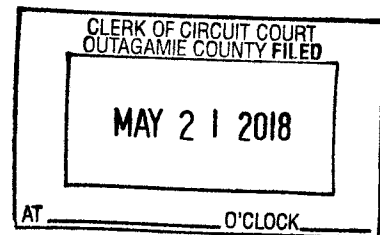
MICHAEL WOODS
N1754 Greenwood Road
Greenville, Wisconsin 54942,

and

ROBERT J. IMMEL EXCAVATING, INC.
Post Office Box 135
Greenville, Wisconsin 54942,

Defendants.

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



COMPLAINT

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (920) 832-5131
AND ASK FOR THE OUTAGAMIE COUNTY CIRCUIT COURT ADA COORDINATOR.

The State of Wisconsin by its attorneys, Attorney General Brad D. Schimel and Assistant Attorney General Anna J. Wildeman, brings this Complaint against defendants Town of Greenville, Michael Woods, and Robert J. Immel Excavating, Inc. at the request of the Wisconsin Department of Natural Resources (DNR) and alleges as follows:

1. The plaintiff is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Dane County, Wisconsin.

2. Defendant Town of Greenville (Town) is a municipality within Outagamie County with its principal office located at W6860 Parkview Drive, PO Box 60, Greenville, Wisconsin 54942.

3. Defendant Michael Woods (Woods) is an adult resident of Outagamie County, who resides at N1754 Greenwood Road, Greenville, Wisconsin 54942. Mr. Woods' date of birth is March 29, 1956. At all times relevant to this Complaint, Mr. Woods was also an elected Town Supervisor in the Town of Greenville.

4. Although Wis. Stat. §§ 23.55(1) and 23.54(3)(a) require the identification of Mr. Woods' social security number in this Complaint, it is not provided here for privacy reasons pursuant to Wis. Stat. § 801.19(2) because the information is not necessary for the prosecution of this action. *See* Wis. Stat. § 801.19, Comment 2015. If the Court deems the information to be

necessary, the State will provide the information under confidential seal pursuant to Wis. Stat. § 801.19(1)(b) and (2)(b), and SCR 70.153.

5. Defendant Robert J. Immel Excavating, Inc. (Immel) is a domestic business with its principal office located at P.O. Box 135, Greenville, Wisconsin 54942-0135. Todd Immel is the President and the registered agent for Immel and is located at the same address.

6. Defendant Woods farms and cultivates property at SE ¼, NE ¼, Sec. 22, T.21N.-R. 16E, Town of Greenville, Outagamie County, Wisconsin (the Site). At all times relevant to this Complaint the Site was owned by Lin Family, LLC.

7. An unnamed tributary to the Rat River runs through the Site (the waterway).

8. In 2006, DNR inspected the waterway and determined it to be a navigable waterway.

9. Wetland delineation maps prepared by the Town in 2015 indicate the presence of wetlands along and adjacent to the navigable waterway at the Site.

10. In 2015, the Town applied to DNR for permits to install utilities along the navigable waterway and to place fill in the adjacent wetlands, demonstrating that the Town knew the waterway was navigable and the adjacent areas were wetlands.

11. In May 2016, Mr. Woods requested that Outagamie County Conservation Technician Quint Krueger inquire with DNR about what permits would be necessary to “clean out” the navigable waterway. As requested by Mr. Woods, Mr. Krueger contacted DNR by email on May 2, 2016.

12. On May 13, 2016, DNR staff responded that, “[DNR] did a navigability determination on this property 10 years ago” and “there are a lot of wetlands on this site on both sides of the waterway...” (160) DNR further stated, “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.”

13. On May 13, 2016, Mr. Krueger responded to DNR’s email and said, “I will proceed by letting the operator know to plant his normal crop.”

14. Mr. Chris Pagels, the Town of Greenville Storm Water Superintendent at the time, was copied on the May 2016 emails between Mr. Krueger and DNR staff.

15. By letter addressed to AAG Wildeman, dated September 26, 2017, Mr. Woods stated that “Mr. Krueger pointed out to me that I was unable to get the clean out process completed in 2016.”

16. In the same letter addressed to AAG Wildeman, dated September 26, 2017, Mr. Woods admitted that he contacted Mr. Todd Immel to discuss the

waterway “clean out” project and that he was involved in the project “because I knew the locations of the drain tiles.”

17. On December 5, 2016 Immel entered into a contract with the Town and Mr. Woods to excavate the waterway at the Site, level the dredge spoils, and insert perforated drain tile through an adjacent wetland area.

18. Between December 20, 2016 and January 12, 2017, Immel dredged the navigable waterway at the Site, per the contract with Mr. Woods and the Town.

19. Immel discharged the dredge material into the wetlands adjacent to the navigable waterway.

20. Todd Immel met with DNR wardens on two occasions to discuss the dredging / “clean out” project. On January 27, 2017, Mr. Immel signed a statement wherein he admitted that Immel was “very leery of the project because we knew this ditch to be a waterway.” (252) Despite his statement that “[w]e believed that the Town and Mr. Woods had all the proper permissions” Mr. Immel also stated, “my impression is that DNR told the Town some time ago that the project would not be approved.”

21. In his January 27, 2017 signed statement, Mr. Immel admitted that Immel performed the excavation work at the Site under contract with Mr. Woods and the Town.

22. The invoice for the excavation work was signed and approved by Mr. Woods and the Town, demonstrating they hired Immel to perform the excavation work at the Site.

23. During a January 27, 2017 inspection of the Site, DNR staff documented the following observations:

- a. approximately 2,600 linear feet of the waterway had been dredged;
- b. the waterway was significantly enlarged and deepened beyond the original dimensions, in some cases more than 12 feet deep;
- c. dredge material was side cast to the north and bulldozed onto the farmland to the north;
- d. dredge material was placed into wetlands;
- e. piles of dredge materials were 50-100 feet wide and about 1-2 feet thick for the entire length of about 2,600 linear feet;
- f. wetlands adjacent to the waterway had been drained as a result of the enlarging and deepening of the waterway and the installation of perforated tile line beneath the wetlands at the Site;
- g. no erosion controls were installed during the excavation at the Site;

- h. there was no stabilization of the side slopes or dredge material which caused slumping, instability and active erosion;
- i. erosion had caused sediment discharge downstream, up to 1.5 feet deep in ditches, between rocks, and in the waterway; and
- j. the dredging activities straightened the waterway and created at least 3 new natural meanders, including one sharp bend to the south and one in the location of a karst feature that was destroyed during the dredging activities.

VIOLATION ONE: DREDGING A NAVIGABLE STREAM WITHOUT A PERMIT

24. Wisconsin Stat. § 30.20(1)(b) states that “[u]nless an individual or a general permit has been issued by [DNR] 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).”

25. Wisconsin Stat. § 30.99(1) states that “[w]hoever 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.”

26. Wisconsin Stat. § 30.99(2) states that, “[a] person is concerned in the commission of the violation if the person: (a) Directly commits the violation;

(b) Aids and abets the commission of it; or (c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.”

27. Between December 20, 2016 and January 12, 2017, Immel dredged and enlarged approximately 2,600 linear feet of the waterway on the Site.

28. Mr. Woods and the Town hired and oversaw Immel’s work at the Site.

29. All three defendants have admitted to participating in the dredging activities.

30. Neither Mr. Woods, the Town, nor Immel applied for or received an individual or general permit issued by DNR or authorization from the legislature to remove any material from the bed of the waterway.

31. Defendants Woods, the Town, and Immel violated Wis. Stat. § 30.20(1)(b) between December 20, 2016 and January 12, 2017 by dredging the waterway without an individual or general permit issued by DNR and without authorization by the legislature.

VIOLATION TWO: FILLING A WETLAND WITHOUT A PERMIT

32. Wisconsin Stat. § 281.36(3b)(b) states, “[n]o 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 [DNR] under this section or the discharge is exempt under sub. (4).”

33. Wisconsin Stat. § 281.01(9) defines "person" as "an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency." This definition includes the defendants Woods, the Town, and Immel.

34. Wisconsin Stat § 281.01(21) provides that the term "wetland" is defined in Wis. Stat. § 23.32(1).

35. Wisconsin Stat. § 23.32(1) defines "wetland" as "an area where water is at, or near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions."

36. Wisconsin Stat. § 281.36(13)(a) states, "[w]hoever 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."

37. Wisconsin Stat. § 281.36(13)(b) states, "[a] person is concerned in the commission of the violation if the person does any of the following: 1. Directly commits the violation. 2. Aids and abets the commission of the violation. 3. Is a party to a conspiracy with another to commit the violation or advises, hires, counsels, or otherwise procures any person to commit it."

38. Between December 20, 2016 and January 12, 2017, Immel dredged the waterway at the Site and discharged dredge material in a wetland.

39. Mr. Woods and the Town hired and oversaw Immel's work at the Site.

40. All three defendants have admitted to participating in the dredging activities.

41. Neither Mr. Woods, the Town, nor Immel applied for or received an individual or general permit from DNR to discharge fill into the wetlands at the Site.

42. Defendants Woods, the Town, and Immel violated Wis. Stat. § 281.36(3b)(b) between December 20, 2016 and January 12, 2017 for discharging fill into wetlands without an individual or general permit issued by DNR.

VIOLATION THREE: CHANGING THE COURSE OF A NAVIGABLE STREAM WITHOUT A PERMIT

43. Wisconsin Stats. § 30.195(1) states that "[u]nless 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."

44. Wisconsin Stat. § 30.99(1) states that "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.”

45. Wisconsin Stat. § 30.99(2) states that, “[a] person is concerned in the commission of the violation if the person: (a) Directly commits the violation; (b) Aids and abets the commission of it; or (c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.”

46. Between December 20, 2016 and January 12, 2017, Immel dredged the waterway at the Site and caused it to change course.

47. Mr. Woods and the Town hired and oversaw Immel’s work at the Site.

48. All three defendants have admitted to participating in the dredging activities.

49. During an inspection of the Site on January 27, 2017, DNR observed that the course of the waterway had been straightened and changed by the dredging activities of Mr. Woods, the Town and Immel.

50. Neither Mr. Woods, the Town, nor Immel applied for or received a permit from DNR to straighten the course of the waterway on the Site.

51. Defendants Woods, the Town, and Immel violated Wis. Stat. § 30.195(1) between December 20, 2016 and January 12, 2017 for straightening

the course of the waterway without a permit issued by DNR and without authorization from the legislature.

PENALTY PROVISIONS

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

53. Wisconsin Stat. § 281.36(14)(a) states that “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.”

54. Wisconsin Stat. § 281.36(14)(d) states that “[i]n addition to the forfeitures specified under pars. (a) and (b), a court may order a defendant to abate any nuisance, restore a natural resource, or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.”

55. Wisconsin Stat. § 281.36(14)(e), states that “[e]ach day of a continuing violation is a separate offense.”

56. Wisconsin Stat. § 281.98(1) states that "any person who violates this chapter or any rule promulgated . . . under this chapter shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense."

57. Wisconsin Stat. § 281.98(2) states that "[i]n addition to the penalties provided under sub. (1) or s. 281.99(2), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of a violation of this chapter, including attorney fees."

58. Wisconsin Stat. § 30.03 authorizes the Attorney General to institute proceedings to abate any nuisance committed under this chapter and to recover forfeitures accordingly.

59. Wisconsin Stat. § 30.294 declares that every violation of Wis. Stat. ch. 30 is a public nuisance which may be prohibited by injunction.

60. Wisconsin Stat. § 30.298(1) states, "[a]ny 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 as a 2nd or subsequent time."

61. Wisconsin Stat. § 30.298(2) states, "[a]ny person who violates any provision of ss. 30.18(2)(a)1. or 30.195(1) shall forfeit not less than \$500 nor

more than \$10,000 for the first offense and shall forfeit not less than \$1,000 nor more than \$10,000 upon conviction of the same offense as a 2nd or subsequent time.”

RELIEF REQUESTED

WHEREFORE, plaintiff asks the Court to enter judgment against the defendants as follows:

62. Forfeitures as to each defendant, consistent with paragraphs 53 to 61 of this Complaint;

63. The 26% penalty surcharge pursuant to Wis. Stat. § 814.75(18), the 20% environmental surcharge pursuant to Wis. Stat. § 814.75(12), the 1% jail surcharge pursuant to Wis. Stat. § 814.75(14), \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15);

64. An injunction, consistent with paragraphs 53-61 of this Complaint, requiring Mr. Woods, the Town and Immel to restore the navigable waterway and the adjacent wetlands pursuant to a DNR-approved restoration plan, created by an environmental consultant at the expense of Mr. Woods, the Town and Immel;

65. The reasonable and necessary expenses of the investigation and prosecution of this case, including attorney fees, under Wis. Stat. § 281.98(2); and

66. Any other relief the Court deems just and appropriate.

Dated this 18th day of May, 2018.

BRAD D. SCHIMEL
Attorney General of Wisconsin



ANNA J. WILDEMAN
Assistant Attorney General
State Bar #1066379

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 261-7178
(608) 267-2778 (fax)
wildemanaj@doj.state.wi.us