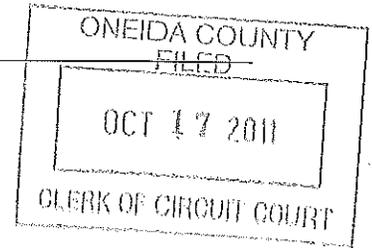


STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

ONEIDA COUNTY

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



Plaintiff,

v.

Case No. 11-CX-01

JEROME A. UNTIEDT
112 Braeburn Road
Barrington Hills, Illinois 60010,

Complex Forfeiture: 30109

Defendant.

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

CIVIL COMPLAINT

The State of Wisconsin, by its counsel Attorney General J.B. Van Hollen and Assistant Attorney General Diane L. Milligan, brings this action against Jerome A. Untiedt, at the request of the Wisconsin Department of Natural Resources, and alleges as follows:

1. The plaintiff is a sovereign state of the United States of America with its seat of government and offices at the State Capitol in Madison, Wisconsin. It has enacted, in Wis. Stat. chs. 30, 281, and 283, laws to protect public rights in waters of the state. Its Department of Natural Resources (DNR) administers regulations and issues permits authorized by these statutes.

2. Defendant Jerome A. Untiedt (Untiedt) is a resident of Illinois who owns real property in Wisconsin, including several properties in Oneida County.

3. Untiedt and his wife own a second home which is located at 8588 Lambert Road, Minocqua, Wisconsin.

4. Untiedt is the sole owner of a second Minocqua-area property located at 8114 Northern Road, Town of Minocqua, Oneida County, Wisconsin (hereinafter "the site"). The site contains 5.28 acres, and is further described as part of Government Lot 4, Section 22, T. 39 N., R. 6 E.

5. All of the activities alleged in this complaint took place at the site.

6. On September 28, 2004, DNR and Oneida County Zoning Department staff visited the site with Untiedt, who stated he was interested in cutting a path through the wetland on the site to improve the view of the lake from the upland.

7. DNR staff told Untiedt that he could cut vegetation in the wetland to create a viewing corridor up to thirty-five feet wide, but that wetland filling is not allowed.

2005 Violations

8. In April 2005, DNR received an anonymous complaint that wetlands were being filled on the site.

9. On April 11, 2005, DNR staff observed the site.

10. As of April 11, 2005, the trees had been cut to create a viewing corridor much wider than thirty-five feet, and fill had been placed in wetlands.

11. On May 4, 2005, after receiving permission from Untiedt to enter the site, DNR and Oneida County staff conducted an inspection and determined that fill had been placed on approximately 30,600 square feet (0.70 acres) of wetland.

12. On May 23, 2005, DNR sent Untiedt a Notice of Violation stating that DNR had reason to believe that the wetland fill and land disturbing activities (grading) that had occurred on the site was done in violation of Wisconsin water regulation and zoning laws, and in violation of federal law.

13. DNR's Notice of Violation stated that Untiedt had violated Wis. Stat. § 281.17(10)(b) by placing fill in wetlands without first notifying and obtaining written confirmation from DNR that the proposed filling would be consistent with the requirements in Wis. Admin. Code ch. NR 299. The Notice further stated that the wetland filling activities that had occurred on the site are not consistent with the requirements in Wis. Admin. Code ch. NR 299, and that DNR would not have granted Untiedt the required pre-filling confirmation.

14. DNR's Notice further stated: "the entire site is within 300 feet of Lake Minocqua, which is a Priority Navigable Waterway as defined in Section NR 341.03[(8)], Wisconsin Administrative Code. As such the bank of the lake extends 300 feet from the ordinary high water mark," in accordance with Wis. Admin. Code § NR 341.035(1)(b). "Therefore, the Department also believes you are in violation of Section 30.19(1g)(c), Wis. Stats., which prohibits grading more than 10,000 square feet on the bank of a navigable waterway without first getting a permit from the Department."

15. DNR directed Untiedt to remove all of the illegal fill by August 1, 2005, and notified him that further enforcement was possible.

16. On May 24, 2005, DNR staff met with Untiedt on the site to delineate the fill that needed to be removed.

17. Untiedt was told that he could keep only the portion of the fill that was on an older road (fifteen feet wide at the northwest side of the site), and a small triangle of fill at the southwestern end of the site that was placed on upland.

18. DNR had Untiedt dig a trench with his backhoe to show him the depth of the fill that needed to be removed (two to three feet deep).

19. On July 1, 2005, the United States Army Corps of Engineers sent Untiedt a letter indicating that filling wetlands adjacent to Lake Minocqua without a permit constitutes a violation of federal law, and demanding that the fill be removed and the wetland restored.

20. The letter from the Corps stated: "Please note that we now consider you to be informed of the permitting requirements of the Clean Water Act. Should you be involved in any further violations occurring on this or other properties, we will consider the violation to be repeat and/or flagrant, and we will consider referring the matter to the U.S. Department of Justice or the Environmental Protection Agency for enforcement."

21. In July 2005, Untiedt had the illegal wetland fill removed.

22. On July 7, 2005, DNR issued a citation to Untiedt for grading more than 10,000 square feet of land on the banks of Minocqua Lake without a permit, in violation of Wis. Stat. §§ 30.19(1g)(c) and 30.20, and Untiedt paid a forfeiture for these violations.

2009 Violations

23. In June 2009, DNR observed that Untiedt had recently graded approximately 46,666 square feet on the banks of Lake Minocqua at the site without a permit, in violation of Wis. Stat. §§ 30.19(1g)(c) and 30.20.

24. In June 2009, DNR also observed that fill had been placed in the wetlands at the site. Approximately 9,019 square feet of wetland had been filled.

25. A construction site storm water discharge and erosion control permit is required under Wis. Admin. Code ch. NR 216 for land disturbing activities covering greater than one acre, and Untiedt had not applied for or obtained permit coverage for the work DNR observed on the site during 2009.

26. Untiedt had not installed any construction site storm water erosion control measures in conjunction with the land disturbing activities DNR observed in June 2009.

27. At an August 4, 2009, Enforcement Conference, Untiedt agreed to remove all of the fill from the wetlands, to submit a permit application for some of the grading work, and to re-grade, seed and mulch other portions of the site.

28. In 2009, DNR granted Untiedt's after-the-fact (ATF) permit application to stabilize work he had already done on the banks of Lake Minocqua, with conditions.

29. The 2009 ATF permit stated that no work was authorized other than what was specifically described in Untiedt's application and plans.

30. The 2009 ATF permit provided: "Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control

measures such as silt fence and straw bales must meet or exceed the standards in the Wisconsin Construction Site Best Management Practices Handbook."

31. One condition of the 2009 ATF permit was that the project not affect wetlands.

32. In October 2009, DNR determined that the site had been stabilized.

2010 Violations

33. In May 2010, DNR learned that additional grading and filling work had been done at the site.

34. Untiedt had re-graded the steep hill slope which had been stabilized under the 2009 AFT permit, and had graded additional areas with steep slopes that had not been included in the 2009 ATF permit application.

35. As of May 13, 2010, no erosion control measures were in place to contain erosion from the new unpermitted grading activities.

36. Untiedt had also constructed a 300(+)-foot long, eight to ten-foot high semi-circular concrete wall near the base of the hill adjacent to the wetlands.

37. Soils from the excavation for the wall foundation had been placed on the area between the wall and the wetland, and these soils had been graded and pushed into the wetland in the same areas that had been filled and restored in 2009.

38. The silt fences that had been installed in 2009 had all failed. They were overtopped by the soils that had been pushed into the wetlands.

39. Soils upslope from the new retaining wall had also been graded toward the wall.

40. DNR staff calculated the newly disturbed area in 2010 totaled approximately 29,815 square feet.

41. On June 11, 2010, DNR and Oneida County Zoning Department staff met at the site to determine the ordinary high water mark (OHWM) on the Untiedt property.

42. The County had determined that the Lake Minocqua summer target elevation is 1,585.55 feet at Dam Road, and had also calculated the OWHM at 1,584.66 and 1,584.59 using OHWM indicators.

43. The elevation of the water at the site was calculated at 1,584.13, which is below the OWHM of Lake Minocqua, and thus portions of the wetland are also parts of the lakebed of Lake Minocqua.

44. DNR and County staff also observed a direct connection between the lakebed-wetland and the remainder of the lake.

45. No bulkhead line has been established for Lake Minocqua.

46. At 9:20 a.m. on June 11, 2010, DNR and County staff met with Untiedt at the site. DNR presented Untiedt with a Notice of Violation.

47. DNR also calculated the amount of fill that had been pushed into the wetland-lakebed area: the fill was 3 feet wide (on average) by 641 feet long, or 1,923 square feet.

48. The 2010 soil disturbance along the north side of the wall was 10 feet (average) by 641 feet, or 6,410 square feet.

49. Between the May 13, 2010, site visit and the June 11, 2010, site visit, Untiedt had added a wooden railing to the top of the new concrete wall.

WISCONSIN STAT. CH. 30 VIOLATIONS

A. ILLEGALLY GRADING MORE THAN 10,000 SQUARE FEET OF THE BED AND BANKS OF A NAVIGABLE WATERWAY

50. Under Wis. Stat. § 30.19(1g)(c), unless an individual or a general permit has been issued under Wis. Stat. § 30.19 or authorization has been granted by the Legislature, no person may grade or remove topsoil from the bank of any navigable waterway where the area exposed by the grading or removal will exceed 10,000 square feet.

51. Wisconsin Admin. Code § NR 341.03(4) defines "grading" as the physical disturbance of the land surface by the addition, removal or redistribution of soil.

52. Wisconsin Admin. Code § NR 341.03(6) defines "navigable waterway" as any body of water with a defined bed and bank, which is navigable under the laws of the state. In Wisconsin, a navigable body of water is capable of floating the lightest boat or skiff used for recreation or any other purpose on a regularly recurring basis.

53. Lake Minocqua is a "priority navigable waterway" under Wis. Admin. Code § NR 341.03(8) and Wis. Stat. § 30.19(1b)(c).

54. For priority navigable waterways, the bank is 300 feet landward of the ordinary high water mark unless the slope of the bank is 10% or greater in those first 300 feet. If the slope is 10% or greater, the bank shall extend further landward to the point

where the slope of the land becomes less than 10% for more than fifty feet. Wis. Admin. Code § NR 341.035(1)(b).

55. Untiedt did not have an individual permit, general permit, or legislative authorization when he graded well in excess of 10,000 square feet on the bed and bank of Lake Minocqua in 2005, 2009, or 2010, thereby violating Wis. Stat. § 30.19(1g)(c) and Wis. Admin. Code § NR 341.10(5).

56. Although Untiedt had an after-the-fact permit allowing him to grade some of the areas he had disturbed in 2009, the initial grading in 2009 was unpermitted, and he violated the terms of the permit by grading additional areas in 2010.

57. These violations subject the defendant to forfeitures of between \$100 and \$10,000 for each violation, pursuant to Wis. Stat. § 30.298(1). In addition, under Wis. Stat. § 30.298(5), the Court may order restoration of the natural resource or other appropriate action designed to eliminate or minimize any environmental damage caused by a violation of Wis. Stat. § 30.19(1g)(c).

**B. ILLEGALLY PLACING MATERIALS OR STRUCTURES
UPON THE BED OF A NAVIGABLE WATERWAY**

58. Pursuant to Wisconsin Stat. § 30.12(1)(a), no person may deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established unless an individual or general permit has been issued pursuant to Wis. Stat. § 30.12.

59. Untiedt deposited soil and fill on the bed of Lake Minocqua in 2005, 2009 and 2010 without first obtaining an individual permit, general permit, or legislative authorization, in violation of Wis. Stat. § 30.12(1)(a).

60. These violations subject the defendant to forfeitures of \$10 to \$500 for each offense, under Wis. Stat. § 30.15(1)(d). Each day during which the material remains in the lake bed is a separate offense under Wis. Stat. § 30.15(3).

WISCONSIN STAT. CH. 281 VIOLATIONS

ILLEGALLY FILLING AND DISTURBING WETLANDS

61. Under Wis. Admin. Code § NR 299.03(1), no person may conduct any activity that may result in a discharge into waters of the state, which under Wis. Stat. § 281.01(18) includes wetlands, without a certification from DNR 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).

62. The DNR promulgated Wis. Admin. Code chs. NR 103 and NR 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.

63. In 2005, 2009 and 2010, Untiedt graded and removed soil at the site, and then placed the graded material into wetland areas on the site, constituting a discharge of pollutants into waters of the state pursuant to Wis. Admin. Code §§ NR 299.02(3), (6) and (10).

64. Untiedt had not provided notice or obtained a certification of compliance with state water quality standards from DNR prior to placing the fill in the wetlands, thereby violating Wis. Stat. § 281.17(10)(b) and Wis. Admin. Code § NR 299.03(1).

65. Wisconsin Stat. § 281.98(1) provides that any person who violates chapter 281 or any rule promulgated under that chapter, such as Wis. Admin. Code § NR 299.03, shall forfeit not less than \$10 nor more than \$5,000 for each day of violation.

66. In addition, Wis. Stat. § 281.98(2) authorizes the Court to award to the department of justice the reasonable and necessary expenses of the investigation and prosecution, including attorney fees.

WISCONSIN STAT. CH. 283 VIOLATIONS

A. PERFORMING LAND DISTURBING CONSTRUCTION ACTIVITY WITHOUT FILING THE REQUIRED NOTICE OF INTENT

67. The State through its Legislature has enacted Wis. Stat. ch. 283 to reduce and regulate discharges of pollutants to waters of the state in Wisconsin. The Legislature promulgated Wis. Admin. Code ch. NR 216, Storm Water Discharge Permits, pursuant to Wis. Stat. ch. 283.

68. One of the goals of Wis. Admin. Code ch. NR 216 is to minimize the discharge of pollutants carried by storm water runoff from construction sites. Wisconsin Admin. Code § NR 216.002(2) defines "construction site" to mean "an area upon which one or more land disturbing construction activities occur that in total will disturb one acre or more of land."

69. Wisconsin Admin. Code § NR 216.002(14) defines "land disturbing construction activity" as any man-made alteration of the land surface resulting in a change in the topography or existing vegetative or non-vegetative soil cover that may result in storm water runoff and lead to increased soil erosion and movement of sediment into waters of the state. Land disturbing construction activity includes filling and grading activities.

70. Under Wis. Admin. Code § NR 216.42(1), the landowner of a construction site with one acre or more of land disturbance that will create a point source discharge of storm water from the construction site to waters of the state must file a Notice of Intent with the DNR. Under Wis. Admin. Code § NR 216.43, the Notice of Intent is to be filed on forms available from the DNR, and the data submitted in the Notice of Intent form shall be used as a basis for conferring coverage under a WPDES storm water permit.

71. Untiedt did not file the required Notice of Intent with the necessary information prior to performing land disturbing activities on greater than one acre of the site, thereby violating Wis. Admin. Code § NR 216.42(1).

72. Wisconsin Stat. § 283.91(2) provides that any person who violates Wis. Stat. ch. 283 or any rule promulgated under that chapter, such as Wis. Admin. Code § NR 216.42(1), shall forfeit not less than \$10 nor more than \$10,000 for each day of violation.

73. In addition, Wis. Stat. § 283.91(5) authorizes the Court to award to the department of justice the reasonable and necessary expenses of the investigation and prosecution, including attorney fees.

B. ENGAGING IN LAND DISTURBING CONSTRUCTION
ACTIVITY WITHOUT FIRST PLANNING FOR OR
MANAGING EROSION

74. Wisconsin Admin. Code § NR 341.05 provides that persons required to submit an application for a grading permit under Wis. Admin. Code ch. NR 341 must develop a site-specific erosion control plan in accordance with Wis. Admin. Code § NR 216.46, that they must install and maintain appropriate erosion and sediment control best management practices from the start of land disturbing construction activities until final stabilization of the site, that those practices shall be designed in accordance with Wis. Admin. Code § NR 216.46(6), and that the erosion control measures must meet or exceed the technical standards in Wis. Admin. Code ch. NR 151.

75. Wisconsin Admin. Code § NR 216.46 also provides that persons who are required to obtain permit coverage for storm water discharges from a construction site must comply with the erosion control planning and management requirements set forth in that section from the start of land disturbing construction activities until final stabilization of the site.

76. Untiedt failed to prepare or implement erosion control plans when he engaged in land disturbing construction activities in 2005, 2009 and 2010, and, with the exception of a 2009 silt fence that was not maintained and failed, he failed to install and maintain any best management practices to prevent discharges into waters of the state, in violation of Wis. Admin. Code § NR 216.46.

77. Wisconsin Stat. § 283.91(2) provides that any person who violates Wis. Stat. ch. 283 or any rule promulgated under that chapter, such as Wis. Admin. Code § NR 216.42(1), shall forfeit not less than \$10 nor more than \$10,000 for each day of violation.

78. In addition, Wis. Stat. § 283.91(5) authorizes the Court to award to the department of justice the reasonable and necessary expenses of the investigation and prosecution, including attorney fees.

SIGNIFICANCE OF THE VIOLATIONS

79. Untiedt filled the wetland/lakebed in 2005 and removed the fill when caught; he filled the wetland/lakebed in 2009 and removed the fill when caught; then he filled it again in 2010.

80. Untiedt's repeated filling and grading activities show a blatant disregard for Wisconsin's wetland and waterway protection laws.

81. The filling and grading activities in 2009 and 2010 (at least) were knowing violations of the law.

82. The repeated violations degraded the slopes of uplands draining to the vegetated lakebed and wetlands, putting the water quality and wildlife and fishery habitats at risk. Such wetland-vegetated lakebed areas are used for feeding, nesting and resting by various bird species such as the great blue heron, American bittern, green heron, least bittern, Canada goose, mallard and other migratory waterfowl. Numerous amphibians, such as frogs, salamanders and turtles, use this kind of habitat for breeding,

brood rearing and feeding. Some fish species will use this kind of wetland-vegetated lakebed for periodic spawning during periods of high water.

83. Filling and degrading this kind of habitat will also degrade the fisheries and wildlife habitat in a manner that results in the simplification of the lake's biota and that degrades the water quality and habitat values of the lake's ecosystem.

84. Untiedt's illegal earthworks may motivate other Lake Minocqua property owners to engage in similar conduct and cause further harm to the lake.

RELIEF REQUESTED

WHEREFORE, plaintiff State of Wisconsin asks for judgment against the defendant Untiedt as follows:

1. An injunction requiring the defendant to promptly comply with all the requirements of Wis. Stat. chs. 30, 281, and 283 that he has violated as alleged in the complaint, including but not limited to requiring complete restoration of the lakebed, banks and wetlands disturbed by the defendant's illegal activities;
2. The forfeitures provided for in Wis. Stat. §§ 30.298(1), 30.15(1), 281.98(1), and 283.91(2) for the violations described in this complaint;
3. The 26% penalty surcharge provided for in Wis. Stat. §§ 814.75(18) and 814.77(11), the 10% environmental surcharge (for violations committed before July 1, 2009) and 20% environmental surcharge (for violations committed on or after July 1, 2009) provided for in Wis. Stat. §§ 814.75(12) and 814.77(5), the \$25.00 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) and 814.77(2), the \$68.00 court support

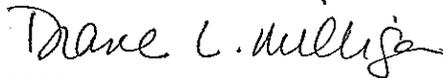
services surcharge pursuant to Wis. Stat. §§ 814.75(2) and 814.77(1m), the 1% jail surcharge pursuant to Wis. Stat. §§ 814.75(14) and 814.77(7), and the \$21.50 justice information system surcharge pursuant to Wis. Stat. §§ 814.75(15) and 814.77(8);

4. The reasonable and necessary expenses of the investigation and prosecution of the violations, including attorney fees, under Wis. Stat. §§ 281.98(2) and 283.91(5); and

5. Any other relief the Court may conclude is just and appropriate.

Dated this 14th day of October, 2011.

J.B. VAN HOLLEN
Attorney General



DIANE L. MILLIGAN
Assistant Attorney General
State Bar #1037973

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-9595
(608) 266-2250 (fax)
milligandl@doj.state.wi.us