



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 11, 2013

Michelle Weisenberger
Clerk of Circuit Court
Trempealeau County
36245 Main Street
Whitehall, WI 54773-0067

Re: State v. Preferred Sands of Wisconsin, LLC

Dear Ms. Weisenberger:

Enclosed are an original and two copies of a Summons and Complaint in the above-entitled case. Please file the original and authenticate the copies and return those copies of the Summons and Complaint to me in the self-addressed, stamped envelope enclosed.

Also enclosed are the original and two copies of a Stipulation and Order for Judgment and also an original and two copies of a Judgment. Please arrange to have a circuit court judge assigned to this case to consider this matter and to review the Stipulation and Order for Judgment and the Judgment. If the assigned judge finds that all is in order, I request that the judge sign the Order and that the Judgment be signed and entered as well. Please return conformed copies of the Stipulation and Order for Judgment and of the Judgment in the self-addressed, stamped envelope with the Summons and Complaint. I will then send a copy to opposing counsel.

This is a civil action for forfeitures using the classification code of Complex Forfeiture 30109, and no filing fee is required.

Thank you for your assistance in this matter.

Sincerely,

Cynthia R. Hirsch
Assistant Attorney General

CRH:jph
Enclosures
cc (via email, w/enc): Attorney Peter Tomasi
Deb Dix, DNR

STATE OF WISCONSIN

CIRCUIT COURT

TREMPEALEAU COUNTY

STATE OF WISCONSIN

17 West Main Street

Post Office Box 7857

Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 13-CX-_____
Complex Forfeiture: 30109

PREFERRED SANDS OF
WISCONSIN, LLC

A foreign limited liability corporation

One Radnor Corporate Center

100 Matsonford Road, Suite 101

Radnor, Pennsylvania 19087,

Defendant

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

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a defendant:

You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is

Treamepealeau County Clerk of Court, 36245 Main Street, Whitehall, WI 54773-0067, and to Cynthia R. Hirsch, plaintiff's attorney, whose address is Wisconsin Department of Justice, Environmental Protection Unit, 17 West Main Street, Post Office Box 7857, Madison, WI 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 9 day of December, 2013.

J.B. VAN HOLLEN
Attorney General



CYNTHIA R. HIRSCH
Assistant Attorney General
State Bar #1012870

Attorneys for Plaintiff

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STATE OF WISCONSIN

CIRCUIT COURT

TREMPEALEAU COUNTY

STATE OF WISCONSIN

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Plaintiff,

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WIS. STAT. § 799.01(1)(d).

Defendant

COMPLAINT

The plaintiff State of Wisconsin, by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Cynthia R. Hirsch, brings this complaint against defendant Preferred Sands of Wisconsin, LLC and alleges that defendant has violated Wis. Stat. chs. 283, 285 and 289, and Wis. Admin. Code ch. NR 216 as follows:

1. The 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.
2. The defendant Preferred Sands of Wisconsin, LLC (Preferred Sands) owns and operates a non-metallic (sand) mining business located at N33005 Helmers Road, Blair, Trempealeau County, Wisconsin (the site). Its Registered Agent is CT Corporation

System and the registered agent's office is 8040 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.

3. The defendant Preferred Sands acquired the site from Winn Bay Sands, LLC (Winn Bay) on or about December 11, 2011.

4. The site covers approximately 350 acres located on the top of a bluff on the northwest portion of the City of Blair, with neighboring homes, woods and farm fields located downhill.

5. Winn Bay was operating the site under Wisconsin Pollution Discharge Elimination Permit (WPDES) general permit WI-0046515-05, and coverage under this permit was formally transferred to Preferred Sands on February 6, 2012.

6. For the time period relevant to these alleged violations, the defendant Preferred Sands' activities were covered by the non-metallic mining operations general WPDES permit WI-0046515-05 (effective July 1, 2009 through March 31, 2014) (the WPDES permit).

7. The WPDES permit requires those engaged in non-metallic mining activities to prevent the discharge of pollutants from their operations by using physical controls, such as pollution prevention or treatment best management practices (BMPs), so that contaminants are not discharged through storm water to natural wetlands, surface water resources, or groundwater.

8. The site is externally drained and is required by the WPDES permit to operate in compliance with a storm water pollution prevention plan (SWPPP).

9. Wisconsin Admin. Code § NR 216.27(1) provides that "[a]ny person who owns or operates a storm water discharge covered by a general or individual storm water discharge permit shall prepare and implement [a] SWPPP."

10. The initial SWPPP for the site was created in May 2010 and updated in November 2010.

11. The 2010 SWPPP stated that 150 acres would be mined in 5- to 10-acre phases, and that "[t]op soil material will be stripped, stockpiled, and seeded to prevent erosion for the duration of the open phase. Based on the geologic evaluation of the site, overburden material ranging in depths of 0 to 60 feet will be encountered. The stockpiled topsoil will be utilized in the reclamation of each phase."

12. The 2010 SWPPP stated that a natural vegetation buffer strip and engineered slopes would be left along all sides of the active extraction area.

13. The 2010 SWPPP also stated that drainage areas throughout the site would contain silt fences, vegetative swales and hay bales.

14. Section 8 of the 2010 SWPPP acknowledges that the plan must be amended when there is a facility expansion, production increase, process modification, change in material handling or storage, or if any monitoring events show that the provisions in the SWPPP are ineffective.

15. The site plan and plant layout in the 2010 SWPPP (Figure 1-3) did not identify any soil stockpiles or any BMPs that would be associated with such stockpiles, and it did not identify drainage areas on the site.

16. On August 10, 2011, DNR inspected the site in response to a complaint that sediment-laden runoff was leaving the site.

17. In a Notice of Noncompliance dated August 22, 2011, DNR identified six areas where there was significant erosion, sedimentation or disturbance that Winn Bay would need to correct and address in an amendment to its SWPPP.

18. In mid-November 2011, DNR received another complaint from a neighboring property owner regarding excessive runoff and sediment being carried off the site.

19. Winn Bay submitted an amendment to the SWPPP on or about December 1, 2011, and this amendment acknowledged that the storm water detention pond it had constructed was too small (sized for 17 acre watershed instead of 84 acre watershed), it stated that a pond addition would be completed by February 28, 2012, and it promised that BMPs would be constructed and completed before additional earth moving activities commenced in 2012.

20. On December 2, 2011, DNR issued a Notice of Violation to Winn Bay identifying the runoff violation and a discharge violation and directing Winn Bay to appear at an Enforcement Conference on December 9, 2011.

21. DNR told those attending the enforcement conference that DNR's enforcement file would remain open until problems are corrected and the site is stabilized.

22. Shortly after Preferred Sands took over operation, it held a plant meeting and asked the employees if there were any outstanding issues that needed to be addressed.

23. Preferred Sands was told that there was a lack of storage space for waste sand and overburden.

24. Winn Bay had run out of room to store waste sand and overburden materials within the 84.3 acre storm water area identified in the 2011 SWPPP amendment, and it had placed piles that were approximately 10 feet high on about 10,000 square feet of land outside of and southeast of storm water area (Pile 9).

25. Preferred Sands was told that if it wanted to continue piling dirt and material at the top of the hill (on Pile 9), the exposed dirt on that pile would need to be addressed.

26. While a silt fence was placed around Pile 9, no other steps were taken between December 2011 and May 2012 to address the exposed dirt on Pile 9.

27. A waste pile on the east side of the site, in the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 8, was also outside the storm water area.

28. During December 2011 and January 2012, Preferred Sands enlarged the storm water pond to comply with the 2011 SWPPP amendment and address the 2011 violations by dredging sand from the bottom of the pond and placing it on Pile 9.

29. Preferred Sands ran the dry plant on the site all winter (2011-12).

30. When DNR formally transferred the permit to Preferred Sands on February 6, 2012, DNR reminded Preferred Sands that it is responsible for notifying the DNR if conditions at the site change.

31. In early February, Preferred Sands was running out of sand to process in the dry plant.

32. In February and part of March 2012, Preferred Sands shipped in approximately 100 rail cars with 100 tons of sand per car (approximately 7,400 cubic yards of sand) to the site from a mine near Bloomer, Wisconsin, that was owned by its sister company, Preferred Sands of Minnesota, LLC, and this sand was processed at the site.

33. Preferred Sands constructed a new roadway leading from the rail loading area to the processing area in order to create a traffic loop and a stable path for trucks to transport the off-site sand to the dry plant.

34. Preferred Sands piled waste sand from the dry plant, including waste sand from the Bloomer mine, on Pile 9 during the winter of 2011-12.

35. There were no Best Management Practices (BMPs) in place to contain storm water runoff from Pile 9 or from the northeast pile when Preferred Sands took over the site.

36. Preferred Sands did not install enough BMPs to contain the waste piles before it added to or created more waste piles.

37. Preferred Sands did not notify DNR that it was expanding operations on the site beyond what was addressed by the SWPPP.

38. Preferred Sands did not amend its SWPPP to address the off-site sand and its associated waste before it brought that sand in, and it did not amend its SWPPP prior to constructing the new roadway for transporting the off-site sand.

39. In approximately mid-February 2012, Preferred Sands began actively mining onsite sands, and it began operating its wet plant.

40. By May 2, 2012, Pile 9 covered approximately 10 acres and contained steeply sloped waste sand and dirt that was up to 40 feet deep.

41. On May 2 and/or 3, 2012, a rain event triggered the discharge of a 2,100+ foot plume of sediment-laden storm water off the site, through a neighboring property, across Larkin Valley Road, through a farm field on another property, and ultimately into Larkin Valley Creek and a wetland adjacent to that creek.

42. The May 2-3, 2012 rain event triggered a second offsite discharge from the northeast pile.

43. The May 2-3, 2012 rain event also triggered a third offsite discharge to the south.

44. Preferred Sands acknowledged that the discharge event caused sediment to run into the first floor of the Menno Neuenschwander home to the northeast of the site, into the garage on the Eberly property to the east of the site, and into a field and a garden on the Jonas Neuenschwander property to the northeast of the site, and into an area of pine plantation on the Mathison property to the south of the site.

45. The plume left over six inches of sediment on and blocking Larkin Valley Road, and township staff had to clear off the road after the rain event and on two consecutive days following the initial discharges.

46. On May 4, 2012, DNR staff inspected the site, the plumes, and the origins of the plumes with representatives of Preferred Sands.

47. During the inspection, DNR staff observed that the waste sand and overburden piles on the site had not been properly stabilized where the discharges had originated. There were no BMPs in place, and a gully cut had eroded out of the piles at the origin of the discharge from Pile 9.

48. DNR staff estimated that the waste pile had been at least 10-15 feet high and had extended over 7.4 acres, which equals about 120,000 to 180,000 cubic yards of material.

49. The waste piles that caused the May 2-3 discharges were too high, too steeply sloped, and no BMPs were in place to direct or treat run off from the piles.

50. Winn Bay had not disclosed the existence of the waste sand piles to DNR.

51. Preferred Sands had not disclosed the existence of the waste sand piles to DNR.

52. During the May 4, 2012 inspection, DNR staff inspected the six areas identified in the December 2, 2011 Notice of Violation, and observed that Area 6 still needed to be stabilized.

53. On May 9, 2012, DNR issued a Notice of Violation alleging that Preferred Sands had failed to implement or amend the SWPPP and that it had failed to implement necessary BMPs.

54. On May 15, 2012, Preferred Sands' consultant, Wenck Associates, Inc. (Wenck), investigated the area near Larkin Valley Creek where sediment had been deposited a result of the May 2-3, 2012 discharge event.

55. Wenck confirmed that between 0 and 6 inches of sediment had been deposited in wetlands adjacent to the stream.

56. On May 23, 2012, DNR staff confirmed that sediment had entered the stream.

57. Wetlands provide crucial habitat, store water to prevent flooding, buffer runoff, protect water quality, provide natural beauty, and sustain recreational opportunities. Wetlands are also an essential habitat for smaller aquatic organisms in the food web.

58. When DNR investigated the May 2012 discharge at the site, it discovered that the extent of the mining, stockpiling, access road construction and other earth disturbing activities on the site had expanded. Updated measurements obtained from Trempealeau County Zoning indicated the open area at that time to be approximately 160 acres of land open and exposed to the elements.

59. The original 2011 reclamation plan for the site administered by Trempealeau County, indicated that there would be 35 acres used for processing and 21 acres for mining.

60. Preferred Sands' 2012 annual reclamation report stated that there would be 120 open acres (35 for processing, 85 for mining).

61. Instead of mining and reclaiming in 5 to 10-acre phases, Preferred Sands has continued to clear the site, stockpile waste, and mine without reclaiming any of the site.

62. The original SWPPP identified storm water management BMPs for the rail load-out areas and the processing areas only.

63. The December 2011 SWPPP amendment proposed the construction of two berms near the south central waste pile, and it proposed shallow storm water diversions across the southern and eastern haul roads, but it contained no other BMPs to control storm water flow off any of the other waste piles or waste stockpile areas.

64. The December 2011 SWPPP amendment identified the limits of a 84.3 acre storm water management area.

65. As of May 2012, Preferred Sands had expanded the footprint of the mining and stockpile area and had expanded its haul road network to the southeast and to the west of the 84.3 acre storm water area identified in the SWPPP.

66. Between May 4, 2012 and June 19, 2012, Preferred Sands took waste from Pile 9 and placed it in another valley to the southeast of the site, outside the storm water management area.

67. Preferred Sands did not notify DNR, amend its SWPPP, or plan for additional storm water management needs prior to expanding the operation in 2012.

68. Preferred Sands submitted an amended SWPPP on June 14, 2012.

69. The 2012 SWPPP was reviewed by DNR, which recommended modifications, on July 2, 2012.

70. WDNR received and approved plans and specification for a revised SWPPP on May 16, 2013.

**A. FAILURE TO NOTIFY DNR OF FACILITY EXPANSION,
PRODUCTION INCREASES OR PROCESS
MODIFICATIONS**

71. Wisconsin Stat. § 283.31(4)(b), Wis. Stat. § 283.59(1), Wis. Admin. Code § NR 205.07(3)(c) and section 6.6 of the WPDES permit require that owners and operators of WPDES permitted point sources report to the DNR any planned facility expansion, production increase or process modifications which will result in new, different or increased discharges of pollutants as set forth in Wis. Admin. Code § NR 205.07(3)(c).

72. Defendant violated Wis. Stat. § 283.31(4)(b), Wis. Stat. § 283.59(1), Wis. Admin. Code § NR 205.07(3)(c) and Section 6.6 of its WPDES permit by failing to report to DNR the facility expansion, production increases and process modifications that resulted in different and increased discharges of contaminated storm water from the site.

73. The expansions/production increases and process modifications referenced in the preceding paragraph include but are not limited to: processing 100 rail cars of sand from a different site, expanding the footprint of the mining and stockpile area beyond the area identified in the 2011 SWPPP, and expanding roads/driveways on the site.

B. FAILURE TO AMEND SWPPP

74. Wisconsin Admin. Code § NR 216.27(1) requires any person who owns or operates a storm water discharge covered by a general or individual storm water discharge permit to prepare and implement a site specific SWPPP.

75. Wisconsin Admin. Code § NR 216.27(3)(a) requires the SWPPP to identify the person with primary responsibility for all aspects of SWPPP development and implementation, it requires that person to develop, evaluate, maintain and revise the SWPPP, and it requires that person to "carry out the specific management actions identified in the SWPPP, including: maintenance practices, monitoring activities, preparing and submitting reports and servicing as facility contact for the department."

76. Wisconsin Admin. Code § NR 216.27(4) requires the owner or operator of discharge covered by a general or individual storm water discharge permit to amend the SWPPP when "expansion, production increases, process modifications, changes in material handling or storage or other activities are planned which will result in significant increases in the exposure of pollutants to storm water discharged either to waters of the state or to storm water treatment devices."

77. Section 3.5 of the permit provides:

The permittee shall amend the SWPPP and notify the Department, in writing, that an amendment has been made under the following circumstances:

3.5.1. When expansion, production increases, process modifications, changes in material handling or storage or other activities are planned, and the changes will result in a significant increase in the exposure of pollutants or a need for significant modifications to the treatment best management practices.

The amendment shall contain: a description of the new activities that contribute to the increased pollutant loading, planned source control activities that will be used to minimize pollutant loads, an estimate of the new or increased

discharge of pollutants following treatment, and a description of any treatment system modifications needed to manage the storm water contaminants.

78. Defendant violated Wis. Admin. Code § NR 216.27(4) and Section 3.5 of Preferred Sands' WPDES permit when they planned and implemented activities that resulted in production increases and changes in material handling and storage without first amending the SWPPP.

C. FAILURE TO IMPLEMENT SOURCE AREA POLLUTION PREVENTION BMPs

79. Wisconsin Admin. Code § NR 216.29(5) requires that BMPs identified in the SWPPP be implemented when industrial operations commence unless an alternate implementation schedule is identified in the operation's permit.

80. Section 3.1 of the permit requires permittees to install source area pollution prevention BMPs that are designed to prevent storm water from becoming contaminated at the site. Source area pollution prevention BMPs include:

Practices that prevent and control soil erosion and sediment movement including, but not limited to, soil stabilization practices, structural practices to divert overland storm flow away from exposed soil and material stockpiles, and minimization of tracking on access roads. Sound engineering principles and practices shall be utilized to minimize erosion and movement of sediment by storm water.

Permit § 3.1.1.1.

81. Since early December 2011, before Preferred Sands acquired the site, Defendant have been aware that the operation had storm water BMP deficiencies and had failed to prevent off-site discharges of sediment.

82. When it purchased the site, Preferred Sands was aware of the existence of unprotected soil and material stockpiles and of the need to develop and implement BMPs.

83. Defendant did not install practices to prevent and control soil erosion and sediment from the unprotected soil and stockpiles that existed on the site before Preferred Sands began expanding mining operations on the site.

84. Preferred Sands failed to install adequate BMPs to prevent storm water from becoming contaminated when it came into contact with the new unprotected soils, roads and material stockpiles created by Preferred Sands.

85. Defendant violated Wis. Admin. Code § NR 216.29(5) and section 3.1 of the WPDES permit from the moment Preferred Sands commenced operations in 2012, until at least May 14, 2012, by failing to properly implement physical controls to prevent the discharge of storm water contaminants.

D. FAILURE TO CAPTURE AND TREAT CONTAMINATED STORM WATER

86. Section 3.1.2 of the WPDES permit provides that operations that cannot prevent the exposure of earthen materials to precipitation shall implement sediment treatment BMPs as follows:

3.1.2.1. Storm water contaminated with sediment shall, to the maximum extent practicable, be captured on the nonmetallic mining site and then allowed to evaporate or infiltrate into the earth so the sediment is removed prior to discharge to groundwater. The tracking of sediment onto local roads shall be minimized by the use of BMPs such as an asphalt or concrete approach to the road or use of a vehicle tracking pad. . . .

3.1.2.2. Storm water discharges off the mining site, to wetlands not exempted under s. NR 103.06, Wis. Adm. Code or to surface waters from areas with exposed earthen materials (including aggregate materials stockpiled for reuse) shall be treated with solids separation best management practices to reduce the amount of sediment to the maximum extent practicable. These treatment practices may include settling, sedimentation, filtration, and modifications to retain sediment at drainage inlets (e.g., storm sewer grates or drainage pipe openings) where they occur.

87. Defendant violated Section 3.1.2 of the WPDES permit when they allowed untreated storm water contaminated with sediment to discharge into non-exempt wetlands and surface waters (Larkin Valley Creek).

E. STORING SOLID WASTE IN A MANNER THAT CAUSES ENVIRONMENTAL POLLUTION

88. Wisconsin Stat. § 289.01(33) defines solid waste to include solid materials resulting from mining operations.

89. Wisconsin Stat. § 289.45 provides that no person can store solid waste in a manner which causes environmental pollution.

90. Preferred Sands violated Wis. Stat. § 289.45 when it stored waste sand and overburden in a manner that caused environmental pollution.

F. AIR POLLUTION CONTROL VIOLATIONS

91. DNR issued air pollution control construction permit 10-JGB-238 (air pollution permit) to Winn Bay on May 31, 2011.

92. The air pollution permit sets a 8.75 pounds per hour particulate matter emission limit for Process P01, Stack S01 (the sand dryer).

93. The air pollution permit also provides that particulate matter emissions from the sand dryer cannot exceed 0.025 grains per standard cubic foot.

94. The air pollution permit states that particulate matter emissions may not exceed 0.1 pound per hour from Process P04-Stack S04, the dryer building exhaust for sand screening and conveying.

95. The dry plant began operation on August 1, 2011.

96. Preferred Sands conducted the first stack tests for the facility on April 4, 2012.

97. The stack test for P01-S01 showed particulate levels at 13.97 pounds per hour and 0.052 grains per cubic foot, 60% and 108% over the permit limits, respectively.

98. The stack test for P04-S04 showed particulate levels at 0.49 pounds per hour, 490% over the permit limit.

99. Wisconsin Stat. § 285.60(7) requires a permittee to comply with all terms and conditions of its permit.

100. On May 21, 2012, Preferred Sands took steps to reduce the particulate matter emissions from P01-S01, including reducing the production rate from 150 tons per hour to 120-135 tons per hour.

101. Since May 21, 2012, Preferred Sands has also maintained additional bags onsite so that the baghouse bags for P01-S01 can be changed out more frequently.

102. Preferred Sands did not alter the operation of its sand dryer (P01-S01) until May 21, 2012, when it received confirmed test results showing the permit violations.

103. Preferred Sands violated the terms of its permit and Wis. Stat. § 285.60(7) when it exceeded its permit limits for particulate matter from P01-S01 and P04-S04.

104. On January 18, 2013, WDNR issued a new air permit resolving the previous non-compliance issues.

RELIEF REQUESTED

1. Any person who violates Wis. Stat. ch. 283, any rule promulgated under this chapter or any term or condition of a permit issued under this chapter shall forfeit not less than \$10 nor more than \$10,000 for each day of violation pursuant to Wis. Stat. § 283.91(2).

2. Wisconsin Admin. Code ch. NR 216 and Preferred Sands' WPDES permit were issued pursuant to Wis. Stat. ch. 283.

3. Any person who violates Wis. Stat. ch. 289, any rule promulgated under this chapter or any term or condition of a permit issued under this chapter shall forfeit not less than \$10 nor more than \$5,000 for each day of violation pursuant to Wis. Stat. § 289.96(3)(a).

4. Any person who violates Wis. Stat. ch. 285, any rule promulgated under that chapter, or any permit issued pursuant to that chapter shall forfeit not less than \$10 nor more than \$25,000 for each violation, and each day of continued violation is a separate offense. Wis. Stat. § 285.87(1).

WHEREFORE, the plaintiff asks for judgment as follows:

1. The forfeitures provided for in Wis. Stat. §§ 283.91(2), 289.96(3)(a), and/or 285.87(1) from each defendant;

2. The reasonable and necessary expenses of the investigation and prosecution, including attorney's fees, pursuant to Wis. Stat. § 283.91(5) and 289.96(3)(b);

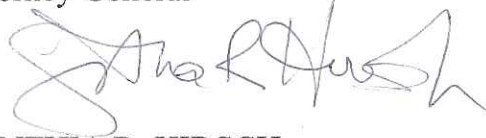
3. The costs and disbursements of this action; and

4. Such other relief as the Court may deem appropriate.

Dated this 9 day of December, 2013.

J.B. VAN HOLLEN

Attorney General

A handwritten signature in dark ink, appearing to read 'Cynthia R. Hirsch', written over the printed name.

CYNTHIA R. HIRSCH

Assistant Attorney General

State Bar #1012870

Attorneys for Plaintiff

Wisconsin Department of Justice
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STATE OF WISCONSIN

CIRCUIT COURT

TREMPEALEAU COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 13-CX-_____
Complex Forfeiture: 30109

PREFERRED SANDS OF
WISCONSIN, LLC,

Defendant.

STIPULATION AND ORDER FOR JUDGMENT

Plaintiff, State of Wisconsin, brought this civil action against defendant, Preferred Sands of Wisconsin, LLC, and alleges that the defendant has violated Wis Stat. ch. 283, 285, and 289 and Wis. Admin. Code § NR 216 at their nonmetallic mining operation in Trempealeau County, Wisconsin.

The parties now wish to resolve the litigation and as such enter into this stipulation and order for judgment setting forth the terms and conditions of such settlement.

IT IS HEREBY STIPULATED AND AGREED THAT:

1. Judgment shall be entered in accordance with this Stipulation in favor of the plaintiff and against the defendant Preferred Sands of Wisconsin, LLC in the amount of \$200,000.00. This sum is comprised of forfeitures, statutory surcharges, and costs as follows: forfeitures of \$132,566.33 under Wis. Stat. §§ 283.91(2), 289.96(3)(a), and 285.87(1), a 26% penalty surcharge of \$34,467.24 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$26,513.27 under Wis. Stat. § 814.75(12), \$25 in court costs under Wis. Stat. § 814.63(1), a \$13 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68

court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$1,325.66 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15) and attorney fees of \$5,000.00 under Wis. Stat. §§ 283.91(5) and 289.96(3)(b).

2. Defendant will pay \$195,000 in installments as set forth below by a check payable to the Trempealeau County Circuit Court and delivered to the Clerk of Court, Trempealeau County Courthouse, Post Office Box 67, Whitehall, WI 54773-0067, along with cover letters to the Court identifying the case by name and number. A copy of each check and cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Cynthia R. Hirsch at the Wisconsin Department of Justice, Post Office Box 7857, Madison, WI 53707-7857. The defendant shall pay this judgment in installments in accordance with the following schedule:

- a. \$35,000.00 within 30 days of Judgment signed by the court;
- b. \$40,000.00 on or before the anniversary of that date in 2014;
- c. \$40,000.00 on or before the anniversary of that date in 2015;
- d. \$40,000.00 on or before the anniversary of that date in 2016; and
- e. \$40,000.00 on or before the anniversary of that date in 2017.

3. Defendant will pay \$5,000.00 in attorney fees within 30 days of the date the Court signs this judgment by check payable to the Wisconsin Department of Justice and delivered to Assistant Attorney General Cynthia R. Hirsch at the address provided in paragraph two, above.

4. This Stipulation and Order for Judgment reflects the compromise of disputed claims and, except as between the parties to this action, nothing contained in this stipulation and order for judgment, nor the fact defendant entered into this Stipulation and Order for Judgment, shall be construed as an admission of liability by the defendant in any proceeding now pending or hereafter commenced.

5. The parties acknowledge that this stipulation and order for judgment sets forth the entire understanding of the parties with respect to the subject matter hereto.

6. The order for judgment accompanying this stipulation will be a final and appealable order. The order for judgment and judgment may be entered incorporating the terms of this stipulation without further notice, and the judgment may be docketed, pursuant to Wis. Stat. § 806.10(1).

7. Entry of the Order for Judgment based on this Stipulation and Order for Judgment shall fully resolve the liability of defendant, its officers, directors, affiliates and agents for any and all violations described in the complaint or arising out of the facts alleged therein.

Dated this 19th day of November, 2013.

J.B. VAN HOLLEN
Attorney General

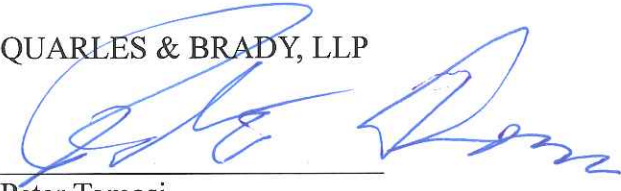


CYNTHIA R. HIRSCH
Assistant Attorney General
State Bar #1012870

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3861
(608) 266-2250 (Fax)
hirschcr@doj.state.wi.us

Dated this 19th day of November, 2013.

QUARLES & BRADY, LLP



Peter Tomasi
State Bar #1038412

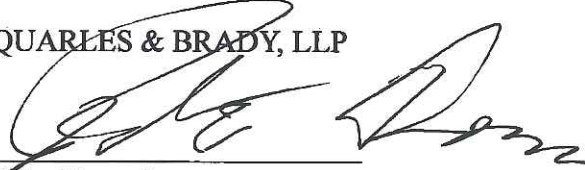
411 E Wisconsin Ave Ste 2350
Milwaukee WI 53202-4426
(414) 277-5677
(414) 271-3552 (Fax)
peter.tomasi@quarles.com

Dated this ____ day of _____, 2013.

By: _____ (print name)
Preferred Sands of Wisconsin, LLC

Dated this 19th day of November, 2013.

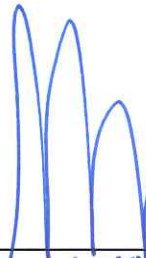
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peter.tomasi@quarles.com

Dated this 26th day of November, 2013.



By: Michael O'Neill, CEO (print name)
Preferred Sands of Wisconsin, LLC

ORDER FOR JUDGMENT

The Court approves the terms of the foregoing settlement Stipulation in *State of Wisconsin v. Preferred Sands of Wisconsin, LLC*, Trempealeau County Case No. 13-CX-____, pursuant to which the defendants will pay \$200,000.00 in forfeitures, surcharges, costs, and attorney fees in accordance with the Stipulation. The Court therefore directs the clerk to enter and docket the Judgment accordingly.

This is a final order that disposes of the entire matter in litigation between the State of Wisconsin and Preferred Sands of Wisconsin, LLC, and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

Dated this ____ day of _____, 2013.

BY THE COURT:

_____, Judge
Trempealeau County Circuit Court

STATE OF WISCONSIN

CIRCUIT COURT

TREMPEALEAU COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 13-CX-_____
Complex Forfeiture: 30109

PREFERRED SANDS OF
WISCONSIN, LLC,

Defendant.

JUDGMENT

The 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.

The defendant Preferred Sands of Wisconsin, LLC owns and operates a non-metallic (sand) mining business located at N33005 Helmers Road, Blair, Trempealeau County, Wisconsin.

Based on the Stipulation between the plaintiff and the defendant, and upon the Court's order, the terms of which are to be incorporated into this judgment in their entirety, judgment is hereby granted in favor of the plaintiff, State of Wisconsin, and against the defendant. Judgment shall be entered in favor of the plaintiff State of Wisconsin and against the defendant Preferred Sands of Wisconsin, LLC in the amount of \$200,000.00. This sum is comprised of forfeitures, statutory surcharges, and costs as follows: forfeitures of \$132,566.33 under Wis. Stat. §§ 283.91(2), 289.96(3)(a), and 285.87(1), a 26% penalty surcharge of \$34,467.24 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$26,513.27 under Wis. Stat. § 814.75(12), \$25 in court costs under Wis. Stat. § 814.63(1), a \$13 crime laboratories and drug law

enforcement surcharge under Wis. Stat. § 814.75(3), a \$68 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$1,325.66 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15) and attorney fees of \$5,000.00 under Wis. Stat. §§ 283.91(5) and 289.96(3)(b).

Defendant will pay \$195,000 in installments as set forth below by a check payable to the Trempealeau County Circuit Court and delivered to the Clerk of Court, Trempealeau County Courthouse, Post Office Box 67, Whitehall, WI 54773-0067, along with cover letters to the Court identifying the case by name and number. A copy of each check and cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Cynthia R. Hirsch at the Wisconsin Department of Justice, Post Office Box 7857, Madison, WI 53707-7857. The defendant shall pay this judgment in installments in accordance with the following schedule:

- a. \$35,000.00 within 30 days of Judgment signed by the court;
- b. \$40,000.00 on or before the anniversary of that date in 2014;
- c. \$40,000.00 on or before the anniversary of that date in 2015;
- d. \$40,000.00 on or before the anniversary of that date in 2016; and
- e. \$40,000.00 on or before the anniversary of that date in 2017.

Defendant will pay \$5,000.00 in attorney fees within 30 days of the date the Court signs this judgment by check payable to the Wisconsin Department of Justice and delivered to Assistant Attorney General Cynthia R. Hirsch at the address provided in paragraph above.

This is a final order that disposes of the entire matter in litigation between the State of Wisconsin and Preferred Sands of Wisconsin, LLC and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

The terms of the Stipulation and Order for Judgment are incorporated in their entirety.

This judgment is final for purposes of appeal.

Dated this _____ day of _____, _____.

BY THE COURT:

_____, Judge
Trempealeau County Circuit Court