

COPY

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 1

CRAWFORD COUNTY

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

Plaintiff,

v.

Case No. 14-CX- 2

DAVID MAGELAND  
619 Independence Street  
Viroqua, WI 54665,

Defendant,

Donna M. Steiner, Clerk  
Crawford County, WI

JUL 14 2014

Clerk of Circuit Court Office  
**FILED**

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

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CIVIL SUMMONS

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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

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IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (608) 326-0211 AND ASK FOR THE CRAWFORD COUNTY CIRCUIT COURT ADA COORDINATOR.


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statutes. The answer must be sent or delivered to the Court, whose address is 220 N. Beaumont Road, Prairie du Chien, WI 53821 and to Diane L. Milligan, 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 11<sup>th</sup> of July, 2014.

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

STATE OF WISCONSIN

CIRCUIT COURT  
BRANCH 1

CRAWFORD COUNTY

STATE OF WISCONSIN

17 West Main Street

Post Office Box 7857

Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 14-CX- 2

Complex Forfeiture: 30109

DAVID D. MAGELAND

619 Independence Street

Viroqua, WI 54665,

Donna M. Stelner, Clerk  
Crawford County, WI

JUL 14 2014

Defendant. Clerk of Circuit Court Office

**FILED**

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

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COMPLAINT

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The State of Wisconsin by its counsel, Attorney General J.B. Van Hollen and Assistant Attorney General Diane L. Milligan, brings this complaint at the request of the Department of Natural Resources, pursuant to Wis. Stat. §§ 292.98 and 299.95, and alleges as follows:

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America with its seat of government and offices at the State Capitol in Madison, Dane County, Wisconsin. The plaintiff has enacted in Wis. Stat. ch. 292 statutes governing

remedial action for spills of hazardous substances, and its Department of Natural Resources (DNR) administers regulations authorized by those statutes.

2. Defendant David D. Mageland is an adult resident of the State of Wisconsin, residing at 619 Independence Street, Viroqua, Crawford County, Wisconsin.

3. From August 1, 2001 until April 12, 2011, M&W, C Stores, LLC, owned property located at 400 Main Street, Gays Mills, in Crawford County, Wisconsin, identified by Crawford County as Parcel Nos. 131-0364-0001, 131-0364-002, 131-0365-0000 and 131-0366-0000, and hereinafter referred to as "the Property."

4. Mageland was the Registered Agent for M&W, C Stores, LLC, from the time it was organized in May 2000 until it was administratively dissolved on June 12, 2012.

5. Mageland was a member of M&W, C Stores, LLC, and he operated the Gays Mills BP Gas Station on the Property.

6. In November 2010, the gasoline and diesel tanks on the Property were emptied of product.

7. M&W, C Stores, LLC's permit to operate the gas station on the Property expired on November 28, 2010.

8. On February 11, 2011, Mageland executed a Commercial Offer to Purchase to convey the Property to the Village of Gays Mills for \$352,263.19.

9. The Offer to Purchase incorporated the following contingency:

This Offer to Purchase is contingent upon all site remediation as required by the Wisconsin Department of Natural Resources being completed prior to purchase. In the alternative, sufficient funds will be deducted from the

purchase price and held in escrow for the purpose of paying the entire cost of such remediation, which is estimated to be \$14,500. It is understood that the Village will apply for Brownfield grant funds to pay all or part of the cost of remediation, however, in the event such funds are not available or are insufficient to pay the total cost of remediation, remediation shall be at Seller's expense. This contingency shall be deemed satisfied only when Seller has obtained a "case closure" letter from the Wisconsin Department of Natural Resources, complying with all the requirements therein and paid all costs related to obtaining said letter.

10. On October 4, 2011, METCO Environmental Consulting conducted a tank system site assessment on the Property.

11. METCO removed two 8,000 gallon underground storage tanks that had been used to store gasoline and one 2,000 gallon underground storage tanks that had been used to store diesel fuel.

12. Soil samples collected by METCO on October 4, 2011 showed that Petroleum Volatile Organic Compound (PVOC) contamination and Diesel Range Organics (DRO) contamination was present in multiple locations on the Property.

13. Petroleum products and their constituents, which include PVOCs and DROs are "hazardous substances" as defined by Wis. Stat. § 292.01(5).

14. Wisconsin Stat. § 292.01(13) defines a "person" as "an individual, owner, operator, corporation, limited liability corporation, partnership, association, municipality, interstate agency, state agency or federal agency."

15. Wisconsin Stat. §§ 292.11(2)(a) and (3) require that any person who possesses or controls a hazardous substance, or who causes the discharge of a hazardous substance, notify DNR of the discharge and take the actions necessary to restore the

environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of this state.

16. As operator of the gas station on the Property, Mageland is a person who possessed or controlled a hazardous substance which was discharged.

17. On December 20, 2011, DNR issued a Responsible Party letter to Mageland that explained his responsibility under Wis. Stat. § 292.11.

18. As a responsible party, Mageland is required by Wis. Admin. Code § NR 716.05(1) to conduct a site investigation that meets the requirements of Wis. Admin. Code ch. NR 716 and Wis. Admin. Code § NR 746.05, and to take remedial action if necessary.

19. DNR's December 20, 2011 letter noted that as a responsible party under Wis. Stat. § 292.11, Mageland is responsible for determining the nature and extent of the PVOC and DRO contamination on the Property and for restoring the environment.

20. Mageland was directed to retain a qualified environmental consultant by January 23, 2012, and to have that consultant submit its site investigation work plan to DNR by February 24, 2012.

21. Mageland was also directed to have his consultant submit its site investigation report within 30 days after completing its site investigation.

22. On January 17, 2012, DNR staff spoke with Mageland by telephone. During this conversation, Mageland stated that while his insurance company would cover the cost of the release, he was responsible for a \$10,000 deductible that he had no

intention of paying, so he had no intention of taking the actions required by DNR's December 20, 2011 Responsible Party letter.

23. DNR issued a Notice of Noncompliance to Mageland on March 2, 2012. This Notice reiterated Mageland's obligations to restore the environment and requested a status update by April 2, 2012.

24. Mageland took no action by April 2, 2012.

25. On or about June 14, 2012, DNR sent Mageland a Notice of Violation that alleged Mageland was in violation of Wis. Stat. § 292.11 for failure to address the extent of contamination on the Property.

26. On July 17, 2012, DNR held an Enforcement Conference with Mageland, who again stated that his insurance company would pay for the clean-up, but that he was unable to pay the \$10,000 deductible.

27. DNR notified Mageland that it had a program aimed at assisting people who proved they were unable to pay for petroleum product contamination cleanup, and invited him to apply for assistance.

28. During the Enforcement Conference, Mageland agreed to submit information regarding his inability to pay, along with written verification that he had hired an environmental consultant, by August 16, 2012.

29. Mageland did not submit the information identified in the preceding paragraph by August 16, 2012.

30. By letter dated October 2, 2012, DNR requested that Mageland provide information regarding his inability to pay, along with written verification that he had hired an environmental consultant, by October 16, 2012.

31. Mageland did not submit the information identified in the preceding paragraph by October 16, 2012.

32. On February 8, 2013, the DNR sent Mageland a final letter requesting that he take action to follow through with his legal responsibilities under Wis. Stat. § 292.11 by February 18, 2013 or the DNR may issue an administrative order or refer him to the Department of Justice for Prosecution.

33. Wisconsin Stat. § 292.11(6)(c) provides that the DNR may issue a special order to the person responsible for the discharge of hazardous substances requiring that person to fulfill the duties imposed by Wis. Stat. § 292.11(3).

34. On July 17, 2013, the DNR issued Findings of Fact, Conclusions of Law and Administrative Order No. 2012-WCEE-038, In the Matter of the Alleged Discharge of a Hazardous Substance on property previously operated by David Mageland, located at 400 Main Street, Village of Gays Mills, Crawford County, Wisconsin ("the Order," attached hereto as Exhibit A).

35. The Order found that Mageland operated the BP Gas Station on the Property, that PVOC and DRO were found on the Property, that Mageland was a responsible party under Wis. Stat. § 292.11, that Mageland was required by law to take action, and that Mageland has failed to take action as required by law.



36. The Order required Mageland to hire an environmental consultant and provide a Site Investigation Workplan to DNR by October 13, 2013, to complete a site investigation report in compliance with the requirements in Wis. Admin. Code § NR 716.15 by December 1, 2013, to provide biannual progress reports to DNR, and to take other actions if necessary to restore the environment.

37. The Order contained a Notice of Appeal rights informing Mageland that he could request a contested case hearing pursuant to Wis. Stat. § 227.42 or seek judicial review of the Order pursuant to Wis. Stat. §§ 227.52 and 227.53, within thirty days.

38. DNR sent the Order via Certified Mail and Mageland refused to claim it.

39. The Order was hand-delivered to Mageland on September 16, 2013.

40. Mageland did not contest the findings of fact, conclusions of law or provisions of the Order pursuant to Wis. Stat. §§ 227.42, 227.52 or 227.53 within the timeframes required by law, or to date.

41. To date, no site investigation has been performed on the Property, and no remediation actions have been undertaken.

42. Wisconsin Stat. § 291.11(7)(e) provides that if a person violates a special order issued under Wis. Stat. § 291.11(7)(c), the DNR may refer the matter to the Department of Justice for enforcement under Wis. Stat. § 299.95.

43. Wisconsin Stat. § 299.95 authorizes the attorney general, in the circuit court for any county where a violation has occurred, to enforce Wis. Stat. ch. 292 and special orders issued pursuant to that chapter by injunction and other appropriate relief.

44. Wisconsin Stat. § 299.95 also provides that where Wis. Stat. ch. 292 or a special order issued pursuant to that chapter "prohibits in whole or in part any pollution, a violation is considered a public nuisance." Such a nuisance may be addressed by injunctive relief.

45. Wisconsin Stat. § 292.99(1) provides for forfeitures of not less than \$10 nor more than \$5,000 for each violation of Wis. Stat. ch. 292 or special orders pursuant to that chapter, and provides that each day of continued violation is a separate offense.

31. Wis. Stat. § 292.99(2) provides that the Court may award the Department of Justice the reasonable and necessary expenses of its investigation and prosecution, including attorney's fees.

WHEREFORE, the plaintiff asks for judgment as follows:

1. An injunction requiring the defendant to secure written permission from the Village of Gays Mills, then take appropriate remedial actions to comply with Wis. Stat. ch. 292 and Wis. Admin. Code chs. 700-728, including investigation, monitoring and any necessary remediation of the contamination on the Property;

2. The forfeitures provided for in Wis. Stat. § 292.99(1), which must be at least \$10 a day and may be as much as \$5,000 for each day of the defendant's continued violation, as alleged in this complaint;

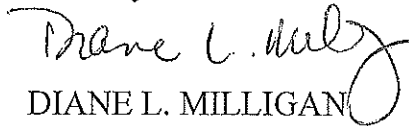
3. A 20% environmental surcharge pursuant to Wis. Stat. § 814.75(12), a 26% penalty surcharge pursuant to Wis. Stat. § 814.75(18), the \$25 court costs pursuant to Wis. Stat. § 814.63(1), the \$8 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68 court support services surcharge pursuant to

Wis. Stat. § 814.75(2), the 1% jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$12 justice information system surcharge pursuant to Wis. Stat. § 814.75(15);

4. The reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney's fees, pursuant to Wis. Stat. § 292.99(2);
5. The costs and disbursements of this action; and
6. Such other relief as the Court may deem appropriate.

Dated this 11<sup>th</sup> day of July, 2014.

J.B. VAN HOLLEN  
Attorney General



DIANE L. MILLIGAN  
Assistant Attorney General  
State Bar #1037973

Attorneys for Plaintiff State of Wisconsin

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Madison, Wisconsin 53707-7857  
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(608) 266-2250 (Fax)  
milligandl@doj.state.wi.us

BEFORE THE  
STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Alleged Discharge of a            ) Administrative Order No 2012-WCEE-  
Hazardous Substance on property previously        ) 038  
operated by David Mageland, located at 400        ) BRRTS #: 03-12-557838  
Main Street, Village of Gays Mills, Crawford        )  
County, Wisconsin

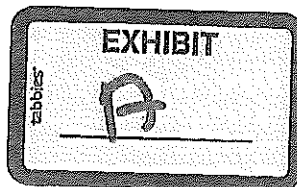
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ADMINISTRATIVE ORDER**

The following constitutes a summary of the Findings of Fact and Conclusions of Law upon which the Department of Natural Resources (Department) bases Administrative Order No. 2012-WCEE-038.

**FINDINGS OF FACT**

The Department finds that:

1. Until April 12, 2011, M&W, C Stores, LLC was owner of property located at 400 Main Street, Gays Mills, Wisconsin ("Site"). M&W, C Stores, LLC was dissolved on June 6, 2012.
2. The property located at 400 Main Street, Gays Mills, Wisconsin, was sold to the Village of Gays Mills on April 12, 2011.
3. David Mageland ("Respondent") operated Gays Mills BP Gas Station at the Site when it was owned by M&W, C Stores, and LLC.
4. The Site is located at the intersection of State Highways 131 (Main Street) and North Gay Street in Gays Mills, Vernon County, Wisconsin.
5. The Site is currently vacant.
6. METCO conducted a tank system site assessment on October 14, 2011. Two 8,000 gallon and one 2,000 underground storage tanks were removed from the Site. The two 8,000 gallon tanks stored gasoline and the 2,000 gallon tank stored diesel.
7. Soil samples collected by METCO on October 4, 2011 indicated that Petroleum Volatile Organic Compound (PVOC) contamination and Diesel Range Organics (DRO) contamination was detected in multiple locations during the tank system site assessment.
8. A responsible party letter was sent to the Respondent on December 20, 2011. The letter described the Respondent's responsibilities under s. 292.11, Wis. Stats. The letter stated that the Village of Gays Mills is the current owner of the property, but Mageland as the causer of



- the contamination, is responsible for investigating and restoring the environment. The letter requested that the Respondent retain a qualified consultant by January 23, 2012. The letter also requested a work plan be submitted to the Department by February 24, 2012.
9. The Department spoke with the Respondent by telephone on January 17, 2012. The Department reminded the Respondent of the obligation to restore the environment. The Respondent indicated that the Respondent's insurance company would cover the release, but the Respondent was responsible for a \$10,000 deductible. The Respondent stated that he had no intention of performing the investigation because the Respondent no longer owned the property. The Respondent was informed that the Department believed him to be the causer of the contamination under s. 292.11, Wis. Stats., and, therefore liable under s. 292.11(3), Wis. Stats., he is a Responsible Party.
  10. The Department sent the Respondent a Notice of Noncompliance letter on March 2, 2012 as a follow-up to the January 17, 2012 phone conversation. The Department reminded the Respondent of the obligation to restore the environment and requested that the Respondent determine the extent of contamination and provide the Department with a written update regarding the status of site activities by April 2, 2012.
  11. A Notice of Violation letter, which requested Respondent to attend an enforcement conference, was sent to the Respondent June 14, 2012.
  12. An enforcement conference was held July 17, 2012. The Respondent agreed to retain a consultant to prepare a site investigation workplan as well as submit ability to pay information by August 16, 2012.
  13. On October 2, 2012 the Department sent the Respondent a letter requesting an update by October 16, 2012.
  14. The Department spoke with the Respondent by telephone on October 22, 2012. The Respondent was asked to: 1) submit his ability to pay information to Shelley Fox, Wisconsin Department of Natural Resources, 101 South Webster Street, Madison, WI; and 2) submit written verification the Respondent hired an environmental consultant. The Respondent stated Respondent was working on a response and the Department asked him to mail that response.
  15. On February 8, 2013, the Department sent the Respondent a Final Request for Update letter asking the Respondent to submit the required information immediately and stating if the Respondent did not take action on the requested items and communicate those actions to the Department by February 18, 2013, the Department would consider issuing an order or referring the matter to the Wisconsin Department of Justice.
  16. To date, the Department has not received any response from the Respondent.

**CONCLUSIONS OF LAW**

The Department concludes that:

1. Petroleum products and their constituents are "hazardous substances" as defined by s. 292.01(5), Wis. Stats.
2. Section 292.01(13), Wis. Stats., defines a "person" as an individual, owner, operator, corporation, partnership, association, municipality, interstate agency, state agency or federal agency.
3. Section 292.11(3), Wis. Stats., requires a person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance to take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of the state pursuant to s. 292.11(3), Wis. Stats.
4. David Mageland caused the release of hazardous substances in the operation of a gas station at the Site. Under s. 292.11, Wis. Stats., David Mageland is required to take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands or waters of the state.
5. Under s. 292.11, Wis. Stats., the Department has the authority to issue Special Orders to the person possessing or controlling a hazardous substance that has been discharged, or who caused the discharge, to fulfill the duty imposed by s. 292.11, Wis. Stats., and chs. NR 700 to 726, Wis. Admin. Code.
6. This Order is necessary to accomplish the purposes of s. 292.11, Wis. Stats., and chs. NR 700 to 726, Wis. Admin. Code, and is enforceable through prosecution by the Attorney General under ss. 299.95 and 299.97, Wis. Stats., and ch. NR 728, Wis. Admin. Code.

**ADMINISTRATIVE ORDER  
COMPLIANCE MEASURES FOR SITE INVESTIGATION REPORT, REMEDIAL  
ACTION, AND REPORTING**

Based on the foregoing Findings of Fact and Conclusions of Law, the Department of Natural Resources (Department) Orders David Mageland to complete the following schedule of actions within the times specified:

1. Hire an environmental consultant and provide the Department with a Site Investigation Workplan by October 15, 2013.
2. By December 1, 2013, submit a complete site investigation report to the Department outlining the findings of the site investigation in compliance with the requirements of s. NR 716.15, Wis. Admin. Code. The Site Investigation Report shall include a discussion of potential remedial actions at the Site.

3. The Department requires modification of the site investigation report, the consultant shall modify the site investigation report to address the Department's comments and resubmit the report to the Department within thirty (30) calendar days after receipt of the Department's notification. The Department may place conditions on the approval of the site investigation report.
4. A Remedial Action Options Report shall be submitted within 60 days of the Department issuing a "Site Investigation Report Complete" determination letter.
5. Unless directed otherwise in writing by the Department, Submit progress reports every six (6) months. In addition, in the event that free product is found at the Site, monthly written updates shall be submitted describing free product measurements, mitigation and disposal actions. These progress reports shall:
  - A. Describe the actions that have been taken toward achieving compliance with this Order during the preceding reporting period.
  - B. Include a map showing all sample locations, roads, property lines, contaminant source locations, utilities, buildings, and other items identified in ch. NR 716, Wis. Admin. Code.
  - C. Include Summary Tables for all historical groundwater quality and elevation data related to each well, and an updated groundwater flow direction contour map.
  - D. Include Summary Tables for all historical petroleum free product removal data from the monitoring wells, quantity of product removed, thickness measurements for each well, if appropriate.
  - E. Include a map showing the horizontal and vertical extent of groundwater contamination and locations of petroleum free product.
  - F. Include an evaluation of the effectiveness of the remedial action and recommendations for improvements.
  - G. If the Respondent or his consultant requests the Department's technical comments aside from the Site Investigation and Remedial Action technical reviews, the Respondent will pay a technical review fee of \$500 per event. The Department agrees to provide all technical comments in writing to both the Respondent and his consultant.

7. Mail or deliver copies of each report, plan or other submittal required by this Order to the following address:

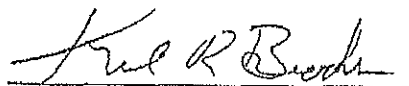
Wisconsin Department of Natural Resources  
Wisconsin Rapids Service Center  
Attn: David Rozeboom  
473 Griffith Ave.  
Wisconsin Rapids, WI 54494

**NOTICE OF APPEAL RIGHTS**

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have thirty (30) days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with section NR 2.05(5), Wis. Admin. Code, and served on the Secretary in accordance with section NR 2.03, Wis. Admin. Code. The filing of a request for a contested case hearing does not extend thirty (30) day period for filing a petition for judicial review.

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES  
For the Secretary  
By:



Karl R. Brooks, Deputy Chief Warden  
Bureau of Law Enforcement

7-17-13

Date