

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 1

**Date of Notice:** July 17, 2006

**Public Notice Number:** PN2006-0008

**Comment Period:** July 18, 2006 - August 16, 2006

**Action:** Notice of Proposed Assessment of Class II Clean Water Act Section 309(g)(2)(B) Administrative Penalties and Opportunity to Comment

Under Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), EPA is authorized to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. In Class II proceedings under Section 309(g)(2)(B), any person who violates certain provisions of the Clean Water Act may be administratively assessed a civil penalty of up to \$10,000 per violation per day for each day during which the violation continues, up to a maximum of \$125,000. Pursuant to 40 C.F.R. Part 19 (Adjustments of Civil Penalties for Inflation) promulgated pursuant to the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, the maximum civil penalties that may be administratively assessed have been increased as follows: For violations occurring between January 31, 1997 and March 14, 2004, up to \$11,000 per violation per day for each day during which the violation continues, up to a maximum of \$137,500; and, for

violations occurring on or after March 15, 2004, up to \$11,000 per violation per day for each day during which the violation continues, up to a maximum of \$157,500. Proceedings are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," at 40 C.F.R. Part 22 ("Part 22").

The procedures by which the public may submit written comments on a proposed penalty order or participate in a penalty proceeding are set forth in Part 22. The deadline for submitting public comment on a proposed penalty order is thirty (30) days after issuance of public notice.

Pursuant to Section 309(g), EPA is providing public notice of the following proposed administrative penalty assessment:

**In the Matter of: Gerald Realty Ltd. Partnership/Busby Construction Co., Inc.**

**Name and Mailing Address of Respondents:**

Gerald Realty  
213 Union Avenue  
Laconia, NH 03246

Busby Construction Company, Inc.  
9 Pond Lane  
Atkinson, NH 03811

**Name and Address of Facility or Site Addressed by Complaint:**

Winnipesaukee Crossing  
1401 Lakeshore Drive (Route 11)  
Gilford, NH

**Description of Business or Activity Conducted by the Respondent:**

Retail Development

**Description of Violations Alleged in Complaint:** Failure to comply with conditions of storm water general permit

**Proposed Settlement Penalty:** \$19,106

**Name of Case:** In the Matter of: Gerald Realty Ltd.  
Partnership/Busby Construction Co., Inc.

**Docket Number:** CWA-01-2005-0010

**Date Filed with Regional Hearing Clerk:** July 14, 2006

**Name, Mailing Address, and Telephone Number of Regional Hearing Clerk:**

Wanda Rivera, Regional Hearing Clerk, U.S. EPA, Region 1,  
One Congress Street, Suite 1100, Mail Code RAA, Boston,  
Massachusetts 02114; (617) 918-1113

FOR FURTHER INFORMATION: Persons wishing to receive a copy of Part 22, review the complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the public record for the proceeding is located in the EPA Regional Office at One Congress Street, Boston, Massachusetts, and the file will be open for public inspection during normal business hours.

Because this matter involves a CWA Section 309(g) proceeding which is proposed to be simultaneously commenced and settled under 40 C.F.R. § 22.13(b), this matter will not be resolved or settled until ten (10) days after the close of the public comment period in accordance with 40 C.F.R. §22.45(b) and (c).