

Zelmer to control runoff, restore wetlands and pay \$25,000 penalty

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(Denver, Colo. – June 2, 2009) The U.S. Department of Justice, on behalf of the U.S. Environmental Protection Agency, has filed a civil complaint and lodged a consent decree against Zelmer, Inc. and Spencer Heights, LLC (Zelmer) to resolve alleged violations of the Clean Water Act (CWA) in Lincoln County, S.D. Zelmer allegedly violated the CWA during the development of a residential subdivision by failing to implement a storm water management plan and by placing material in wetlands without a permit.

“These actions compromised water quality by failing to manage runoff and by filling important wetlands,” said Diane Sipe, Director of EPA Region 8’s Water Enforcement Program. “EPA is requiring Zelmer to prevent its construction operations from depositing sediment into nearby waters and to restore the impacted wetlands. We will continue to pursue actions against those who violate federal laws that protect South Dakota’s waters.”

Zelmer’s activities caused approximately 3.29 acres of wetlands to be filled. EPA also determined that Zelmer failed to implement erosion control practices on the site, a violation of CWA storm water regulations that resulted in additional sediment loading to a tributary of the Big Sioux River. The CWA violations were discovered during an investigation by the U.S. Army Corps of Engineers.

Under the consent decree, Zelmer will restore impacted wetlands at the development site and will complete a wetlands creation project in nearby Turner County. The estimated cost to complete these wetland projects is \$444,500. Zelmer will take additional actions at all of its construction sites to ensure future compliance with storm water requirements. The company will also pay a penalty of \$25,000. Penalties assessed under the CWA are determined by a variety of statutory factors, including the extent of the violations, economic benefit of noncompliance, history of violations and the defendants’ ability to pay.

The rivers, streams and wetlands in this area are important as habitat for local and migratory birds and localized wildlife, water storage and retention, water quality enhancement, flood control and aesthetics. Sediment from construction activities is a major water quality issue and can have a negative impact on aquatic life. The State of South Dakota has designated a portion of the Big Sioux River as impaired due to sediments.

Any person planning work affecting waters and wetlands should contact the U.S. Army Corps of Engineers’ Office in Pierre, South Dakota, at (605) 224-8531 prior to beginning any work to determine if they need a permit. Information on permitting requirements may also be found online at:

<https://www.nwo.usace.army.mil/html/od-rsd/frame.html>

Furthermore, developers, contractors and other landowners who plan to conduct construction activities disturbing one acre of land or greater should contact the South Dakota Department of Environment and Natural Resources at 1-800-SD-STORM (1-800-737-8676) to obtain storm water permit coverage. Information on storm water requirements in South Dakota may also be found online at:

<http://www.denr.sd.gov/des/sw/stormwater.aspx>.

For more information on the Clean Water Act, visit EPA's compliance web page:

<http://www.epa.gov/compliance/civil/cwa/index.html>