

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 RED SEAL DEVELOPMENT)
 CORPORATION, an Illinois Corporation, and)
 LENZINI EXCAVATING COMPANY, an)
 Illinois Corporation,)
)
 Respondents,)

PCB No.
(Enforcement - Water)

NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

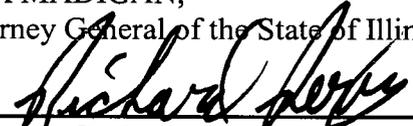
PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board the following Complaint, a copy of which is attached and hereby served on you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office or an attorney.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental facilities financing act [20 ILCS 3515/1 et seq.] to correct the alleged pollution.

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN,
Attorney General of the State of Illinois

By: 
 RICHARD A. PERRY
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington St., 18th Floor
 Chicago, Illinois 60602
 (312) 814-3776

CERTIFICATE OF SERVICE

I, RICHARD A. PERRY, an Assistant Attorney General, do certify that I caused to be mailed this 28th day of July, 2008, the foregoing Complaint and Notice of Filing upon the persons listed on said notice, by certified mail.



RICHARD A. PERRY
Assistant Attorney General
Environmental Bureau
69 West Washington, 18th Floor
Chicago, IL 60602
312-814-2069

SERVICE LIST

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	
)	PCB No.
RED SEAL DEVELOPMENT)	(Enforcement - Water)
CORPORATION, an Illinois corporation, and)	
LENZINI EXCAVATING COMPANY, an)	
Illinois corporation.)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of the Respondents, RED SEAL DEVELOPMENT CORPORATION, an Illinois corporation, and LENZINI EXCAVATING COMPANY, an Illinois corporation, as follows:

COUNT I
WATER POLLUTION

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to abate violations of the National Pollutant Discharge Elimination System ("NPDES") permit program under the federal

Clean Water Act ("CWA"), 33 U.S.C. § 1342(b)(7).

3. At all times relevant to this Complaint, Respondent Red Seal Development Corp. ("Red Seal") was and is an Illinois corporation in good standing with the State of Illinois.

4. At all times relevant to this Complaint, Respondent Lenzini Excavating Company ("Lenzini") was and is an Illinois corporation in good standing with the State of Illinois.

5. At all times relevant to this Complaint, Respondent Red Seal was the owner of a parcel of land of approximately 14.24 acres in size and known as the "Deer Park Estates". This land was located at the intersection of Long Grove Road and Quentin Road in the City of Deer Park, Lake County, Illinois (the "Site").

6. On October 4, 2006, the Illinois EPA sent violation notices to the Respondents alleging the stormwater violations of the Act described herein, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006). On October 31, 2006, the Illinois EPA sent a violation notice to Respondent Red Seal alleging the failure to obtain a construction permit violation of the Act described herein, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006). The Illinois EPA met with representatives of Respondent Lenzini on November 29, 2006, and with representatives of Respondent Red Seal on December 5, 2006. On January 17, 2007, the Illinois EPA sent notices to the Respondents rejecting their proposed compliance commitment agreements for stormwater violations, and on February 8, 2007 the Illinois EPA sent a notice to Respondent Red Seal rejecting its proposed compliance commitment agreement for the failure to obtain a construction permit violation. On August 17, 2007, the Illinois EPA sent notices of intent to pursue legal action to the Respondents.

7. The Site is bordered by wetlands to the south and to the east (the "Wetlands").

8. An unnamed tributary of Buffalo Creek flows near the northwest corner of the

Site (the "Tributary").

9. At all times relevant to this Complaint, Respondent Red Seal was engaged in the construction of a residential subdivision at the Site.

10. Red Seal hired Respondent Lenzini as a contractor for its construction work at the Site. In its contract with Red Seal, Lenzini agreed to carry out soil excavation activities at the Site, including topsoil stripping, deep-soil cutting, and topsoil stockpiling, and to install silt fences, a detention pond, and certain other erosion/runoff control measures.

11. Some time in 2006, on a date better known to the Respondents, Lenzini signed a contractor certification statement with respect to the Site, stating that Lenzini "understand[s] the terms of conditions of the general National Pollutant Discharge Elimination System (NPDES) permit (ILR10) that authorizes the storm water discharges associated with industrial activity from the construction site."

12. On a date or dates better known to the Respondents, but prior to August 24, 2006, the Respondents caused or allowed the stripping, grading and disturbing of the soil that covered most of the Site. This disturbed soil covering most of the Site was exposed and unstabilized. The soil remained in a disturbed, exposed, and unstabilized condition during a period of time beginning no later than August 24, 2006, and continuing until at least September 11, 2006, and on other dates better known to the Respondents.

13. On a date or dates better known to the Respondents, but prior to August 24, 2006, the Respondents created or allowed the creation of a large stockpile of soil located in the northern portion of the Site (the "Soil Stockpile").

14. The soil constituting the Soil Stockpile was exposed and unstabilized. The Soil Stockpile remained in an exposed and unstabilized condition during a period of time beginning

no later than August 24, 2006, and continuing until at least September 11, 2006, on dates better known to the Respondents.

15. During a period of time beginning no later than August 24, 2006, and continuing until at least September 11, 2006, on dates better known to the Respondents, the exposed and unstabilized soil covering the Site, including the Soil Stockpile, was located in such a place and manner as to make it likely that this soil would be carried by stormwater runoff into the Wetlands or the Tributary.

16. On August 24, 2006, on September 11, 2006, and on other dates better known to the Respondents, stormwater runoff carried exposed soil from the Site away from the Site at its northwestern corner. This runoff exiting from the northwestern part of the Site had a tan color due to the heavy concentrations of soil it contained, and the contaminated runoff traveled through a series of conveyances until it reached the Tributary.

17. At the point when the sediment-laden runoff from the Site entered the Tributary, it changed the color of the entire width of the Tributary from a naturally occurring color to a strong tan color. The Tributary continued to have this tan color for a substantial distance downstream from the point of confluence.

18. The flow of sediment-laden runoff from the Site into the Tributary caused turbidity in the Tributary.

19. On August 24, 2006, on September 11, 2006, and on other dates better known to the Respondents, stormwater runoff carried exposed soil from the Site away from the Site at its southeastern corner. This southeastern runoff had a strong tan color due to the heavy concentrations of soil it contained. After exiting the Site, this contaminated runoff traveled downhill and into the Wetlands.

20. On September 11, 2006, and on other dates better known to the Respondents, stormwater runoff carried exposed soil from the Site away from the Site at various points along its southern edge. This southern runoff had a strong tan color due to the heavy concentrations of soil it contained. After exiting the Site, this contaminated runoff traveled directly into the Wetlands.

21. The flow of sediment-laden runoff from the Site into the Wetlands caused a change of color in the Wetlands.

22. The flow of sediment-laden runoff from the Site into the Wetlands caused turbidity in the Wetlands.

23. Section 12(a) of the Act, 415 ILCS 5/12(a)(2006), provides as follows:

No person shall:

(a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

24. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides the following definition:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

25. The Respondents, Red Seal and Lenzini, are corporations, and are therefore each a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

26. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), provides the following definition:

“Contaminant” is any solid, liquid or gaseous matter, any odor, or any form of

energy, from whatever source.

27. Soil and sediment, and stormwater runoff containing soil and sediments, are “contaminants” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

28. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), provides the following definition:

“Water Pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

29. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), contains the following definition:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

30. The Tributary and the Wetlands are “waters” of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

31. During a period commencing no later than August 24, 2006, and continuing until at least September 11, 2006, and on dates better known to the Respondents, by failing to install adequate erosion and stormwater runoff control measures at the Site, the Respondents caused, threatened and/or allowed excessive soil- and sediment-laden runoff from its soil grading and disturbing activities at the Site to discharge into the Tributary and the Wetlands. Such soil and/or sediment altered, or would tend to alter, the physical or biological properties of the Tributary and/or the Wetlands in such a manner that the alteration would, or likely would, create a nuisance; or in such a manner that the alteration would, or likely would, render the Tributary and/or the Wetlands harmful, detrimental or injurious to public health or welfare; or to domestic,

recreational, or other legitimate uses; or to wild animals, birds, fish, and other aquatic life. The Respondents therefore caused, threatened, or allowed the discharge of contaminants so as to cause or tend to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, Red Seal and Lenzini, on this Count I:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2006);
3. Ordering the Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006);
4. Assessing against each of the Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against each of the Respondents for each day of violation;
5. Ordering the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II
OFFENSIVE CONDITIONS

1.-30. The Complainant realleges and incorporates by reference herein paragraphs 1 through 30 of Count I as paragraphs 1 through 30 of this Count II.

31. The Respondents' discharges at the Site are subject to the Act and the rules and regulations promulgated by the Illinois Pollution Control Board (the "Board") pursuant to the Act. The Board's regulations for water pollution are found in Title 35, Subtitle C, Chapter I of the Illinois Administrative Code ("Board Water Pollution Regulations").

32. Part 302, Subpart B, of the Board Water Pollution Regulations, 35 Ill. Adm. Code Part 302, Subpart B, establishes general use water quality standards for non-specified waters of the State of Illinois.

33. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part, as follows:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin

34. By causing, threatening, or allowing the discharge of contaminants into the Tributary and the Wetlands that caused unnatural turbidity and color in the Tributary and the Wetlands, the Respondents caused a violation of Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and thereby also violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of the Complainant and against the Respondents, Red Seal and Lenzini, on this Count II:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(a) of the Act, 415 ILCS

5/12(a)(2006), and Section 302.203 the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

3. Ordering the Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and Section 302.203 the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;

4. Assessing against each of the Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and the Board Water Pollution Regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against each of the Respondents for each day of violation;

5. Ordering the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT III
WATER POLLUTION HAZARD

1.-30. The Complainant realleges and incorporates by reference herein paragraphs 1 through 30 of Count I as paragraphs 1 through 30 of this Count III.

31. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides as follows:

No person shall:

d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

32. By depositing soil at the Site in such place and manner described in paragraphs 11-14 above, the Respondents created a situation in which soil and sediments, which are contaminants as defined by the Act, were likely to be carried by stormwater runoff into the

Tributary and the Wetlands. The Respondents therefore created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, Red Seal and Lenzini, on this Count III:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);
3. Ordering the Respondents to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d)(2006);
4. Assessing against each of the Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) each for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against each of the Respondents for each day of violation;
5. Ordering the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT IV
NPDES PERMIT VIOLATIONS AS TO DEFENDANT RED SEAL -
FAILURE TO IMPLEMENT THE SWPPP

1.-30. Complainant realleges and incorporates by reference herein paragraphs 1 through 30 of Count I as paragraphs 1 through 30 of this Count IV.

31. Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), provides, in pertinent part, as

follows:

No person shall:

* * * * *

(f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program. . . .

32. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

NPDES Permit Required

a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

33. The USEPA has delegated the authority to administer the NPDES program to the State of Illinois, conditioned upon its compliance with federal regulations. The State of Illinois issues NPDES permits through the Illinois EPA. The State of Illinois' authority to issue NPDES permits includes issuing permits for the discharge of stormwater. Stormwater discharges are regulated by 40 CFR § 122.26, which requires a person to obtain a NPDES permit and to implement a storm water pollution prevention plan ("SWPPP") before discharging stormwater in the course of engaging in certain construction activities.

34. In pertinent part, 40 CFR § 122.26(a) provides as follows:

(a) Permit requirement.

(1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

* * * * *

(ii) A discharge associated with industrial activity...

35. In pertinent part, 40 CFR § 122.26(b) provides as follows:

(b) Definitions.

* * * * *

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. . . . The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

* * * * *

(x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. . . .

36. Since the Respondents have engaged in construction activity at the Site that has involved clearing, grading, and excavation of soil and that has disturbed more than five acres of total land area, the Respondents' activities at the Site are an "industrial activity" within the definition of 40 CFR § 122.2(b), and the stormwater discharges from the Site are a "discharge associated with industrial activity" as that phrase is defined in 40 CFR § 122.26(a).

37. Stormwater discharges from construction sites are governed by a general permit that allows such discharges, provided that certain conditions are met. The Illinois EPA issued this general stormwater permit as the "General NPDES Permit No. ILR10" or "General NPDES Permit For Storm Water Discharges From Construction Site Activities", on May 30, 2003 (the "General Stormwater Permit").

38. On July 5, 2006, the Illinois EPA issued to Red Seal a Notice of Coverage,

determining that Red Seal's activities at the Site were covered by the General Stormwater Permit. At all times relevant to this Complaint, the construction activities at the Site were governed by the General Stormwater Permit.

39. Part VI.A. of the General Stormwater Permit provides as follows:

The permittee must comply with all conditions of this permit.

40. Part IV. of the General Stormwater Permit provides as follows:

A storm water pollution prevention plan shall be developed for each construction site covered by the permit. . . . Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

41. Red Seal wrote and adopted a SWPPP for its construction activities at the Site.

Red Seal's SWPPP stated that soil striping, grading, and stockpiling should not take place at the Site prior to the construction and installation of a stabilized detention pond containing a perforated riser.

42. As of August 24, 2006, the Respondents had not constructed or installed at the Site a stabilized detention pond containing a perforated riser at the Site.

43. By failing to implement its SWPPP, Respondent Red Seal thereby violated Part IV. of the General Stormwater Permit. Compliance with Part IV. is a condition of the General Stormwater Permit. By violating Part IV. Of the General Stormwater Permit, Respondent Red Seal thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2006) and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent Red Seal, on this Count IV:

1. Authorizing a hearing in this matter at which time the Respondent Red Seal will be required to answer the allegations herein;

2. Finding that the Respondent has violated Part IV. of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

3. Ordering the Respondent to cease and desist from any further violations of Part IV. of the General Stormwater Permit, Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assessing against the Respondent, pursuant to Section 42(b)(1) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT V

CONSTRUCTING WITHOUT A PERMIT AS TO RESPONDENT RED SEAL

1.-30. Complainant realleges and incorporates by reference herein paragraphs 1 through 30 of Count I as paragraphs 1 through 30 of this Count V.

31. Section 12(b) of the Act, 415 ILCS 5/12(b)(2006), provides, in pertinent part, as follows:

No person shall:

- (b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

* * * * *

32. Section 309.202(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code

309.202(a), provides as follows:

Except for treatment works or wastewater sources which have or will have discharges for which NPDES Permits are required, and for which NPDES Permits have been issued by the Agency:

- a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency, except as provided in paragraph (b).

33. Section 301.265 of the Board Water Pollution Regulations, 35 Ill. Adm. Code

301.265, provides the following definition:

"Construction" means commencement of on-site fabrication, erection, or installation of a treatment works, sewer, or wastewater source; or the reinstallation at a new site of any existing treatment works, sewer, or wastewater source.

34. Section 301.390 of the Board Water Pollution Regulations, 35 Ill. Adm. Code

301.390, provides the following definition:

"Sewer" means a stationary means of transport or stationary system of transport, excluding natural waterways, constructed and operated for the purpose of collecting and transporting wastewater or land runoff, or both.

35. On a date or dates better known to the Respondents, but after September 22, 2006 and prior to October 13, 2006, Respondent Red Seal caused and/or allowed the construction and/or installation of a sanitary sewer at the Site (the "Sanitary Sewer").

36. At no point during or prior to the installation and/or construction of the Sanitary Sewer did Respondent Red Seal possess a permit from the Illinois EPA allowing the installation or construction of the Sanitary Sewer.

37. The Sanitary Sewer is equipment or a facility that is capable of causing or contributing to water pollution.

38. The Respondent's installation of the Sanitary Sewer constitutes "construction" as

that term is defined in Section 301.390 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.390.

39. The Sanitary Sewer is a stationary system of collecting and transporting wastewater, and is therefore a "sewer" as that term is defined in Section 301.390 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.390.

40. By constructing the Sanitary Sewer, a piece of equipment and a facility capable of contributing to water pollution, without a permit from the Illinois EPA, Respondent Red Seal violated Section 12(b) of the Act, 415 ILCS 5/12(b)(2006) and Section 309.202(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the and against the Respondent, Red Seal, on this Count V:

1. Authorizing a hearing in this matter at which time the Respondent Red Seal will be required to answer the allegations herein;

2. Finding that the Respondent Red Seal has violated Section 12(b) of the Act, 415 ILCS 5/12(b)(2006), and Section 309.202(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a);

3. Ordering the Respondent to cease and desist from any further violations of Section 12(b) of the Act, 415 ILCS 5/12(b)(2006), and Section 309.202(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a);

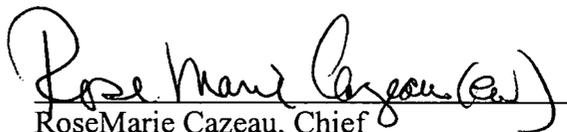
4. Assessing against Respondent Red Seal a civil penalty of Fifty Thousand Dollars (\$50,000.00) each for each and every violation of the Act and the Board Water Pollution Regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against the

Respondent for each day of violation;

5. Ordering the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN,
Attorney General of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 
RoseMarie Cazeau, Chief
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