



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 12, 2008

PLB09-40

RECEIVED
CLERK'S OFFICE
DEC 17 2008
STATE OF ILLINOIS
Pollution Control Board

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Illinois Valley Paving Co., Inc.***

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Stephen J. Janasie
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

SJJ/pk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD **RECEIVED**
CLERK'S OFFICE

DEC 17 2008

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 ILLINOIS VALLEY PAVING COMPANY,)
 INC.,)
)
 Respondent.)

PCB No. 09-40
(Enforcement)

NOTICE OF FILING

To: Illinois Valley Paving Company
c/o James Bruner, Registered Agent
P.O. Box 248
Winchester, IL 62694

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon 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 this 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.

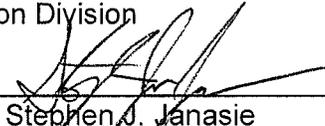
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2006), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY: 
Stephen J. Janasie
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 12, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on December 12, 2008, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Illinois Valley Paving Company
c/o James Bruner, Registered Agent
P.O. Box 248
Winchester, IL 62694

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Stephen J. Janasie
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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CLERK'S OFFICE
DEC 17 2008
STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
ILLINOIS VALLEY PAVING COMPANY,)
INC.,)
)
Respondent.)

PCB No. 09-40
(Enforcement)

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, STEPHEN J. JANASIE, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

Respectfully submitted,

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

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

BY: 
Stephen J. Janasie
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 12, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

DEC 17 2008

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
ILLINOIS VALLEY PAVING)
COMPANY, INC.)
)
Respondent.)

PCB No. 09- 40

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 Respondent, ILLINOIS VALLEY PAVING COMPANY, INC. as follows:

COUNT I
WATER POLLUTION VIOLATIONS

1. This Complaint is brought by the Attorney General, 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 agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.
3. Respondent ILLINOIS VALLEY PAVING COMPANY, Inc. is an Illinois corporation in good standing.
4. Respondent operates a temporary concrete batch plant ("the site") which is located inside the northwest portion of the "cloverleaf" intersection of I-74 and I-474 just west of Peoria, Peoria County, Illinois. The site is located near an unnamed tributary of Kickapoo Creek and storm water and other runoff from the site flow into this waterway.

5. Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), provides, in pertinent part, 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;

* * *

6. Section 302.203 of the Illinois Pollution Control Board's Water Quality Standards, 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.

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

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor or any form of energy, from whatever source.

8. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), contains 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 water 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.

9. 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.

10. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without an NPDES permit. The United States Environmental Protection Agency (“USEPA”) administers the NPDES program in each State unless the USPEA has delegated authority to do so to that State. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations.

11. Storm water discharges are regulated by 40 CFR 122.26, which requires a person to obtain an NPDES permit and to implement a stormwater pollution prevention plan for construction activity including clearing, grading and excavation:

(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 (see § 122.26(a)(4));

* * *

(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):

* * *

- (ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 31I, 32 (except 323), 33, 344I, 373;

* * *

12. According to the Standard Industrial Classification ("SIC") Manual, 1987, published by the Executive Office of the President, Office of Management and Budget, Respondent's temporary concrete batch plant falls under SIC Major Group 32: Stone, Clay, Glass, and Concrete Products, and Industry Group 327: Concrete, Gypsum and Plaster Products.

13. On March 4, 2005, Lyle Ray ("inspector") of the Illinois EPA's Peoria Regional Office performed an inspection at the site. At that time, Respondent conducted operations on the site even though the site's silt fences were in disrepair.

14. On June 16, 2005, the inspector re-inspected the site and found Respondent using the site for extensive truck washing activities which overwhelmed the erosion control devices. As a result of the runoff, the water laden with concrete waste and residues entered the Kickapoo Creek via an unnamed tributary. Water samples of the runoff showed elevated levels of pH and Total Suspended Solids.

15. On July 28, 2005, the inspector conducted a re-inspection and found the concrete residues in the tributary to Kickapoo Creek were heavier than during the previous visit.

16. Respondent caused water pollution by discharging contaminant-laden stormwater runoff into the Kickapoo Creek via an unnamed tributary, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

17. Respondent also caused waters of the State to contain sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin, by discharging contaminant-laden stormwater runoff into the Kickapoo Creek via an unnamed tributary, in violation of Section 302.203 of the Illinois Pollution Control Board's Water Quality Standards, 35 Ill. Adm. Code 302.203.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board deems appropriate.

COUNT II
WATER POLLUTION HAZARD VIOLATIONS

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 4 and paragraphs 7 through 15 of Count I as paragraphs 1 through 13 of this Count II.

14. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides, in pertinent part, 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.

* * *

15. Respondent created a water pollution hazard by depositing concrete wastes and residues on the land without the protection of adequate erosion controls, in violation of Section

12(d) of the Act, 415 ILCS 5/12(d) (2006).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board deems appropriate.

COUNT III
NPDES PERMIT VIOLATIONS

1-13. Complainant realleges and incorporates herein by reference paragraphs 1 through 4 and paragraphs 7 through 15 of Count I as paragraphs 1 through 13 of this Count III.

14. 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.

* * *

15. Respondent violated the terms of its NPDES permit number ILR006436 by failing to implement adequate erosion controls at the site, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board deems appropriate.

Respectfully submitted,

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

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

BY: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel
STEPHEN J. JANASIE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 12, 2008