

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
LISA MADIGAN, Attorney General )  
of the State of Illinois, )  
 )  
Complainant, ) PCB No. 09  
 ) (Enforcement - Water)  
vs. )  
 )  
PAR DEVELOPMENT, INC., )  
an Illinois corporation, )  
 )  
Respondent. )

**NOTICE OF FILING**

TO: Warren R. Fuller  
Fuller and Berres  
69 South Barrington Road  
South Barrington, Illinois 60010

Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Ste. 11-500  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a Complaint, Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "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,

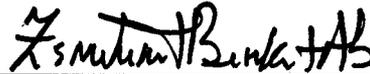
you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney."

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General  
State of Illinois

BY:



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ZEMEHERET BEREKET-AB  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18<sup>th</sup> Flr.  
Chicago, IL 60602  
(312) 814-3816

DATE: March 30, 2009

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
) No. 09-  
PAR DEVELOPMENT, INC., )  
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 Respondent, PAR DEVELOPMENT, INC., 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 Par Development, Inc., ("PAR") was and is an Illinois corporation in good standing with the Illinois Secretary of State.

4. At all times relevant to this Complaint, PAR was the owner/developer of a retail business development project, called Lake Pointe located at the northeast corner of the intersection at Algonquin Road and Lakewood Road in Lake in the Hills, McHenry County, Illinois ("Site").

5. On September 24, 2004, the Illinois EPA received from PAR a Notice of Intent ("NOI") application for coverage under the NPDES general permit to discharge storm water from construction site activities. On October 26, 2004, the Illinois EPA issued Notice of Coverage Under Construction Site Activity Storm Water General Permit NPDES Permit No. ILR10B681.

6. The total size of the construction Site is approximately 26.3 acres and the closest receiving water is Exner Marsh, an Illinois protected area. The NOI indicated that storm water from the Site discharges directly to waters of the State, Exner Marsh.

7. On June 20, 2007, the Illinois EPA conducted an inspection of the construction Site.

8. During the June 20, 2007 inspection, the Illinois EPA observed that a pump was pumping sediment laden water adjacent to the silt fence, and the sediments were breaching the silt fence and entering into a pond named Rose's Pond which is located adjacent to the Site. Rose's Pond is a tributary to Exner Marsh.

9. The Illinois EPA also observed some piles of dirt laden with debris as well as a pile of broken concrete with rebar adjacent to Rose's Pond and the silt fence. The exposed piles of soil laden with debris and pile of broken concrete with rebar were placed in a manner which posed a hazard to water quality.

10. During the June 20, 2007, inspection, the Illinois EPA also observed that the NOI was not posted and there was no copy of the stormwater pollution prevention plan ("SWPPP") available for review at the Site.

11. On August 15, 2007, the McHenry County Soil and Water Conservation District ("MCSWCD") conducted an inspection of the Site under a delegation agreement with the Illinois EPA.

12. During the August 15, 2007 inspection, the MCSWCD inspector observed sediment-laden water being pumped from an area adjacent to the Site where PAR's contractor was working to widen Algonquin Road. The water was pumped from the area adjacent to the Site and discharged to the ground on the Site and traveled 300 to 400 feet over bare ground to the detention basin. From the basin, the water was pumped into a filter bag, which failed to remove suspended solids from the water. The water then flowed into Exner Marsh.

13. On July 9, 2007, the Illinois EPA sent a violation notice to PAR.

14. On July 16, 2007, PAR sent its compliance commitment agreement ("CCA") to the Illinois EPA.

15. On August 15, 2007, the Illinois EPA rejected PAR's CCA.

16. On March 20, 2008, the Illinois EPA issued a Notice of Intent to Pursue Legal Action.

17. 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.

18. 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.

19. PAR Development, Inc. is a corporation, and therefore a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

20. 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.

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

22. 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.

23. 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.

24. Rose’s Pond and the Exner Marsh 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).

25. From some time prior to June 20, 2007, on a date or dates known better to the Respondent, PAR failed to install adequate erosion and stormwater runoff control measures at the Site thereby allowing soil and sediment-laden runoff from its construction site activities to discharge into Rose's Pond and Exner Marsh, waters of the State.

26. Such soil and/or sediment altered, or would tend to alter, the physical or biological properties of Rose's Pond and Exner Marsh, waters of the State.

27. By its failure to install adequate erosion and stormwater run-off control measures at the Site, Respondent allowed contaminants to enter into water of the State.

28. By causing, threatening or allowing the discharge of contaminants into waters of the State, Respondent caused or tended to cause water pollution in Illinois in violation of Section 12(a) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, Par Development, Inc., on this Count I:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2006);
3. Ordering Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006);
4. Assessing against the Respondent 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 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.

**COUNT II**  
**WATER POLLUTION HAZARD**

1-24. The Complainant realleges and incorporates by reference herein paragraphs 1 through 24 of Count I as paragraphs 1 through 24 of this Count II.

25. 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.

26. By depositing piles of dirt laden with debris as well as a pile of concrete with rebars, which are contaminants, at the Site in such place and manner as to create a water pollution hazard, Respondent violated 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 Respondent, Par Development, Inc., on this Count II:

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

2. Finding that the Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);

3. Ordering the Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d)(2006);

4. Assessing against the Respondent 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 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.

**COUNT III**  
**NPDES PERMIT VIOLATION- DISCHARGE OF CONTAMINENTS**

1-25. Complainant realleges and incorporates by reference herein paragraphs 1 through 25 of Count II as paragraphs 1 through 25 of this Count III.

26. 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. . . .

27. 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.

28. Stormwater discharges from construction site activities are governed by a general permit that allows such discharges. On October 26, 2004, the Illinois EPA issued coverage to Respondent under the General NPDES Permit with the permit number ILR10B681.

29. At all times relevant to this Complaint, storm water discharges associated with construction activities at the Site were governed by NPDES Permit No. ILR10B681 issued to Respondent.

30. Part VI.A of NPDES Permit No. ILR10B681 Permit provides as follows:

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of Illinois Environmental Protection Act and the CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

31. Part III.C of NPDES Permit No. ILR10B681 Permit provides as follows:

Discharges covered by this permit, alone or in combination with other sources, shall not cause or contribute to a violation of any applicable water quality standard.

32. By discharging soil and sediment-laden runoff from the Site, PAR violated Part III.C of NPDES Permit No. ILR10B681. Compliance with Part III.C is a condition of the NPDES Permit No. ILR10B681.

33. By violating Part III.C of NPDES Permit No. ILR10B681, Respondent PAR also 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 in favor of Complainant and against the Respondent Par Development, Inc., on this Count III:

1. Authorizing a hearing in this matter at which time the Respondent PAR will be required to answer the allegations herein;
2. Finding that the Respondent has violated Part III.C of NPDES Permit No. ILR10B681, 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 III.C of NPDES Permit No. ILR10B681, 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 each 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 IV**

**NPDES PERMIT VIOLATION- FAILURE TO POST NOTIFICATION OF COVERAGE**

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 26 of Count III as paragraphs 1 through 26 of this Count IV.

27. Part II.D.2 of the General Stormwater Permit provides as follows:

A copy of the letter of notification of coverage or other indication that storm water discharges from the site are covered under an NPDES permit shall be

posted at the site in a prominent place for public viewing (such as alongside a building permit).

28. During the May 20, 2007, and August 15, 2007, inspections, a copy of the letter of notification of coverage was not posted at the Site.

29. By failing to post the notification of coverage, Respondent PAR violated Part II.D.2 of NPDES Permit No. ILR10B681. Compliance with Part II.D.2 is a condition of the General Stormwater Permit.

30. By violating Part II.D.2 of the NPDES Permit No. ILR10B681, Respondent PAR also 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 Par Development, Inc., on this Count IV:

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

2. Finding that the Respondent has violated Part II.D.2 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 II.D.2 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 each 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**

**NPDES PERMIT VIOLATION- FAILURE TO HAVE STORM WATER  
POLLUTION PREVENTION PLAN AVAILABLE AT THE SITE**

1-26. Complainant realleges and incorporates by reference herein paragraphs 1 through 26 of Count IV as paragraphs 1 through 26 of this Count V.

27. Part IV.B.1 of the General Stormwater Permit provides as follows:

Part IV. Stormwater Pollution Prevention Plans

\* \* \* \*

The plan shall be signed in accordance with Part VI.G (Signatory Requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (Duty to Provide Information) of this permit.

28. During the June 20, 2007, and August 15, 2007, inspection, Respondent did not maintain on Site a copy of the SWPPP as required by NPDES Permit.

29. By failing to retain a copy of the Stormwater Pollution Prevention Plan, Respondent PAR violated Part IV.B.1 of the General Stormwater Permit. Compliance with Part IV.B.1 is a condition of the General Stormwater Permit.

30. By violating Part IV.B.1 of the General Stormwater Permit, Respondent PAR also 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)(2006).

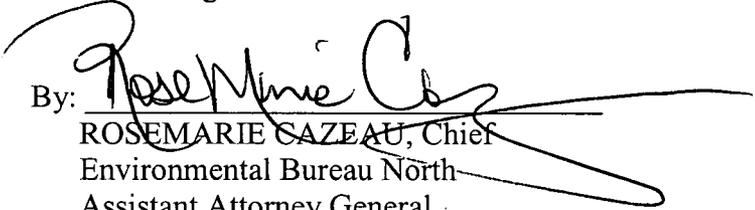
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent Par Development, Inc., on this Count V:

1. Authorizing a hearing in this matter at which time the Respondent PAR will be required to answer the allegations herein;
2. Finding that the Respondent has violated Part IV.B.1 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.B.1 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 each 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,  
*ex rel.* LISA MADIGAN, Attorney  
General of the State of Illinois

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

By: 

ROSEMARIE CAZEAU, Chief  
Environmental Bureau North  
Assistant Attorney General

Of Counsel:

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**CERTIFICATE OF SERVICE**

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 30<sup>th</sup> day of March 2009, the foregoing Notice of Filing, and a Complaint, upon Mr. Warren Fuller via Certified Mail by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.

  
\_\_\_\_\_  
ZEMEHERET BEREKET-AB