



**Service List**

**For the Respondent**

Jerome B. Vaussen, Agent  
Thumser Entertainment, Inc.  
445 Apple Street  
East Dubuque, Illinois 61025

Dale Thumser, President  
Thumser Entertainment, Inc.  
211 Iroquois Trail  
East Dubuque, Illinois 61025-9534

**Illinois Environmental Protection Agency**

Charles Gunnarson  
Assistant Counsel  
Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
by LISA MADIGAN, Attorney	)	
General of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No. 13-
	)	(Enforcement - Water)
	)	
THUMSER ENTERTAINMENT, INC., an	)	
Illinois corporation,	)	
	)	
Respondent.	)	

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, THUMSER ENTERTAINMENT, INC., an Illinois corporation, as follows:

**COUNT I**  
**WATER POLLUTION**

1. This Complaint 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 (2010).

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2010), and is 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 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, THUMSER ENTERTAINMENT, INC. ("TEI"), was and is an Illinois corporation in good standing with the Illinois Secretary of State.

4. TEI is the owner and operator of Thumser's 19<sup>th</sup> Hole, a restaurant and bar located at 1625 Illinois Route 35 North, East Dubuque, Jo Daviess County, Illinois ("Site").

5. On March 8, 2011, an Illinois EPA inspector conducted an inspection of the Site.

6. On March 8, 2011, the Illinois EPA inspector observed that the east side of the Site was being expanded over a steep embankment and that construction material was being brought in as fill.

7. On March 8, 2011, the Illinois EPA inspector observed that a large area at the back portion of the Site contained piled sand; broken, painted concrete; concrete blocks; and some plumbing materials (collectively "construction materials") near the steep embankment.

8. The steep embankment at the back of the Site leads to an unnamed waterway and residential storm water detention basin ("detention basin") at the bottom of the embankment.

9. On March 8, 2011, the Illinois EPA inspector observed that there were no erosion controls in place to keep the construction materials located at the top of the embankment at the Site from eroding into the unnamed waterway and detention basin.

10. On March 8, 2011, upon observation and belief, the Illinois EPA inspector noted that the active area of the Site appeared to be greater than one (1) acre in size, which would require TEI to obtain coverage under the general National Pollutant Discharge Elimination System ("NPDES") stormwater permit for its construction activities at the Site.

11. On January 5, 2012, an Illinois EPA inspector conducted another inspection of the Site.

12. On January 5, 2012, the Illinois EPA inspector observed that a portion of the Site and embankment had been stabilized with native grass, but that loose construction materials at the top of the embankment still lacked erosion controls.

13. On January 5, 2012, upon observation and belief, the Illinois EPA inspector noted that the active area of the Site appeared to be less than one (1) acre in size.

14. Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), 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.

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), 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.

16. Respondent TEI is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

18. The construction materials at the Site are each a contaminant as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

19. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), provides 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.

20. The unnamed waterway and detention basin are each “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).

21. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), 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.

22. The Respondent’s accumulation of construction materials at the Site, contaminants as defined herein, without erosion controls to protect the unnamed waterway and detention basin threatened to alter the physical, thermal, chemical, biological or radioactive properties of those waters; rendered, or was likely to render those waters harmful or detrimental or injurious to wild animals, birds, fish and other aquatic life; or created, or was likely to create, a nuisance, and, therefore, constituted “water pollution” as defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2010).

23. The Respondent, by allowing the construction materials at the Site to remain unprotected from erosion into the unnamed waterway and detention basin, thereby caused, threatened, or allowed water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against the Respondent, THUMSER ENTERTAINMENT, INC., with respect to Count I:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);
3. Ordering the Respondent to protect the embankment from erosion of the construction materials at the Site;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

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

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

14. Section 12(d) of the Act, 415 ILCS 5/12(d) (2010), 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.

15-22. The Complainant realleges and incorporates by reference herein paragraphs 15 through 22 of Count I as paragraphs 15 through 22 of this Count II.

23. The Respondent, by allowing the construction materials at the Site to remain unprotected from erosion into the unnamed waterway and detention basin, thereby created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against the Respondent, THUMSER ENTERTAINMENT, INC., with respect to Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010);
3. Ordering the Respondent to protect the embankment from erosion of the construction materials at the Site;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

**COUNT III**  
**FAILURE TO OBTAIN COVERAGE UNDER THE NATIONAL POLLUTANT**  
**DISCHARGE ELIMINATION SYSTEM ("NPDES") PERMIT**

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

14. Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), provides 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. The United States Environmental Protection Agency has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations, including storm water discharges regulated by 40 CFR 122.26, which requires a person to obtain an NPDES permit and to implement a storm water pollution prevention plan for construction activity including clearing, grading and excavation.

16. Section 122.26(a) of the Code of Federal Regulation ("CFR"), 40 CFR 122.26(a), provides, in pertinent part, as follows:

- (a) Permit requirement.

\* \* \*

- (9)(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph

(a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

\* \* \*

(B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

17. Section 122.26(b) of the CFR, 40 CFR 122.26(b), provides, in pertinent part, as follows:

(b) Definitions.

\* \* \*

15) Storm water discharge associated with small construction activity means the discharge of storm water from:

i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. . . .

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

Section 309.102 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 waters of the State from a point source or into a well shall be unlawful.

19-24. The Complainant realleges and incorporates by reference herein paragraphs 15 through 20 of Count I as paragraphs 19 through 24 of this Count III.

25. Section 401.11(d) of the CFR, 40 C.F.R. 401.11(d), provides as follows:

The term point source means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

26. The unnamed waterway and detention basin are each a point source within the meaning of 40 C.F.R. 401.11(d).

27. The Respondent failed to obtain coverage under the NPDES permit prior to beginning construction activities at the Site. The NPDES permit requires that a Storm Water Pollution Prevention Plan ("SWPPP") be implemented to stabilize sediment and control soil erosion at a construction site.

28. By failing to obtain coverage under the NPDES permit and implement a SWPPP, the Respondent caused, threatened or allowed the discharge of storm water containing sediment and eroded soil from the Site into the unnamed waterway and detention basin without a permit.

29. From at least March 8, 2011, when the Illinois EPA inspector observed that the active area of the Site appeared to be greater than one (1) acre in size, through January 5, 2012, when the Illinois EPA inspector observed that the active area of the Site appeared to be less than one (1) acre in size, the Respondent, by causing, threatening or allowing the discharge of contaminants into the waters of the State without a permit, thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against the Respondent, THUMSER ENTERTAINMENT, INC., with respect to Count III:

1. Authorizing a hearing in this matter at which time the Respondent will be

required to answer the allegations contained herein;

2. Finding that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondent to obtain coverage under the NPDES permit for the Site if the active area of the Site is greater than one (1) acre in size;
4. Assessing against the Defendant a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation;
5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; 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,

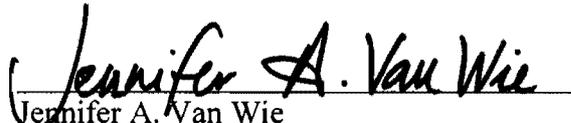
MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

By:   
MATTHEW J. DUNN, Chief

OF COUNSEL:  
JENNIFER A. VAN WIE  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0609

**CERTIFICATE OF SERVICE**

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that on the 31<sup>st</sup> day of July 2012, I caused to be served by U.S. Certified Mail (return receipt requested), the foregoing Complaint and Notice of Filing to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
Jennifer A. Van Wie  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-0609