

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement-_____)
UNION PACIFIC RAILROAD COMPANY, a)	
Delaware Corporation, and WALSH CONSTRUCTION)	
COMPANY, an Illinois corporation,)	
)	
Respondents.)	

NOTICE OF ELECTRONIC FILING

TO: See attached service list

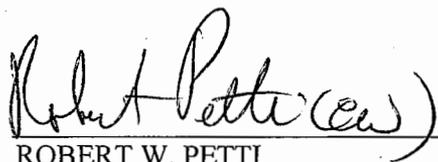
PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in 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 violations.

Respectfully submitted,

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

By: 

ROBERT W. PETTI
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-2069

Date: May 29, 2013

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601
(by electronic filing)

C T CORPORATION SYSTEM
208 SO LASALLE ST, SUITE 814
Chicago, IL 60604

Mr. Rami S. Hanash
Senior Environmental Compliance Counsel
1400 Douglas Street – MS 1580
Omaha, NE 68179

Mr. Kevin J. Kelly
Walsh Construction Company
929 W. Adams Street
Chicago, IL 60607

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement - Water)
UNION PACIFIC RAILROAD)	
COMPANY, a Delaware corporation, and)	
WALSH CONSTRUCTION COMPANY,)	
an Illinois corporation,)	
)	
Respondents.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, UNION PACIFIC RAILROAD COMPANY and WALSH CONSTRUCTION COMPANY, as follows:

COUNT I

WATER POLLUTION

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 the terms and provisions of Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2012).

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 (2012), and charged with, *inter alia*, the duty of enforcing the Act.

3. At all times relevant to this complaint, Respondent, UNION PACIFIC RAILROAD COMPANY ("Union Pacific"), has been and is a Delaware corporation authorized to do business in Illinois and has been and is in good standing.

4. At all times relevant to this complaint, Union Pacific has owned and operated an extensive railroad system operating across the western United States, including in Illinois.

5. At all times relevant to this complaint, Respondent, WALSH CONSTRUCTION COMPANY ("Walsh Construction"), has been and is an Illinois corporation in good standing.

6. At all times relevant to this complaint, Walsh Construction has been a Chicago-based general contracting, construction management and design-build firm.

7. In, or subsequent to, 2008, on such dates better known to Respondents, Union Pacific hired Walsh Construction to construct a railroad bridge over Addison Creek in Bellwood, Cook County, Illinois to replace an existing timber bridge (the "Bridge Project"). The Bridge Project also involved the construction of a new railroad embankment in order to shift the railroad tracks onto the new bridge.

8. On May, 6, 2008, Union Pacific obtained approval from the United States Army Corps of Engineers to proceed with the Bridge Project.

9. On May, 8, 2008, prior to retaining Walsh Construction for the Bridge Project, Union Pacific submitted a Soil Erosion & Sediment Control Plan (the "SE/SC Plan") relating to the Bridge Project to the North Cook County Soil & Water Conservation District ("NCSWCD") for approval.

10. On September 9, 2008, NCSWCD conditionally approved the SE/SC Plan. The condition set for approval required that following Union Pacific's selection of a contractor for the

Bridge Project, Union Pacific must submit a final Soil Erosion & Sediment Control Plan, identifying the contractor selected for the project and setting forth the final Soil Erosion & Sediment Control Plan (“Plan”). The Plan had to be submitted to NCSWCD for approval prior to commencing the Bridge Project.

11. Following September 9, 2008, on a date better known to the Respondents, Union Pacific engaged Walsh Construction as its contractor for the Bridge Project.

12. On March 22, 2010, Union Pacific submitted a Notice of Intent to the Illinois EPA in order to obtain coverage for the Bridge Project under the National Pollutant Discharge Elimination System (NPDES) General Permit No. ILR10 for Storm Water Discharges From Construction Site Activities.

13. On April 22, 2010, in response to Union Pacific’s March 22, 2010 Notice of Intent, the Illinois EPA issued Permit No. ILR10M802 (the “General Stormwater Permit”) to Union Pacific, providing that clean stormwater discharges associated with construction or industrial activities at the Bridge Project site were covered under the provisions of the General Stormwater Permit.

14. In late 2010, on dates better known to Respondents, work on the Bridge Project commenced without Union Pacific providing NCSWCD a Soil Erosion & Sediment Control Plan for final review and approval.

15. On August 5, 2011, an inspector with NCSWCD conducted an inspection of the Bridge Project site (the “August 5th Inspection”).

16. At the time of the August 5th Inspection, stormwater from the Bridge Project site flowed to a large detention basin. The stormwater collected in the detention basin was pumped

through a lift station to a concrete-lined ditch that discharged into Addison Creek.

17. Addison Creek is tributary to Salt Creek, which in turn is tributary to the Des Plaines River, which in turn is tributary to the Illinois River, which in turn is tributary to the Mississippi River.

18. At the time of the August 5th Inspection, silt fencing was installed around the catch basins in the large detention basin at the Bridge Project site, but the silt fencing was not entrenched in the soil around the basin. The above grade silt fencing allowed silt laden storm water to flow into the basin, and ultimately discharge into Addison Creek.

19. Also at the time of the August 5th Inspection, areas of the newly-constructed railroad embankment contained topsoil but had not been seeded, mulched or stabilized with an erosion-control blanket. The absence of seeds, mulch or a stabilization blanket allowed stormwater to carry sediment and flow directly into the concrete ditch that discharged into Addison Creek.

20. Further, at the time of the August 5th Inspection, a metal pipe allowed stormwater from the Bridge Project to drain from an existing dirt ditch to the newly-constructed concrete ditch. The metal pipe created a conduit for silt-laden stormwater to enter the concrete ditch and discharge into Addison Creek.

21. At the time of the August 5th Inspection, an area of depression in the grade existed on the south side of the railroad tracks that received sediment laden runoff from disturbed soil areas. The area of depression was being dewatered via a pump, installed by Walsh, that discharged the sediment laden stormwater to a rock ballast, and ultimately discharged into Addison Creek.

22. On August 12, 2011, inspectors with the Illinois EPA and NCSWCD conducted an inspection of the Bridge Project site (the "August 12th Inspection").

23. At the time of the August 12th Inspection, many of the same conditions that existed during the August 5, 2011 inspection remained. The silt fencing around the drainage basin was not entrenched. The newly-constructed embankment for the railroad was not seeded, mulched or stabilized with an erosion-control blanket. Further, the jersey barriers being used as ditch checks in the concrete ditch were not properly sized and not proper for use as ditch checks.

24. On August 18, 2011, August 25, 2011 and September 25, 2011, NCSWCD conducted additional inspections of the Bridge Project site.

25. At the time of each inspection, on August 18, 2011, August 25, 2011 and September 25, 2011, the newly-constructed embankment, or portions thereof, were still not seeded, mulched or stabilized with a sediment control blanket, allowing stormwater to carry sediment into the concrete ditch and discharge to Addison Creek.

26. On November 14, 2011, Respondents ceased all construction operations under the General Stormwater Permit, and the Bridge Project was deemed to be complete.

27. Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), 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.

28. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), 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.

29. Respondents are each a “person” as that term is defined by 415 ILCS 5/3.315 (2012).

30. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), contains the following definition:

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

31. The soil, sediment, and sediment-laden stormwater that discharged into Addison Creek are each a “contaminant” as that term is defined by 415 ILCS 5/3.165 (2012).

32. Section 3.550 of the Act, 415 ILCS 5/3.550 (2012), 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.

33. The waters in the stormwater ditch and Addison Creek are “waters” of the State as that term is defined by 415 ILCS 5/3.550 (2012).

34. Section 3.545 of the Act, 415 ILCS 5/3.545 (2012), 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.

35. By causing or allowing the discharge of soil, sediment, and sediment-laden stormwater from the Bridge Project into the detention basin and the concrete ditch, Respondents have caused, threatened or allowed the discharge of contaminants into the waters of the State.

36. The discharge of soil, sediment and sediment-laden stormwater constituted "water pollution" as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2012).

37. By discharging soil, sediment, and sediment-laden stormwater to the ditch leading to Addison Creek, Respondents caused, threatened or allowed water pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, UNION PACIFIC RAILROAD COMPANY and WALSH CONSTRUCTION COMPANY:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);
3. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);
4. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2012), imposing a civil penalty of fifty thousand dollars (\$50,000) for each violation and an additional penalty of ten thousand dollars (\$10,000) for each day of violation;

5. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), taxing all costs against Respondents, 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 may deem appropriate.

COUNT II

WATER POLLUTION HAZARD

1-35. Complainant realleges and incorporates by reference herein paragraphs 1 through 26 and 28 through 36 of Count I as paragraphs 1 through 35 of this Count II.

36. Section 12(d) of the Act, 415 ILCS 5/12(d) (2012), 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.

37. On or before August 5, 2011, and continuing through completion of the Bridge Project, or such dates better known to Respondents, Respondents deposited soil and sediment on the new railroad embankment without taking effective measures to prevent the soil and sediment from flowing into the ditch and Addison Creek.

38. By not providing adequate erosion controls for the Bridge Project site and by causing or allowing unstabilized soils to remain in areas of the Bridge Project site as to allow runoff onto the land and into waters of the State, Respondents created a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, UNION PACIFIC RAILROAD COMPANY and WALSH CONSTRUCTION COMPANY:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);
3. Ordering Respondents to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);
4. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2012), imposing a civil penalty of fifty thousand dollars (\$50,000) for each violation and an additional penalty of ten thousand dollars (\$10,000) for each day of violation;
5. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), taxing all costs against Respondents, 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 may deem appropriate.

COUNT III – AS TO UNION PACIFIC RAILROAD COMPANY ONLY

FAILURE TO COMPLY WITH THE TERMS AND CONDITIONS OF THE GENERAL STORMWATER NPDES PERMIT

1-33. Complainant realleges and incorporates by reference herein paragraphs 1 through 26, and 28 through 33, and 35 of Count I as paragraphs 1 through 31 of this Count III.

34. Section 12(f) of the Act, 415 ILCS 12(f) (2012), provides, in pertinent part, as

follows:

No person shall:

- (f) Cause, threaten or allow the discharge of any contaminants into the waters of 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.

35. Part III.A.1. of the General Stormwater Permit provides that “. . . all discharges covered by this permit shall be composed entirely of storm water.”

36. Between August 5, 2011 and November 14, 2011, and on such other dates better known to Union Pacific, Union Pacific allowed the discharge of soil, sediment, and sediment-laden stormwater from the Bridge Project site to Addison Creek in violation of Part III.A.1 of the General Stormwater Permit.

37. Part IV.D.4 of the General Stormwater Permit provides as follows:

4. Inspections

Qualified personnel (provided by the permittee) shall inspect disturbed areas of the construction site that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that has 0.5 inches or greater or equivalent snow fall. . .

- c. A report summarizing the scope of the inspection, names(s) and qualifications of the personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph b above shall be made and retained as part of the storm water

pollution prevention plan for at least three years from the date that the permit coverage expires or is terminated. All inspection reports shall be retained at the construction site. . .

- d. The permittee shall notify the appropriate Agency Field Operations Section office by email at: epa.swnoncomp@illinois.gov, telephone or fax within 24 hours of any incidence of noncompliance for any violation of the storm water pollution prevention plan observed during any inspection conducted, or for violations of any condition of this permit. The permittee shall complete and submit within 5 days an "Incidence of Noncompliance" (ION) report for any violation of the storm water pollution prevention plan observed during any inspection conducted, or for violations of any condition of this permit. Submission shall be on forms provided by the Agency and include specific information on the cause of noncompliance, actions which were taken to prevent any further causes of noncompliance, and a statement detailing any environmental impact which may have resulted from the noncompliance.

38. During the August 12th Inspection, an Illinois EPA inspector requested copies of the weekly inspection reports relating to stormwater control. The required weekly inspection reports for the Bridge Project were not maintained on site.

39. Subsequent to the August 12th Inspection, on a date better known to Union Pacific, the weekly inspection reports for the Bridge Project, from December 10, 2010, through August 12, 2011, were provided to the Illinois EPA via email. The inspection report for August 5, 2011 did not contain a report identifying any compliance issues with the Bridge Project.

40. Union Pacific failed to retain the required inspection reports at the construction site, and failed to adequately report information regarding areas of the Bridge Project that had not

been finally stabilized as required by Section IV.D.4.c of the General Stormwater Permit.

41. Union Pacific failed to provide notice by email, telephone or fax to Illinois EPA within 24 hours of the violations that existed at the time of the August 5th Inspection, described in paragraphs 18 through 21 of Count I, as required by Section IV.D.4.d of the General Stormwater Permit.

42. Union Pacific failed to submit an Incidence of Noncompliance report to Illinois EPA for the violations that existed at the time of the August 5th Inspection, described in paragraphs 18 through 21 of Count I, as required by Section IV.D.4.d of the General Stormwater Permit .

43. By discharging soil, sediment, and sediment-laden stormwater from the Bridge Project site, failing to maintain inspection reports at the site, and by failing to provide email, telephone or fax notice to the Illinois EPA of noncompliance with the General Stormwater Permit and an Incidence of Noncompliance report for the violations that existed at the time of the August 5th Inspection, described in paragraphs 18 through 21 of Count I, Union Pacific violated the requirements of Section III.A.1 and Section IV.D.4 of the General Stormwater Permit.

44. By violating Section III.A.1 and Section IV.D.4 of the General Stormwater Permit, Union Pacific caused, threatened or allowed the discharge of contaminants into the waters of the State in violation of the terms and conditions of an NPDES permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, UNION PACIFIC RAILROAD COMPANY:

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

2. Finding that Union Pacific has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012);

3. Ordering Union Pacific to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012);

4. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2012), imposing a civil penalty of ten thousand dollars (\$10,000) for each day of violation;

5. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), taxing all costs against Union Pacific, 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 may deem appropriate.

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

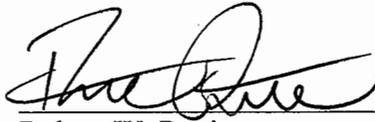
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: Elizabeth Wallace /rb
ELIZABETH WALLACE, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel
ROBERT W. PETTI
Assistant Attorney General
69 W. Washington Street, 18th Floor
Chicago, Illinois 60602
312-814-2069

CERTIFICATE OF SERVICE

I, Robert W. Petti, an Assistant Attorney General, certify that on the 29th day of May 2013, I caused to be served by U.S. Certified Mail (return receipt requested), the foregoing Notice of Filing, Complaint and Certificate of Service 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.



Robert W. Petti
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-2069