

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY - 6 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,)
)
v.)
)
DUR-O-WAL, INC., an Illinois)
Corporation,)
)
Respondent.)

PCB No. 04- 194
(Enforcement - Water)

NOTICE OF FILING

TO: Steve Huston c/o
Jennifer T. Nijman
Winston & Strawn
35 West Wacker Drive
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed the Complaint with the Office of the Clerk of the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and herewith served upon you. Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to advise you that 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. Pursuant to 415 ILCS 5/31(c)(1), I am required to advise you that financing may be available through the Illinois Environmental Facilities Financing Act to correct the violations.

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

BY: Bridget M. Carlson
BRIDGET M. CARLSON
Assistant Attorney General
Environmental Bureau
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PEOPLE OF THE STATE OF ILLINOIS,)
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COMPLAINT

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

COUNT I

WATER POLLUTION

1. This Complaint is brought by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).
2. At all times relevant to this Complaint, Respondent, DUR-O-WAL, INC. ("Dur-O-Wal"), is and was an Illinois corporation authorized to transact business in the State of Illinois.
3. At all times relevant to this Complaint, Dur-O-Wal is and was the owner and operator of a facility located at 625 Crain Street, Aurora, Kane County, Illinois ("facility").
4. Adjacent to the North and West of Respondent's facility are residential properties which utilize groundwater for drinking

purposes through the use of residential wells.

5. The processes at Respondent's facility include wire drawing, fabrication, and zinc galvanizing.

6. Respondent utilizes a valve pit at its facility in connection with its zinc galvanizing process.

7. On or about March 27, 1998, or on a date better known to Respondent, Respondent's valve pit began to fill with water.

8. On information and belief, the source of the water entering the valve pit was groundwater leaking from a breach in the valve pit wall where a wastewater line enters the valve pit.

9. On or about March 27, 1998, until at least April 8, 1998, or on dates better known to Respondent, Respondent employed a mobile pump to discharge an unspecified volume of waste water from its valve pit.

10. Respondent discharged waste water from its valve pit to a storm sewer located adjacent to its facility which, in turn, discharged to an unnamed tributary of the Fox River.

11. At the point of discharge, these surface discharge waters are effluent waste waters. Section 301.275 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.275, provides the following definition:

"Effluent" means any wastewater discharged, directly or indirectly, to the waters of the State or to any storm sewer, and the runoff from land used for the disposition of wastewater or sludges,...

12. On April 8, 1998, a representative of the Fox Metro Water Reclamation District observed Respondent discharging waste water to the adjacent storm sewer and instructed Respondent to

cease said discharge. Respondent ceased its discharge effluent to the storm sewer on April 8, 1998.

13. On April 7, 1998, prior to ceasing its discharge, Respondent collected a sample of the waste water present in the valve pit for laboratory analysis. The laboratory analysis detected the presence of lead, zinc, iron, chromium, total suspended solids and low pH levels in the discharged waste water. These contaminants are consistent with the products used in metal fabrication and metal coating operations at the facility.

14. Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), 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 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

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

16. Lead, zinc, iron, chromium, total suspended solids, and low pH levels are "contaminants" as that term is defined by Section 3.165 of the Act.

17. Pursuant to authority granted in Sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2002), the Illinois Pollution Control Board ("Board") promulgated rules and regulations which establish criteria for water pollution control, codified at 35 Ill.

Adm. Code Subtitle C, Chapter I ("Water Pollution Regulations").

18. Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, titled Violation of Water Quality Standards, provides, in relevant part, as follows:

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard. When the agency finds that a discharge which would comply with effluent standards contained in the Part would cause or is causing a violation of water quality standards, the Agency shall take appropriate action under Section 31...of the Act to require the discharge to meet whatever effluent limits are necessary to ensure compliance with the water quality standards.

19. Section 304.124, 35 Ill. Adm. Code 304.124, provides the water quality standards as follows:

No person shall cause or allow the concentration of the following constituents in any effluent to exceed the following levels, subject to the averaging rules contained in Section 304.104(a).

20. The concentrations of contaminants of concern at Dur-O-Wal from the waste water sample collected from the effluent discharge on April 7, 1998 exceeded limitations in water quality as described in Section 304.105, 35 Ill. Adm. Code 304.105. The resulting laboratory analytical data are provided as follows:

<u>Constituent</u>	<u>*Concentration at Dur-O-Wal in mg/L</u>	<u>**Concentration limitation in mg/L</u>
Lead	59.1	1.0
Zinc	40,650	5.0
Iron	9,023	10.0
TSS	390	15.0
pH	1.25	6-9

The concentration limitations permitted by the Board rules have been adjusted subject to the averaging rules contained in Section 304.104(a).

* From effluent sample collected April 7, 1998.

** Limitations from 35 Ill.Adm.Code 304.124.

21. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), 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.

22. Respondent is a "person" as that term is defined in Section 3.315 of the Act.

23. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), 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 domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

24. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), 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 the State.

25. The groundwater underlying Respondent's facility and the unnamed tributary of the Fox River to which Respondent discharged are "waters" as that term is defined in Section 3.550 of the Act.

26. On or about March 27, 1998, until at least April 8,

1998, or on dates better known to Respondent, Respondent employed a mobile pump to discharge contaminants to a storm sewer which, in turn, discharged to waters of the State.

27. By discharging contaminants to a storm sewer, Respondent discharged to waters of the State and in turn caused, threatened or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

28. By discharging contaminants, above applicable effluent water quality standards, to a storm sewer, Respondent violated water quality standards in accordance with Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, DUR-O-WAL, INC., on this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000.00) for each day during which each violation continued thereafter pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002);
5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS

42(f) (2002); and

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

COUNT II

OPERATION OF FACILITY CAUSING WATER POLLUTION WITHOUT A PERMIT

1-20. Complainant realleges and incorporates by reference paragraphs 1 through 13, and 15 through 21 of Count I as paragraphs 1 through 20 of this Count II.

21. Section 12(b) of the Act, 415 ILCS 5/12(b) (2002), provides, in relevant part, as follows:

No person shall:

* * *

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

22-25. Complainant realleges and incorporates by reference paragraphs 22 through 25 of Count I, as paragraphs 22 through 25 of this Count II.

26. Section 304.141(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.141(b), titled NPDES Effluent Standards, provides, in relevant part, as follows:

b. No person may discharge any pollutant subject to, or which contributes or threatens to cause a violation of, any applicable federal or state water quality standard, effluent standard, guideline or other limitation, promulgated pursuant to the [Clean Water Act] or the Act, unless limitation for such a pollutant has been set forth in an applicable NPDES Permit . . .

27. On or about March 27, 1998, until at least April 8, 1998, or on dates better known to Respondent, Respondent employed a

mobile pump to discharge waste water contaminants to a storm sewer which, in turn, discharged to waters of the State.

28. Respondent was not granted an NPDES permit to discharge waste water from its facility, contaminated with lead, zinc, iron, chromium, total suspended solids and low pH levels to a storm sewer in turn discharging to waters of the State.

29. By discharging contaminated waste water to a storm sewer from its facility without an NPDES permit, Respondent violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2002), and Section 304.141(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.141(b).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, DUR-O-WAL, INC., on this Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000.00) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000.00) for each day of violation pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2002);
5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002); and

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

COUNT III

NPDES STORM WATER PERMIT VIOLATION

1-13. Complainant realleges and incorporates by reference 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) (2002), provides, in relevant 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 . . .

15-23. Complainant realleges and incorporates by reference paragraphs 15 through 17, and paragraphs 20 through 25 of Count I, as paragraphs 15 through 23 of this Count III.

24. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), titled NPDES Permit Required, provides as follows:

a. Except as in compliance with the provisions of the Act, Board regulations, and the [Clean Water Act], 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.

25. Respondent's facility operates under Illinois EPA general storm water permit No. ILR005451 pursuant to the National Pollutant Discharge Elimination System ("NPDES").

26. The provisions and conditions of Respondent's NPDES Permit No. ILR005451 do not permit Respondent to discharge waste water into waters of the state including sewage works which contains lead, zinc, iron, chromium, total suspended solids, or low pH levels to a storm sewer from its facility.

27. Respondent was not issued an NPDES permit which permits it to discharge lead, zinc, iron, chromium, total suspended solids, or low pH levels to a storm sewer.

28. By violating the provisions and conditions of its NPDES storm water permit, Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), 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 Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, DUR-O-WAL, INC., on this Count III:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of ten thousand dollars (\$10,000.00) for each day of violation pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2002);
5. Awarding to Complainant its costs and reasonable

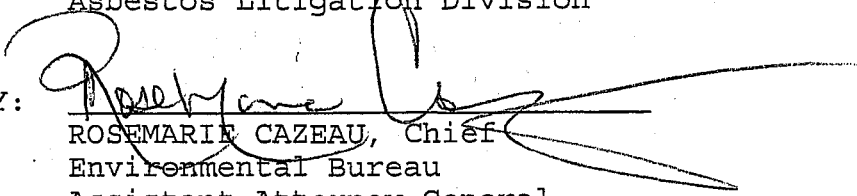
attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002); and

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
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

BRIDGET M. CARLSON
Environmental Bureau
Assistant Attorney General
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
312-814-0608
Attorney ID: 99000

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Complaint was sent by certified mail with return receipt requested to each of the persons listed on the Notice of Filing on May 6, 2004.

BY: Bridget M. Carlson
BRIDGET M. CARLSON

It is hereby certified that the originals plus nine (9) copies of the foregoing were hand-delivered to the following person on May 6, 2004:

Pollution Control Board, Attn: Clerk
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

BY: Bridget M. Carlson
BRIDGET M. CARLSON