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JUN 30 2004

STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 ROGERS DEVELOPMENT COMPANY )  
 an Illinois Corporation, )  
 )  
 Respondent. )

No. 04- 227

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on June 30, 2004, the People of the State of Illinois filed with the Illinois Pollution Control Board a Complaint, true and correct copies of which are 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.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY: Joel J. Sternstein  
JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
Chicago, Illinois 60601  
(312) 814-6986

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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No. 04-

221

COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent ROGERS DEVELOPMENT COMPANY, as follows:

COUNT I

VIOLATIONS OF NPDES PERMIT

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" or "Agency") pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002), and is an action to restrain violations of the Act and for civil penalties.

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 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this complaint, Respondent Rogers Development Company was and is an Illinois corporation in good standing.

4. Respondent is a developer of residential homes at the Lyford Oaks subdivision, located on the west side of Lyford Road north of State Street in Rockford, Winnebago County, Illinois ("Site"). The Site is adjacent to a tributary of Manning Creek.

5. On April 9, 2003, there was erosion of loose dirt, silt, and poor to nonexistent erosion control measures at the Site. Specifically, Respondent had stored large stockpiles of soil along the western side of the Site on a downward slope toward a tributary of Manning Creek. The piles buried silt fencing that had been installed at that part of the Site. Sheet erosion and/or grading activities buried other silt fencing on the western side of the Site. In addition, spoil had been placed on or near Trowbridge Road at the Site without any erosion controls.

6. 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.

7. Respondent is a person as that term is defined at 415 ILCS 5/3.315 (2002).

8. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), contains the following definition:

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

9. Silt, loose dirt, and spoil are "contaminants" as that term is defined in Section 3.165 of the Act.

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

11. The tributary of Manning Creek adjacent to the Site is a "water" of the State of Illinois, as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2002).

12. Subsection 12(f) of the Act, 415 ILCS 5/12(f) (2002), states 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 any order adopted by the Board with respect to the NPDES program.

13. On December 12, 2001, pursuant to Respondent's application, Illinois EPA granted Respondent coverage under the general National Pollutant Discharge Elimination System (NPDES) Storm Water Permit for construction site activities effective until May 31, 2003.

14. Respondent's NPDES Storm Water Permit provides, in pertinent part, as follows:

**Part IV STORM WATER POLLUTION PREVENTION PLANS**

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with construction site activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with construction site activity and to assure compliance with the terms and the conditions of the permit. *Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.*  
(emphasis added)

\* \* \*

D. **Contents of Plan.** The storm water pollution prevention plan shall include the following terms.

\* \* \*

2. **Controls.** Each plan shall include a description of appropriate controls that will be implemented at the construction site . . . . The description of controls shall address as appropriate the following minimum components:

a. Erosion and Sediment Controls.

(i) Stabilization Practices. A description of interim and permanent stabilization practices including site-specific scheduling of the implementation of the practices. Site plans should insure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized . . .

\* \* \*

(ii) Structural Practices. A description of structural practices to the degree attainable, to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site . . .

15. Respondent failed to install adequate storm water controls at its Site, and failed to make improvements to those controls when excessive erosion was evident, as required by its NPDES Permit.

16. By failing to install adequate storm water controls and implement improvements when excessive erosion was evident, Respondent violated the terms of its NPDES Permit. By violating the terms of its NPDES permit, Respondent is in violation of Subsection 12(f) of the Act, 415 ILCS 5/12(f) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent ROGERS DEVELOPMENT COMPANY, for the following relief:

1. Authorize a hearing in this matter at which time

Respondent will be required to answer the allegations herein;

2. Find that Respondent has violated Subsection 12(f) of the Act, 415 ILCS 5/12(f) (2002);

3. Order Respondent to cease and desist from any further violations of Subsection 12(f) of the Act;

4. Assess against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day each violation of the Act occurred;

5. Order Respondent to pay all costs, pursuant to Subsection 42(f) of the Act, 415 ILCS 5/42(f) (2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

6. Grant 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  
Assistant Attorney General

OF COUNSEL:

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Assistant Attorney General  
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Chicago, IL 60601  
312-814-6986

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CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 30th day of June, 2004, I caused to be served by First Class Mail the foregoing Complaint 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.

  
\_\_\_\_\_  
JOEL J. STERNSTEIN