

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 27 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS)
)
Complainant,)
)
v.)
)
YOUSSI REAL ESTATE AND DEVELOPMENT,)
INC., an Illinois Corporation,)
)
Respondent.)

No. 05-60
(Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List

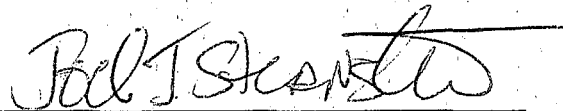
PLEASE TAKE NOTICE that on September 27, 2004, the People of the State of Illinois filed with the Illinois Pollution Control Board a Complaint, true and correct copies of which are attached and hereby served upon you.

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
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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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD SEP 27 2004

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS)
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 Complainant,)
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 YOUSSE REAL ESTATE AND DEVELOPMENT,)
 INC., an Illinois Corporation,)
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 Respondent.)

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COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent YOUSSE REAL ESTATE AND DEVELOPMENT, INC. as follows:

COUNT I

NPDES PERMIT VIOLATIONS

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 Youssi Real Estate and Development, Inc. was and is an Illinois corporation in good standing.

4. Respondent is a developer of residential homes at the Prairie Meadow subdivision, a 72.2 acre parcel of land located at the corner of Dawson Lake Road and Caledonia Road in the Village of Timberlane, Boone County, Illinois. A roadside ditch is located along the west side of Prairie Meadow Way within the subdivision.

5. Prairie Meadow subdivision is being developed in phases, and Respondent completed Phase I of the Prairie Meadow Subdivision ("Phase I") in approximately 1992. Phase I is not at issue in the instant Complaint.

6. The instant Complaint concerns Phase II of the Prairie Meadow Subdivision ("Phase II"), a 28 acre parcel where lot sizes average 1.3 acres each. Respondent built Phase II from sometime in 2003 until mid-2004, on dates better known to Respondent.

7. Since 2003, at least one stormwater retention pond was located at the Site to allow stormwater settling prior to discharge from Phase II. Any overflow from the retention pond would flow south approximately one mile to the headwaters of Beaver Creek which is a tributary to the Kishwaukee River.

8. During development and construction activities at Phase II from 2003 until mid-2004, Respondent operated equipment which disturbed and moved topsoil.

9. Section 12 of the Act, 415 ILCS 5/12 (2002), 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.

* * *

10. Respondent is a "person" as that term is defined at Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

11. The topsoil at Phase II is a "contaminant" as that term is defined at Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

12. The stormwater retention pond/ponds at Phase II is/are "water(s)" of the State of Illinois, as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2002).

13. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and

prohibits such point source discharges without an NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State. The USEPA 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.

14. In pertinent part, 40 CFR 122.26 provides as follows:

(a) Permit requirement.

(1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

* * *

(ii) A discharge associated with industrial activity (see § 122.26(a)(4));

* * *

(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;

* * *

(b) Definitions.

* * *

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under this part 122. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, State, or municipally owned or operated that meet the description of the facilities listed in paragraphs (b) (14) (i) through (xi) of this section) include those facilities designated under the provisions

of paragraph (a)(1)(v) of this section. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

* * *

(x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

* * *

(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.

15. Section 309.103 of the Pollution Control Board

("Board") water pollution regulations, 35 Ill. Adm. Code 309.103, provides in pertinent part as follows:

a) Application Forms

1) An applicant for a National Pollutant Discharge elimination System (NPDES) permit shall file an application, in accordance with Section 309.223 hereof, on forms provided by the Illinois Environmental Protection Agency (Agency). Such forms shall comprise the NPDES application forms promulgated by the U.S. Environmental Protection

Agency for the type of discharge for which an NPDES Permit is being sought and such additional information as the Agency may reasonably require in order to determine that the discharge or proposed discharge will be in compliance with applicable state and federal requirements.

16. Prior to the commencement of its Phase II construction activities sometime in 2003 or a date better known to Respondent, Respondent failed to obtain an NPDES stormwater discharge permit for its Phase II construction activities.

17. Respondent did not obtain a stormwater discharge permit for its Phase II construction activities until June 24, 2003.

18. By failing to obtain an NPDES stormwater permit application form for its Phase II construction activities prior to June 24, 2003, Respondent violated of Section 309.103 of the Board water pollution regulations and thereby also violated Section 12(f) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent YOUSSEF REAL ESTATE AND DEVELOPMENT, INC., 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 Section 309.103 of the Board's water pollution regulations, 35 Ill. Adm. Code 309.103, and Section 12(f) of the Act, 415 ILCS 5/12(f) (2002);

3. Order Respondent to cease and desist from any further violations of Section 309.103 of the Board's water pollution regulations and Section 12(f) of the Act;

4. Assessing against Respondent a civil penalty of ten thousand dollars (\$10,000.00) for each day during which each violation of Section 12(f) of the Act and the regulations promulgated thereunder occurred and continued;

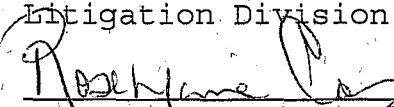
5. Order Respondent to pay all costs, pursuant to Subsection 42(f) of the Act, 415 ILCS 5/42(f) (2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

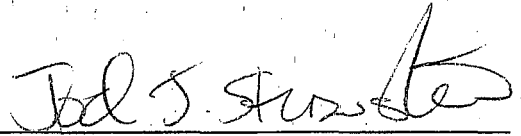
OF COUNSEL:

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Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
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312-814-6986

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CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 27th day of September 2004, I caused to be served by Certified 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