

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
by LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
v.)
)
MATRIX NATIONAL INVESTMENT) PCB No.
CORP, an Illinois corporation,) (Enforcement - Water)
)
Respondent.)

NOTICE OF FILING

TO: Matrix National Investment Corp
c/o Rick Hochman, Registered Agent
379 W. Wachter
Galena, Illinois 61036

(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today, May 2, 2006, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint a true and correct copy of which is attached and hereby served upon you.

Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to state 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.

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 pollution.

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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

BY:



STEPHEN J. SYLVESTER

Assistant Attorney General

Environmental Bureau

188 West Randolph St., Suite 2001

Chicago, Illinois 60601

(312) 814-2087

Date: May 2, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
by LISA MADIGAN, Attorney)
General of the State of Illinois,)
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Complainant,)
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) PCB No.
MATRIX NATIONAL INVESTMENT CORP,)
an Illinois corporation,) (Enforcement - Water)
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Respondent.)

COMPLAINT

Complainant, 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, complains of Respondent, MATRIX NATIONAL INVESTMENT CORP, an Illinois corporation, as follows:

COUNT I

WATER POLLUTION

1. This Count 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 (2004).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415

ILCS 5/4 (2004), and 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 ("NPDES") permit program under the Federal Clean Water Act ("CWA"), 33 U.S.C. § 1342(b)(7) (2004).

3. At all times relevant to this Complaint, Respondent, Matrix National Investment Corp ("Matrix"), was and is an Illinois corporation in good standing.

4. At all times relevant to this Complaint, Matrix is and was a company that owns and is developing a residential subdivision known as Cobblestone Crossing, located in Section 12, Township 28 North, Range 1 West on Oldenburg Road in the northwestern portion of the City of Galena, Jo Daviess County, Illinois ("Site").

5. The Site is an approximately thirty-four (34) acre mixed-use development comprised of twelve (12) single family homes, thirty-two (32) multi-family dwellings and one commercial building.

6. Stormwater run-off from the Site flows south through a storm sewer system and a separate culvert directly into an unnamed creek on the southern portion of the Site ("southern creek"), which flows to a detention pond on the eastern portion of the Site. Stormwater run-off from the Site also flows north into an unnamed creek on the northern portion of the Site

("northern creek"), which bypasses the detention pond and leads to the Hughlett Branch of the Galena River.

7. On January 13, 2005, there was disturbed and piled soil without erosion controls along the curbs of Cobblestone Boulevard running through the Site. Also, mud and dirt were present on the surface of Cobblestone Boulevard.

8. Also on January 13, 2005, a storm water drain alongside the curb on Cobblestone Boulevard, which also had disturbed soil along the curb, was unprotected with mud clods on top of its grate. The storm sewer led directly to and discharged into the adjacent southern creek at the Site. Straw had been placed at the discharge pipe, but water had undercut the straw bale leaving the discharge area unprotected, and there were no erosion controls in place along the southern creek in that area.

9. On January 13, 2005, a culvert running under Cobblestone Boulevard allowed for drainage from the north, northwest, northeast, west and east to discharge to the southern creek. The upstream end of the culvert was unprotected with large piles of soil and rock alongside and a few rocks in the drain pipe.

10. On January 13, 2005, on the western and northwestern portions of the Site, off of Country View Court, there were disturbed soils without any erosion controls in place.

11. On November 16, 2005, there were improperly installed and/or poorly maintained sediment controls in place, including silt fencing along the northern curb of Cobblestone Boulevard, along the southern creek, and along the northwestern side of the Site down slope from the cul-de-sac. Also, along the slope east and west of Country View Court, the silt fencing in place there had sediment nearly to the top of the fencing.

12. On February 28, 2006, along the north side of the Site, the silt fencing there was in need of maintenance in some areas. The area east of Country View Court, which was not under construction, had disturbed ground and piles of soil as a result of previous work, and there were disturbed ground and soil piles on the northern portion of the Site. The disturbed ground and piles of soil were not protected by erosion controls.

13. Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminant 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.

14. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), 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.

15. Respondent Matrix, a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

16. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides the following definition:

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

17. Soil and silt are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2004).

18. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), 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.

19. The southern and northern creeks are "waters" of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004).

20. 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 to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life.

21. The lack of adequate erosion control measures at the Site caused, threatened or allowed excessive silt and soil erosion from construction site activities to discharge into the southern and northern creeks. Such silt and soil, altered, or threatened to alter, the physical, thermal, chemical, or radioactive properties of the southern and northern creeks; rendered, or were likely to render, them harmful, detrimental or injurious to wild animals, birds, fish, and other aquatic life; or created, or were likely to create, a nuisance.

22. From at least November, 2004 through at least November 16, 2005, on dates better known to Respondent, Respondent utilized inadequate erosion control measures at the Site, which caused, threatened, or allowed silt-laden stormwater runoff into the southern and northern creeks. By its actions and omissions, Respondent Matrix caused, threatened, or allowed water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MATRIX NATIONAL INVESTMENT CORP on this Count I:

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

2. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);

3. Ordering the Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), 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

CREATING A WATER POLLUTION HAZARD

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 and paragraphs 14 through 21 of Count I as paragraphs 1 through 20 of this Count II.

21. Section 12(d) of the Act, 415 ILCS 5/12(d) (2004), provides as follows:

No person shall:

- d. Deposit any contaminant upon the land in such place and manner as to create a water pollution

hazard.

22. From at least January 13, 2005 through at least March 20, 2005, on dates better known to Respondent, Respondent excavated and disturbed soil near waterways, including the southern and northern creeks at the Site without adequate erosion control structures in place and allowed sediment runoff to impact the southern and northern creeks at the Site.

23. Respondent, Matrix, by its actions alleged herein, deposited contaminants onto the land so as to create a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MATRIX NATIONAL INVESTMENT CORP on this Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);
3. Ordering the Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars

(\$10,000.00) for each day of violation;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), 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
NPDES PERMIT VIOLATIONS

1-19. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 and paragraphs 14 through 20 of Count I as paragraphs 1 through 19 of this Count III.

20. Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), 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.

21. The Illinois EPA issued to Matrix General NPDES Permit No. ILR108050 for Storm Water Discharges from Construction Site Activities for Cobblestone Crossing Subdivision ("NPDES Permit No. ILR108050"). NPDES Permit No. ILR108050 became effective on or about April 21, 2003 and remains in effect as of the date of the filing of this Complaint.

22. Part IV. of NPDES Permit No. ILR108050, entitled, Storm Water Pollution Prevention Plans, provides, in pertinent part, as follows:

IV. A storm water pollution prevention plan shall be developed for each construction site covered by this permit. . . . 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 conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

23. Part IV.B of NPDES Permit No. ILR108050, entitled, Signature, Plan Review and Notification, provides, in pertinent part, as follows:

B. Signature, Plan Review and Notification.

1. The plan shall be signed in accordance with Part VI.G (Signatory Requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (Duty to Provide

Information) of this permit.

* * *

24. Part IV.C of NPDES Permit No. ILR108050, entitled, Keeping Plans Current, provides, in pertinent part, as follows:

C. Keeping Plans Current.

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the Waters of the State and which has not otherwise been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under paragraph D.2 below, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with construction site activity.

25. Part IV.D.4 of NPDES Permit No. ILR108050, entitled, Inspections, provides, in pertinent part, as follows:

D. Contents of Plan: the stormwater pollution prevention plan shall include the following items:

* * * *

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 is 0.5 inches or greater or equivalent snowfall.

a. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for,

pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

- b. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph IV.D.1 (Site Description) of this permit and pollution prevention measures identified in the plan in accordance with paragraph IV.D.2 (Controls) of this permit shall be revised as appropriate as soon as practicable after such inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.
- c. A report summarizing the scope of the inspection, name(s) and qualifications of 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. The report shall be signed in accordance with Part VI.G (Signatory Requirements) of this permit.
- d. 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 an

inspection conducted, including those not required by the Plan. 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.

- e. All reports of noncompliance shall be signed by a responsible authority as defined in Part VI.G (Signatory Requirements).
- f. All reports of noncompliance shall be mailed to the Agency at the following address:

Illinois Environmental Protection Agency
Division of Water Pollution Control
Compliance Assurance Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

26. From at least November, 2004, through at least March 18, 2005, on dates better known to Respondent, Respondent failed to retain at the Site a stormwater pollution prevention plan ("SWPPP").

27. By failing to retain at the Site its SWPPP, Respondent violated Part IV.B of NPDES Permit No. ILR108050.

28. From at least November, 2004, on a date better known to Respondent, through at least February 28, 2006, Respondent failed to implement and update its SWPPP to adequately address erosion control issues at the Site, including missing or improperly installed silt fencing, inadequate stabilization of disturbed soils, and sediment runoff to storm sewers, a culvert,

and the southern and northern creeks.

29. By failing to implement and update its SWPPP to adequately address erosion control issues at the Site, Respondent violated Part IV.C of NPDES Permit No. ILR108050.

30. From at least November, 2004, through at least November 16, 2005, on dates better known to Respondent, Respondent failed to conduct, and provide signed reports of, all inspections of the Site required by Part IV.C of NPDES Permit No. ILR108050.

31. By failing to conduct, and provide signed reports of, all required site inspections, Respondent violated Part IV.D.4.c. of NPDES Permit No. ILR108050.

32. From at least November, 2004, through at least March 20, 2005, on dates better known to Respondent, Respondent failed to submit to the Illinois EPA signed notices of noncompliance with the SWPPP.

33. By failing to submit signed notices of noncompliance to the Illinois EPA, Respondent violated Part IV.D.4.d., e. and f. of NPDES Permit No. ILR108050.

34. By violating conditions imposed by its NPDES permit, Respondent Matrix violated Section 12(f) of the Act, 415 ILCS 12(f) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, MATRIX NATIONAL INVESTMENT CORP on this Count III:

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

2. Finding that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004);

3. Ordering the Respondent to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004);

4. Assessing against Respondent, pursuant to Section 42(b)(1) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act;

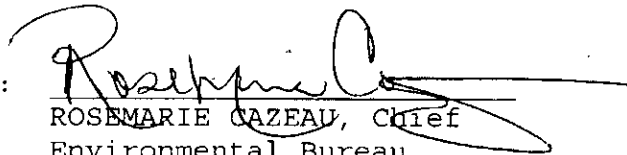
5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

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

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

By:



ROSEMARIE GAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

STEPHEN J. SYLVESTER
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188 W. Randolph St. -- 20th Fl.
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CERTIFICATE OF SERVICE

I, Stephen J. Sylvester, an Assistant Attorney General, do certify that a true and correct copy of the Complaint and Notice of Filing were sent by certified mail with return receipt requested to the person listed on the Notice of Filing on May 2, 2006.

BY:


STEPHEN J. SYLVESTER