

ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)	
)	
Complainant,)	
vs.)	
)	PCB No. 06-
LOUIE'S TRENCHING SERVICE, INC., an)	(Enforcement-Water)
Illinois corporation, and CITY OF GALENA, an)	
Illinois municipal corporation,)	
)	
Respondents.)	

NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board the following Complaint, a copy of which is attached and hereby served on 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 pollution.

Respectfully submitted,

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

By: 
 KATHERINE M. HAUSRATH
 Assistant Attorney General
 Environmental Bureau
 188 W. Randolph St., 20th Floor
 Chicago, Illinois 60601
 (312) 814-0660

SERVICE LIST

City of Galena
Tom Brusch, Mayor
312 ½ North Main Street
Galena, Illinois 61036

Louis A. Timp, Registered Agent
Louie's Trenching Service
9720 Rte. 20 W.
Galena, Illinois 61036

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
LISA MADIGAN, Attorney General of)	
the State of Illinois,)	
)	
Complainant,)	
)	
v.)	No.
)	
LOUIE'S TRENCHING SERVICE, INC., an)	(Enforcement-Water)
Illinois corporation, and CITY OF GALENA, an)	
Illinois municipal corporation,)	
)	
Respondents.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, LOUIE'S TRENCHING SERVICE and CITY OF GALENA, 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 the terms and provisions of 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) *et seq.*
(2002).

3. At all times relevant to this complaint, Respondent, Louie's Trenching Service, Inc. ("LTS"), was and is an Illinois corporation in good standing.

4. At all times relevant to this complaint, Respondent, City of Galena, was and is an incorporated municipality duly organized and existing under the laws of the State of Illinois.

5. At all times relevant to this Complaint, Respondent, LTS, has operated and continues to operate a contracting and construction business.

6. At all times relevant to this Complaint, Respondent, City of Galena, has owned 6.3 acres located just south of Route 20, along the east bank of the Galena River, in the City of Galena, Jo Daviess County, Illinois ("Site").

7. On May 30, 2003, the Illinois EPA issued City of Galena NPDES Permit No. ILR10B623. This permit is a general permit to discharge storm water during construction site activities, and governs, among other things, construction activities that will disturb more than one acre of total land area.

8. On a date prior to October 18, 2004, the City of Galena hired LTS to construct the Galena Recreational Greenway, a bicycle path along the Galena River, at the Site. On or about October 18, 2004, or at a time better known to Respondents, LTS began earthwork at the Site on behalf of the City of Galena.

9. On October 20, 2004, the Illinois EPA received a complaint indicating that no erosion controls were in place at the Site.

10. On November 1, 2004, the Illinois EPA inspected the Site. During the

inspection, the Illinois EPA inspector observed more than one acre of disturbed, uncovered soil at the Site. Also, there was little or no effective erosion and storm water controls at the Site.

11. On November 1, 2004, a trench extended from the Site to the eastern bank of the Galena River. Through this trench, there was an active, direct discharge of silt-laden storm water from the Site into the Galena River.

12. On November 1, 2004, no Storm Water Pollution Prevention Plan ("SWPPP") was present at the Site, nor was a SWPPP available on that date upon inquiry by the Illinois EPA from the Galena City Hall.

13. On March 18, 2005, the Illinois EPA again inspected the Site. At that time, the SWPPP was posted at the Site. In addition, erosion controls had been improperly installed and were therefore ineffective. A silt fence was resting above the ground, and in some places was installed over twigs and other objects that prevented the silt fence from being flush with the ground. Also, the ground underneath some straw bales was washed out.

14. On March 18, 2005, there was also an active silt-containing surface water discharge to the Galena River.

15. Respondents, City of Galena and Louie's Trenching Service, construction of the recreational bicycle path are subject to the Act and the rules and regulations promulgated by the Illinois Pollution Control Board ("Board") and the Illinois EPA. The Board's regulations for water pollution are found in Title 35, Subtitle C, Chapter I of the Illinois Administrative Code ("Board Water Pollution Regulations"), and the Illinois EPA rules and regulations for water pollution are found in Title 35, Subtitle C, Chapter II of

the Illinois Administrative Code ("Illinois EPA Water Pollution Regulations").

16. 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.

17. 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, agency or assigns.

18. LTS, an Illinois corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 513.315 (2004).

19. City of Galena, an Illinois political subdivision, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

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

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

21. The silt-laden storm water discharge that LTS released from the Site is a "contaminant" as that term is defined in Section 3.165 of the Act.

22. Section 3.545 of the Act, 415 ILCS 513.545 (2004), contains 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 water 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.

23. Section 3.550 of the Act, 415 ILCS 513.550 (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 the State.

24. The Galena River is a "water" of the State of Illinois, as that term is defined in Section 3.550 of the Act.

25. From at least November 1, 2004 through March 18, 2005, or dates better known to Respondents, Respondents, LTS and City of Galena, caused, threatened, or allowed contaminants to enter the Galena River by failing to implement adequate erosion controls at the site, which allowed silt-laden storm water to enter the Galena River.

26. Respondents, LTS and City of Galena, by their actions as alleged herein, caused contaminants, the unauthorized silt-laden storm water, to enter the waters of the State, thereby causing or tending to cause water pollution.

27. By causing or tending to cause water pollution, Respondents violated Section 12(a) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, LOUIE'S TRENCHING SERVICE and CITY OF GALENA, for the following relief

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

2. Find that Respondents have violated Section 12(a) of the Act;
3. Order Respondents to cease and desist from any future violations of Section 12(a) of the Act;
4. Assess against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Order Respondent to pay all costs in this action, including expert witness, consultant, and attorney's fees; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II

VIOLATION OF NPDES PERMIT

1-22. Complainant realleges and incorporates herein by reference paragraphs 1 through 15, paragraphs 17 through 21, and paragraphs 23 and 24 of Count I as paragraphs 1 through 22 of this Count II.

23. Respondents, City of Galena and Louie's Trenching Service, construction of the recreational bicycle path are subject to the terms of NPDES Permit No. ILR10B623, because the construction at the Site disturbed more than one acre of total land area.

24. 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, . . . in violation of any term or condition imposed by such [NPDES] permit.

25. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm.

Code 309.102(a) provides as follows:

Except as in compliance with the provisions of the Act, Board regulations, and the CWA, 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.

26. Part IV of NPDES Permit No. ILR10B623, 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.

27. Part IV.D.4 of NPDES Permit No. ILR10B623 entitled, Inspections,

provides, in pertinent part, as follows:

D. Contents of Plan: the storm water 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.

* * * * *

- 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.

28. Part IV.B.1 of NPDES Permit No. ILR10B623 entitled, Signature, Plan Review, and Notification, provides, in pertinent part, as follows:

The plan shall 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.

29. From at least November 1, 2004 through March 18, 2005, Respondents failed to adequately implement their SWPPP to effectively address erosion control issues at the Site. The erosion controls at the Site were inadequate or non-existent, including missing or improperly installed silt fencing and improperly installed hay bales. Respondents' failure to adequately implement the SWPPP resulted in the discharge of silt-laden storm water into the Galena River for at least four months.

30. By failing to effectively implement their SWPPP to adequately address erosion control issues at the Site, Respondents violated Part IV of NPDES Permit No.

ILR10B623.

31. On November 1, 2004, Respondents provided the Illinois EPA with a daily log of site inspections that did not include the storm water information required by Part IV.D.4.a of NPDES Permit No. ILR10B623.

32. By failing to provide reports of site inspections that included storm water information, Respondents violated Part IV.D.4.c. of NPDES Permit No. ILR10B623.

33. By failing to have a copy of the SWPPP available at either the Site or Galena City Hall on November 1, 2004, Respondents violated Part IV.B.1 of NPDES Permit No. ILR10B623

34. By their actions and omissions as alleged herein, Respondents, LTS and City of Galena, caused, threatened, or allowed the discharge of silt-laden storm water into the Galena River, in violation of the terms or conditions of City of Galena's NPDES Permit No. ILR10B623, and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and thereby violating Section 12(f) of the Act, 415 ILCS 5/12(f) (2004).

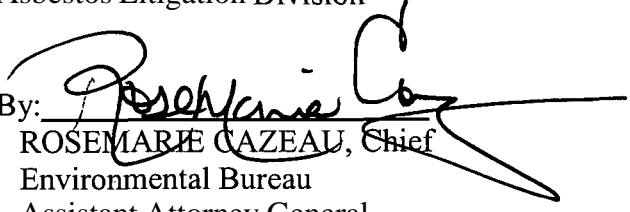
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, LOUIE'S TRENCHING SERVICE and CITY OF GALENA, for the following relief:

1. Authorize a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Find that Respondents have violated Section 12(f) of the Act and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

3. Order Respondents to cease and desist from any future violations of Section 12(f) of the Act and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
4. Assess against Respondents a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Order Respondent to pay all costs in this action, including expert witness, consultant, and attorney's fees; and
6. Granting 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 I
Asbestos Litigation Division

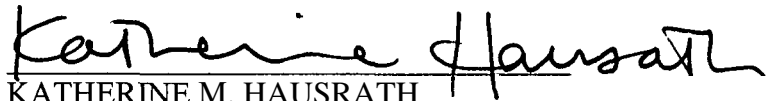
By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

KATHERINE M. HAUSRATH
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0660

CERTIFICATE OF SERVICE

I, KATHERINE M. HAUSRATH, an Assistant Attorney General, do certify that I caused to be mailed this 27 day of June, 2006, the foregoing Complaint and Notice of Filing upon the person listed on said notice, by certified mail.



KATHERINE M. HAUSRATH
Assistant Attorney General
Environmental Bureau
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Chicago, IL 60601
312-814-0660