

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

v.)

VILLAGE OF ROCKTON, an Illinois)
municipal corporation,)

Respondent.)

PCB No.
(Enforcement - Water)

NOTICE OF FILING

TO:

Village of Rockton
Dale Adams, Village President
110 East Main Street
Rockton, IL 61072

Gregory E. Cox, Esq.
Attorney for Village of Rockton
Nicolosi & Associates LLC
363 Financial Court, Suite 100
Rockford, IL 61107-6671

(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today, June 8, 2007, 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

69 W. Washington St., Suite 1800

Chicago, Illinois 60602

(312) 814-2087

Date: June 8, 2007

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PEOPLE OF THE STATE OF ILLINOIS)
by LISA MADIGAN, Attorney General)
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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, VILLAGE OF ROCKTON, an Illinois municipal 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) (2007).

3. At all times relevant to this Complaint, Respondent, Village of Rockton ("Rockton"), is and has been an Illinois municipal corporation, duly organized and existing under the laws of the State of Illinois.

4. At all times relevant to this Complaint, Rockton owned and operated a waste water treatment plant ("WWTP"), which included a lift station ("Hawick lift station"), located on the 200 block of Hawick Street, Rockton, Winnebago County, Illinois ("Site").

5. On and before June 6, 2006, the Hawick lift station had an electric power box lever that when in the "on" position provided power to the Hawick lift station and pumped sewage from the Hawick lift station across the Rock River to its WWTP for treatment. When the Hawick lift station electrical power box lever was in the "off" position, no power was provided for the operation of the Hawick lift station.

6. On and before June 6, 2006, the electric power box for the Hawick lift station was located on a power pole that was not fenced in or otherwise secured from unauthorized access.

7. Sometime between the late afternoon of June 6, 2006, and the morning of June 7, 2006, the Hawick lift station power box lever was in the "off" position, which resulted in sewage backing up and overflowing out of the Hawick lift station into a bypass pipe and discharging approximately 150,000 to 153,000 gallons of untreated sewage into the Rock River via a storm sewer outfall south of the Hawick lift station.

8. Rockton's operation of its WWTP is subject to the Act and the rules and regulations promulgated by the Illinois Pollution Control Board ("Board"). 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").

9. 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.

10. 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.

11. Respondent, Rockton, a municipal corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

12. 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.

13. Untreated sewage is a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2004).

14. 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.

15. The Rock River 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 (2004).

16. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), 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 of 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.

17. Rockton’s discharge of untreated sewage, a contaminant, into the Rock River, altered, or threatened to alter, the physical, thermal, chemical, or radioactive properties of the Rock River; rendered, or were likely to render, the Rock River harmful, detrimental or injurious to wild animals, birds, fish, and other aquatic life; or created, or were likely to create, a nuisance, and thereby constituted “water pollution” as defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004).

18. By discharging untreated sewage into the Rock River, as alleged herein, Rockton caused or allowed water pollution in violation of 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, VILLAGE OF ROCKTON, an Illinois municipal corporation, 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 Section 12(a) 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

NPDES PERMIT VIOLATIONS: UNLAWFUL DISCHARGES

1-14. Complainant realleges and incorporates by reference herein paragraphs 1 through 8 and paragraphs 10 through 15 of Count I as paragraphs 1 through 14 of this Count II.

15. The Illinois EPA issued to Rockton NPDES Permit No. IL0020791, which became effective on September 16, 2004 and remains in effect as of the date of filing of this complaint.

16. NPDES Permit No. IL0020791 allows Rockton to discharge effluent from its WWTP through a location known as Sewage Treatment Plant outfall 001 into the Rock River.

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

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

309.102(a), provides as follows:

NPDES Permit Required

- a) 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.

19. Section 301.240 of the Illinois Pollution Control Board ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 301.240, provides the following definition:

"CWA" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the "Clean Water Act", Public Law 95-217, enacted December 12, 1977, as amended.)

20. Section 1362(14) of the CWA, 33 U.S.C.A. §1362(14) (2007), provides the following definition:

- 14) The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

21. The storm sewer outfall south of the Hawick lift station is a discernible, confined and discrete conveyance, and therefore constitutes a "point source", as that term is defined in Section 1362 of the CWA, 33 U.S.C.A. § 1362 (2007).

22. NPDES Permit No. IL0020791 does not authorize Rockton to discharge from the storm sewer outfall south of the Hawick lift station.

23. Some time between the afternoon of June 6, 2006, and the morning of June 7, 2006, Rockton discharged untreated sewage, a contaminant, from a storm sewer outfall south of

the Hawick lift station and into the Rock River, waters of the State, without an NPDES permit authorizing the discharge.

24. Rockton, by its actions as alleged herein, violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), 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 Board enter an order against Respondent, VILLAGE OF ROCKTON, an Illinois municipal corporation, 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(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
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), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
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 and Section 309.102(a) of the Board Water Pollution Regulations;
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
SYSTEMS RELIABILITY VIOLATIONS

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count III.

17. Section 306.102 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.102, provides as follows:

Systems Reliability

- a) **Malfunctions:** All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, through such measures as multiple units, holding tanks, duplicate power sources, or such other measures as may be appropriate.
- b) **Spills:** All reasonable measures, including where appropriate the provision of catchment areas, relief vessels, or entrapment dikes, shall be taken to prevent any spillage of contaminants from causing water pollution.

18. On and before June 6, 2006, Rockton did not have a backup power source for the Hawick lift station or for its emergency notification system.

19. By failing to provide a duplicate power source for the Hawick lift station and for its emergency notification system, and by failing to operate the Hawick lift station in a manner so as to prevent a discharge of untreated sewage to the Rock River, waters of the State, Rockton violated Section 306.102 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102, thereby violating Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

20. Section 306.304 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.304, provides as follows:

Overflows

Overflows from sanitary sewers are expressly prohibited.

21. At some time between the afternoon of June 6, 2006, and the morning of June 7, 2006, Rockton allowed the overflow of the sanitary sewer at the Hawick lift station out into a bypass pipe, discharging untreated sewage to the Rock River via a storm sewer south of the Hawick lift station.

22. Rockton, by its actions as alleged herein, violated Section 306.304 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.304, thereby violating 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, VILLAGE OF ROCKTON, an Illinois municipal corporation, 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(a) of the Act, 415 ILCS 5/12(a) (2004), and Sections 306.102 and 306.304 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102 and 306.304;
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), and Sections 306.102 and 306.304 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 306.102 and 306.304;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of Section 12(a) of the Act and Sections 306.102 and 306.304 of the Board Water Pollution Regulations, 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

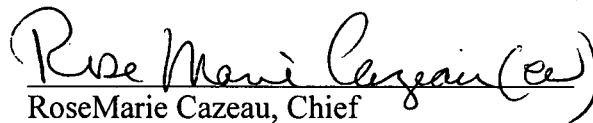
ILCS 5/42(f) (2004), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

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:

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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 June 11, 2007.

BY:


STEPHEN J. SYLVESTER