

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex *rel.* LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,) PCB
)
vs.) (Enforcement - Water)
)
UNION PACIFIC RAILROAD)
COMPANY, a Delaware Corporation,) VIA *ELECTRONIC FILING*
)
Respondent.)

NOTICE OF FILING

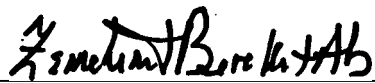
TO: Mr. W. Lee Hammond Clerk
Environmental Manager Illinois Pollution Control Board
Union Pacific Railroad Company James R. Thompson Center
1400 Douglas Street, Stop 1080 100 W. Randolph Street, Suite 11-500
Omaha , Nebraska 68179 Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of the Complaint, Notice of Filing and a Certificate of Service, a copy of which is attached herewith and served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: 
ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau North
69 West Washington Street, Suite 1800
Chicago, IL 60602
(312) 814-3816

DATE: July 16,2007

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Complainant,) No.
)
v.)
)
UNION PACIFIC RAILROAD)
COMPANY, a Delaware Corporation,)
)
Respondent.)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, ex rel. 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, UNION PACIFIC RAILROAD COMPANY, a Delaware Corporation, as follows:

COUNT I

CAUSING, THREATENING OR ALLOWING WATER POLLUTION

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, ex rel. 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 (2006).

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 (2006), and charged, inter alia, with the duty of enforcing the Act. Additionally, pursuant to Section 402(b) of the federal Clean Water Act

("CWA"), 33 U.S. C. § 1342(b), the Illinois EPA administers and enforces the CWA's National Pollutant Discharge Elimination System ("NPDES") permit program within the State of Illinois.

3. At all times relevant to this Complaint, UNION PACIFIC RAILROAD COMPANY ("Respondent"), has been a Delaware corporation duly authorized to do business in Illinois.

4. At all times relevant to this Complaint, Respondent has operated a rail yard and intermodal facility, located at 301 West Lake Street, City of Northlake, County of Cook, Illinois ("Facility").

5. Stormwater and accumulated groundwater from the Facility are treated by passing through an oil/water separator ("Separator"), prior to being discharged into Mud Creek, which is a tributary of Addison Creek. The Separator consists of several weirs over which water flowing through the Separator passes, prior to being discharged. Respondent's discharge of the treated stormwater and accumulated groundwater is authorized under the terms of its Illinois EPA-issued NPDES Permit No. IL0002127 ("NPDES Permit").

6. On November 23, 2005, an employee of the Metropolitan Water Reclamation District of Greater Chicago ("MWRDC") notified Illinois EPA that there had been a recent fuel oil release at the Facility.

7. On November 23, 2005 ("November 23rd Inspection") the Illinois EPA inspected the Facility and observed a rainbow and silver colored sheen on the water extending from a storm culvert at the Facility's Locomotive Fueling Pad, continuing on through a drainage ditch and ultimately flowing into the Separator and then proceeding over the final weir in the Separator, before being discharged into Mud Creek.

8. During the November 23rd Inspection, the Illinois EPA observed the rainbow and silver colored sheen along the length of the oil/water separator structure, continuing past the final weir in the structure, and, ultimately, in Mud Creek.

9. On February 19, 2006, or on a date better known to Respondent, a diesel fuel release occurred at the Facility.

10. On February 21, 2006, representatives of the Illinois EPA and the MWRDC conducted an inspection of the Facility and confirmed that a diesel fuel release had indeed occurred.

11. On February 22, 2006 ("February 22nd Inspection"), representatives of the Illinois EPA and the MWRDC returned to the Facility and met with a representative for the Respondent.

12. During the February 22nd Inspection, Respondent's representative informed the Illinois EPA and MWRDC representatives that one of Respondent's contractors had caused the fuel release when a fuel line on one of the Respondent's contractor's trucks ruptured, discharging diesel fuel into a storm sewer inlet at the Facility.

13. During the February 22nd Inspection, the Illinois EPA and the MWRDC representatives determined that at least some of the diesel fuel which had been released as a result of the rupture to the fuel line had flowed through the Facility's Separator and had subsequently been discharged into Mud Creek.

14. Section 12(a) of the Act, 415 ILCS 5/12(a)(2006), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment of 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.

15. Section 3.315 of the Act, 415 ILCS 513.315 (2006), 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.

16. Respondent, a Delaware corporation, is a "person," as that term is defined in Section 3.315 of the Act.

17. Section 3.165 of the Act, 415 ILCS 513.165 (2006), provides the following definition:

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

18. The rainbow and silver colored fuel oil sheen that was observed on the water discharging into Mud Creek is a "contaminant," as that term is defined by Section 3.165 of the Act.

19. Section 3.545 of the Act, 415 ILCS 513.545 (2006), 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 likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety, or welfare, or domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

20. The rainbow and silver colored fuel oil release observed in Mud Creek during the November 23, 2005 Inspection constitutes "water pollution," as that term is defined by Section 3.545 of the Act, 415 ILCS 513.545 (2006).

21. The diesel fuel released on or about February 19, 2006 constitutes "water pollution," as that term is defined by Section 3.545 of the Act, 415 ILCS 513.545 (2006).

22. Section 3.550 of the Act, 415 ILCS 513.550 (2006), provides 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.

23. The water in the Separator at the Facility, as well as in Mud Creek, constitute "waters," as that term is defined in Section 3.550 of the Act.

24. By causing, threatening or allowing the rainbow and silver colored fuel oil sheen to discharge from the Separator into Mud Creek, as well as by allowing the diesel fuel release at the Facility into Mud Creek, Respondent caused, threatened or allowed the discharge of a contaminant into the environment.

25. By causing, threatening or allowing the discharge of the rainbow and silver colored fuel oil sheen and the diesel fuel, both of which are "contaminants," to discharge into Mud Creek, a water of the State, Respondent caused, threatened or allowed water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count I:

1. Authorizing a hearing in this matter at which time 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)(2006);
3. Ordering Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a)(2006);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day during which Respondent continues to be in violation of Section 12(a) of the Act;
5. Ordering Respondent to pay all costs 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

- 1-13. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count II.
14. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides as follows:
No person shall:

* * * *

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

15. On at least two occasions, Respondent deposited petroleum products, which are contaminants, onto the land in such place and manner so as to create a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board enter an order in favor of Complainant and against Respondent with respect to this Count II:

1. Authorizing a hearing in this matter at which time 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) (2006);

3. Ordering Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which Respondent continues to be in violation of Section 12(d) of the Act;

5. Ordering Respondent to pay all costs including attorney, expert witnesses 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

**FAILURE TO COMPLY WITH THE TERMS
AND CONDITIONS OF THE NPDES PERMIT**

1-13. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 of Count I as paragraphs 1 through 13 of this Count III.

14. Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), 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, any 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 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.

15. Section 309.102(a) of the Illinois Pollution Control Board Water Pollution regulations ("Board Water Pollution Regulations"), 35 Ill. Adm. Code 309.102(a), provides as follows:

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.

16. The discharge of petroleum products from the Separator into Mud Creek is a violation of Respondent's NPDES Permit and is therefore a violation of Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

17. By violating Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a), Respondent thereby, also violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent with respect to this Count III:

1. Authorizing a hearing in this matter at which time 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) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

3. Ordering Respondent to cease and desist from further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) per day against Respondent for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12/(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

5. Ordering Respondent to pay all costs 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 IV

VIOLATION OF WATER QUALITY AND EFFLUENT STANDARDS

1-14. Complainant realleges and incorporates by reference herein paragraphs 1 through 14 of Count I as paragraphs 1 through 14 of this Count IV.

15. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides as follows:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin ...

16. Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105, provides as follows:

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard . . .

17. On November 23, 2005, and on February 19, 2006, or on dates better known to the Respondent, Respondent caused or allowed petroleum products to leave the Separator at the Facility and to enter Mud Creek.

18. By allowing the petroleum products to enter Mud Creek, Respondent thereby violated the water quality standard found in Sections 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

19. Through its violation of Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, Respondent thereby violated Section 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 304.105.

20. By violating Sections 302.203 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105, Respondent thereby, also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, on this Count IV, as follows:

1. Authorizing a hearing in this matter at which time 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) (2006), and Sections 302. 203 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105;

3. Ordering Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12/(a) (2006), and Sections 302.203 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105;


4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a) of the Act, 415 ILCS 5/12/(a) (2006), and Sections 302. 203 and 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each violation of Section 12(a) of the Act and Sections 302.203 or 304.105 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.105;

5. Ordering Respondent to pay all costs 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,
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 North
Assistant Attorney General

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CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 16th day of July, 2007, the foregoing Complaint, Notice of Filing, and a Certificate of Service upon the person listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB