

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
) PCB No 08-011
) (Enforcement – Water)
v.)
)
ROCKFORD BLACKTOP CONSTRUCTION)
CO., an Illinois corporation, and)
WESTLAKE UTILITIES, INC.,)
an Illinois corporation,)
)
Respondents.)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondents, ROCKFORD BLACKTOP CONSTRUCTION CO., an Illinois corporation, and WESTLAKE UTILITIES, INC., an Illinois corporation, as follows:

COUNT I

WATER POLLUTION

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”), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2006), and is an action 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 (2006), and is 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) (2006).

3. At all times relevant to this Complaint, Respondent Rockford Blacktop Construction Co. (“Rockford Blacktop”) was and is an Illinois corporation registered and qualified to transact business in the State of Illinois.

4. At all times relevant to this Complaint, Respondent Westlake Utilities, Inc. (“Westlake”) was and is an Illinois corporation registered and qualified to transact business in the State of Illinois.

5. At all times relevant to this Complaint, Westlake has owned and operated a wastewater lagoon-type treatment plant (“WWTP”). The WWTP provides service to the Westlake Village residential development and is located in Winnebago County, Illinois.

6. Upon information and belief, the WWTP was constructed in approximately 1997 as part of the Westlake Village residential development (“Westlake Village”). The WWTP is situated on approximately 10 acres and consists of a blower house and three treatment cells, identified as “Cell One”, “Cell Two” and “Cell Three”, which utilize an aeration process to treat sanitary waste prior to discharge to Coolidge Creek.

7. At all times relevant to the Complaint, Rockford Blacktop was the contractor responsible for performing repair work on Cell Three, which included dewatering, removing rip-rap and trees from the Cell’s banks, and regrading and preparing the Cell for placement of a synthetic membrane liner.

8. Upon information and belief, Westlake entered into a contract with Rockford Blacktop to perform the construction work as described in paragraph 8 herein.

9. On October 1, 2006, Rockford Blacktop began construction work at the WWTP to repair Cell Three. Rockford Blacktop completed construction activities at the WWTP in June 2007.

10. On October 20, 2006, in response to a citizen complaint that raw sewage was being pumped out of a lagoon at Westlake Village, Illinois EPA inspected the WWTP.

11. At the time of the October 20, 2006 inspection, Rockford Blacktop was pumping water from Cell Three through a 3-inch trash pump to a grassy area adjacent to Coolidge Creek. Coolidge Creek is a tributary to the Pecatonica River. The discharge appeared slightly cloudy.

12. At the time of the October 20, 2006 inspection, erosion and silt control measures were not in place at the WWTP to prevent the migration of sediment into Coolidge Creek.

13. At the time of the October 20, 2006 inspection, Illinois EPA collected a water sample from Cell Three. Analytical testing of the water sample revealed that it contained a total suspended solids ("TSS") concentration of 461 milligrams per liter ("mg/L").

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

No person shall:

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

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (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. Respondents Rockford Blacktop and Westlake are each a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (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 water in Cell Three contained solids and sediments, which are “contaminants” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

19. Section 3.545 of the Act, 415 ILCS 5/3.545 (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 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.

20. Section 3.550 of the Act, 415 ILCS 5/3.550 (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 this State.

21. Coolidge Creek and Pecatonica River are each “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

22. By pumping water containing solids and sediments from Cell Three onto the ground adjacent to Coolidge Creek, and failing to install adequate erosion control measures, Respondents caused, threatened and/or allowed sediment and solids from its pumping and dewatering activities at the WWTP to discharge into Coolidge Creek. Such sediment and solids altered or threatened to alter the physical, thermal, chemical or radioactive properties of Coolidge Creek, or were likely to render Coolidge Creek harmful, detrimental or injurious to wild animals, birds, fish and other aquatic life; or created or were likely to create a nuisance.

23. From at least October 1, 2006 to at least October 20, 2006, Respondents failed to implement adequate erosion control measures at the WWTP, to prevent solids and sediments from Cell Three from being discharged into Coolidge Creek.

24. By causing, threatening, or allowing the discharge of sediment into Coolidge Creek, which ultimately discharges to Pecatonica River, Respondents Rockford Blacktop and Westlake caused, threatened or allowed the discharge of a contaminant into the environment so as to cause or tend to cause water pollution in Illinois.

25. By causing or tending to cause water pollution in Illinois, Respondents Rockford Blacktop and Westlake 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 against the Respondents, ROCKFORD BLACKTOP CONSTRUCTION CO., an Illinois corporation, and WESTLAKE UTILITIES, INC., an Illinois corporation:

1. Authorizing a hearing in the matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(a) of the Act;
3. Ordering the Respondents to cease and desist from any further violations of Section 12(a) of the Act;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondents for each violation of the Act, with an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action, including expert witness, consultant and attorney fees, against the Respondents; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II

WATER POLLUTION HAZARD

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 and paragraphs 15 through 23 of Count I as paragraphs 1 through 22 of this Count II.

23. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides, in pertinent part, 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.

24. By causing or allowing sediment to be deposited on the land at the WWTP adjacent to Coolidge Creek, without taking measures to prevent sediments from entering the creek, Respondents Rockford Blacktop and Westlake created 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 that the Board enter an Order against the Respondents, ROCKFORD BLACKTOP CONSTRUCTION CO., an Illinois corporation, and WESTLAKE UTILITIES, INC., an Illinois corporation:

1. Authorizing a hearing in the matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(d) of the Act;
3. Ordering the Respondents to cease and desist from any further violations of Section 12(d) of the Act;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondents for each violation of the Act, with an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Taxing all costs in this action, including expert witness, consultant and attorney fees, against the Respondents; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III

FAILURE TO OBTAIN AN NPDES STORMWATER PERMIT

1-21. Complainant realleges and incorporates by reference herein paragraphs 1 through 13, paragraphs 15 through 18, and paragraphs 20 through 23 of Count I, as paragraphs 1 through 21 of this Count III.

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

23. 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.

24. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations, including stormwater discharges regulated by 40 CFR 122.26, which requires a person to obtain an NPDES permit and to implement a stormwater pollution prevention plan for construction activity including clearing, grading and excavation.

25. In pertinent part, 40 CFR 122.26(a) 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...

26. In pertinent part, 40 CFR 122.26(b) provides as follows:

(b) Definitions.

* * *

(14) Storm water discharge associated with industrial activity means....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;

27. The activities associated with repairing and installing a liner in Cell Three at the WWTP, as described in paragraph 8 of Count I, were an "industrial activity", as that term is defined in 40 CFR 122.26(b)(14)(x).

28. 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.

29. 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.)

30. On July 17, 2007, Illinois EPA issued to Westlake General NPDES Permit No. ILR10H658 for Storm Water Discharges from Construction Site Activities at the WWTP.

31. From at least October 1, 2006, and continuing through at least October 20, 2006, on dates better known to Respondents, Respondents Rockford Blacktop and Westlake did not have an NPDES permit allowing the discharge of stormwater associated with their construction activities at the WWTP.

32. By causing or allowing ten (10) acres of land at the WWTP to be disturbed without first obtaining coverage under the NPDES general storm water permit, Respondents Rockford Blacktop and Westlake 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).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondents, ROCKFORD BLACKTOP CONSTRUCTION CO., an Illinois corporation, and WESTLAKE UTILITIES, INC., an Illinois corporation:


1. Authorizing a hearing in the matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondents to cease and desist from any further violations of Section 12(d) of the Act and 35 Ill. Adm. Code 309.102(a);
4. Assessing against the Respondents, 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 35 Ill. Adm. Code 309.102(a);
5. Taxing all costs in this action, including expert witness, consultant and attorney fees, against the Respondents; 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
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BY:


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CERTIFICATE OF SERVICE

I, VANESSA A. VAIL, an Assistant Attorney General, do certify that I caused to be served this 4th day of August 2008, true and correct copies of the Stipulation and Proposal for Settlement with Westlake Utilities, Inc., Motion to Request Relief from Hearing Requirement and Notice of Filing by certified mail with return receipt requested to the person listed on the said Notice of Filing, and depositing same with the United States Postal Service located at 69 West Washington Street, Chicago, Illinois, 60602.



VANESSA A. VAIL