

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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|----------------------------------|---|-----------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB No. 09- |
| |) | (Enforcement – Water) |
| KEN RAWSON, individually |) | |
| |) | |
| Respondent. |) | |

NOTICE OF FILING

To: Mr. Kenneth A. Rawson
308 West Erie, Suite 700 (VIA ELECTRONIC FILING)
Chicago, Illinois 60654

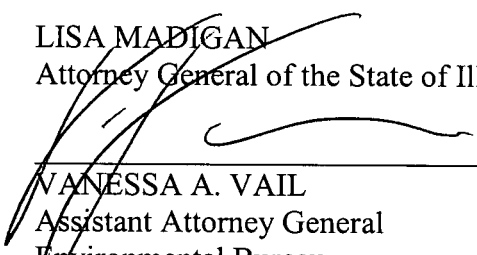
PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the State of Illinois

BY:



VANESSA A. VAIL
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-5361

DATE: April 17, 2009

CERTIFICATE OF SERVICE

I, VANESSA A. VAIL, an Assistant Attorney General, do certify that I caused to be served this 17th day of April 2009, the foregoing NOTICE OF FILING, and COMPLAINT, by certified mail with return receipt requested to the person listed on the Notice, and depositing same with the United States Postal Service located at 69 West Washington Street, Chicago, Illinois, 60602.



VANESSA A. VAIL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB No. 09-
) (Enforcement – Water)
KEN RAWSON, individually)
)
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, KEN RAWSON, individually, as follows:

COUNT I

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 Sections 42(d) and (e) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/42(d) and (e) (2006).

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, KEN RAWSON ("Rawson"), was and is an Illinois resident.

4. On September 17, 2004, Illinois EPA issued to Rawson NPDES coverage under the General NPDES Permit for storm water discharges from construction site activity related to the installation of a sanitary sewer and potable water lines to service future residential subdivisions in the City of Crystal Lake, McHenry County, Illinois ("NPDES Permit"). At all time relevant to the Complaint, Rawson was the designated permittee under the NPDES Permit.

5. The sanitary sewer and potable water lines extended west from Briarwood Road, along Illinois State Route 176 toward Illinois State Route 47 in Crystal Lake ("Site"; also referred to as the "Bryn Mawr Sanitary Sewer Installation Project"). The Site consists of an approximately 10 acre strip of land and is located in McHenry County.

6. Storm water runoff from the Site flows into a storm ditch that extends along Route 176 and discharges into the Kishwaukee River.

7. Upon information and belief, the Site borders and directly affects a State jurisdictional wetland as well as federally designated High Functioning wetlands K999, K1003, K1011 and High Habitat ADID wetland K958.

8. On May 31, 2007, Illinois EPA inspected the Site. Illinois EPA conducted the inspection as a follow-up to two previous Illinois EPA inspections that were conducted on July 27, 2006 and August 2, 2006. At the time of the May 31, 2007 inspection, construction of the sewer line was near completion.

9. During the May 31, 2007 inspection, erosion and sediment controls that

were installed in August 2006 had been removed. The sediment and erosion controls that were being used at the time of the inspection were improperly maintained.

10. At the time of the May 31, 2007 inspection, soils originally in the wetland area were stockpiled at various locations throughout the Site. During the inspection, the stockpiled soils were not stabilized or protected, and no silt control measures were in place to prevent soil from entering the wetland area. Sediment-laden water was entering the wetland area during the inspection.

11. At the time of the May 31, 2007 inspection, erosion and silt control measures were not in place at the Site to prevent the migration of sediment into storm water. During the inspection, sediment was entering the roadside ditch at numerous locations along Route 176.

12. In October 2007, the Site received proper erosion control blanketing and became permanently stabilized.

13. 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.

14. 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.

15. Respondent Rawson is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

16. 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.

17. Silt, soil and sediments are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

18. 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.

19. 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.

20. The roadside ditch alongside Route 176, downstream tributaries, and the Kishwaukee River are each "waters" as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

21. The lack of adequate erosion control measures at the Site from at least May 31, 2007 to at least October 1, 2007, caused, threatened or allowed silt-laden storm

water and sediment to discharge into the wetland area and roadside ditch which ultimately flows into the Kishwaukee River. Such silt and sediment altered, or threatened to alter the physical, thermal, chemical or radioactive properties of the ditch, wetland and the Kishwaukee River; 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. By his actions and omissions, Rawson caused, threatened or allowed the discharge of a contaminant into the environment so as to cause or tend to cause 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, KEN RAWSON:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006);
3. Ordering the Respondent to cease and desist from any future 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 the Respondent for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) 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) (2006), 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

WATER POLLUTION HAZARD

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 II.

20. 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.

21. From at least May 31, 2007 to at least October 1, 2007, Rawson caused and/or allowed silt and sediments from the Site to flow into the roadside ditch alongside Route 176, which flows to the Kishwaukee River. In addition, Rawson allowed disturbed soil and soil stockpiles to remain adjacent to the wetland areas without adequate erosion control to prevent the runoff of soil from the stockpiles into the wetland.

22. Respondent, by his 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) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, KEN RAWSON:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);
3. Ordering the Respondent to cease and desist from any future 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 the Respondent for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) 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) (2006), 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 STORMWATER PERMIT VIOLATIONS

1-18. Complainant realleges and incorporates by reference herein paragraphs 1 through 12, paragraphs 14 through 17, and paragraphs 19 and 20 of Count I as paragraphs 1 through 18 of this Count III.

19. 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.

20. 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.

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

22. At all times relevant to the Complaint, Respondent Rawson's discharges were 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").

23. 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.

24. Rawson's NPDES Permit requires, in part, that Respondent utilize and maintain adequate storm water control measures to prevent erosion, that Respondent obtain a signed certification statement for each contractor or subcontractor identified in the SWPPP and that a copy of the project's Notice of Intent ("NOI") and SWPPP be kept on-Site and available for review upon request.

25. During the May 31, 2007 inspection, no SWPPP or NOI were at the Site or available for review.

26. From at least May 31, 2007 through October 1, 2007, Respondent failed to adequately address erosion control issues at the Site. Respondent failed to adequately stabilize silt, soil and sediment, and allowed sediment runoff to the roadside ditch and wetland at the Site.

27. By failing to adequately address erosion control issues at the Site, and failing to have his SWPPP and NOI at the Site, Respondent Rawson violated the conditions and provisions of his NPDES Permit.

28. By allowing storm water discharges from the Site in violation of his NPDES storm water permit for construction site activities, Respondent Rawson violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and 35 Ill. Adm. Code 309.102(a).

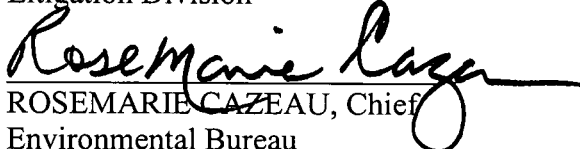
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS,
respectfully requests that the Board enter an order in favor of Complainant and against
Respondent, KEN RAWSON:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondent to cease and desist from any future violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and 35 Ill. Adm. Code 309.102(a);
4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation of the Act and any NPDES program-related regulation of the Board continued;
5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), 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/Asbestos
Litigation Division

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

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