

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	PCB NO. 09-
v.)	(Enforcement-Water)
)	
MOHAMMAD AKRABAWI,)	
d/b/a DEERFIELD CROSSINGS, LLC,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Francis X. Lyons
Attorney at Law
Bryan Cave LLP
161 North Clark Street, Suite 4300
Chicago, Illinois 60601-3715

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, Illinois 60601

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

Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "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."

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY:



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, IL 60602
(312) 814-3816

DATE: June 29, 2009

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,)

v.)

MOHAMMAD AKRABAWI,)
d/b/a DEERFIELD CROSSINGS, LLC,)

Respondent.)

PCB NO. 09-
(Enforcement-Water)

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, MOHAMMAD AKRABAWI, d/b/a Deerfield Crossings, LLC, as follows:

COUNT I

CAUSE, THREATEN OR ALLOW WATER POLLUTION

1. This Complaint 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 the terms and provisions of 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. 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).

3. At all times relevant to the complaint, RESPONDENT, Mohammad Akrabawi, d/b/a Deerfield Crossings LLC, owned and operated Deerfield Crossings, LLC (“LLC”) which is the owner/developer of Deerfield Crossings Subdivision (“Site”). The Site is 147 acres in size. The Site is located at the southeast quadrant of the intersection of Illinois Route 23 and U.S. Route 30 on the east side of the Village of Waterman, DeKalb County, Illinois. The closest receiving stream to the Site is Somonauk Creek.

4. On March 20, 2006, the Illinois EPA received a Notice of Intent for general permit to discharge storm water from construction site activities from Mohammad Akrabawi for the Deerfield Crossings Site.

5. On April 19, 2006, the Illinois EPA issued to Deerfield Crossings Subdivision a notice of coverage for storm water discharge associated with construction site activities NPDES Permit No. ILR10F194.

6. On March 21, 2007, the Illinois EPA, Rockford Regional Office inspected the Site and observed the following:

- (a) the letter granting coverage under the NPDES general storm water permit was not posted for public viewing at the Site as required by the permit;
- (b) the Site lacked the proper sediment stabilization required in the NPDES general storm water permit;
- (c) the berms of the detention basin located on the northern portion of the Site, and the discharge channel leading from the basin both lacked stabilization;

- (d) storm water discharge was leaving the basin, flowing through a culvert under railroad tracks to a roadside ditch and into Somonauk Creek;
- (e) a portion of the silt fence along the western perimeter of the Site was down; and,
- (f) a portion of the silt fence on the eastern perimeter was down and water was flowing off-site, over the downed silt fence into an adjacent farm.

7. On June 27, 2007, the Illinois EPA issued a violation notice ("VN") to Respondent citing failure to comply with terms and conditions of the NPDES general storm water permit and storm water violations.

8. On July 20, 2007, Respondent responded to the VN letter by submitting his Compliance Commitment Agreement ("CCA").

9. On August 22, 2007 the Illinois EPA rejected the CCA due to the nature and seriousness of the violations.

10. On September 13, 2007, the Illinois EPA conducted a brief follow-up inspection of the Site and observed that the detention outlet from the north detention pond was overgrown with vegetation, observed erosion in the ground sloping toward the silt fence, the silt fence on the south side of the Site was overgrown with vegetation and the Site as a whole was sparsely covered with weeds rather than proper ground cover. The Site was not properly stabilized.

11. On February 19, 2008, the Illinois EPA sent a notice of intent to pursue legal action ("NIPLA") letter to Respondent.

12. On May 5, 2008, the Illinois EPA conducted a third inspection of the Site and again observed that the Site was not properly stabilized and that some storm sewer inlets were choked with vegetation that had been carried to the inlet by storm water. Sediment controls

were not maintained and ground cover was lacking. The detention pond outlet was “heavily silted” and weeds were growing out of the grated outlet.

13. 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 in any State so as to cause or tend to cause water pollution in Illinois, whether 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 as follows:

“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. Mr. Mohammad Akrabawi, an individual, and Deerfield Crossings LLC are both a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

16. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), provides as follows:

“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological or radioactive properties of 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.

17. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), provides as follows:

“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.

18. The detention ponds, discharge channels, and Somonauk Creek are “waters,” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

19. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), provides as follows:

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

20. The silt-laden storm water runoff from the Site that flowed into the detention ponds and eventually into Somonauk Creek is a “contaminant,” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

21. The discharge of contaminants, such as silt-laden runoff, from the Site into waters of the State, constitutes “water pollution,” as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2006).

22. By allowing disturbed soils to remain unstabilized and without adequate erosion control protection, Respondent caused, threatened or allowed the discharge of contaminants, into the environment.

23. By causing, threatening or allowing discharge of contaminants into the detention pond, discharge channels and Somonauk Creek, 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 request 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 against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) each for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) against the Respondent for each day of violation;
5. Ordering Respondent to implement adequate erosion control protection measures;
6. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Granting such relief as the Board deems appropriate and just.

COUNT II

CREATING A WATER POLLUTION HAZARD

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

23. Section 12(d) of the Act, 415 ILCS 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.

24. By grading the entire 147 acres site without first implementing adequate erosion controls, Respondent allowed silt to be deposited and remain exposed at the Site in such place and manner 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 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 against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) each for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day violation;
5. Ordering Respondent to implement adequate erosion control measures;
6. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Granting such relief as the Board deems appropriate and just.

COUNT III

VIOLATION OF NPDES PERMIT

1-22. Complainant realleges and incorporates by reference herein paragraph 1 through 22 of Count II as paragraphs 1 through 22 of this Count III.

23. 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, 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.

24. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), titled, NPDES Permit Required, 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.

25. Respondent's General NPDES Permit for Storm Water Discharges from Construction Site Activities No. ILR10F194, Part IV. D.2(a) provides in pertinent part as follows:

"...stabilization measures shall be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased."

26. During the September 13, 2007 inspection, the Illinois EPA inspector observed that only two houses on the 147 acre site were built and the remaining areas of the Site remained dormant as of May 2008, and the Site was not stabilized even though construction activity had ceased. Stabilization measures should have been initiated within 14 days of the cessation of construction activities as required by NPDES Permit No. ILR10 Part IV.D.2(a).

27. Failure to stabilize the Site as soon as possible in portions of the Site where construction activities had ceased is a violation of NPDES Permit ILR10F194 and also a violation of Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

28. By failing to take stabilization measures as called for by NPDES Permit No. ILR10F194 Part IV.D.2(a), at its construction site, Respondent violated 35 Ill. Adm. Code 309.102(a) and Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board 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 35 Ill. Adm. Code 309.102(a);
3. Ordering Respondent to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and NPDES permit conditions;
4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) per day of violation for each day of violating Section 12(f) of the Act, 415 ILCS 5/12 (f) and 35 Ill. Adm. Code 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
5. Ordering Respondent to implement adequate erosion control and protection measures;
6. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Granting such relief as the Board deems appropriate and just.

COUNT IV
NPDES PERMIT VIOLATION- FAILURE TO POST
NOTIFICATION OF COVERAGE

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 22 of Count III as paragraphs 1 through 22 of this Count IV.

23. Part II.D.2 of NPDES Permit #ILR10F194 provides as follows:

A copy of the letter of notification of coverage or other indication that storm water discharges from the site are covered under an NPDES permit shall be posted at the site in a prominent place for public viewing (such as alongside a building permit).

24. During the March 21, 2007 inspection, a copy of the letter of notification of coverage was not posted at the Site.

25. By failing to post the notification of coverage, Respondent violated Part II.D.2 of NPDES Permit No. ILR10F194.

26. By violating Part II.D.2 of the NPDES Permit No. ILR10F194, Respondent also 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 Respondent Mohammad Akrabawi, on this Count IV:

1. Authorizing a hearing in this matter at which time the Respondent Mohammad Akrabawi will be required to answer the allegations herein;

2. Finding that the Respondent has violated Part II.D.2 of its NPDES Permit No. ILR10F194 Permit, 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 the Respondent to cease and desist from any further violations of Part II.D.2 of its NPDES Permit No. ILR10F194, 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 against the Respondent, pursuant to Section 42(b)(1) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation of Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a);

5. Ordering the Respondent, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant fees; and

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

COUNT V

NPDES PERMIT VIOLATION- FAILURE TO HAVE STORM WATER POLLUTION PREVENTION PLAN AVAILABLE AT THE SITE

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 22 of Count IV as paragraphs 1 through 22 of this Count V.

23. Part IV.B.1 of NPDES Permit #ILR10F194 provides as follows:

Part IV. Stormwater Pollution Prevention Plans

* * * *

The plan shall be signed in accordance with Part VI.G (Signatory Requirements), and 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.

24. During the March 21, 2007 inspection, Respondent did not maintain on Site a copy of the Stormwater Pollution Prevention Plan as required by NPDES Permit.

25. By failing to retain and post at the Site a copy of the Stormwater Pollution Prevention Plan, Respondent Akrabawi violated Part IV.B.1 of NPDES Permit #ILR10F194.

26. By violating Part IV.B.1 of NPDES Permit #ILR10F194, Respondent 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)(2006).

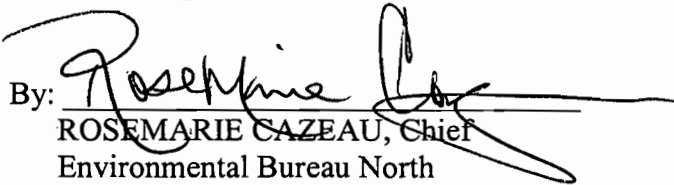
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, on this Count V:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Part IV.B.1 of NPDES Permit #ILR10F194, 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 the Respondent to cease and desist from any further violations of Part IV.B.1 of the General Stormwater Permit, 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 against the Respondent, pursuant to Section 42(b)(1) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation of Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a);
5. Ordering the Respondent, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2006), to pay all costs expended by the State in its pursuit of this action, including attorney, expert witness, and consultant 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/
Asbestos Litigation Division

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau North
Assistant Attorney General

Of Counsel:

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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 29th day of June 2009, the foregoing Notice of Filing, and a Complaint, upon Mr. Francis X. Lyons, Attorney at Law, via Certified Mail 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