

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 10-
)	(Enforcement - Water)
WILLIAM CHARLES REAL ESTATE)	
INVESTMENT, L.L.C., an Illinois limited)	
liability company,)	
Respondent.)	

NOTICE OF FILING

To: See Attached Service List.
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Complainant's Complaint for Civil Penalties, a copy of which is herewith served upon you.

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.

LISA MADIGAN
Attorney General
State of Illinois


JENNIFER A. VAN WIE

Dated: June 24, 2010

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Charles F. Helsten
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CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Notice of Filing and Complaint for Civil Penalties by U.S. Certified Mail (return receipt requested) upon Mr. Helsten and First Class U.S. Mail upon Mr. Gunnarson at the following addresses:

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COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, WILLIAM CHARLES REAL ESTATE INVESTMENT, L.L.C., 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 (2008), 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 (2008), and is charged, *inter alia*, with the duty of enforcing the Act. This Count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2008).

3. At all times relevant to this Complaint, Respondent, WILLIAM CHARLES REAL ESTATE INVESTMENT, L.L.C. (“William Charles” or “Respondent”), was and is an

Illinois corporation in active standing with the Illinois Secretary of State.

4. Lookout Preserve is a subdivision development, approximately 65 acres in size, located at the northwest corner of Rotary Road and Ryberg Road in New Milford, Winnebago County, Illinois ("Site"). The Site is located approximately two miles south of Rockford, Illinois and consists of land on which residential and commercial buildings are to be built.

5. 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.

6. On December 5, 2006, the Illinois EPA received William Charles' Notice of Intent application for coverage under the General NPDES Permit for Storm Water Discharges From Construction Site Activities ("NPDES Permit") for the Site.

7. On January 5, 2007, the Illinois EPA issued William Charles a notice of coverage under the construction site activity storm water general permit, NPDES Permit No. ILR10G970. The Site discharges into drainage ditches along the perimeter of the Site, which ultimately discharge into the Kishwaukee River.

8. On August 14, 2007, an Illinois EPA inspector received a citizen complaint of stormwater runoff from the Site entering the basement of a nearby resident's home ("resident").

9. On August 16, 2007, the Illinois EPA inspector contacted the resident. The resident stated that the runoff stormwater had flooded the resident's basement and that the stormwater had carried clay and gravel to a property adjacent to resident's.

10. On August 17, 2007, the Illinois EPA's Rockford Regional Office received another report of flooding in the area near the Site.

11. On August 21, 2007, an Illinois EPA inspector inspected the area affected by

runoff from the Site. A project manager from William Charles and two representatives from Rockford Blacktop Construction Company, a subsidiary of William Charles, were present at the Site for this inspection.

12. During the August 21, 2007 inspection, the Illinois EPA inspector observed that grass at the Site had been matted down by the surface flow of the stormwater. Topsoil had been removed from most of the Site and was stockpiled in two mounds in the northwest part of the Site. The entire Site appeared to be sand, gravel and some clay.

13. On August 23, 2007, the Illinois EPA conducted another inspection of the Site after a heavy rain event. The inspector observed stormwater flowing over a silt fence at the northeast corner of the Site.

14. On November 3, 2007, the Illinois EPA again visited the Site. The inspector observed that a detention basin had been constructed and seeded, and the vegetative cover was started but thin. The basin's discharge riser and overflow section of the berm had been reinforced with rip rap. Silt fencing was being maintained in good condition.

15. On May 22, 2008, the Illinois EPA's Watershed Management Section received a report from a trustee of the Village of New Milford ("trustee") regarding excessive stormwater runoff from the Site. The report included photographs showing sediment-laden stormwater leaving the Site following heavy rains in April 2008. The photos also showed a full detention basin with no available flow through the north outlet pipe. The stormwater was instead flowing out the back side of the detention pond and east berm. The high flows resulted in silt fencing being knocked down at the Site.

16. Additionally, the trustee reported that the topsoil was removed from the entire Site and stockpiled in three large mounds near a private residence on the Site's western side and

the Site was then covered with approximately 310,000 cubic yards of sand, gravel and clay from a nearby landfill expansion project in which Respondent has an interest.

17. On June 11, 2008, the Illinois EPA inspector again inspected the Site and observed the following:

- a) sections of silt fence near the southeast corner of the detention basin and in other areas around the Site were washed out;
- b) evidence that sediment was leaving the Site;
- c) embankments along the channel leading to the detention basin were unstabilized and eroded;
- d) the Site had been seeded but there were large areas with sparse or no vegetation, particularly up-slope from the detention basin; and
- e) the topsoil stockpiles had sparse vegetation, were eroded, and lacked containment such as silt fencing.

18. On December 8, 2008, the Illinois EPA sent William Charles, care of the Site's Project Manager, Scott Perian, a Violation Notice ("VN") citing Respondent's failure to comply with NPDES Permit No. ILR10G970, failure to submit Incidence of Non-Compliance, causing or threatening to cause water pollution by failing to provide adequate erosion control measures, and depositing contaminants upon the land in such a place and manner so as to create a water pollution hazard.

19. By letter dated January 16, 2009, counsel for William Charles responded to the VN. The response stated that the VN letter lacked specificity, denied William Charles' noncompliance with its stormwater permit on June 11, 2008 or at any other time, and proposed its commitment to comply with all applicable statutes, rules, regulations, and permits as its Compliance Commitment Agreement ("CCA").

20. On February 23, 2009, the Illinois EPA sent William Charles a letter rejecting its

proposed CCA as described in William Charles' January 16, 2009 response to the VN.

21. On April 16, 2009, the Illinois EPA sent William Charles a Notice of Intent to Pursue Legal Action ("NIPLA") letter for the violations contained in the VN.

22. On May 18, 2009, an Illinois EPA inspector again visited the Site. He noted that vegetative cover remained sparse and stabilization of the topsoil stockpile was still lacking. Areas of failed silt fence remained at the Site.

23. A meeting was held between representatives of William Charles and the Illinois EPA via telephone call on May 20, 2009, pursuant to the NIPLA letter. William Charles' representatives explained that the Site experienced a "more than 100-year" rain event in August 2007. William Charles' representatives also claimed the Site was seeded and fertilized in 2008 and would be again in 2009.

24. On October 21, 2009, the Illinois EPA conducted an inspection of the Site. Respondent was in the process of completing the items needed to come into full compliance with its NPDES permit. The topsoil stockpiles have been removed. The topsoil appears to have been spread over the Site and seeded. Much of the Site appeared stabilized.

25. On November 9, 2009, the Illinois EPA conducted an inspection of the Site. Stabilization work still needed to be completed at the Site.

26. Section 12(a) of the Act, 415 ILCS 5/12 (2008), 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, 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.

27. Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), 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.

28. Respondent is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2008).

29. Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), provides the following definition:

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

30. Eroded soil and sediment are each a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2008).

31. Section 3.545 of the Act, 415 ILCS 5/3.545 (2008), 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.

32. Section 3.550 of the Act, 415 ILCS 5/3.550 (2008), 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.

33. The drainage ditches along the perimeter of the Site and the Kishwaukee River are each “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2008).

34. The Respondent caused, threatened and allowed the discharge of contaminants,

such as eroded soil and sediment, into waters of the State such that they will or are likely to create a nuisance or render such waters harmful or detrimental or injurious.

35. By failing to stabilize disturbed soils and provide adequate erosion control structures to prevent such contaminants from discharging to the environment, Respondent caused, threatened and allowed "water pollution" as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2008).

36. The Respondent, by causing, threatening and allowing the discharge of eroded soil and sediment runoff off-Site so as to cause water pollution, has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, WILLIAM CHARLES REAL ESTATE INVESTMENT, L.L.C., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008);
3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2008);
4. Order the Respondent to comply with all the terms and conditions of NPDES Permit No. ILR10G970;
5. Assess against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2008), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Grant such other relief as the Board deems appropriate and just.

COUNT II
WATER POLLUTION HAZARD

1-25. Complainant realleges and incorporates by reference Paragraphs 1 through 25 of Count I as Paragraphs 1 through 25 of this Count II.

26. Section 12(d) of the Act, 415 ILCS 5/12(d) (2008), 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.

27-34. Plaintiff realleges and incorporates by reference herein paragraphs 27 through 34 of Count I as paragraphs 27 through 34 of this Count II.

35. The Respondent, by failing to provide adequate sediment and erosion controls for stockpiled soil at the graded portions of the Site and by failing to adequately stabilize disturbed areas, deposited contaminants on the land so as to cause a water pollution hazard.

36. By depositing contaminants on land so as to cause water pollution hazard, Respondent thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, WILLIAM CHARLES REAL ESTATE INVESTMENT, L.L.C., for the following relief:

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

2. Find that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2008);
3. Order Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2008);
4. Order the Respondent to comply with all the terms and conditions of NPDES Permit No. ILR10G970;
5. Assess against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2008), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Grant such other relief as the Board deems appropriate and just.

COUNT III
NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM ("NPDES") PERMIT VIOLATIONS

1-25. Complainant realleges and incorporates by reference Paragraphs 1 through 25 of Count I as Paragraphs 1 through 25 of this Count III.

26. Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), 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.

27-33. Plaintiff realleges and incorporates by reference herein paragraphs 27 through 33 of Count I as paragraphs 27 through 33 of this Count III.

34. Part IV of the Site's NPDES Permit provides that a Stormwater Pollution Prevention Plan ("SWPPP") must be developed for the Site and implemented using best management practices. The Respondent must implement the provisions of the SWPPP required under Part IV as a condition of the NPDES Permit.

35. Respondent failed to adequately implement the SWPPP for the Site by causing, threatening or allowing the discharge of storm water containing eroded soil and sediment, contaminants, from the Site into drainage ditches along the perimeter of the Site and the Kishwaukee River.

36. By failing to adequately implement the SWPPP for the Site and causing, threatening or allowing the discharge of contaminants into the waters of the State, Respondent violated NPDES Permit No. ILR10G970.

37. By violating NPDES Permit No. ILR10G970, Respondent thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, WILLIAM CHARLES REAL ESTATE INVESTMENT, L.L.C., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f)

(2008);

3. Order Respondent to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008);

4. Order the Respondent to comply with all the terms and conditions of NPDES Permit No. ILR10G970;

5. Assess against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

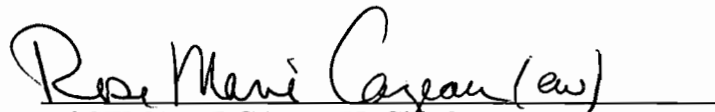
6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2008), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Grant 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
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