



By:



---

JAMIE GETZ  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602  
(312) 814-6986

Date: October 23, 2014

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**Service List**

**For the Respondents**

SSW Development, LLC

Bruce T. Logan

77 West Washington Street, Suite 1211

Chicago, Illinois 60602

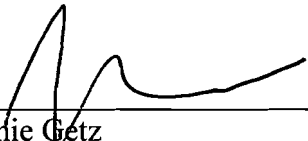
John Kaup

21627 Schoolhouse Road

New Lenox, Illinois 60452

**CERTIFICATE OF SERVICE**

I, Jamie Getz, an Assistant Attorney General, certify that on the 24th day of October 2014, I caused to be served by Certified U.S. Mail (return receipt requested) the foregoing Notice of Filing and Complaint to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



---

Jamie Getz  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington Street, Suite 1800  
Chicago, Illinois 60602  
(312) 814-6986



2. The Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4 (2012), charged, *inter alia*, with the duty of enforcing the Act.

3. The Taylor Glen Subdivision, a residential subdivision which is the subject of this Complaint, is located at Delaney Road, one quarter mile West of Cedar Road, New Lenox, Will County, Illinois ("Site").

4. The Site totals 77.24 acres in size. Storm water from the Site discharges into Jackson Creek, a tributary of the Des Plaines River.

5. SSW Development, L.L.C. ("SSW Development") was an Illinois limited liability corporation in good standing duly authorized to transact business in Illinois from on or before March 23, 2004 through August 9, 2013. Its corporate office was located at 21627 Schoolhouse Road, New Lenox, Will County, Illinois. SSW Development operated and controlled the Site from June 8, 2012 through May 27, 2014, or on dates better known to Respondents.

6. John Kaup is an Illinois resident and was the manager for SSW Development. As manager, John Kaup was responsible for ensuring that SSW Development complied with the Act and the Federal Clean Water Act ("CWA"), 33 U.S.C § 1251 *et seq.* From June 8, 2012 through May 27, 2014, or on dates better known to Respondents, John Kaup managed construction at the Site, including establishing and maintaining soil erosion control measures.

7. On June 8, 2012, the Illinois EPA conducted an inspection of the Site. The inspection indicated an absence of erosion control measures and/or a lack of maintenance on several storm sewers within the Site.

8. On June 15, 2012, approximately seven days after the previous inspection, Illinois EPA conducted a follow up inspection of the Site. The inspection indicated an absence of

erosion control measures and/or a lack of maintenance on several storm sewers within the Site. A large soil pile was lacking proper silt fence installation to prevent soil erosion. Two lots lacked proper stabilization.

9. On August 16, 2012, Illinois EPA conducted a follow up inspection of the Site. The inspection indicated that fabrics on some of the storm sewers were missing or had holes, stabilization measures were not in place, and soil at the Site on the road had not been properly cleaned.

10. On July 25, 2013, Illinois EPA conducted a follow up inspection of the Site. The inspection indicated that a pile of soil was lacking proper silt fence installation to prevent soil erosion in one lot and soil erosion from that lot was leading to an unprotected storm sewer on the road. The inspection also indicated a silt fence that was not properly maintained, erosion control fabric in the storm sewers had holes, and several lots had no erosion control measures.

11. Unstabilized and disturbed soil at the Site, which lacks erosion and other control measures, will contaminate storm water.

12. All construction of homes in the development was completed and the Site was stabilized on or about May 27, 2014, on a date better known to Respondents

13. Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), states 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 (2012), 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. Respondents SSW Development L.L.C., a dissolved limited liability corporation, and John Kaup, an individual, are each a “person” as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

16. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), provides the following definition:

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

17. Soil and silt-laden storm water are each a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

18. Section 3.550 of the Act, 415 ILCS 5/3.550 (2012), 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 throughout, or border upon this State.

19. Jackson Creek and the Des Plaines River are each “waters” of the State of Illinois as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2012).

20. Section 3.545 of the Act, 415 ILCS 5/3.545 (2012), 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.



21. The introduction of soil and silt laden water into the storm sewers at the Site is the discharge of contaminants into a water of the State as will or is likely to create a nuisance or render such waters harmful or detrimental to public health. It is therefore “water pollution” as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2012).

22. By causing or allowing soil and silt laden water to enter the storm sewers at the Site, Respondents caused, threatened, or allowed the discharge of contaminants 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) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondents SSW DEVELOPMENT, L.L.C., a dissolved Illinois limited liability corporation, and JOHN KAUP, an individual, on this Count I:

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

2. Finding that the Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);

3. Ordering the Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);

4. Assessing a civil penalty against the Respondents of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Assessing all costs against the Respondents, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2012); and

6. Granting such other relief as this Court deems equitable and just.

**COUNT II**  
**WATER POLLUTION HAZARD**

1-20. Complainant reallages and incorporates herein by reference paragraphs 1 through 11 and paragraphs 13 through 21 of Count I as paragraphs 1 through 20 of this Count II.

21. Section 12(d) of the Act, 415 ILCS 5/12(d) (2012), states as follows:

No person shall:

\* \* \*

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

22. Respondents disturbed land by construction activity at the Site and allowed soil deposited on the land to remain without soil erosion and sediment controls such that storm water could carry it from the Site into waters of the State.

23. By depositing soil upon the land and failing to stabilize dormant construction lots with adequate soil erosion and sediment controls, Respondents created a water pollution hazard, thereby violating Section 12(d) of the Act, 415 ILCS 5/12(d) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondents SSW DEVELOPMENT, L.L.C., a dissolved Illinois limited liability corporation, and JOHN KAUP, an individual, on this Count II:

1. Authorizing a hearing in this matter, at which time Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);
3. Ordering the Respondents to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2012);
4. Assessing a civil penalty against the Respondents of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against the Respondents, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2012); and
6. Granting such other relief as this Court deems equitable and just.

**COUNT III**  
**FAILURE TO COMPLY WITH NPDES STORM WATER PERMIT**

- 1-18. Complainant realleges and incorporates herein by reference paragraphs 1 through 11 and paragraphs 13 through 19 of Count I as paragraphs 1 through 18 of this Count III.
19. Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), 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.

20. The CWA regulates, among other things, the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without a NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each state unless the USEPA has delegated the authority to do so in 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 a NPDES permit and to implement a Storm Water Pollution Prevention Plan ("SWPPP") for construction activity including clearing, grading, and excavation. The Illinois EPA is charged with the duty to abate violations of the NPDES permit by Section 1342(b)(7) of the CWA, 33 U.S.C. § 1342(b)(7) (2014).

22. 40 CFR § 122.26(a)(1)(ii) provides as follows:

a. Permit Requirement.

i. Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

\* \* \*

a. A discharge associated with industrial activity;

23. 40 CFR § 122.26(b)(14)(x) provides as follows:

(b) Definitions.

\* \* \*

- (14) Storm water discharge associated with industrial activity means the discharge of storm water from any conveyance that is used for collecting and conveying storm water:

\* \* \*

- (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;

24. Respondents' construction activity at the Site includes clearing, grading, and excavating land that totals 77.24 acres in area and is therefore an industrial activity as that term is defined in 40 CFR § 122.26(b)(14)(x).

25. Pursuant to authority granted in sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2012), the Illinois Pollution Control Board ("Board") has promulgated rules and regulations to control water pollution in Illinois, codified at 35 Ill. Adm. Code Subtitle C, Chapter I ("Board Water Pollution Regulations").

26. 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 the conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into waters of the State from a point source or into a well shall be unlawful.

27. On March 23, 2004, Illinois EPA issued NPDES Permit No. ILR10A118 to the Respondents for construction activity at the Site, granting coverage to the Respondents under the General NPDES Permit issued by the Illinois EPA.

28. Part IV of the General NPDES Permit provides, in relevant part, as follows:

A storm water pollution prevention plan shall be developed for each construction site covered by this Permit.

29. During the June 15, 2012 Illinois EPA inspection, a complete and accurate SWPPP was not available.

30. By failing to develop a complete and accurate SWPPP for the Site, Respondents violated the terms of the NPDES Permit No. ILR10A118.

31. Part IV.D.2.a(i) of the General NPDES Permit provides, in relevant part, as follows:

...[S]tabilization 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 7 days after the construction activity in that portion of the site has temporarily or permanently ceased...

32. By failing to initiate stabilization measures as soon as practicable or within seven (7) days where construction activities at the Site had ceased, Respondents violated the terms of their NPDES Permit No. ILR10A118.

33. Part IV.D.4 of The General NPDES Permit provides, in relevant part, as follow:

Qualified personnel (provided by the permittee) shall inspect disturbed areas of the construction site that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours at the end of a storm that is 0.5 inches or greater or equivalent snowfall...

\* \* \*

c. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph b above shall be made and retained as part of the storm water pollution prevention plan for at least three years from the date that the permit coverage expires or is terminated...

34. During the June 8, 2012 Illinois EPA inspection, the Illinois EPA requested that the Respondents provide inspection reports for the Site, but none were provided. During the June 15, 2012 Illinois EPA inspection, inspection reports were still not available.

35. By failing to conduct inspections of the Site and make records of those inspections available at the Site, Respondents violated the terms of their NPDES Permit No. ILR10A118.

36. By failing to comply with the terms of NPDES Permit No. ILR10A118, Respondents violated Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and thereby also violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).


WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondents SSW DEVELOPMENT, L.L.C., a dissolved Illinois limited liability corporation, and JOHN KAUP, an individual on this Count III:

1. Authorizing a hearing in the matter, at which time Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondents to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assessing against the Respondents, pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2012), a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against the Respondents, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2012); and
6. Granting such other relief as this Court deems equitable 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:   
ELIZABETH WALLACE, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:  
JAMIE D. GETZ  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, 18th Floor  
Chicago, Illinois 60602  
(312) 814-6986  
ARDC# 6296185