

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD


PEOPLE OF THE STATE OF ILLINOIS)	
By LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	No. 2015-080
)	(Enforcement – Water)
vs.)	
)	
SSW DEVELOPMENT, L.L.C. a dissolved)	
Illinois limited liability corporation, and)	
JOHN KAUP, an individual,)	
)	
Respondents.)	

NOTICE OF FILING

TO: Jamie Getz
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602

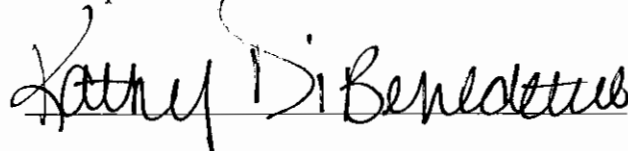
PLEASE TAKE NOTICE that we have caused to be filed with the Clerk of the Court on the 10th day of December, 2014, **Answer to Complaint**, a copy of which is attached hereto.

RATHBUN, CSERVENYAK & KOZOL, LLC

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PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that a copy of the foregoing document with any attachments was served upon the attorneys of record of all parties to the above cause by enclosing the same in an envelope addressed to such attorneys at their business address as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing said envelope in a U.S. Post Office Mail Box in Mokena, Illinois, on the 10th day of December, 2014.

A handwritten signature in black ink that reads "Kathy Di Benedetto". The signature is written in a cursive style and is positioned over a horizontal line.

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ANSWER TO COMPLAINT

NOW COME the Respondents, SSW DEVELOPMENT, L.L.C. a dissolved Illinois limited liability corporation, and JOHN KAUP, an individual, and for their Answer to Complainant’s Complaint, state as follows:

COUNT I
WATER POLLUTION

1. This Count 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”), against Respondents, SSW Development, L.L.C., a dissolved Illinois limited liability corporation, and John Kaup, an individual (“Respondents”) pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2012).

ANSWER: Admit that Complainant purports to bring this action pursuant to § 31 of the Act, but deny that Complainant can sustain any claims against Respondents.

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.

ANSWER: Admit.

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").

ANSWER: Admit.

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.

ANSWER: Admit.

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.

ANSWER: Admit that SSW Development, LLC (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 and that its corporate office was located at 21627 Schoolhouse Road, New Lenox, Will County, Illinois. Respondents deny that SSW Development operated and controlled the Site from June 8, 2012 through May 27, 2014.

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. § 125 et seq. From June 8, 2012 through May 27, 2014, or on dates better known to Respondents, John Kaup manages construction at the Site, including establishing and maintain soil erosion control measures.

ANSWER: Admit that John Kaup is an Illinois resident and was a manager for SSW Development. Whether 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.* is a legal conclusion to which no answer is required. Respondents deny that from June 8, 2012 through May 27, 2014, John Kaup managed construction at the Site.

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 lack of maintenance on several storm sewers within the Site.

ANSWER: Admit that the IEPA conducted an inspection of the Site. Deny the remaining allegations contained in this paragraph.

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 lack of maintenance on several storm sewers within the Site.

ANSWER: Admit that the IEPA conducted an inspection of the Site. Deny the remaining allegations contained in this paragraph.

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.

ANSWER: Admit that the IEPA conducted an inspection of the Site and further state damage was done to the Site at that time. Deny the remaining allegations contained in this paragraph.

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 lending 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.

ANSWER: Admit that the IEPA conducted an inspection of the Site. Deny the remaining allegations contained in this paragraph.

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

ANSWER: Deny.

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.

ANSWER: Deny. Respondents further state the Site was completed by the Fall of 2013 and approved on December 12, 2013.

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 contaminates into the environment in any State so as to cause or tend to cause water pollution in Illinois, wither 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.

ANSWER: The Act is a statute that speaks for itself.

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.”

ANSWER: The Act is a statute that speaks for itself.

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).

ANSWER: This paragraph states a legal conclusion to which no answer is required and so none is given.

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.

ANSWER: The Act is a statute that speaks for itself.

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)

ANSWER: This paragraph states a legal conclusion to which no answer is required and so none is given.

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 part thereof, which are wholly or partially within, flow throughout, or border upon this State.

ANSWER: The Act is a statute that speaks for itself.

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 5/3.545 (2012).

ANSWER: This paragraph states a legal conclusion to which no answer is required and so none is given.

20. Section 3.545 of the Act, 415 ILCS 5/3.545 (2012), provides the following definition:

“Water pollution” is such alternation of the physical, thermal, chemical, biological or radioactive properties of 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.

ANSWER: The Act is a statute that speaks for itself.

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).

ANSWER: This paragraph states legal conclusions to which no answers are required. To the extent an answer is required, Respondents deny the allegations contained in this paragraph.

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 tent to cause water pollution in Illinois in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

ANSWER: Deny.

WHEREFORE, Respondents, SSW Development, LLC and John Kaup, respectfully request that the Board grant judgment in their favor and against Complainant, and further request any additional relief the Board deems just and appropriate.

COUNT II
WATER POLLUTION HAZARD

1-20. Complainant realleges 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.

ANSWER: Respondents repeat and reallege their answers to paragraphs 1 through 11 and 13 through 21 above and incorporate them by reference herein.

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.

ANSWER: The Act is a statute that speaks for itself.

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.

ANSWER: Deny.

23. By deposition soil upon the land and dialing to stabilize dormant construction lots with adequate soil erosion and sediment controls such that storm water could carry it from the Site into waters of the State.

ANSWER: Deny.

WHEREFORE, Respondents, SSW Development, LLC and John Kaup, respectfully request that the Board grant judgment in their favor and against Complainant, and further request any additional relief the Board deems just and appropriate.

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 the Count III.

ANSWER: Respondents repeat and reallege their answers to paragraphs 1 through 11 and 13 through 19 above and incorporate them by reference herein.

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.

ANSWER: The Act is a statute that speaks for itself.

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 State Environmental Protection Agency ("USEPA") administers the NPDES program in each state unless the USEPA has delegated the authority to do so in that State.

ANSWER: This paragraph states legal conclusions to which no answers are required and so none are given.

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 charges 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).

ANSWER: This paragraph states legal conclusions to which no answers are required and so none are given.

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;

ANSWER: The Code speaks for itself.

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 will ultimately disturb five acres or more;

ANSWER: The Code speaks for itself.

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).

ANSWER: This paragraph states a legal conclusion to which no answer is required. To the extent an answer is required, Respondents deny the allegations contained in this paragraph.

25. Pursuant to authority granted in sections 13 and 17 of the Act, 415 ILCS 5/13 and 5/21 (2012), the Illinois Pollution Control Board ("Board") had promulgated rules and regulations to control water pollution in Illinois, codified at 35 Ill. Adm. Code Subtitle C, Chapter I ("Board Water Pollution Regulations").

ANSWER: This paragraph states a legal conclusion to which no answer is required and so none is given.

26. Section 309.12(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.

ANSWER: The Administrative Code speaks for itself.

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.

ANSWER: Admit.

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.

ANSWER: The permit is a document that speaks for itself.

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

ANSWER: Respondents lack knowledge to admit or deny whether the IEPA conducted an inspection on the stated date. Respondents deny any remaining allegations contained in this paragraph.

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

ANSWER: Deny.

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 portion 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.

ANSWER: The permit is a document that speaks for itself.

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.

ANSWER: Deny.

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

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...

ANSWER: The permit is a document that speaks for itself.

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.

ANSWER: Respondents lack knowledge to admit or deny whether the IEPA conducted an inspection on the stated date. Respondents deny any remaining allegations contained in this paragraph.

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.

ANSWER: Deny.

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).

ANSWER: Deny.

WHEREFORE, Respondents, SSW Development, LLC and John Kaup, respectfully request that the Board grant judgment in their favor and against Complainant, and further request any additional relief the Board deems just and appropriate.

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