

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

- VS -

KIRSEA BUILDERS, INC.,
an Illinois corporation,

Respondent.

PCB No. 06-
(Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List (VIA ELECTRONIC FILING)

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.

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.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental facilities financing act [20 ILCS 3515/1 *et seq.*] to correct the alleged pollution.

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

188 W. Randolph St., 20th Floor

Chicago, Illinois 60601

312-814-5361

DATE: June 2, 2006

SERVICE LIST

Attorney for Respondent

Mr. Thomas S. Leonard
Leonard & Associates
17103 Oak Park Avenue
Tinley Park, Illinois 60477

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
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Complainant,	)	
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	)	
KIRSEA BUILDERS, INC.,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	

COMPLAINT FOR CIVIL PENALTIES

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 ("Illinois EPA"), complains of Respondent, KIRSEA BUILDERS, INC., an Illinois corporation, as follows:

COUNT I

FAILURE TO OBTAIN CONSTRUCTION PERMITS

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 EPA, against KIRSEA BUILDERS, INC., pursuant to the terms and conditions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004).

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 (2004), and is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent, Kirsea Builders, Inc. ("Kirsea"), was and is an Illinois corporation duly authorized to conduct business in Illinois. Kirsea is a building contractor and was responsible for installation of sewers at a residential development known as Eagle Fair Subdivision, located in Monee, Will County, Illinois ("Site").

4. On November 8, 2004, the Illinois EPA denied Kirsea's application for a sewer construction permit for the Site.

5. On November 18, 2004, the Illinois EPA conducted an inspection of the Site. During the inspection, Illinois EPA inspectors observed that 2,500 linear feet of a sanitary sewer had been constructed at the Site. Sewer construction work had ceased at the time of the inspection.

6. On January 14, 2005, the Illinois EPA sent a violation notice ("VN") to Respondent advising Kirsea that the installation of sanitary sewer lines at the Site without an Illinois EPA construction permit constituted violations of the Act and Illinois Pollution Control Board ("Board") regulations. The VN informed Respondent that it was required to submit a written response within 45 days of receipt of the VN. The VN

also advised Respondent to obtain all required permits prior to the start of construction at the Site.

7. On March 2, 2005, Respondent submitted a Compliance Commitment Agreement ("CCA") to the Illinois EPA informing it that construction operations were performed at the Site on the mistaken belief that a valid permit had been issued by the Illinois EPA.

8. On March 31, 2005, the Illinois EPA rejected Respondent's CCA submitted on March 2, 2005.

9. On April 20, 2005, the Illinois EPA conducted an inspection at the Site. During the inspection, the Illinois EPA observed that sewer construction work was in progress. The Illinois EPA inspector directed Kirsea to cease sewer construction activity until Respondent was issued a sewer construction permit by the Illinois EPA.

10. On April 25, 2005, Respondent submitted an application to the Illinois EPA for a sewer construction permit.

11. On April 28, 2005, the Illinois EPA issued sewer construction permit number 2005-IB-3984 to the Respondent.

12. Section 12(b) of the Act, 415 ILCS 5/12(b) (2004), provides, in pertinent part, as follows:

No person shall:

- (b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed

to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

* * *

13. Section 309.202(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a), provides as follows:

Except for treatment works or wastewater sources which have or will have discharges for which NPDES Permits are required, and for which NPDES Permits have been issued by the Agency:

- a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency, except as provided in paragraph (b).

14. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), 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. Respondent Kirsea, a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

16. Section 301.265 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.265, provides the following definition:

"Construction" means commencement of on-site fabrication, erection, or installation of a treatment works, sewer, or wastewater source; or the reinstallation at a new site of any existing treatment works, sewer, or wastewater source.

17. Section 301.390 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.390, provides the following definition:

"Sewer" means a stationary means of transport or stationary system of transport, excluding natural waterways, constructed and operated for the purpose of collecting and transporting wastewater or land runoff, or both.

18. From at least November 17, 2004, to approximately April 28, 2005, on dates better known to Kirsea, Respondent constructed a sewer at the Site without the required construction permit.

19. By failing to obtain a permit from the Illinois EPA prior to constructing the sewer, Respondent violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2004), and Section 309.202(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.202(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, KIRSEA BUILDERS, INC., on 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 the Respondent violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2004), and 35 Ill. Adm. Code 309.202(a);

3. Ordering the Respondent to cease and desist from any future violations of Section 12(b) of the Act, and 35 Ill. Adm. Code 309.202(a);

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;

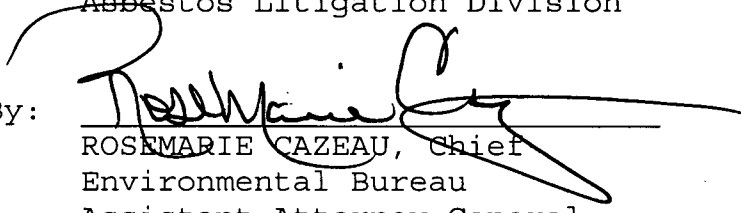
5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

PEOPLE OF THE STATE OF ILLINOIS,
by 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

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, JUNE 2, 2006

Of Counsel:

Vanessa A. Vail

Assistant Attorney General

Environmental Bureau

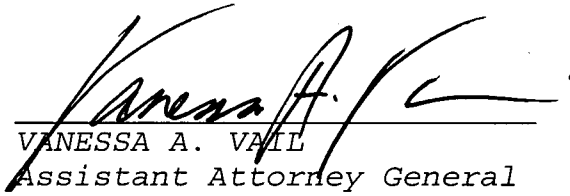
188 W. Randolph Street, Suite 2001

Chicago, Illinois 60601

(312) 814-5361

CERTIFICATE OF SERVICE

I, VANESSA A. VAIL, an attorney, do certify that I caused to be served this 2nd day of June 2006, the foregoing Complaint and Notice of Filing upon the persons listed on said Notice, by Certified Mail and U.S. MAIL.


VANESSA A. VAIL
Assistant Attorney General