

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
- vs -	)	PCB No. 07-
	)	(Enforcement - Water)
KURT CARLSON,	)	
an Illinois resident,	)	
	)	
Respondent.	)	

**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.

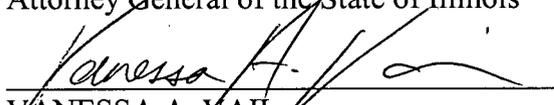
**NOTIFICATION**

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., 20<sup>th</sup> Floor  
 Chicago, Illinois 60601  
 312-814-5361

DATE: July 3, 2006

**SERVICE LIST**

**Kurt Carlson**  
7125 Windsor Lake Parkway  
Loves Park, Illinois 61111

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KURT CARLSON,	)	
an Illinois resident,	)	
	)	
Respondent.	)	

**COMPLAINT FOR CIVIL PENALTIES**

Complainant, 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"), complains of Respondent, KURT CARLSON, an Illinois resident, 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 EPA, against KURT CARLSON, 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, Kurt Carlson, was and is an Illinois resident. Kurt Carlson is the sole owner and developer of the residential subdivision known as Park Valley. Park Valley is comprised of 62 residential lots that are situated on approximately 22 acres located along McFarland Road in the City of Loves Park, Winnebago County, Illinois ("Site").

4. On May 29, 2003, the Illinois EPA issued a General National Pollutant Discharge Elimination System Permit for Storm Water Discharges from Construction Site Activities ("General NPDES Storm Water Permit") to Respondent Kurt Carlson to discharge storm water for construction activities and related earthwork within an area of the Site identified as Plat 2 (Permit Number ILR10 B900). Respondent's General NPDES Storm Water Permit Number ILR10 B900 was issued prior to commencing work in Plat 2 area at the Site.

5. On December 1, 2004, a second General NPDES Storm Water Permit (Permit Number ILR10 8389) was issued to Kurt Carlson to discharge storm water for construction activities and related earthwork for a portion of the Site identified as Plat 1, not covered under Respondent's previously issued General NPDES Storm Water Permit Number ILR10 B900. Respondent's

General NPDES Storm Water Permit Number ILR10 8389 was issued prior to Respondent commencing work in Plat 1 area.

6. A facility covered by a General NPDES Storm Water Permit is required to develop and implement a Storm Water Pollution Prevention Plan ("SWPP") to control pollutants that may be discharged into storm water runoff pursuant to Part IV of the General NPDES Storm Water Permit.

7. On September 23, 2004, the Winnebago County Soil and Water Conservation District ("Winnebago Conservation District") conducted a soil and erosion and sediment control inspection of the Site. The inspection revealed roads in the subdivision covered with sediment, inadequate erosion controls, such as stabilized construction entrances and silt fences along curbs to prevent sediment from entering the road and culverts and storm sewer inlets without protection. During the inspection, the Winnebago Conservation District also observed evidence of past erosion and sediment-laden storm water discharges. Sediment was observed running into a detention basin located south of Yorkshire Lane. Waters discharge from the detention basin's outlet to Willow Creek that is tributary to Pierce Lake, which is an impoundment of Willow Creek.

8. On October 18, 2004, the Winnebago Conservation District again inspected the Site. The inspection revealed that

the same deficiencies as described in paragraph 7 herein remained unaddressed at the Site.

9. On November 8, 2004, the Illinois EPA conducted an inspection of the Site. During the inspection, Illinois EPA inspectors observed that erosion and silt controls had still not been installed at the Site, and that the erosion and silt controls that were present at the Site were improperly maintained. The Illinois EPA also observed silt and soil being dragged onto the streets and not removed. The Illinois EPA inspection revealed that non-compliance reports had not been submitted to the Agency as required by Respondent's NPDES Storm Water Permits.

10. Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), provides, in pertinent part, 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.

11. 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.

12. Respondent Kurt Carlson, an individual, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

13. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides as follows:

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

14. The sediment present at the Site is a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2004).

15. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides as follows:

"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.

16. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), 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 this State.

17. Willow Creek and Pierce Lake are "waters" of the State of Illinois, as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004).

18. Respondent failed to implement adequate erosion controls at the Site from at least September 23, 2004 to at least February 2005, on dates better known to Respondent, which resulted in the discharge of contaminants into the detention basin.

19. Respondent, by its actions as alleged herein, has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, KURT CARLSON, 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(a) of the Act, 415 ILCS 5/12(a) (2004);
3. Ordering the Respondent to cease and desist from any future violations of Section 12(a) of the Act;
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.

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COUNT II

FAILURE TO COMPLY WITH NPDES STORM WATER PERMIT

1-18. Complainant realleges and incorporates by reference herein paragraphs 1 through 18 of Count I as paragraphs 1 through 18 of this Count II.

19. Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), provides, in pertinent part, 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. By failing to implement SWPPs for the Site and failing to submit required noncompliance reports, from at least September 23, 2004 to at least February 2005, on dates better known to Respondent, in violation of Respondent's General NPDES Storm Water Permits, Respondent Kurt Carlson violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, KURT CARLSON, on 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 the Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004);
3. Ordering the Respondent to cease and desist from any future violations of Section 12(f) of the Act;
4. Assessing a civil penalty pursuant to Section 42(a) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) per day against the Respondent for each violation of Section 12(f) of the Act;
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.

COUNT III

WATER POLLUTION HAZARD

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 20 of Count II as paragraphs 1 through 20 of this Count III.

21. Section 12(d) of the Act, 415 ILCS 5/12(d) (2004), provides, in pertinent part, 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.

22. By depositing disturbed sediment on the land at the Site without adequate erosion controls, thereby threatening or allowing sediment-laden storm water runoff to be discharged into Willow Creek, Respondent created a water pollution hazard at the Site in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, KURT CARLSON, on 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 the Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);

3. Ordering the Respondent to cease and desist from any future violations of Section 12(d) of the Act;

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

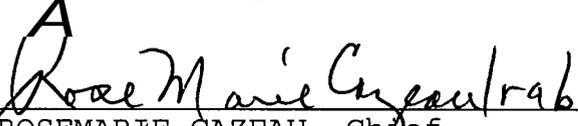
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN, Attorney  
General of the State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/  
Asbestos Litigation Division

By:

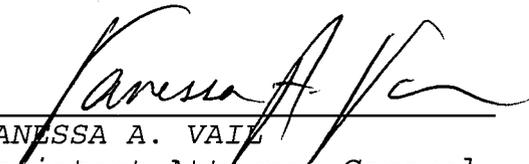
  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

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 3rd day of July 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