

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
LISA MADIGAN, Attorney General of )  
the State of Illinois, )  
 )  
Complainant, )  
 )  
v. )  
 )  
ADVANTAGE NATIONAL BANCORP, INC., an )  
Illinois corporation and VACALA )  
CONSTRUCTION, INC., an Illinois corporation, )  
 )  
Respondents. )

No. 08-  
(Enforcement-Water)

**NOTICE OF FILING**

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board the following Complaint, a copy of which is attached and hereby served on 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 M. CORDONNIER  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602  
(312) 814-0660

**SERVICE LIST**

John Reagan  
Wintrust Financial Corporation.  
1949 St. Johns Ave.  
Highland Park, Illinois 60035

Vacala Construction c/o John Reagan  
Wintrust Financial Corporation  
1949 St. Johns Ave.  
Highland Park, Illinois 60035

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CONSTRUCTION, INC., an Illinois corporation,	)	
	)	
Respondents.	)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, ADVANTAGE NATIONAL BANCORP, INC., and VACALA CONSTRUCTION, INC., 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"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2006), and is charged *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent ADVANTAGE NATIONAL BANCORP, INC., a subsidiary of WINTRUST FINANCIAL CORPORATION ("Advantage"), was an Illinois corporation in good standing.

4. At all times relevant to this Complaint, Respondent VACALA CONSTRUCTION, INC. ("Vacala") was an Illinois corporation in good standing.

5. At all times relevant to the Complaint, Respondent Advantage owned a 1.84 acre parcel of land located at 165 West Lake Street, Bloomingdale, DuPage County, Illinois ("Site").

6. Prior to November 1, 2006, or a date better known to Respondents, Advantage retained Vacala to construct a branch bank facility at the Site.

7. Prior to November 6, 2007, or a date better known to Respondents, Respondent Vacala conducted construction activities on the Site.

8. Storm water runoff from the Site flows into Spring Creek.

9. On November 1, 2006, the Illinois EPA inspected the Site in response to a citizen complaint of excessive mud being tracked onto Lake Street from the Site.

10. At this time, silt fencing was not properly anchored along the southern edge of the Site. There were no erosion control measures in place along the southeast edge of the property and along the edges of the construction site entrance to prevent the migration of disturbed soil and debris into Spring Creek.

11. On March 22, 2007, the Illinois EPA again inspected the Site.

12. At this time, silt fencing was not installed properly along the southern edge of the Site. It was improperly anchored, or had fallen down. Additionally, storm sewer inlets on the property had no erosion control measures in place.

13. On April 24, 2007, the Illinois EPA again inspected the Site.

14. At this time, silt fencing was not installed along the eastern side of the Site. Silt fencing along the southern edge of the Site was not properly maintained. It was improperly anchored, or had fallen down. Additionally, storm sewer inlets on the property had no erosion control measures in place.

15. On November 6, 2007, Respondent Vacala submitted to the Illinois EPA photographs of the Site and documentation, including invoices for purchase of silt fencing and street sweeping. The photographs indicated that construction and landscaping activities had been completed and sufficient erosion control measures were in place at the Site.

16. Section 12(a) of the Act, 415 ILCS 5/12(a)(2006), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminant 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.

17. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides, as follows:

“PERSON” is an individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

18. Respondent Advantage, a corporation, is a “person” as that term is defined in the

Act.

19. Respondent Vacala, a corporation, is a "person" as that term is defined in the Act.

20. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006), provides the following

definition:

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

21. Soil and debris from construction activities at the Site are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

22. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), contains 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.

23. Spring Creek is a "water[s]" of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

24. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), 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.

25. From at least November 1, 2006 to November 6, 2007, or on dates better known to Respondents, Respondents Advantage and Vacala failed to install adequate erosion control

measures at the Site, thereby causing, threatening or allowing soil and/or debris from construction activities at the Site to discharge into Spring Creek, the receiving waters of the Site.

26. The discharge of soil and/or debris from construction activities at the Site into Spring Creek has caused or tended to cause water pollution, in that such discharges have likely rendered the waters of the State 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, and have likely created a nuisance.

27. By causing or allowing the discharge of contaminants in such a manner as to cause or tend to cause water pollution in the waters of the State, Respondents Advantage and Vacala have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, ADVANTAGE NATIONAL BANCORP, INC., and VACALA CONSTRUCTION, INC., for the following relief:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(a) of the Act;
3. Ordering Respondents to cease and desist from any further violations of Section 12(a) of the Act;
4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondents to pay all costs, pursuant to Section 42(f) of the Act, 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 II**

**CREATING A WATER POLLUTION HAZARD**

1-25. Complainant realleges and incorporates by reference herein paragraphs 1 through 15 and paragraphs 17 through 26 of Count I as paragraphs 1 through 25 of this Count II.

26. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides as follows:

No person shall:

\* \* \*

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

27. From at least November 1, 2006 through at least November 6, 2007, or on dates better known to Respondents, Respondents Advantage and Vacala graded ground on the Site during construction activities without providing adequate erosion control devices to prevent runoff of soil and debris-laden storm water to Spring Creek.

28. During the April 24, 2007 inspection of the Site by Illinois EPA, Respondents Advantage and Vacala had stockpiled soil on the Site immediately adjacent to a storm sewer. Soil had been stockpiled in such a manner that a rain event would have caused the runoff of soil and debris-laden storm water into the storm sewer.

29. By depositing contaminants upon the land in such place and manner so as to



create a water pollution hazard, Respondents Advantage and Vacala violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, ADVANTAGE NATIONAL BANCORP, INC., and VACALA CONSTRUCTION, INC., for the following relief:

1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(d) of the Act;
3. Ordering Respondents to cease and desist from any further violations of Section 12(d) of the Act;
4. Assessing against Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondents to pay all costs, pursuant to Section 42(f) of the Act, 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**

**FAILURE TO COMPLY WITH NPDES PERMIT**

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 15 and paragraphs 17 through 23 Count I as paragraphs 1 through 22 of this Count III.

23. Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), provides in relevant 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.

24. Pursuant to authority granted in Sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2006), 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").

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

26. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without an NPDES

permit. The United States Environmental Protection Agency ("US EPA") administers the NPDES program in each State unless the US EPA has delegated authority to do so to that State.

27. The US EPA 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 an NPDES permit and to implement a storm water pollution prevention plan for construction activity including clearing, grading and excavation.

28. 40 C.F.R § 122.26(a) provides, in pertinent part, as follows:

(a) Permit requirement.

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

\* \* \*

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.

29. 40 C.F.R. § 122.26(b)(15)(i) provides, in pertinent part, as follows:

(15) Storm water discharge associated with small construction activity means the discharge of storm water from:

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

30. From May 4, 2006 to July 27, 2007, the Site was covered by NPDES general permit numbered ILR10F300 authorizing storm water discharges from the Site.

31. Part VI.A of NPDES Permit No. ILR10F300, provides, in relevant part, as follows:

Part VI. Standard Permit Conditions

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of Illinois Environmental Protection Act and the CWA and is grounds for enforcement action...

32. Part IV.D.4 of NPDES Permit No. ILR10F300, provides, in relevant part, as follows:

Part IV. Special Conditions, Management Practices, and Other Non-Numeric Limitations

D. Contents of Plan

4. Inspections

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 of the end of a storm that is 0.5 inches or greater or equivalent snowfall.

33. Part III.D.4(c) of NPDES Permit No. ILR10F300, provides as follows:

4 (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. On July 16, 2007, the Illinois EPA received from Respondents Advantage and Vacala a Notice of Termination of coverage under NPDES No. ILR10F300. The Notice of Termination stated that construction activities on the Site had been completed.

35. On July 27, 2007, the Illinois EPA terminated NPDES Permit No. ILR10F300.

36. The inspection requirement as described by Part IV.D.4 of the NPDES Permit began on May 4, 2006 and ended on July 27, 2007.

37. Up to and including the time of the November 1, 2006 inspection of the Site by the Illinois EPA, Respondents were required to have, at a minimum, 24 inspection reports pursuant to Part IV.D.4 of the NPDES Permit as of November 1, 2006. During the November 1, 2006 inspection of the site, neither Advantage nor Vacala made the reports available to the Illinois EPA inspector.

38. Up to and including the time of the March 22, 2007 inspection of the Site by the Illinois EPA, Respondents were required to have, at a minimum, 45 inspection reports pursuant to Part IV.D.4 of the NPDES Permit as of March 22, 2007. During the March 22, 2007 inspection of the site, neither Advantage nor Vacala made the reports available to the Illinois EPA inspector.

39. Part IV.B.1 of NPDES Permit No. ILR10F300 provides, in relevant part, as follows:

IV. Storm Water Pollution Prevention Plans

\* \* \*

(B) Signature, Plan Review and Notification

(1) The plan shall be signed in accordance with Part VI.G (Signatory Requirements), and be retained on-site at the facility which generates the storm water discharge in accordance with Part VI.E (Duty to Provide Information) of this permit.

40. Part VI.E of the NPDES Permit No. ILR10F300 provides, in part, as follows:

(E) Duty to Provide Information.

[...]Upon request, the permittee shall also furnish to the Agency or local agency approving sediment and erosion plans, grading plans, or storm water management plans...

41. During the November 1, 2006 inspection of the Site by Illinois EPA, a representative of Vacala was present at the Site. The Illinois EPA inspector requested a copy of the complete Storm Water Pollution Prevention Plan ("SWPPP"). Neither Advantage nor Vacala made the SWPPP available to the Illinois EPA inspector at the time of the inspection. As required under Part IV.B.1 and VI.E of the NPDES Permit, Respondents were required to retain the SWPPP on Site and make it available to the Illinois EPA upon request.

42. Part IV(d)(4)(d) of NPDES Permit No. ILR10F300 provides as follows:

(d) The permittee shall complete and submit within 5 days an "Incident of Noncompliance" (ION) report for any violation of the storm water pollution prevention plan observed during an inspection conducted, including those not required by the Plan. Submission shall be on forms provided by the Agency and include specific information on the cause of noncompliance, actions which were taken to prevent further causes of noncompliance, and a statement detailing any environmental impact which may have resulted from the noncompliance.

43. Respondents Advantage and Vacala failed to submit ION reports to the Illinois EPA within five days of violations of the SWPPP, including inadequate and/or missing erosion control devices observed during inspections of the Site.

44. By failing to make available inspection reports and a complete copy of the SWPPP on Site, and by failing to timely submit ION reports to the Illinois EPA for violations of the SWPPP, Respondents Advantage and Vacala violated Parts IV(D)(4) and 4(c), IV(B)(1) and (d)(4)(d) and VI(E) of NPDES general permit No. ILR10F300.

45. By violating the terms and conditions of the NPDES general permit covering the Site, Respondents Advantage and Vacala violated Section 309.102(a) of 35 Ill. Adm. Code, and thereby also violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, ADVANTAGE NATIONAL BANCORP, INC., and VACALA CONSTRUCTION, INC., for the following relief:

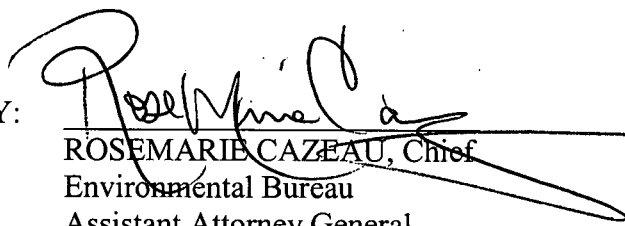
1. Authorizing a hearing in this matter at which time Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(f) of the Act and Section 309.102(a) of 35 Ill. Adm. Code;
3. Ordering Respondents to cease and desist from any further violations of Section 12(f) of the Act and Section 309.102(a) of 35 Ill. Adm. Code;
4. Assessing against Respondents a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act and Section 309.102(a) of 35 Ill. Adm. Code;
5. Ordering Respondents to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witness, and consultant fees expended by the State in 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  
State of Illinois

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

BY:

  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

OF COUNSEL  
VANESSA M. CORDONNIER  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602  
(312) 814-0608



CERTIFICATE OF SERVICE

I, VANESSA M. CORDONNIER, an Assistant Attorney General, do certify that I caused to be mailed this 28 day of May, 2008, the foregoing Complaint and Notice of Filing upon the person listed on said notice, by certified mail.



VANESSA M. CORDONNIER  
Assistant Attorney General  
Environmental Bureau  
69 West Washington, 18<sup>th</sup> Floor  
Chicago, IL 60602  
312-814-0608