



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 3, 2009

PLB09-75
RECEIVED
CLERK'S OFFICE
APR 07 2009
STATE OF ILLINOIS
Pollution Control Board

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Andalusia Ventures, L.L.C.***

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Raymond J. Callery".

Raymond J. Callery
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

RJC/pk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
ANDALUSIA VENTURES, L.L.C.,)
)
Respondent.)

PCB No. 09.75
(Enforcement)

RECEIVED
CLERK'S OFFICE
APR 07 2009
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: Andalusia Ventures, L.L.C.
c/o Rick Lee, Registered Agent
2102 S.E. 3rd Street
Aledo, IL 61231

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith 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 this 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.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2006), to correct the pollution alleged in the Complaint filed in this case.

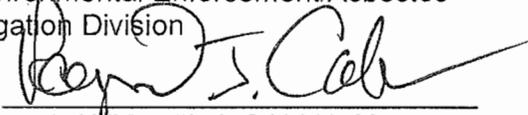
Respectfully submitted,

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:


RAYMOND J. CALLERY
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 3, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on April 3, 2009, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Andalusia Ventures, L.L.C.
c/o Rick Lee, Registered Agent
2102 S.E. 3rd Street
Aledo, IL 61231

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



RAYMOND J. CALLERY
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
Complainant,)
)
)
vs.)
)
)
ANDALUSIA VENTURES, L.L.C.,)
)
)
Respondent.)

PCB No. 09-75
(Enforcement)
RECEIVED
CLERK'S OFFICE
APR 07 2009
STATE OF ILLINOIS
Pollution Control Board

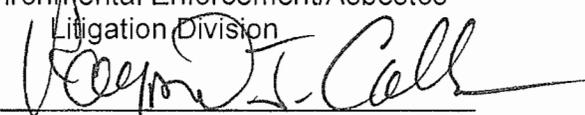
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, RAYMOND J. CALLERY, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

Respectfully submitted,

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: 
RAYMOND J. CALLERY
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: April 3, 2009

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
ANDALUSIA VENTURES, L.L.C,)
)
Respondent.)

PCB No. 09-15
(Water - Enforcement)

RECEIVED
CLERK'S OFFICE

APR 07 2009

STATE OF ILLINOIS
Pollution Control Board
Attorney General

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondent, ANDALUSIA VENTURES, L.L.C., an Illinois limited liability company, as follows:

COUNT I
WATER POLLUTION

1. This Complaint is brought by the Attorney General 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 ("the Act"), 415 ILCS 5/31 (2006).
2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").
3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2006), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. The Respondent, Andalusia Ventures, L.L.C. ("Andalusia"), is an Illinois limited liability company whose registered agent is Rick Lee, 2102 S. E. 3rd Street, Aledo, Illinois, 61231.

5. Andalusia owns and is developing a residential housing area known as Fancy Creek Crossing Subdivision ("Fancy Creek") located at 101st Street West and Andalusia Road (Route 92), in Andalusia, Rock Island County, Illinois.

6. In August 2004 Andalusia submitted a Notice of Intent ("NOI") to obtain coverage for the discharge of storm water at Phase I of Fancy Creek under the general National Pollutant Discharge Elimination System ("NPDES") permit for construction site activities. In October 2004 Illinois EPA issued to Andalusia NPDES permit number ILR10B771.

7. The NOI submitted by Andalusia to Illinois EPA in August 2004 inaccurately stated the total size of the construction site to be 25 acres. Phase I of Fancy Creek is approximately 35 to 40 acres.

8. In July 2007 Andalusia submitted a NOI to Illinois EPA for Phase II of Fancy Creek stating the total size of the construction site to be 131 acres. In August 2007 Illinois EPA issued to Andalusia NPDES permit number ILR10I476.

9. Storm water from Fancy Creek subdivision discharges into Fancy Creek which in turn empties into the Mississippi River.

10. 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.

11. 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.

12. Fancy Creek and the Mississippi River are “waters” of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), 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.

13. Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2006), provide:

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;

* * *

- f. Cause, threaten or allow the discharge of any contaminants into the waters of the State, as defined herein, including but not limited to, water 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.

14. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Admin. Code 302.203, provides:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. . .

15. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill.

Admin. Code 309.102(a), provides:

- 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.

* * *

16. On May 23, 2006, Illinois EPA inspected the construction site at Phase I of Fancy Creek and observed that the density of grass cover was inadequate, the silt fencing was insufficient and not properly maintained, and substantial volumes of sediment were being discharged into Fancy Creek with sediment deposits present both at the discharge points and downstream. Further, the Storm Water Pollution Prevention Plan ("SWPPP") and weekly rainfall reports were not available onsite for inspection.

17. On February 27, 2007, Illinois EPA re-inspected the construction site at Phase I of Fancy Creek and observed that the silt fence at the northeast corner of the hillside behind lots 16 through 19 to be partially down, apparent older sediment deposits remained in the stream and sediment was still entering the storm sewer system.

18. On September 23, 2008, Illinois EPA re-inspected the construction site at Phase I of Fancy Creek and observed that erosion controls were inadequate for the two storm water retention ponds, run-off from the southeast hillside area was not being properly controlled and additional erosion controls were needed along the west side of the construction site.

19. On September 23, 2008, Illinois EPA inspected the construction site at Phase II

of Fancy Creek and observed that erosion controls were inadequate. Sediment had been pushed toward the edge of the creek and the slopes were barren on both sides of the stream. Additional silt fencing was required and areas of fencing were improperly installed and maintained. Sediment releases had occurred but no Incidents of Noncompliance ("ION") reports had been submitted to Illinois EPA as required by the NPDES permit.

20. Respondent caused, allowed or threatened to cause water pollution by failing to provide adequate storm water pollution controls, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

21. Respondent discharged sediment of other than natural origin into the receiving stream, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006) and 35 Ill. Admin. Code 302.203.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, ANDALUSIA VENTURES L.L.C.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding the Respondent has violated the Act and the regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006) impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT II
NPDES PERMIT VIOLATIONS

1-19. Complainant realleges and incorporates herein by reference paragraphs 1 through 19 of Count I as paragraphs 1 through 19 of this Count II.

20. The storm water system at Fancy Creek constitutes a "point source" as that term is defined in the federal Clean Water Act ("CWA"):

The term "point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

33 U.S.C.A. § 1362(14).

21. Illinois EPA issued NPDES permit # ILR10B771 based upon the inaccurate NOI submitted by Respondent concerning Phase I of Fancy Creek.

22. By submitting an inaccurate NOI to Illinois EPA Respondent violated 35 Ill. Adm. Code. 309.102(a) and Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

23. By failing to have available for inspection onsite the SWPPP and weekly rainfall reports concerning Phase I of Fancy Creek Respondent violated 35 Ill. Adm. Code. 309.102(a) and Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

24. By failing to submit ION reports to Illinois EPA concerning sediment releases at Phase II of Fancy Creek Respondent violated 35 Ill. Adm. Code 309.102(a) and Section 12(f) fo the Act, 415 ILCS 5/12(f) (2006).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, ANDALUSIA VENTURES L.L.C.:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding the Respondent has violated the Act and the regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006) impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

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: 

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

RAYMOND J. CALLERY
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

Dated: April 2, 2009