

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No.
)	(Enforcement - Water)
)	
FREEPORT AREA ECONOMIC)	
DEVELOPMENT FOUNDATION,)	
d/b/a Northwest Illinois Development)	
Alliance, an Illinois not-for-profit corporation,)	
& WEITZ INDUSTRIAL, LLC,)	
)	
Respondents.)	

NOTICE OF FILING

TO: Dan Fishburn
Registered Agent for
Freeport Area Economic Development Foundation
8 East Stephenson Street
Freeport, Illinois 61032

National Registered Agents, Inc.
Registered Agent for Weitz Industrial, LLC
200 West Adams Street
Chicago, Illinois 60606

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on this date I filed with the Office of the Clerk of the Illinois Pollution Control Board a Complaint, Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith serve upon you.

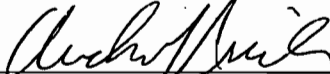
Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as

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."

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: 

ANDREW J. NICHOLAS
Assistant Attorney General
Environmental Bureau
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312/814-2069

DATE: April 27, 2010

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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Alliance, an Illinois not-for-profit corporation,)	
& WEITZ INDUSTRIAL, LLC,)	
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Respondents.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondents, FREEPORT AREA ECONOMIC DEVELOPMENT FOUNDATION d/b/a NORTHWEST ILLINOIS DEVELOPMENT ALLIANCE and WEITZ INDUSTRIAL, LLC, 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 ("Act"), 415 ILCS 5/31 (2008).

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 (2008), and charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent Freeport Area Economic Development Foundation d/b/a Northwest Illinois Development Alliance ("FAEDF"), is a not-for-profit corporation registered in good standing with the Illinois Secretary of State. Its mission is to create a public/private partnership to retain, expand and diversify the economic base of the Freeport/Stephenson County and northwest Illinois area. On information and belief, its office is located at 27 West Stephenson Street, Freeport, Illinois.

4. Respondent Weitz Industrial, LLC ("Weitz") is a foreign corporation registered and in good standing with the Illinois Secretary of State's Office. Weitz is a national construction company that provides, among other things, industrial construction services. On information and belief, Weitz is located at 1065 Sierra Court NE, Suite A, Cedar Rapids, Iowa.

5. On or about July 13, 2006, FAEDF filed a Notice of Intent ("NOI") with the Illinois EPA seeking a General National Pollutant Discharge Elimination System ("NPDES") Permit for Stormwater Discharge from Construction Activities at the Mill Race Industrial Park ("Mill Race").

6. Mill Race is a 145-acre property located east of Springfield Road, north of Hiveley Road, and south of Business 20, Freeport, Stephenson County, Illinois ("Site").

7. On August 31, 2006, the Illinois EPA issued NPDES Permit No. ILR10G259 to FAEDF.

8. NPDES Permit No. ILR10G259 requires, among other things, that FAEDF develop and maintain a storm water pollution prevention plan ("SWPPP") for the Site.

9. On or about December 19, 2006, FAEDF filed a revised NOI with the Illinois EPA naming Weitz as its general contractor for the Mill Race project.

10. On December 27, 2006, the Illinois EPA modified FAEDF's NPDES Permit recognizing Weitz as its general contractor for the Mill Race project.

11. On January 31, 2007, the Illinois EPA inspected the Site. The inspector observed earthmoving activities and noted silt fences along Silver Creek on the southeast portion of the Site.

12. The inspector also reviewed the SWPPP maintained by FAEDF at the Site. The SWPPP identified Weitz as responsible for conducting weekly storm water inspections at the Site.

13. On August 16, 2007, the Illinois EPA inspected the Site in response to a complaint of a release of sediment into Silver Creek. The inspector observed that a row of silt fencing bordering Silver Creek was knocked down and covered with mud. The inspector also observed settleable solids that had discharged from the Site into Silver Creek.

14. On September 27, 2007, the Illinois EPA sent Violation Notice ("VN") No. W-2007-00384 to FAEDF.

15. On September 27, 2007, the Illinois EPA sent VN No. W-2007-00385 to Weitz.

16. On November 1, 2007, Weitz responded to VN No. W-2007-00385 and included a proposed compliance commitment agreement ("CCA").

17. On December 12, 2007, the Illinois EPA rejected Weitz's CCA.

18. On January 4, 2008, FAEDF responded to VN No. W-2007-00384 and included Weitz's previously submitted CCA.

19. On February 4, 2008, the Illinois EPA rejected FAEDF's proposed CCA.

20. On April 2, 2008, the Illinois EPA inspected the Site. The silt fencing along Silver Creek was down and sediment from the Site drained into the creek. The ground was not stabilized and the creek was susceptible to sedimentation from the Site.

21. On October 3, 2008, the Illinois EPA sent FAEDF and Weitz a notice of intent to pursue legal action (“NIPLA”) letter.

22. On November 6, 2008, the Illinois EPA inspected the Site. The inspector noted that the flow channel from the Site to Silver Creek was not stabilized and silt fencing was buried beneath sediment at the point of discharge.

23. On December 5, 2008, the Illinois EPA met with representatives of FAEDF and Weitz to discuss the apparent violations of the Act.

24. Section 12 of the Act, 415 ILCS 5/12 (2008), 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.

25. Section 3.165 of the Act, 415 5/3.165 (2008), provides the following definition:

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

26. Section 3.545 of the Act, 415 ILCS 5/3.545 (2008), 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 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.

27. Section 3.550 of the Act, 415 ILCS 5/3.550 (2008), provides 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.

28. Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), provides the following definition:

”Person” is any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

29. Section 122.26 of the Code of Federal Regulations, provides, in pertinent part, the following definition:

“Storm water” means storm water runoff, snow melt runoff, and surface runoff and drainage.

30. Silver Creek is “waters” of the State as that term is defined by 415 ILCS 5/3.550 (2008).

31. Sediment from the Site is a “contaminant” as that term is defined by 415 ILCS 5/3.165 (2008).

32. The discharge of sediment from the Site into Silver Creek constitutes “water pollution” as that term is defined by 415 ILCS 3.545 (2008).

33. FAEDF and Weitz are "persons" as that term is defined by 415 ILCS 5/3.315 (2008).

34. FAEDF and Weitz failed to maintain storm water controls at the Site allowing contaminants to discharge into Silver Creek.

35. By failing to maintain storm water controls at the Site, FAEDF and Weitz caused or allowed contaminants to discharge into a water of the State causing water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, FREEPORT AREA ECONOMIC DEVELOPMENT FOUNDATION d/b/a NORTHEAST ILLINOIS DEVELOPMENT ALLIANCE and WEITZ INDUSTRIAL, LLC:

A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;

B. Finding that Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008);

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondents a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem appropriate and just.

COUNT II

OFFENSIVE CONDITIONS

1-33. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 33 of Count I as paragraphs 1 through 33 of this Count II.

34. Section 302.203 of the Illinois Pollution Control Board's ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part, as follows:

Offensive Conditions

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.

35. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106, provides, in pertinent part, as follows:

Offensive Discharges

...no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

36. FAEDF and Weitz allowed discharges containing color and turbidity of other than natural origin and which caused bottom deposits in Silver Creek.

37. By allowing discharges containing color and turbidity of other than natural origin and causing bottom deposits in Silver Creek, FAEDF and Weitz violated Sections 302.203 and 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.106, thereby violating Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, FREEPORT AREA ECONOMIC

DEVELOPMENT FOUNDATION d/b/a NORTHEAST ILLINOIS DEVELOPMENT

ALLIANCE and WEITZ INDUSTRIAL, LLC:

A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;

B. Finding that Respondents violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008), and Sections 302.203 and 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203 and 304.106;

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondents a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem appropriate and just.

COUNT III

WATER POLLUTION HAZARD

1-32. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 23 and 25 through 33 of Count I, as paragraphs 1 through 32 of this Count III.

33. Section 12 of the Act, 415 ILCS 5/12 (2008), 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.

34. FAEDF and Weitz deposited sediment onto the land in such a place and manner so as to create a water pollution hazard.

35. By depositing sediment onto the land in such a place and manner so as to create a water pollution hazard, FAEDF and Weitz violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2008).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondents, FREEPORT AREA ECONOMIC DEVELOPMENT FOUNDATION d/b/a NORTHEAST ILLINOIS DEVELOPMENT ALLIANCE and WEITZ INDUSTRIAL, LLC:

A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;

B. Finding that Respondents violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2008);

C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondents a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem appropriate and just.

COUNT IV

PERMIT VIOLATIONS – DEFENDANT FAEDF

1-33. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 33 of Count I as paragraphs 1 through 33 of this Count IV.

34. Section 12 of the Act, 415 ILCS 5/12 (2008), 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 issue by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit...

* * * *

35. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

Except as in compliance with the provisions of the Act, Board regulations, and the CWA [Clean Water Act], 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.

36. Section 309.243 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.243, provides as follows:

Conditions

In addition to specific conditions authorized under this Subpart B, the Agency may impose such conditions in any permit issued pursuant to this Subpart B as may be necessary to accomplish the purposes of the Act, or this Chapter, or the CWA, provided such conditions are not inconsistent with this Chapter.

37. Part IV of FAEDF's NPDES permit provides the following requirement:

Storm Water Pollution Prevention Plan

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices....Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

38. FAEDF failed to implement provisions of its storm water pollution prevention plan and thereby allowed contaminants to discharge into Silver Creek.

39. By failing to implement provisions of its storm water pollution prevention and allowing contaminants to discharge into Silver Creek, FAEDF violated Part IV of its NPDES permit, Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, FREEPORT AREA ECONOMIC DEVELOPMENT FOUNDATION d/b/a NORTHEAST ILLINOIS DEVELOPMENT ALLIANCE:

A. Authorizing a hearing in this matter at which time the Respondent FAEDF will be required to answer the allegations herein;

B. Finding that Respondent FAEDF violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and Sections 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

C. Ordering Respondent FAEDF to cease and desist from any further violations of the Act and associated regulations;

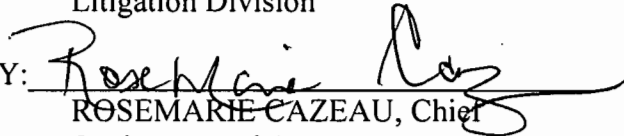
D. Assessing against Respondent FAEDF a civil penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;

E. Granting such other relief as the Board may deem appropriate and just.

Respectfully submitted,
PEOPLE OF THE STATE OF ILLINOIS,
ex rel. 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

ANDREW J. NICHOLAS
Assistant Attorney General
69 W. Washington St., Suite 1800
Chicago, Illinois 60602
312/814-2069

CERTIFICATE OF SERVICE

I, ANDREW J. NICHOLAS, an Assistant Attorney General, do certify that I caused to be served on this 27th day of April 2010, the foregoing Notice of Filing, Complaint, and a Certificate of Service, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ANDREW J. NICHOLAS