

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 PARAMOUNT DEVELOPERS, INC. )  
 an Illinois Corporation, )  
 )  
 Respondent. )

PCB 04-84

RECEIVED  
CLERK'S OFFICE  
NOV 24 2003  
STATE OF ILLINOIS  
Pollution Control Board

NOTICE OF FILING


TO: See Attached Service List

PLEASE TAKE NOTICE that on November 24, 2003, the People of the State of Illinois filed with the Illinois Pollution Control Board a Complaint, true and correct copies of which are 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.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY:   
JOEL J. STERNSTEIN  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20th Floor  
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

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COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and by JOSEPH E. BIRKETT, State's Attorney for Du Page County, Illinois, complains of Respondent, PARAMOUNT DEVELOPERS, INC. ("Paramount"), 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 Environmental Protection Agency ("Illinois EPA" or "Agency") and by Joseph E. Birkett, State's Attorney for Du Page County, Illinois, on his own motion, pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002), and is an action to restrain ongoing violations of the Act and for civil penalties.

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 (2002), and is charged, *inter alia*, with the duty of enforcing the Act. This Count is brought pursuant to Section 31 of the Act, 415 ILCS 5/31(2002).

3. On September 7, 2001 Illinois EPA sent Paramount a Violation Notice (VN) letter regarding violations of the Act and the Pollution Control Board's (Board) regulations. Paramount did not respond to the VN Letter.

4. On September 17, 2002, Illinois EPA sent Paramount a Notice of Intent to Pursue Legal Action (NITPLA) letter regarding violations of the Act and the Board's regulations. Kim R. Denkewalter, the president and registered agent of Paramount, contacted Illinois EPA concerning the NITPLA letter but did not request a meeting pursuant to the NITPLA letter.

5. At all times relevant to this complaint, Paramount was and is an Illinois corporation in good standing.

6. Paramount is a developer of residential homes at the Hatch Farm Development, located in Section 15, Township 38 North, Range 10 East in Lisle, Du Page County, Illinois ("Site"). At the Site, water from storm sewers and other areas of the Site discharges into a pond and wetland area. Water from the pond and wetland area discharges into the East Branch of the Du Page River.

7. On July 19, 2001, Paramount caused, threatened, or allowed erosion of loose dirt, silt, and poor to nonexistent erosion control measures at the Site.

8. By August 7, 2001, Paramount had taken few, if any, actions to install improved erosion control measures. There was no silt fencing around large piles of dirt on the Site, and filters on storm sewer inlets were either shredded or improperly installed. On August 7, 2001, there was substantial soil erosion at the Site, with some soil erosion areas adjacent to the pond and wetland area.

9. On August 16, 2001, there were further signs of erosion. Paramount caused, threatened, or allowed an excessive amount of loose dirt and silt at the Site which to wash off into unprotected storm sewers. Paramount still had not installed any improved erosion control measures.

10. On May 9, 2002, there were additional signs of erosion at the Site. Paramount had installed some new silt fencing and erosion control measures since August 2001, but not enough to adequately control erosion at the Site.

11. On May 12, 2003 areas of the Site remained either without erosion control measures or with inadequate controls. Signs of erosion were again prevalent at several locations within the Site.

12. Paramount never installed sufficient control measures

at the Site to prevent silt discharges to waters of the State from the Site.

13. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), contains 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.

14. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), provides the following definition:

"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 Paramount is a person as that term is defined at 415 ILCS 5/3.315 (2002).

16. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), contains the following definition:

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

17. Silt and loose dirt are "contaminants" as that term is defined in Section 3.165 of the Act.

18. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), 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.

19. The storm sewers at the Site, the pond and wetland area at the Site, and the East Branch of the Du Page River are "waters" of the State of Illinois, as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2002).

20. Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), provides 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.

21. By discharging silt and loose dirt into the storm sewers at the Site, which discharge to the pond and wetland area at the Site, and ultimately to the East Branch of the Du Page River, Paramount caused or allowed water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, PARAMOUNT DEVELOPERS INC. for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002);

3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act;

4. Order Respondent to remediate the environmental damage caused to the waters of the State of Illinois;

5. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day each violation occurred;

6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Grant such other relief as the Board deems appropriate and just.

## COUNT II

### WATER POLLUTION HAZARD

1. Count II 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 by Joseph E. Birkett, State's Attorney for Du Page County, Illinois, on his own motion, and is an action to restrain ongoing violations of the Act and for civil



penalties.

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 (2002), and is charged, *inter alia*, with the duty of enforcing the Act.

3-17. Complainant realleges and incorporates by reference paragraphs 5 through 19 of Count I as paragraphs 3 through 17 of this Count II.

18. Section 12(d) of the Act, 415 ILCS 5/12(d) (2002), states as follows:

No Person Shall:

\* \* \*

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

19. By causing or allowing contaminants to be deposited on the land in such places and manners as to create water pollution hazards to the waters of the State, Paramount is in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent PARAMOUNT DEVELOPERS, INC. for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(d) of the

Act, 415 ILCS 5/12(d) (2002);

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

4. Order Respondent to remediate the environmental damage caused to the waters of the State of Illinois;

5. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day each violation occurred;

6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Grant such other relief as the Board deems appropriate and just.

### COUNT III

#### VIOLATIONS OF NPDES PERMIT

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

20. Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), states 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 any order adopted by the Board with respect to the NPDES program.

21. On June 1, 1998, pursuant to Paramount's application, Illinois EPA granted Paramount coverage under the general National Pollutant Discharge Elimination System (NPDES) Storm Water Permit for construction site activities effective June 1, 1998 until May 31, 2003.

22. Paramount's NPDES Storm Water Permit provides, in pertinent part, as follows:

#### Part IV STORM WATER POLLUTION PREVENTION PLANS

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. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with construction site activity from the facility. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharges associated with construction site activity and to assure compliance with the terms and the conditions of the permit. *Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.*  
(emphasis added)

\*

\*

\*

D. **Contents of Plan.** The storm water pollution prevention plan shall include the following terms.

\* \* \*

2. **Controls.** Each plan shall include a description of appropriate controls that will be implemented at the construction site. . . The description of controls shall address as appropriate the following minimum components:

a. **Erosion and Sediment Controls.**

(i) **Stabilization Practices.** A description of interim and permanent stabilization practices including site-specific scheduling of the implementation of the practices. Site plans should insure that existing vegetation is preserved where attainable and that disturbed portions of the site are stabilized.

\* \* \*

(ii) **Structural Practices.** A description of structural practices to the degree attainable, to divert flows from exposed soils, store flows or otherwise limit runoff and the discharge of pollutants from exposed areas of the site.

\* \* \*

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 and 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.

\* \* \*

- d. The permittee shall complete and submit within 5 days an "Incidence 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 any further causes of noncompliance and a statement detailing any environmental impact which may have resulted from the noncompliance.

23. Paramount failed to monitor the Site as required by its NPDES Permit.

24. Paramount failed to install adequate storm water controls when excessive erosion was evident, as required by its NPDES Permit.

25. Paramount failed to submit incidence of noncompliance ("ION") reports for violations of the storm water pollution prevention plan, as required by its NPDES Permit.

26. Subsections 309.146(a)(1) and (2) of the Board's Water Pollution regulations, 35 Ill. Adm. Code 309.146(a)(1) and (2), provides as follows:

- a. The Agency shall require every holder of an NPDES Permit, as a condition of the NPDES Permit issued to the holder, to:
  - 1) Establish, maintain and retain records;
  - 2) Make reports

27. By failing to submit ION reports to Illinois EPA, Paramount violated Subsections 309.146(a)(1) and (2) of the Board's Water Pollution regulations, 35 Ill. Adm. Code 309.146(a)(1) and (2).

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

- 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.

29. By failing to monitor the Site, by failing to improve and install adequate storm water controls when excessive erosion was evident, and by failing to submit ION reports to Illinois EPA, Paramount violated the terms of its NPDES Permit. By discharging contaminants into the waters of the State of Illinois in violation of its NPDES permit, Paramount is in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Section 309.102(a) of the Board's Water Pollution regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent PARAMOUNT DEVELOPERS, INC., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Find that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Subsections 309.102(a) and 309.146(a)(1) and (2) of the Board's Water Pollution regulations, 35 Ill. Adm. Code 309.102(a) and 309.146(a)(1) and (2);

3. Order Respondent to cease and desist from any further violations of Section 12(f) of the Act and Subections 309.102(a) and 309.146(a)(1) and (2) of the Board's Water Pollution regulations;

4. Order Respondent to remediate the environmental damage caused to the waters of the State of Illinois;

5. Assess against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day each violation of the Act and the Board's regulations occurred;

6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Grant such other relief as the Board deems appropriate and just.

#### COUNT IV

##### FAILURE TO MAINTAIN RELIABLE POLLUTION CONTROL SYSTEMS

1-20. Complainant realleges and incorporates by reference paragraphs 1 through 20 of Count I as paragraphs 1 through 20 of this Count IV.

21. Section 306.102(a) of the Board's Water Pollution regulations, 35 Ill. Adm. Code 306.102(a), provides as follows:

Systems Reliability

a) Malfunctions: All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, though such measures as multiple units, holding tanks, duplicate power sources, or such other measures as may be appropriate.

22. Section 301.145 of the Board's Water Pollution regulations, 35 Ill. Adm. Code 301.145, contains the following definition:

"Treatment Works" means individually or collectively those constructions or devices (except sewers, and except constructions or devices used for the pretreatment of wastewater prior to its introduction into publicly owned or regulated treatment works) used for collecting, pumping, treating, or disposing of wastewaters or for the recovery of byproducts from such wastewater.

23. Section 302.203 of the Board's Water Pollution regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part, as follows:

**Section 302.203 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.

24. Paramount's erosion control measures are "treatment works" as that term is defined at Section 301.145 of the Board's Water Pollution regulations.



25. Paramount's erosion control measures were not constructed and operated so as to minimize violations of the applicable standards at Section 302.203 of the Board's Water Pollution regulations during such contingencies as flooding or adverse weather.

26. By failing to construct and operate erosion control measures so as to minimize violations of applicable standards during such contingencies as flooding or adverse weather, Paramount is in violation of Section 306.102(a) of the Board's Water Pollution regulations.

27. By violating Section 306.102(a) of the Board's regulations, Respondent is also in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, PARAMOUNT DEVELOPERS, INC., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), and Section 306.102(a) of the Board's Water Pollution regulations, 35 Ill. Adm. Code 306.102(a);
3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act and Section 306.102(a) of

the Board's Water Pollution regulations;

4. Order Respondent to remediate the environmental damage caused to the waters of the State of Illinois;

5. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and the Board's regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day each violation occurred;

6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Grant such other relief as the Board deems appropriate and just.

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

ex rel. JOSEPH E. BIRKETT,  
State's Attorney for Du Page County

BY:

  
THOMAS F. DOWNING  
Deputy Chief  
Civil Bureau  
Assistant State's Attorney

OF COUNSEL:

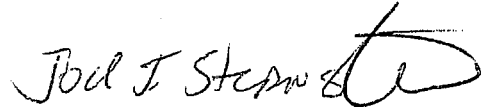
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CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 24<sup>th</sup> day of November 2003, I caused to be served by First Class Mail the foregoing Complaint to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

A handwritten signature in cursive script, appearing to read "Joel J. Sternstein", written over a horizontal line.

JOEL J. STERNSTEIN