

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
-vs-)
)
TRI-K DEVELOPMENT, INC.,)
an Illinois corporation,)
)
)
Respondent.)

RECEIVED
CLERK'S OFFICE

AUG 29 2003

PCB No. 04-24 STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

PLEASE TAKE NOTICE that we have today, August 29, 2003, filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of our Complaint, a copy of which is attached herewith and 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.

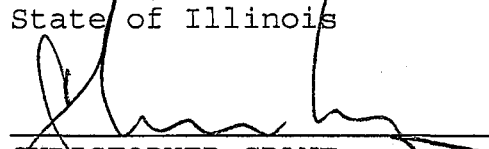
NOTIFICATION

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.

PEOPLE OF THE STATE OF ILLINOIS

ex rel. LISA MADIGAN
Attorney General/of the
State of Illinois

BY:


CHRISTOPHER GRANT
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-5388

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, TRI-K DEVELOPMENT, INC., as follows:

COUNT I
WATER POLLUTION

1. This complaint is brought 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 Section 31 of the Environmental Protection Act, ("Act"), 415 ILCS 5/31 (2002).

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

3. Respondent TRI-K DEVELOPMENT, INC. ("Tri-K") is an Illinois corporation, duly authorized to transact business in the State of Illinois.

4. Tri-K is in the business of residential construction and real estate development. Tri-K is the developer of 'Meadows Edge', a 6 acre multi-family residential development near the intersection of 59th street and Interstate 355 in the Village of Lisle, Du Page County Illinois ("Site").

5. As part of the development of Meadows Edge subdivision, the Respondent removed vegetation and excavated large quantities of soil at, and in the vicinity of, the Site.

6. Stormwater draining from the Site flows through adjacent storm sewers to a retention area which accumulates and holds stormwater during rainfall events. The retention area discharges into a tributary of Prentiss Creek, which in turn discharges into the Du Page River.

7. On July 19, 2001, a significant portion of the Site consisted of exposed soil, not stabilized by natural vegetation, netting, or other means. The Respondent had deposited a large earthen berm on one border of the Site. No silt fencing, hay bales or other barriers had been placed around the exposed soil or the earthen berm to prevent migration of sediment into storm sewers. The exposed soil and earthen berm showed evidence of erosion from stormwater runoff. The stormwater retention area consisted of exposed soil, not stabilized by grass or other vegetation.

8. On August 7, 2001, the earthen berm had been partially

removed, but showed evidence of continued erosion. Silt fencing had been installed around only a portion of the berm, and was inadequate to prevent migration of sediment into storm sewers.

9. On May 9, 2002, the earthen berm had been removed, and the former location of the berm was bare, unstabilized soil. Silt fencing at the site had collapsed, and was inadequate to prevent sediment migration. Sediment had been washed from the Site into the adjacent storm sewers, which discharge through the retention area into Prentiss Creek and the Du Page River.

10. Section 12(a) of the Act, 415 ILCS 5/12(a) (2002), 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 3.555 of the Act, 415 ILCS 5/3.555 (2002), 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 the State.

12. Storm sewers, the retention area, Prentiss Creek and the Du Page river are "water[s]" of the State of Illinois as that term is defined in Section 3.555 of the Act, 415 ILCS 5/3.555

(2002).

13. 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.

14. Respondent, an Illinois corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

15. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides, as follows:

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

16. The soil and sediment which entered the storm sewers and other waters adjacent to the Site is a "contaminant" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

17. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), 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 domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

18. The soil and sediment which flowed into storm sewers, the retention area, Prentiss Creek and, eventually to the Du Page River, altered the physical, thermal, chemical or radioactive properties of these waters and was likely to render it harmful or detrimental or injurious to wild animals, birds, fish and other aquatic life, or was likely to create a nuisance.

19. By causing or allowing the discharge of silt, sediment, and other solid material into the stormwater sewers, the retention area, Prentiss Creek and the Du Page River, the Respondent caused or allowed water pollution, and thereby violated 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 TRI-K DEVELOPMENT, INC. on Count I:

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

2. Finding that the Respondent has violated Section 12(a) of the Act;

3. Ordering the Respondent to cease and desist from any further 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 Section 12(a) of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Respondent 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

FAILURE TO PROVIDE WATER POLLUTION CONTROLS

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

20. Section 306.102 of the Illinois Pollution Control Board regulations ("Board Water Pollution regulations"), 35 Ill. Adm. Code 306.102, 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, through such measures as multiple units, holding tanks, duplicate power sources or such other measures as may be appropriate.
- b) Spills: All reasonable measures, including where appropriate the provision of catchment areas, relief vessels, or entrapment dikes, shall be taken to prevent any spillage of contaminants from causing water pollution.

21. Respondent failed to construct and/or maintain silt fences or other barriers between unstabilized portions of the

Site and storm sewers to prevent contaminants from causing water pollution. The Respondent thereby violated Section 306.102 of the Board Water Pollution regulations, 35 Ill. Adm Code 306.102, and thereby also violated 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 TRI-K DEVELOPMENT, INC. on Count II:

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

2. Finding that the Respondent has violated Section 12(a) of the Act, and 35 Ill. Adm. Code 306.102;

3. Ordering the Respondent to cease and desist from any further violations of Section 12(a) of the Act, and 35 Ill. Adm. Code 306.102;

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

5. Ordering the Respondent 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
WATER QUALITY AND EFFLUENT VIOLATIONS

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count III.

17. Section 302.203 of the 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.

* * *

18. On at least May 9, 2002, the Respondent caused or allowed the discharge of effluent containing soil and sediment into storm sewers, Prentiss Creek and the East Branch of the Du Page river. The discharge(s) resulted in an unnatural accumulation of bottom deposits and sludge. Respondent has thereby violated Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and has thereby also violated 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 the Respondent TRI-K DEVELOPMENT, INC. on Count III:

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

2. Finding that the Respondent has violated Section 12(a) of the Act and 35 Ill. Adm. Code 302.203;

3. Ordering the Respondent to cease and desist from further violations of Section 12(a) of the Act and 35 Ill. Adm. Code 302.203;

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of the Section 12(a) of the Act, and pertinent regulations, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Respondent 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 IV
NPDES PERMIT VIOLATION

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 9, and paragraphs 11 through 16 of Count I as paragraphs 1 through 15 of this Count IV.

16. Pursuant to the requirements of Section 402 of the Federal Water Pollution Control Act and 40 CFR 122 *et seq.*, the

Respondent applied for coverage under the general National Pollutant Discharge Elimination System ("NPDES") permit for construction related storm water discharges. On December 8, 1998, Illinois EPA issued NPDES permit no. ILR104445 ("Permit") to the Respondent for development and construction activities at the Site.

17. NPDES permit No. ILR104445 required the Respondent to develop a detailed Stormwater Pollution Prevention Plan ("SWPPP") prior to the start of construction, to comply with the requirements contained in the SWPPP, and to retain a copy of the SWPPP at the Site until construction activities were completed and the Site had been stabilized.

18. On at least July 19, 2001, August 7, 2001, September 20, 2001, May 9, 2002, and August 16, 2002, Respondent failed to retain a copy of its SWPPP at the Site.

19. Respondent completed grading and stabilization of soil at the Site on a date better known to Respondent, but after August 16, 2002.

20. Section 12(f) of the Act, 415 ILCS 12(f) (2002), 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. . .

21. Section 309.146 of the Board Water Pollution
Regulation, 35 Ill. Adm. Code 309.146 provides, as follows:

**Authority to Establish Recording, Reporting and
Sampling Requirements**

- 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;
 3. Install, calibrate, use and maintain
monitoring equipment or methods (Including
where appropriate biological monitoring
methods;
 4. Take samples of effluents (in accordance with
such methods, at such location, at such
interval, and in such a manner as may be
prescribed); and
 5. Provide such other information as may
reasonably be required.

22. NPDES permit No. ILR104445 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 conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance.

The plan shall:

1. Be completed prior to the start of the construction to be covered under this permit and updated as appropriate;

* * *

Part V. RETENTION OF RECORDS

* * *

- B. The permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final stabilization.

23. On at least July 19, 2001, August 7, 2001, September 20, 2001 May 9, 2002, August 16, 2002, Respondent, by failing to retain a copy of its SWPPP at the Site, violated Section V.B of its Permit.

24. By violating the terms and conditions of its NPDES permit, the Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002) and Section 309.146 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.146.

~~WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS,~~
respectfully requests that the Board enter an order against
Respondent TRI-K DEVELOPMENT, INC. on Count IV:

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

2. Finding that the Respondent has violated Section 12(f)
of the Act, 35 Ill. Adm. Code 309.146, and NPDES permit No.
ILR104445;

3. Ordering the Respondent to cease and desist from any
further violations of Section 12(f) of the Act, 35 Ill. Adm. Code
309.146, and NPDES permit No. ILR104445;

4. Assessing a civil penalty of Ten Thousand Dollars
(\$10,000.00) against the Respondent for each day of violation of
Section 12(f) of the Act, NPDES permit No. ILR104445, and
pertinent regulations;

5. Ordering the Respondent 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.

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN
Attorney General
State of Illinois

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

BY: *Rose Marie Cazeau*
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:

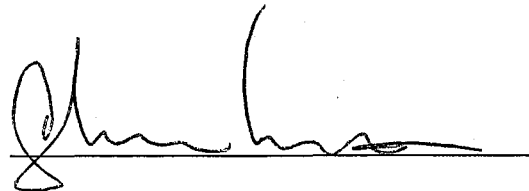
CHRISTOPHER J. GRANT
Assistant Attorney General
Environmental Bureau
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-vs-	)	PCB No.
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an Illinois corporation,	)	
	)	
	)	
Respondent.	)	

CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 29th day of August, 2003, by first class mail, the foregoing Complaint and Notice of Filing upon the person listed below, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT

Service List:

Mr. George Arnold
Sosin Lawler & Arnold, LLC
11800 South 75th Street, Suite 300
Palos Heights, Illinois 60463