



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

Lisa Madigan
ATTORNEY GENERAL

November 17, 2005

PCB 06-80

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Fulford Construction, Inc.***

Dear Clerk Gunn:

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,

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

JLH/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
FULFORD CONSTRUCTION, INC.,)
an Illinois corporation,)
)
Respondent.)

PCB No. *PC B06-80*
(Enforcement)

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Pollution Control Board

NOTICE OF FILING

To: Fulford Construction, Inc.
c/o Norbert Glassl
Kasten Green Glassl & Welch, LLP
784 Wall Street
O'Fallen, IL 62269

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 (2004), 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:


J. L. HOMAN

Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 17, 2005

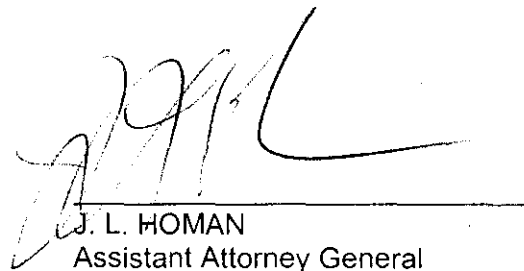
CERTIFICATE OF SERVICE

I hereby certify that I did on November 17, 2005, 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: Fulford Construction, Inc.
c/o Norbert Glassl
Kasten Green Glassl & Welch, LLP
784 Wall Street
O'Fallen, IL 62269

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

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



J. L. HOMAN
Assistant Attorney General

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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vs.)
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FULFORD CONSTRUCTION, INC.,)
an Illinois corporation,)
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Respondent.)

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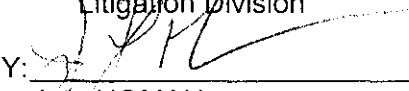
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, J. L. HOMAN, Assistant Attorney General of the State of Illinois, hereby enters her 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: 

J. L. HOMAN
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 17, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FULFORD CONSTRUCTION INC., an)
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Respondent.)

PCB NO.
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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, FULFORD CONSTRUCTION, as follows:

COUNT I

NPDES PERMIT VIOLATIONS

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 (2004).

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 (2004), 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 (2004), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. Respondent, Fulford Construction, Inc., is an Illinois corporation in good standing and authorized to do business in the State of Illinois. Its president and registered agent is Mark T. Fulford, Fulford Construction Inc., 775 Sunset Boulevard, Suite A, O'Fallon, St. Clair County, Illinois 62269.

5. The Defendant is the developer of Woodfield Estates Subdivision ("Site"), a residential subdivision consisting of twenty-seven (27) single-family lots. Woodfield Estates Subdivision is located near the Village of Shiloh, St. Clair County, Illinois.

6. Section 3.550 of the Act, 415 ILCS 5/3.550, provides:

"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.

7. Section 12 of the Act, 415 ILCS 5/12(2004) 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, 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.

* * *

8. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004) provides:

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

9. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004) provides:

"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.

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

Adm. Code 309.102(a), requires an NPDES permit:

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.

11. On June 10, 1999, the Illinois EPA inspected the site and observed that the homes on site had single family aeration units as a method of handling home wastewater. A single family aeration unit is a wastewater treatment system designed as an alternative to a septic system for a single family residence. In such a system, domestic wastewater is generally

treated by an extended aeration process and filtering of the resulting effluent. While on site the inspectors observed that the Respondent had installed connections from some of the single family lots' aeration units to a storm sewer system. The storm sewer system ultimately discharges into an unnamed drainage ditch on the property.

12. While on site, the Illinois EPA observed the discharge from the home aeration units to the storm sewer catchbasins. The discharge was noted to have a distinct hydrogen sulfide scent.

13. Upon subsequent record review, the Illinois EPA determined that the Respondent had not obtained a NPDES permit prior to the installation of the storm sewer system on site.

14. Since at least June 10, 1999, the Respondent has introduced contaminants into the storm sewer system and from there into the unnamed drainage ditch at the rear of the property.

15. Section 12(f) of the Act, 415 ILCS 5/12(f) (2004) provides that no person shall cause, threaten, or allow the discharge of any contaminant into the waters of the State without an NPDES permit for point source discharges issued by the Illinois EPA.

16. By causing or allowing or threatening the discharge of contaminants into waters of the State without an NPDES permit, the Defendants have violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2004), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a)(2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent,

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent 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;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT II

CONSTRUCTION PERMIT VIOLATIONS

1-14. Plaintiff realleges and incorporates herein by reference paragraphs 1-14 of Count I as paragraphs 1 through 14 of this Count II.

15. Section 12(b) of the Act, 415 ILCS 5/12(b)(2004), provides as follows:

No person shall:

* * *

(b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

* * *

16. Section 309.202 of the Board's regulations, 35 Ill. Adm. Code Section

309.202, provides:

Except for treatment works or wastewater sources which have or will have discharges for which NPDES Permits are required, and for which NPDES Permits have been issued by the Agency:

a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency, except as provided in paragraph (b).

17. While on site during the June 10, 1999 inspection, Illinois EPA inspectors observed that the Defendant had installed connections from some of the single family lots' aeration units to a storm sewer system.

18. Upon subsequent record review, the Illinois EPA determined that the Defendant had failed to obtain a construction permit prior to connecting the individual family aeration units to the storm sewer system.

19. By failing to obtain a construction permit from the Illinois EPA prior to connecting the individual aeration units to the storm sewer system, the Defendant has violated Section 12(b) of the Act, 415 ILCS 5/12(b)(2004) and Section 309.202(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, :

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

B. Finding that Respondent has violated the Act and regulations as alleged herein;

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

D. Assessing against Respondent 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;


E. Awarding to Complainant its costs and reasonable attorney's fees; and

F. Granting such other relief as the Board may deem appropriate.

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

J. Homan
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: November 15, 2005