

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
vs.)
)
REDFEARN EARTHMOVING, INC., an)
Illinois corporation,)
)
Respondent.)

PCB No. 05-89
(Enforcement - Water)

NOTICE OF FILING

TO: James William Vincent
1480 Route 20 West
Elizabeth, Illinois 61028

PLEASE TAKE NOTICE that I have today 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 served 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
State of Illinois

BY:

Zemeheret Bereket-AB

ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-3816

DATE: November 9, 2004

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
vs.)	No. PCB No.
)	(Enforcement - Water)
REDFEARN EARTHMOVING, INC., an)	
Illinois corporation,)	
)	
Respondent.)	

VERIFIED COMPLAINT

Complainant, 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, complains of Respondent, REDFEARN EARTHMOVING, INC., an Illinois corporation, 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"), pursuant to Section 31 of the Illinois 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 charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to abate violations of the National Pollutant Discharge Elimination System ("NPDES") Permit Program under the Federal Clean Water Act ("CWA"), 33 U.S.C. §1342(b)(7).

3. At all times relevant to the Complaint, Respondent, Redfearn Earthmoving, Inc., ("Redfearn"), is an Illinois corporation in good standing.

4. Section 12(f) of the Act, 415 ILCS 5/12(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, 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.

* * *

5. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and

prohibits such point source discharges without an NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations, including storm water discharges regulated by 40 CFR 122.26, which requires a person to obtain an NPDES permit and to implement a storm water pollution prevention plan for construction activity including clearing, grading and excavation.

6. In pertinent part, 40 CFR 122.26 provides as follows:

(a) Permit requirement.

(i) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain an NPDES permit except:

* * *

(ii) A discharge associated with industrial activity (see §122.26(a)(4)).

* * *

(9)(i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

* * *

(B) The discharge is storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

* * *

(b) Definitions.

* * *

Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

* * *

(15) Storm water discharge associated with small construction activity means the discharge of storm water from:

- (1) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

7. Section 309.102(a) of the Board Water Pollution

Regulations, 35 Ill. Adm. Code 309.102(a), titled, NPDES Permit Required, provides as follows:

- (a) 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 issues 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.

8. Sometime in March 2003, at a time better known to the Respondent, Redfearn began a construction project to expand its

parking lot at its office located at 1480 Route 20 West, Elizabeth, Jo Daviess County, Illinois, ("Site"). Redfearn was constructing additional parking and storage areas for its equipment at the Site.

9. On May 8, 2003, the Illinois EPA inspected the construction site and observed that the construction activity was being conducted on land estimated to be more than one acre and less than five acres. The Illinois EPA observed that the Site did not have any erosion controls in place and that there was evidence of erosion that had occurred previously. The slope of the ravine was deep and erosion was evident.

10. On June 9, 2003, the Illinois EPA sent Redfearn a violation notice for Respondent's failure to obtain coverage under the general NPDES storm water permit for construction site activities ("storm water NPDES permit") for the construction Site.

11. On June 16, 2003, Redfearn submitted to the Illinois EPA a notice of intent ("NOI") for coverage under the storm water NPDES permit for the Site. The NOI submitted by Redfearn indicated that the total size of the construction site was approximately five (5) acres. On July 24, 2003, the Illinois EPA granted Redfearn coverage under the storm water NPDES permit.

12. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), defines person as follows:

"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.

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

14. Redfearn was performing construction activities on the Site from March 2003 until July 24, 2003, without coverage under the storm water NPDES permit for construction site activities.

15. By discharging storm water from its construction Site without coverage under the storm water NPDES permit, Respondent, Redfearn, violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002) and 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent with respect to this Count I:

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

2. Finding that Respondent has caused or allowed a violation of Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a);

3. Ordering Respondent to cease and desist from any further violations of Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a);

4. Assessing against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day that the violation of Section 12(f) of the Act and 35 Ill. Adm. Code 309.102(a) continued;

5. Assessing all costs against Respondent, including attorney, expert witness, emergency response, 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

LISA MADIGAN
Attorney General
State of Illinois

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

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau North
Assistant Attorney General

OF COUNSEL;

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188 W. Randolph St., 20th Flr.
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(312) 814-3816

STATE OF ILLINOIS)
)
COUNTY OF WINNEBAGO)

VERIFICATION

I, Nancy Sisson, being first duly sworn, on oath
state:

1. I am currently employed by the Illinois Environmental Protection Agency ("Illinois EPA") in the Bureau of Water located in Rockford, Illinois.
2. I am an Environmental Protection Specialist with the Illinois EPA Bureau of Water.
3. I have read the foregoing Verified Complaint and am aware of the contents thereof.
4. I have personal and direct knowledge of the facts alleged in the Verified Complaint.
5. The factual matters set forth therein are true and correct in substance and in fact, and I am prepared to testify to the items of noncompliance contained in the Verified Complaint that I have personally observed and know to be true.

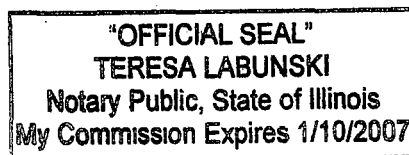


Nancy Sisson

Subscribed and sworn to before
me on this 26th day of October, 2004



Notary Public



CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Complaint, Notice of Filing, and Certificate of Service via United States Postal certified mail upon:

James William Vincent
1480 Route 20 West
Elizabeth, Illinois 61028



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601