

*** * PCB 2006-103 * * * *

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 05-
)	(Enforcement)
FIRST ROCKFORD GROUP, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

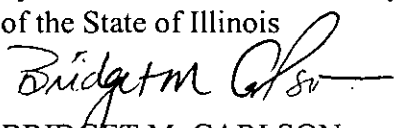
NOTICE OF FILING

TO: Mr. Charles Helsten
Hinshaw & Culbertson
100 Park Avenue
Rockford, Illinois 61105

PLEASE TAKE NOTICE that I have today filed the Complaint with the Office of the Clerk of the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and herewith served upon you. Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to advise you that 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. Pursuant to 415 ILCS 5/31(c)(1), I am required to advise you that financing may be available through the Illinois Environmental Facilities Financing Act to correct the violations.

PEOPLE OF THE STATE OF ILLINOIS,
by LISA MADIGAN, Attorney General
of the State of Illinois

BY:


BRIDGET M. CARLSON
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
(312) 814-0608
Attorney No. 99000

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-v-)	
)	
FIRST ROCKFORD GROUP, INC., an Illinois)	PCB 05-
corporation,)	
)	
Respondent.)	

COMPLAINT

Complainant, People of the State of Illinois, *ex rel.* 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, FIRST ROCKFORD GROUP, INC., an Illinois corporation, as follows:

SECTION I
WINCHESTER HILLS SUBDIVISION

COUNT I

WATER POLLUTION

1. This Complaint is brought on behalf of the People of the State of Illinois, *ex rel.* 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 the terms and provisions of Subsection 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2004), and is an action for civil penalties.

2. The Illinois EPA is an administrative 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.

3. At all times relevant to this Complaint, Respondent, First Rockford Group, Inc., (“First Rockford”), was and is an Illinois corporation in good standing, authorized to do business in the State of Illinois. The principal place of business for First Rockford is located at 6801 Spring Creek Road, Rockford, Illinois, 61114.

4. First Rockford is the parent company of Spring Creek Meadows LLC, (“Spring Creek”), a corporation wholly owned by First Rockford. Spring Creek was created in part to develop the residential subdivisions of Winchester Hills, Wexford Place, and Wyndridge in Machesney Park, Winnebago County which are the subject matter of this Complaint.

5. At all times relevant to this Complaint, First Rockford constructed Winchester Hills, a planned use development construction site intended for a residential subdivision development located near the northwest corner of Mitchell Road and Illinois State Route 173 in Machesney Park, Winnebago County, Illinois (“Winchester Hills Site”). The Winchester Hills Site consists of single family, town home and condominium units in various stages of completion.

6. First Rockford controlled and managed the development and construction at all the Sites which are the subject matter of this Complaint. First Rockford applied for and secured permits from the Illinois EPA. First Rockford was sent violation notices from the Illinois EPA and corresponded with the Illinois EPA regarding the alleged statutory and regulatory violations.

7. From on or about August 15, 2003, through at least May 31, 2005, Respondent First Rockford constructed streets, developed residential homes, constructed storm water sewer inlets and stockpiled soils adjacent to the storm water sewer inlets at the Winchester Hills Site.

8. On August 18, 2004, the Illinois EPA conducted a field inspection of the Winchester Hills Site after the County soil and water conservation district personnel noted storm

water erosion control problems at the Winchester Hills Site. The inspection revealed that newly constructed storm water sewer inlets at the Site were not protected from excessive silt runoff from the stockpiled soils, by the use of proper erosion control devices near the storm water sewer inlets.

9. On August 18, 2004, the Illinois EPA also observed that eroded soils, as a result of construction activities at the Winchester Hills Site, were not removed from areas near storm sewer inlets, allowing the discharge of silt and soils into the storm water inlets during rainfall.

10. On August 18, 2004, the Illinois EPA observed that vehicle ingress/egress areas at the Winchester Hills Site were not stabilized to prevent exiting vehicles from dragging out soil.

11. On August 18, 2004, the Illinois EPA also observed that storm water inlets at the Winchester Hills Site receiving flow from an area north of a retention pond were inadequately protected by erosion control devices and the drainage ways contained no structures to slow storm water velocities to reduce sediment runoff.

12. Respondent First Rockford's active construction work at the Winchester Hills Site is subject to the Act and the Rules and Regulations promulgated by the Illinois Pollution Control Board ("Board") and the Illinois EPA. The Illinois EPA rules and regulations for water pollution are found in Section 12 of the Act, 415 ILCS 5/12 (2004).

13. Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), details prohibitions relating to water pollution. Section 12(a) provides as follows:

a. No person shall:

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.

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14. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), contains 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 First Rockford, a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

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

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

17. Silt laden storm water and soils resulting from construction and development operations at the Winchester Hills Site are "contaminants" as that term is defined by Section 3.165 of the Act.

18. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), provides the definition for "water pollution":

"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.

19. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), provides the definition for "waters" as follows:

"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.

20. The storm water inlets at the Winchester Hills Site act as conduits of storm water laden with silt and soils that lead to storm water sewers, retention basins and roadside drainage ditches. The storm water also discharges from the Site to a north un-named tributary of Willow Creek. This tributary discharges to Willow Creek and Willow Creek then discharges directly to the Rock River. The water flowing into roadside drainage ditches, Willow Creek, the Rock River, as well as the storm sewers themselves are "waters" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004).

21. The discharge of silt laden storm water and soils resulting from construction and development operations at the Site, into the storm water sewers, is "water pollution" as that term is defined in Section 3.545 of the Act, 415 ILCS 3.545 (2004).

22. From on or before August 15, 2003, through at least May 31, 2005, by moving earth in association with their residential development activities, and constructing and installing storm sewer inlets at the Winchester Hills Site, Respondent First Rockford caused, threatened or allowed the discharge of waters laden with silt and eroded soil into the storm water sewers, roadside drainage ditches and waters of the State. By discharging contaminants into the environment, the Respondent caused or tended to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, FIRST ROCKFORD GROUP, INC. on 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 violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);
3. Ordering the Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;
5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004); and
6. Granting such other relief as the Board deems appropriate and just.

COUNT II

CREATING A WATER POLLUTION HAZARD

1 - 20. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 12 and paragraphs 14 through 21 of Count I as paragraphs 1 through 20 of this Count II.

21. Respondents' construction and development activities at the Winchester Hills Site included installing storm sewer inlets, moving and disturbing earth, constructing stockpiles of soils and depositing them in areas near storm water sewers, roadside drainage ditches and waters of the State without proper erosion control structures protecting them from excessive silt laden storm water runoff.

22. Section 12(d) of the Act, 415 ILCS 5/12(d) (2004), details prohibitions relating to water pollution. Section 12(d) provides in pertinent part as follows:

- (d) No person shall:

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

23. By installing storm sewer inlets at the Winchester Hills Site, and moving earth in association with construction and development activities, First Rockford allowed soils to be disturbed, stockpiled and deposited in areas near storm water sewers, roadside drainage ditches and waters of the State without proper erosion control structures protecting them from excessive silt laden run-off, creating a water pollution hazard.

24. By depositing contaminants upon the land in such place and manner so as to create a water pollution hazard, Respondent First Rockford violated Section 12(d) of the Act, 415 ILCS 5/12(d)(2004).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, FIRST ROCKFORD GROUP, INC. on this Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);
3. Ordering the Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004); and
6. Granting such other relief as the Board deems appropriate and just.

COUNT III

**FAILURE TO OBTAIN AN NPDES STORM WATER PERMIT
PRIOR TO CONSTRUCTION**

1 - 20. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 12 and paragraphs 14 through 21 of Count I as paragraphs 1 through 20 of this Count III.

21. Respondent, First Rockford, displaced and stockpiled earth and soils in association with their development and construction activities at the Winchester Hills Site. First Rockford placed the stockpiled soils adjacent to storm water sewer inlets, which were also constructed by Respondent. Respondent stockpiled soils near storm water sewer inlets without proper erosion control structures protecting inlets from excessive storm water runoff being discharged into them. During rainfall, silt laden storm water and soils were discharged from the Site to the storm water inlets.

22. Section 12(f) of the Act, 415 ILCS 5/12(f)(2004) provides in applicable part as follows:

No person shall:

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.

23. Section 309.102(a) of the Board Construction Permit Regulations, 35 Ill. Adm.

Code 309.102(a), entitled NPDES Permit Required, provides as follows:

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.

24. The Illinois EPA is 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) (2004).

25. Section 301.325 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.325, provides the definition for "NPDES":

"NPDES" means the National Pollutant Discharge Elimination System for issuing, establishing conditions for, and denying permits under Section 402 of the CWA. All terms used in connection with NPDES which have been defined in the CWA or regulations adopted thereunder shall have the meanings specified therein, unless specifically noted otherwise.

26. Section 301.240 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.240, provides the definition for "CWA":

"CWA" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the "Clean Water Act", Public Law 95-217, enacted December 12, 1977, as amended.)

27. The storm water discharge laden with silt and soils from construction and development activities at the Winchester Hills Site is a discharge. The storm water sewer inlets at the Site, which lead directly to a catch basin, storm water sewers, roadside drainage ditches and waters of the State, are point sources into waters of the State.

28. Respondent First Rockford began construction and development activities at the Winchester Hills Site in 2003, but as of August 18, 2004, had failed to obtain the required National Pollutant Discharge Elimination System ("NPDES") permit prior to construction on the Winchester Hills Site.

29. Respondent discharged silt laden storm water directly from the Winchester Hills Site into the catch basin, storm water sewers, roadside drainage ditches and waters of the State without obtaining an NPDES permit.

30. By causing, threatening or allowing the discharge of contaminants into waters of the State, without an NPDES permit issued by the Illinois EPA, Respondent First Rockford violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2004).

31. By discharging contaminants into the waters of the State from a point source without an NPDES permit, in violation of the Act, the Respondent also violated Section 309.102(a) of the Board's Construction Permit Regulations.

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, FIRST ROCKFORD GROUP, INC., on this Count III:

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

2. Finding that Respondent violated Sections 12(f) of the Act, 415 ILCS 5/12(f) (2004) and Section 309.102(a) of the Board Construction Permit Regulations, 35 Ill. Adm. Code 309.102(a);

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

4. Assessing against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004) continued;
5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004); and
6. Granting such other relief as the Board deems appropriate and just.

SECTION II
WEXFORD PLACE SUBDIVISION

COUNT IV

WATER POLLUTION

1 - 11. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 4, paragraph 6, and paragraphs 14 through 19 of Count I as paragraphs 1 through 11 of this Count IV.

12. At all times relevant to this Complaint, the Wexford Place Subdivision was an approximate 12.9 acre planned use development construction site intended for a residential subdivision located near the northeast corner of Mitchell Road and Illinois State Route 173 in Machesney Park, Winnebago County, Illinois ("Wexford Place Site").

13. From on or about September 10, 2003, through at least May 31, 2005, Respondent First Rockford has constructed streets, developed residential homes, constructed storm water sewer inlets and stockpiled soils adjacent to the storm water sewer inlets at the Wexford Place Site.

14. On August 18, 2004, the Illinois EPA conducted a field inspection after County soil and water conservation district personnel noted storm water erosion control problems at the

Wexford Place Site. The inspection revealed that various storm water sewer inlets and retention basins on the Wexford Place Site were poorly protected by erosion control devices and drainage ways, and contained no structures to slow storm water flow velocities and reduce sediment runoff during rainfall. The Wexford Place Site was not properly protected from excessive silt runoff by the use of suitable erosion control devices.

15. On August 18, 2004, the Illinois EPA also observed that eroded soils at the Wexford Place Site were not removed from areas near storm sewer inlets, allowing the discharge of silt and soils into the inlets during rainfall.

16. Respondent First Rockford's active construction work at the Wexford Place Site is subject to the Act and the Rules and Regulations promulgated by the Board and the Illinois EPA. The Illinois EPA rules and regulations for water pollution are found in Section 12 of the Act, 415 ILCS 5/12 (2004).

17. Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), details prohibitions relating to water pollution. Section 12(a) provides as follows:

a. No person shall:

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.

18. The storm water inlets at the Wexford Place Site act as conduits of storm water laden with silt and soils that lead to storm water sewers, retention basins and roadside drainage ditches. The storm water also discharges from the Site to a north un-named tributary of Willow Creek. This tributary discharges to Willow Creek and Willow Creek then discharges directly to the Rock River. The water flowing into roadside drainage ditches, Willow Creek, the Rock

River, as well as the storm sewers themselves are "waters" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004).

19. The discharge of silt laden storm water and soils resulting from developing operations at the Wexford Place Site, into the storm water sewers, is 'water pollution' as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2004).

20. From on or about September 10, 2003, through at least May 31, 2005, by constructing and installing storm sewer inlets at the Wexford Place Site and stockpiling soils in association with their residential development activities near the storm water inlets, Respondent First Rockford caused and allowed the discharge of storm water laden with silt and eroded soil into the storm water sewers, roadside drainage ditches and waters of the State. By discharging contaminants into the environment, the Respondent caused or tended to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, FIRST ROCKFORD GROUP, INC. on this Count IV:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);
3. Ordering the Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars

(\$50,000.00) for each violation of the Act and pertinent regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004); and

6. Granting such other relief as the Board deems appropriate and just.

COUNT V

CREATING A WATER POLLUTION HAZARD

1 - 18. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 16 and paragraphs 18 and 19 of Count IV as paragraphs 1 through 18 of this Count V.

19. Respondents' construction and development activities at the Wexford Place Site included installing storm sewer inlets, moving and disturbing earth, constructing stockpiles of soils and depositing them in areas near storm water sewers, roadside drainage ditches and waters of the State without proper erosion control structures protecting them from excessive storm water erosion control runoff.

20. Section 12(d) of the Act, 415 ILCS 5/12(d) (2004), details prohibitions relating to water pollution. Section 12(d) provides in pertinent part as follows:

(d) No person shall:

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

21. By moving earth for construction and development activities, allowing soils to be disturbed, stockpiled and deposited in areas near storm water sewers, roadside drainage ditches and waters of the State without proper erosion control structures protecting them from excessive

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silt laden run-off, and installing storm sewer inlets at the Wexford Place Site, Respondent First Rockford deposited eroded soil and silt adjacent to the sewers and roadside drainage ditches, creating a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, FIRST ROCKFORD GROUP, INC. on this Count V:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);
3. Ordering the Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;
5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004); and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VI

VIOLATION OF NPDES PERMIT REQUIREMENTS

1 - 18. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 18 of Count V as paragraphs 1 through 18 of this Count VI.

19. Respondent, First Rockford, displaced and stockpiled earth and soils in association with their development and construction activities at the Wexford Place Site. First Rockford placed the stockpiled soils adjacent to storm water inlets, which were also constructed by Respondent. Respondent stockpiled soils near storm sewer inlets without proper erosion control structures protecting them from excessive storm water runoff being discharged into them. During rainfall, silt laden storm water and soils were discharged from the Site to the storm water inlets.

20. Section 12(f) of the Act, 415 ILCS 5/12(f)(2004) provides in applicable part as follows:

No person shall:

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.

21. Section 309.102(a) of the Board Construction Permit Regulations, 35 Ill. Adm. Code 309.102(a), entitled NPDES Permit Required, provides as follows:

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

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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.

22. The Illinois EPA is 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) (2004).

23. Section 301.325 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.325, provides the definition for "NPDES":

"NPDES" means the National Pollutant Discharge Elimination System for issuing, establishing conditions for, and denying permits under Section 402 of the CWA. All terms used in connection with NPDES which have been defined in the CWA or regulations adopted thereunder shall have the meanings specified therein, unless specifically noted otherwise.

24. Section 301.240 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.240, provides the definition for "CWA":

"CWA" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the "Clean Water Act", Public Law 95-217, enacted December 12, 1977, as amended.)

25. On August 14, 2003, the Illinois EPA granted coverage for the Wexford Place Site under a general NPDES permit.

26. The storm water discharge laden with silt and soils from construction and development activities at the Wexford Place Site is a discharge. The storm water sewer inlets at the Site, which lead directly to a catch basin, storm water sewers and roadside drainage ditches are point sources into waters of the State.

27. As a result of rainwater runoff at the Wexford Place Site, Respondent First Rockford caused, threatened or allowed the discharge of soils, silts and sediments, or

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contaminants, into the waters of the State. By discharging silt laden storm water directly from the Wexford Place Site into a catch basin, storm water sewers, roadside drainage ditches and waters of the State, the Respondent violated the terms or conditions imposed by their NPDES permit.

28. By causing, threatening or allowing the discharge of contaminants into waters of the State in violation of their NPDES permit, Respondent First Rockford violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2004).

29. By discharging contaminants into the waters of the State from a point source in violation of their NPDES permit, the Respondent also violated Section 309.102(a) of the Board's Construction Permit Regulations.

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, FIRST ROCKFORD GROUP, INC., on this Count VI:

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

2. Finding that Respondent violated Sections 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board's Construction Permit Regulations, 35 Ill. Adm. Code 309.102(a);

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

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars

(\$50,000.00) for each violation of the Act and pertinent regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004); and
6. Granting such other relief as the Board deems appropriate and just.

SECTION III

WYNDRIDGE SUBDIVISION

COUNT VII

WATER POLLUTION

1-11. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 4, paragraph 6, and paragraphs 14 through 19 of Count I as paragraphs 1 through 11 of this Count VII.

12. At all times relevant to this Complaint, Wyndridge was an approximate 15 acre planned use development construction site located near the northeast corner of Perryville Road and Illinois State Route 173 in Machesney Park, Winnebago County, Illinois ("Wyndridge Site"). The Wyndridge Site consists of single family, town home and condominium units in various stages of completion.

13. From on or before January, 2004, through at least May 31, 2005, Respondent First Rockford constructed streets, developed residential homes and constructed storm water sewer inlets at the Wyndridge Site.

14. On August 18, 2004, the Illinois EPA conducted a field inspection of the Wyndridge Site after the County soil and water conservation district personnel noted storm water erosion control problems at the Site. The inspection revealed that constructed storm water sewer inlets at the Wyndridge Site were not protected from excessive erosion runoff by the use of proper erosion control devices.

15. On August 18, 2004, the Illinois EPA also observed that eroded soils at the Wyndridge Site were not removed from areas near storm sewer inlets, allowing the discharge of silt and soils into the inlets during rainfall.

16. On August 18, 2004, the Illinois EPA observed that vehicle ingress/egress areas at the Wyndridge Site were not stabilized to prevent exiting vehicles from dragging out soil. No temporary seeding/stabilization was provided in areas that remained disturbed and without construction activities for more than twenty-one (21) days.

17. On August 18, 2004, the Illinois EPA also observed that storm water inlets at the Wyndridge Site were inadequately protected by erosion control devices, with evidence of silt laden storm water discharges to an adjacent creek. The Wyndridge Site drainage ways contained no structures to slow storm water velocities to reduce sediment runoff.

18. Respondent First Rockford's active construction work at the Wyndridge Site is subject to the Act and the Rules and Regulations promulgated by the Board and the Illinois EPA. The Illinois EPA rules and regulations for water pollution are found in Section 12 of the Act, 415 ILCS 5/12 (2004).

19. Section 12(a) of the Act, 415 ILCS 5/12(a)(2004), details prohibitions relating to water pollution. Section 12(a) provides as follows:

- a. No person shall:

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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.

20. The storm water inlets at the Wyndridge Site act as conduits of storm water laden with silt and soils that lead to storm water sewers, retention basins and roadside drainage ditches. The storm water also discharges from the Site to a north un-named tributary of Willow Creek. This tributary discharges to Willow Creek and Willow Creek then discharges directly to the Rock River. The water flowing into roadside drainage ditches, Willow Creek, the Rock River, as well as the storm sewers themselves are "waters" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004).

21. The discharge of silt laden storm water and soils resulting from construction and development operations at the Site, into the storm water sewers, is "water pollution" as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2004).

22. From on or before January, 2004, through at least May 31, 2005, by moving earth in association with their residential development activities, and constructing and installing storm sewer inlets at the Wyndridge Site, Respondent First Rockford caused and allowed the discharge of silt and eroded soil into the storm water sewers, roadside drainage ditches and waters of the State. By discharging contaminants into the environment, the Respondent caused or tended to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, FIRST ROCKFORD GROUP, INC. on this Count VII:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);
3. Ordering the Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;
5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004); and
6. Granting such other relief as the Board deems appropriate and just.

COUNT VIII

CREATING A WATER POLLUTION HAZARD

1 - 20. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 18 and paragraphs 20 and 21 of Count VII as paragraphs 1 through 20 of this Count VIII.

21. Respondents' construction and development activities at the Wyndridge Site included installing storm sewer inlets, moving and disturbing earth, constructing stockpiles of soils and depositing them in areas near storm water sewers, roadside drainage ditches and waters of the State without proper erosion control structures protecting them from excessive storm water erosion runoff.

22. Section 12(d) of the Act, 415 ILCS 5/12(d) (2004), details prohibitions relating to water pollution. Section 12(d) provides in pertinent part as follows:

(d) No person shall:

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

23. By moving earth for construction and development activities, allowing soils to be disturbed, stockpiled and deposited in areas near storm water sewers, roadside drainage ditches and waters of the State without proper erosion control structures protecting them from excessive silt laden run-off, and installing storm sewer inlets at the Wyndridge Site, Respondent First Rockford deposited eroded soil and silt adjacent to the sewers and roadside drainage ditches, creating a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, FIRST ROCKFORD GROUP, INC. on this Count VIII:

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

2. Finding that Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);

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

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars

(\$50,000.00) for each violation of the Act and pertinent regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004); and

6. Granting such other relief as the Board deems appropriate and just.

COUNT IX

VIOLATION OF NPDES PERMIT REQUIREMENTS

1 - 21. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 21 of Count VIII as paragraphs 1 through 21 of this Count IX.

22. Respondent, First Rockford, displaced and stockpiled earth and soils in association with their development and construction activities at the Wyndridge Site. First Rockford placed the stockpiled soils adjacent to storm water inlets, which were also constructed by Respondent. Respondent stockpiled soils near storm sewer inlets without proper erosion control structures protecting them from excessive storm water runoff being discharged into them. During rainfall, silt laden storm water and soils were discharged from the Site to the storm water inlets.

23. Section 12(f) of the Act, 415 ILCS 5/12(f)(2004) provides in applicable part as follows:

No person shall:

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

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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.

24. Section 309.102(a) of the Board Construction Permit Regulations, 35 Ill. Adm.

Code 309.102(a), entitled NPDES Permit Required, provides as follows:

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.

25. The Illinois EPA is 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) (2004).

26. Section 301.325 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.325, provides the definition for "NPDES":

"NPDES" means the National Pollutant Discharge Elimination System for issuing, establishing conditions for, and denying permits under Section 402 of the CWA. All terms used in connection with NPDES which have been defined in the CWA or regulations adopted thereunder shall have the meanings specified therein, unless specifically noted otherwise.

27. Section 301.240 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.240, provides the definition for "CWA":

"CWA" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the "Clean Water Act", Public Law 95-217, enacted December 12, 1977, as amended.)

28. On November 6, 2003, the Illinois EPA granted coverage for the Wyndridge Site under a general NPDES permit.

29. The storm water discharge laden with silt and soils from construction and development activities at the Wyndridge Site is a discharge. The storm water discharged into sewer inlets at the Site, which lead directly to a catch basin, storm water sewers and roadside drainage ditches and waters of the State are point sources into waters of the State.

30. As a result of rainwater runoff at the Wyndridge Site, Respondent First Rockford caused, threatened or allowed the discharge of soils, silts and sediments, or contaminants, into the waters of the State. By discharging silt laden storm water directly from the Wyndridge Site into a catch basin, storm water sewers and roadside drainage ditches, the Respondent violated the terms or conditions imposed by their NPDES permit.

31. By causing, threatening or allowing the discharge of contaminants into waters of the State in violation of their NPDES permit, Respondent First Rockford violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2004).

32. By discharging contaminants into the waters of the State from a point source in violation of their NPDES permit, the Respondent also violated Section 309.102(a) of the Board's Construction Permit Regulations.

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, FIRST ROCKFORD GROUP, INC., on this Count IX:

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

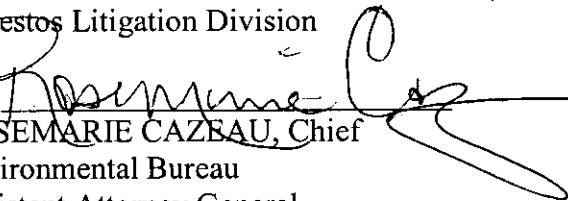
2. Finding that Respondent violated Sections 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board's Construction Permit Regulations, 35 Ill. Adm. Code 309.102(a);

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3. Ordering the Respondent to cease and desist from any further violations of the Act and regulations;
4. Assessing against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004) continued;
5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2004); 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 of the State
of Illinois

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

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Chicago, IL 60601
(312) 814-0608


*** * PCB 2006-103 * * * *

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Complaint was sent by certified mail with return receipt requested to each of the persons listed on the Notice of Filing on December 15, 2005.

BY: 
BRIDGET M. CARLSON

It is hereby certified that a copy of the Complaint was filed via electronic filing, with the Illinois Pollution Control Board on December 15, 2005.

BY: 
BRIDGET M. CARLSON