

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS )  
by LISA MADIGAN, Attorney General )  
of the State of Illinois, )  
 )  
Complainant, )  
 )  
v. )  
 )  
GALENA HILLSIDE HOMES, INC., an )  
Illinois corporation, )  
 )  
Respondent. )

PCB No.  
(Enforcement - Water)

**NOTICE OF FILING**

TO: Galena Hillside Homes, Inc.  
c/o James L. Miller, Registered Agent  
402 Fourth Street  
Galena, Illinois 61036

**(VIA ELECTRONIC FILING)**

PLEASE TAKE NOTICE that today, May 24,2006, I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint a true and correct copy of which is attached and hereby served upon you.

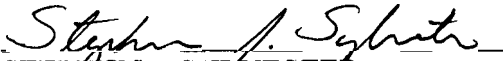
Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to state that failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

**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.

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

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

BY:   
STEPHEN J. SYLVESTER  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph St., Suite 2001  
Chicago, Illinois 60601  
(312) 814-2087

Date: May 24, 2006

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	)	
Respondent.	)	

**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, GALENA HILLSIDE HOMES, INC., an Illinois corporation, as follows:

**COUNT I**  
**WATER POLLUTION**

1. This Count 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 5131 (2004).

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 (2004), 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) (2004).

3. At all times relevant to this Complaint, Respondent, Galena Hillside Homes, Inc. ("GHH"), was and is an Illinois corporation in good standing.

4. At all times relevant to this Complaint, GHH excavated/harvested topsoil from a parcel of land approximately 3.6 acres in size, which it owns, located off Posey Road in the East 1/2 of Section 36, Township 29 North, Range 1 East, Jo Daviess County, Illinois ("Site").

5. Stormwater run-off from the Site flows directly into the East Fork of the Galena River ("River"), which flows through the Site.

6. On April 22, 2005, there was a front-end loader and screening equipment inside the west gate at the Site and there was disturbed soil from soil excavating/harvesting operations that had been occurring in and around the western portion of the Site.

7. Also on April 22, 2005, GHH's soil excavating/harvesting activities on the north bank of the upstream side of a bridge near the Site reduced the height of the riverbank on the upstream and downstream sides of the bridge, which crosses the River. The riverbank in the area, where the soil excavating/harvesting was taking place, was at nearly the same elevation as the River, while immediately downstream the riverbanks were between three (3) and six (6) feet higher than the River.

8. Also on April 22, 2005, there were no erosion control measures in place to prevent the migration of disturbed soil into the River.

9. Also on April 22, 2005, there were overgrown mounds from previous soil excavations/harvestings by GHH, and over one (1) acre of land at the Site had been disturbed.

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

No person shall:

- a. Cause or threaten or allow the discharge of any contaminant 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 3.315 of the Act, 415 ILCS 5/3.315 (2004), 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.

12. Respondent GHH, a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 513.315 (2004).

13. 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.

14. Soil and/or silt are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 513.165 (2004).

15. Section 3.550 of the Act, 415 ILCS 513.550 (2004), contains the following definition:

"WATERS" means all accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

16. The East Fork of the Galena River are "waters" of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 513.550 (2004).

17. Section 3.545 of the Act, 415 ILCS 513.545 (2004), 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 to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish or other aquatic life.

18. By failing to install adequate erosion control measures at the Site, GHH caused, threatened and/or allowed excessive soil and/or silt erosion from its soil excavation/harvesting activities at the Site to discharge into the East Fork of the Galena River. Such soil and/or silt, altered, or threatened to alter, the physical, thermal, chemical, or radioactive properties of the East Fork of the Galena River; rendered, or were likely to render, the river harmful, detrimental or injurious to wild animals, birds, fish, and other aquatic life; or created, or were likely to create, a nuisance.

19. From at least April 22, 2005 through at least July 2005, on dates better known to GHH, GHH failed to utilize any erosion control measures at the Site, which caused, threatened, or allowed soillsilt-laden stormwater runoff. By its actions and omissions, GHH caused, threatened, or allowed water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, GALENA HILLSIDE HOMES, INC. on this 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 Respondent has 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 Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);

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

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), 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**  
**CREATING A WATER POLLUTION HAZARD**

1-17. Complainant realleges and incorporates by reference herein paragraphs 1 through 9 and paragraphs 11 through 18 of Count I as paragraphs 1 through 17 of this Count II.

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

No person shall:

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

19. From at least April 22, 2005 through at least July 2005, on dates better known to GHH, GHH excavated/harvested and disturbed soil near the East Fork of the Galena River at the Site without any erosion control structures in place and allowed sediment runoff to impact the East Fork of the Galena River at the Site.

20. By excavating/harvesting and disturbing soil near the East Fork of the Galena River at the Site without any erosion control structures in place, allowing sediment runoff to impact the East Fork of the Galena River at the Site, Respondent GHH created a water pollution hazard and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, GALENA HILLSIDE HOMES, INC. on this 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 Respondent has 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 Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), 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**  
**FAILURE TO OBTAIN AN NPDES STORM WATER PERMIT**

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 III.

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

17. 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.

18. 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.

19. In pertinent part, 40 CFR 122.26(a) provides as follows:

- (a) Permit requirement.

\* \* \* \* \*

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

20. In pertinent part, 40 CFR 122.26(b) provides as follows:

(b) Definitions.

\* \* \* \* \*

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

- i) 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. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. . . .

21. Section 309.102(a) of the Illinois Pollution Control Board ("Board") Water

Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

NPDES Permit Required

- a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

22. On January 5, 2006, the Illinois EPA issued to GHH NPDES Permit No.

ILR10E548 for Storm Water Discharges from construction site activities at the Site.

23. From at least April 22,2005 until January 5,2006, GHH's Site was not covered under an NPDES storm water permit.

24. By disturbing over one acre of land at the Site without first obtaining coverage under the general NPDES storm water permit for construction site activities prior to initiating soil excavation/harvesting at the Site, GHH violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

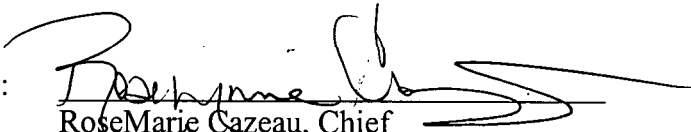
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, GALENA HILLSIDE HOMES, INC. on this Count III:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondent to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004) and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
4. Assessing against Respondent, pursuant to Section 42(b)(1) of the Act, a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act and Section 309.102(a) of the Board Water Pollution Regulations;
5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), 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,  
by LISA MADIGAN,  
Attorney General of the State of Illinois,

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

By:   
RoseMarie Cazeau, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:

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**CERTIFICATE OF SERVICE**

I, Stephen J. Sylvester, an Assistant Attorney General, do certify that a true and correct copy of the Complaint and Notice of Filing were sent by certified mail with return receipt requested to the person listed on the Notice of Filing on May 24, 2006.

BY:

  
STEPHEN J. SYLVESTER