

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
vs.) PCB No.
) (Enforcement - Water)
RANCHO AMIGO, LLC, an Illinois)
limited liability company,)
)
Respondent.)

NOTICE OF FILING

TO: Mr. Don Deutsch Clerk
625 W. Roosevelt Road Illinois Pollution Control Board
West Chicago, IL 60185 James R. Thompson Center
100 W. Randolph Street, Ste. 11-500
Chicago, Illinois 60601

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
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Flr.
Chicago, IL 60602
(312) 814-3816

DATE: February 19, 2008

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
LISA MADIGAN, Attorney General)	
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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, RANCHO AMIGO, LLC, an Illinois limited liability company, as follows:

COUNT I

CONSTRUCTION WITHOUT AN NPDES PERMIT

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 (2006).

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 (2006), 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, Rancho Amigo, LLC ("Rancho Amigo"), is an Illinois limited liability company in good standing.

4. On May 1, 2005, Rancho Amigo began a construction project to create an off-road vehicle riding facility known as Rancho Amigo, on approximately 4.42 acres of land located in Pleasant Valley Township, Section 36, T26N, R4E in rural JoDaviess County, Illinois ("Site").

5. An unnamed perennial stream, tributary to Davis Creek, flows through the Site at the southern portion of the trails and jumps for off-road vehicles.

6. On June 28, 2005, the Illinois Environmental Protection Agency ("Illinois EPA") an administrative agency of the State of Illinois, inspected the Site and observed substantial earthmoving activity related to the construction of trails and jumps for off-road vehicles. The trails looped up and down the slope of the property and appeared to go through Davis Creek.

7. The total size of the construction site was 4.42 acres and as such the Site required coverage under the NPDES general storm water permit for a small construction activity. However,

Rancho Amigo began the construction of the trails and jumps for off-road vehicles without first obtaining coverage under the NPDES general storm water permit for small construction activity and without implementing erosion controls prior to disturbing the earth surface.

8. 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.

9. 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.

10. 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.

11. Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), provides as follows:

- (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 ... 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.

12. Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), provides as follows:

- (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;

13. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides as follows:

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard;

14. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), 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.

15. Rancho Amigo, an Illinois limited liability company, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

16. Section 3.165 of the Act, 415 ILCS 5/3.165 defines contaminant as follows:

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

17. Section 3.550 of the Act, 415 ILCS 5/3.550 defines 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.

18. The unnamed perennial tributary to Davis Creek and Davis Creek are waters of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

19. Silt that results from the clearing, grading and excavation of unprotected land surface flows down and mixes with a body of water thereby becoming a contaminant when the silt

comes in contact with the water, as the term contaminant is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

20. From May 1, 2005 until January 3, 2006, Rancho Amigo conducted construction activities on the Site without first obtaining coverage under a general storm water permit for small construction activity and without implementing and maintaining adequate erosion control measures.

21. By failing to obtain an NPDES general storm water permit coverage and failing to properly create and implement a Storm Water Pollution Prevention Plan prior to clearing, grading and excavating soil at the Site, Rancho Amigo threatened the discharge of silt, contaminant, in a manner that would tend to cause water pollution, in violation of Section 12(a) of the Act.

22. By depositing silt on the land in an unnatural, unprotected state that created a water pollution hazard, Rancho Amigo violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

23. By disturbing land more than one acre and less than five acres, Rancho Amigo threatened the discharge of silt, contaminant, into the waters of the State without an NPDES permit, thereby violating Section 12(f) of the Act, 415 ILCS 5/12(f) (2006) 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, threatened or allowed violations of Sections 12(a), (d) and (f) of the Act, 415 ILCS and 35 Ill. Adm. Code 309.102(a);

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

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a), (d) and (f) of the Act and 35 Ill. Adm. Code 309.102(a) and Ten Thousand Dollars per day for each day the violations of the Act and Board Regulation continued;

5. Assessing all costs against Respondent, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

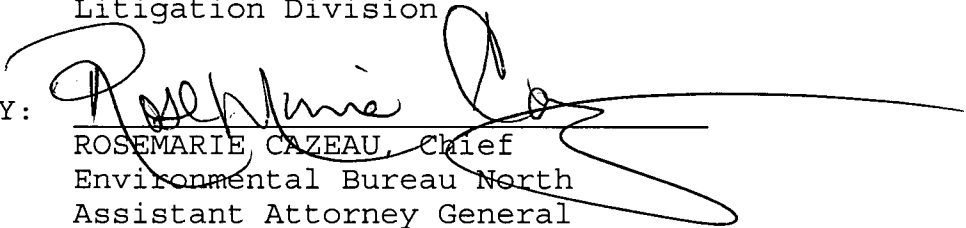
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

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

BY:



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CERTIFICATE OF SERVICE

I, ZEMEHERET BEREKET-AB, an Assistant Attorney General, do certify that I caused to be served on this 19th day of February 2008, the foregoing Notice of Filing, Complaint, and a Certificate of Service, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



ZEMEHERET BEREKET-AB