

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant,)

v.)

RUPE CONTRACTING, INC.,)
an Illinois corporation, and JOHN A. RUPE,)
individually and as owner and operator of)
Rupe Contracting, Inc.,)

Respondents.)

PCB 08 -

(Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List

(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby 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 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

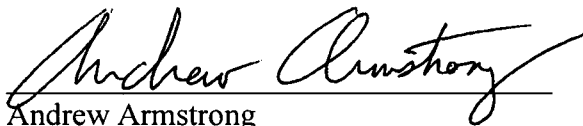
YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1 *et seq.*] to correct the alleged violation.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the State of Illinois

BY:


Andrew Armstrong

Assistant Attorney General

Andrew Armstrong
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602
312-814-0660

DATE: May 1, 2008

SERVICE LIST

Rupe Contracting, Inc.
John A. Rupe, President and Registered Agent
3096 800th Road
P.O. Box 201
Wenona, Illinois 61377

John A. Rupe
451 State Route 251
Rutland, Illinois 61358

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
LISA MADIGAN, Attorney General of)	
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Rupe Contracting, Inc.,)	
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Respondents.)	

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 RUPE CONTRACTING, INC., an Illinois corporation, and, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, complains of Respondent JOHN A. RUPE, individually and as owner and operator of Rupe Contracting, Inc., as follows:

COUNT I

CREATION OF A WATER POLLUTION HAZARD

1. This Count is brought against Respondent Rupe Contracting, Inc. 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 the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006). This Count is also brought against Respondent John A. Rupe, individually and as owner and operator of

Rupe Contracting, Inc., on behalf of the People of the State of Illinois, by Lisa Madigan, Attorney General of the State of Illinois, on her own motion, pursuant to the terms and provisions of Section 31 of the 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 is charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent Rupe Contracting, Inc. ("Rupe Contracting") was and is an Illinois corporation.

4. At all times relevant to this Complaint, Rupe Contracting was and is a contractor that performs excavation work.

5. At all times relevant to this Complaint, Respondent John A. Rupe ("John Rupe") was and is the president, owner, and registered agent of Rupe Contracting, and was and is in control of and is responsible for the day-to-day operations of Rupe Contracting.

6. On or around September 11, 2006, Lester Schmollinger hired Rupe Contracting to grade and fill a low spot on his property in Spring Valley, Bureau County, Illinois ("the Site").

7. The Site is approximately forty feet in distance from a watercourse known as Spring Creek.

8. On September 11, 2006, Rupe Contracting graded and filled a low spot at the Site.

9. On September 11, 2006, John Rupe performed the grading and filling of the Site on behalf of Rupe Contracting.

10. While grading and filling the Site on September 11, 2006, John Rupe struck and ruptured a sanitary sewer line.

11. On September 11, 2006, or at any time thereafter, neither John Rupe nor any other agent of Rupe Contracting reported the rupture of the sewer line at the Site to Mr. Schmollinger or to any public authorities.

12. On or about September 16, 2006, Mr. Schmollinger notified the Spring Valley Police Department that sewage was flowing from the ruptured sewer line onto his property.

13. By the time a work crew from the City of Spring Valley ("City") responded to the sewer line rupture at the Site on September 16, 2006, a pool of untreated sewage had collected in a ditch adjacent to the sewer line.

14. On September 16, 2006, the City work crew responding to the sewer line rupture at the Site constructed a temporary berm, in order to direct the flow of untreated sewage back into the sanitary sewer system.

15. On September 18, 2006, a City work crew pumped an estimated 108,000 gallons of untreated sewage that had leaked from the ruptured sewer line and accumulated in an adjacent ditch back into the sanitary sewer system.

16. On September 19, 2006, Rupe Contracting, after consulting with City officials, repaired the ruptured sewer line by installing a new section of pipe and pouring concrete to seal the line.

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

18. Respondents RUPE CONTRACTING, INC. and JOHN A. RUPE are each a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2006).

19. Section 3.165 of the Act, 415 ILCS 5/3.165(2006), provides the following definition:

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

20. Untreated sewage is a "contaminant" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

21. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), provides 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.

22. Spring Creek, located in Spring Valley, Bureau County, Illinois, is a "water" of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

23. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), 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.

24. Section 12 of the Act, 415 ILCS 5/12 (2006), provides, in relevant part, as follows:

No person shall:

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

25. The Respondents' rupture of a sanitary sewer line at the Site on September 11, 2006 caused untreated sewage to be deposited upon the ground.

26. The deposit of untreated sewage at the Site created a water pollution hazard.

27. By causing or allowing the deposit of contaminants upon the land so as to create a water pollution hazard, the Respondents, Rupe Contracting and John Rupe, violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents RUPE CONTRACTING, INC. and JOHN A. RUPE for the following relief:

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

2. Finding that the Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);

3. Ordering the Respondents to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);

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

5. Ordering the Respondents to pay all costs in this action, including expert witness, consultant, and attorney's fees; and

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

COUNT II

CAUSING SANITARY SEWAGE OVERFLOW

1-22. The Complainant realleges and incorporates by reference paragraphs 1 through 22 of Count I as if fully set forth herein as paragraphs 1 through 22 of this Count II.

23. Sanitary sewer systems are subject to the Act and the Rules and Regulations promulgated by the Illinois Pollution Control Board ("Board"). The Board's regulations for water pollution are found in Title 35, Subtitle 35, Chapter I, of the Illinois Administrative Code ("Board's Water Pollution Regulations").

24. Section 12 of the Act, 415 ILCS 5/12 (2006), provides, in relevant part, as follows:

No person shall:

- (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.

25. Section 306.304 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.304, provides as follows:

Overflows

Overflows from sanitary sewers are expressly prohibited.

26. On or about September 11, 2006, Respondents Rupe Contracting and John Rupe caused the overflow of the sanitary sewer in Spring Valley, Illinois, in violation of Section 306.304 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.304.

27. By violating section 306.304 of the Board's Water Pollution Regulations, a regulation adopted by the Board, Respondents Rupe Contracting and John Rupe also violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents RUPE CONTRACTING, INC. and JOHN A. RUPE for the following relief:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that the Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and Section 306.304 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.304;
3. Ordering the Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and Section 306.304 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.304;

4. Assessing against the Respondents a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and Ten Thousand Dollars (\$10,000.00) for each day of violation;

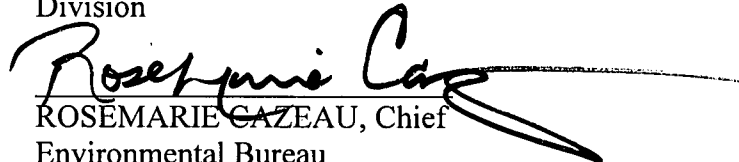
5. Ordering the Respondents to pay all costs in this action, including expert witness, consultant, and attorney's fees; and

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
Assistant Attorney General

OF COUNSEL
ANDREW ARMSTRONG
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Floor
Chicago, Illinois 60602
(312) 814-0660

CERTIFICATE OF SERVICE

I, ANDREW ARMSTRONG, an Assistant Attorney General, do certify that I caused to be mailed this 1st day of May, 2008, the foregoing Complaint and Notice of Filing upon the persons listed on said Notice, by certified mail.



ANDREW ARMSTRONG
Assistant Attorney General
Environmental Bureau
Office of the Illinois Attorney General
69 West Washington Street, 18th Floor
Chicago, Illinois 60602
(312) 814-0660