

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Complainant,)	
)	
)	PCB
v.)	
)	(Enforcement - Water)
STEVE SODERBERG d/b/a STEVE'S)	
CONCRETE AND EXCAVATING,)	
)	
Respondent.)	

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that on May 7, 2008, the People of the State of Illinois filed with the Illinois Pollution Control Board a Complaint, a true and correct 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.

Respectfully submitted,

LISA MADIGAN
Attorney General
State of Illinois

BY:



George D Theophilos
Assistant Attorney General
Environmental Bureau
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Ms. Joey Logan-Wilkey, Esq.
Illinois Environmental Protection Agency
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Mr. STEVE SODERBERG d/b/a
STEVE'S CONCRETE AND EXCAVATING
1720 Charles Road
Rockford, Illinois 61104

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	No.
)	
STEVE SODERBERG d/b/a)	
STEVE'S CONCRETE AND EXCAVATING,)	
)	
Respondent.)	

COMPLAINT FOR CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complain of the Respondent, STEVE SODERBERG d/b/a STEVE'S CONCRETE AND EXCAVATING, 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, 415 ILCS 5/31 (2006) ("Act").

2. The Illinois EPA is an administrative agency established in the executive branch of the State government by Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent Steve Soderberg is the owner and operator of Steve's Concrete and Excavating. Respondent Steve's is located at 1720 Charles Street, Rockford, Illinois and is not registered with the Illinois Secretary of State.

4. A diesel fuel spill in Keith Creek was reported by the Rockford Fire Department ("RFD") to the Illinois EPA on May 12, 2006 after individuals at a local elementary school noticed a petroleum odor near the creek. Illinois EPA determined that the source of the contamination was a spill area behind 2239 Charles Street.

5. The spill area was inspected by Illinois EPA personnel, who responded to the call from the RFD. The area was a small concrete landing above a storm water culvert discharging to Keith Creek. Fuel had pooled on the concrete and flowed into the culvert, to the creek, and onto a small area of surrounding ground surface. Illinois EPA observed a sheen moving on top of the water and collecting in the curves and vegetation along the creek.

6. The Respondent had been renting the back of a building at 2303 Charles Street which was part of the same property at which the spill occurred. The property was owned by the Rockford Local Development Corporation and at the time the spill was discovered, Respondent had agreed to a termination of the lease and removal of an above ground fuel tank from the site.

7. A witness reported to the RFD that a truck marked as Steve's Concrete and Excavating was observed removing equipment, including an above ground fuel tank, from the site. Respondent Soderberg conceded that his employees had removed the fuel tank, but indicated that the tank did not belong to him and that there had been no problems during removal.

8. The RFD initially constructed a small earthen dike to stop the flow of fuel to the culvert and the creek. Shortly thereafter, the RFD Hazmat team placed a boom in

the creek at the mouth of the culvert to prevent further release and placed a pad on the area of the spill to absorb the fuel.

9. Respondent contracted with Trans Environmental to take over remedial efforts from the RFD. Trans Environmental, reported the release to the Illinois Emergency Management Agency ("IEMA"). Trans Environmental estimated that the release was less than ten gallons of fuel based on the size of the tank and the volume of fuel remaining.

10. On or about May 15, 2006, Illinois EPA returned to inspect the site and observed that the concrete above the culvert was clean and that waste materials had been placed in a fifty-five gallon drum. Trans Environmental had been instructed by the Illinois EPA to remove the soaked pads from the culvert and replace them with new ones. Trans Environmental agreed to place the contaminated soil from around the spill area into a disposal drum and notify the Illinois EPA's Rockford office when the cleanup was complete.

11. On or about June 20, 2006, Illinois EPA representatives informed Respondent that additional clean-up of the site was needed. Respondent contacted Trans Environmental to consult with the Illinois EPA and remediate the area of the release. After replacing absorbent materials and installing additional booms and pads at the site, a steel drum of contaminated soil and absorbents was disposed of at Orchard Hills Landfill on June 23, 2006.

12. On July 18, 2006, Illinois EPA sent a violation notice letter to Respondent citing unpermitted discharge of contaminants and water quality violations. Trans Environmental responded by a letter dated September 29, 2006 and stated that Trans

Environmental had taken immediate corrective actions following the release and minimized the impact to the environment. On October 16, 2006, the Illinois EPA rejected the proposed compliance commitment submitted by Trans Environmental on behalf of Respondent and sent a notice of intent to pursue legal action ("NIPLA") letter on March 21, 2007.

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

14. Section 3.315 of the Act, 415 ILCS 5/3.315 (2006), provides, in relevant part, the following definition:

"PERSON" is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate . . . or any other legal entity, or their legal representative, agent or assigns.

15. Respondent Steve Soderberg doing business as Steve' Concrete and Excavating is a "person" as that term is defined in Section 3.315 of the Act.

16. 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.

17. The diesel fuel improperly emptied from the above ground fuel tank is a contaminant as that term is defined in Section 3.165 of the Act.

18. 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 the State.

19. Keith Creek and the area surrounding it are “waters” as that term is defined in Section 3.550 of the Act.

20. 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.

21. By spilling diesel fuel which flowed to the culvert and creek, Respondent caused, threatened or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

WHEREFORE, Complainant prays that this Board grant civil damages in favor of Complainant, People of the State of Illinois, and against Respondent, Steve Soderberg d/b/a Steve’s Concrete and Excavation, and enter an order with respect to 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) (2006);

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

4. Assessing against Respondent, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violations continued thereafter;

5. Ordering Respondent to pay all costs, pursuant to Subsection 42(f) of the Act, 415 ILCS 5/42(f)(2006), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT II

WATER POLLUTION HAZARD

1-12. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 and 14 through 16 of Count I, as paragraphs 1 through 15 of this Count II.

16. Section 12(d) of the Act, 415 ILCS 5/12(d) (2006), provides 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.

16. During the Illinois EPA's inspections of the site, the fuel was observed floating on top of the water as well as on the soil leading from the culvert to the creek. Prior to the RFD's placement of absorbent materials on the spill, the fuel was uncovered and unprotected from exposure to the elements.

17. By spilling fuel which then flowed to the creek and surrounding soil areas, Respondent deposited contaminants upon the land in such place and manner so as to

create a water pollution hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).

WHEREFORE, Complainant prays that this Board grant civil damages in favor of Complainant, People of the State of Illinois, and against Respondent, Steve Soderberg d/b/a Steve's Concrete & Excavation, and enter an order with respect to 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) (2006);
3. Ordering Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);
4. Assessing against Respondent, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2006), a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, and an additional Ten Thousand Dollars (\$10,000.00) for each day during which the violations continued thereafter;
5. Ordering Respondent to pay all costs, pursuant to Subsection 42(f) of the Act, 415 ILCS 5/42(f)(2006), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as this Board deems appropriate and just.

COUNT III

DISCHARGING WITHOUT A PERMIT

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 and 14 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) (2006), provides 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. Section 309.102(a) of the 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.

18. The spilled fuel identified at the site are not covered or allowed by any NPDES permit issued to, or held by, the Respondent.

19. By discharging contaminants not covered by an NPDES permit, Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant prays that this Board grant civil damages in favor of Complainant, People of the State of Illinois, and against Respondent, Steve Soderberg d/b/a Steve's Concrete and Excavation and enter an order pursuant to 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 Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

3. Ordering Respondent to cease and desist from any further violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), 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(a) of the Act, 415 ILCS 5/42(b) (2006), a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each violation of the Act;

5. Ordering Respondent to pay all costs, pursuant to Subsection 42(f) of the Act, 415 ILCS 5/42(f)(2006), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT IV

CREATING AN OFFENSIVE CONDITION

1-15. Complainant realleges and incorporates by reference herein paragraphs 1 through 12 and 14 through 16 of Count I, as paragraphs 1 through 15 of this Count IV.

15. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides as follows:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing

provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

16. Oil sheens were visible on the creek surface and petroleum odor in the area was evident during the dates of the Illinois EPA's inspections.

17. By causing and allowing the oil sheens which disturbed the natural appearance of the creek, Respondent has created an offensive condition and violated Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

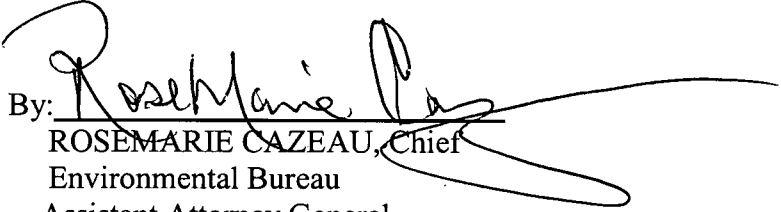
WHEREFORE, Complainant prays that this Board grant civil damages in favor of Complainant, People of the State of Illinois, and against Respondent, Steve Soderberg d/b/a Steve's Cement and Excavation and enter an order with respect to Count IV:

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 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;
3. Ordering Respondent to cease and desist from any further violation of Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203;
4. Assessing against Respondent, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), a civil penalty of Fifty Thousand Dollars for each violation of the Board Water Pollution Regulations, and Ten Thousand Dollars (\$10,000.00) per day for each day during which the violation continues;
5. Ordering Respondent to pay all costs, pursuant to Subsection 42(f) of the Act, 415 ILCS 5/42(f)(2006), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting other such relief as this Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,

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