

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB
)	(Enforcement – Water)
PHOENIX CORPORATION OF THE QUAD)	
CITIES, an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that we have today, September 9, 2011, filed the initial Complaint in this matter with the Office of the Clerk of the Illinois Pollution Control Board, by electronic filing. A true and accurate copy of the Complaint is attached herewith and 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.

RESPECTUFLY SUBMITTED,

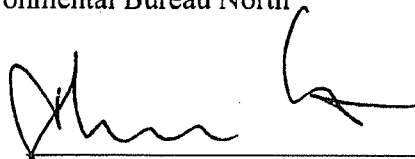
PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General of the
State of Illinois

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau North

BY:



CHRISTOPHER GRANT
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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, PHOENIX CORPORATION OF THE QUAD CITIES, as follows:

COUNT I
WATER POLLUTION

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 the terms and provisions of Section 31 of the Environmental Protection Act (“Act”), 415 ILCS 5/31 (2010).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2010), and charged, *inter alia*, with the duty of enforcing the Act and regulations promulgated by the Illinois Pollution Control Board (“Board”).

3. Respondent, PHOENIX CORPORATION OF THE QUAD CITIES ("Phoenix"), is an Illinois corporation, duly authorized to transact business in the State of Illinois.

4. Phoenix is an excavation, grading, and construction contractor with offices in Port Byron, Illinois. At all times relevant to the complaint, Phoenix was performing excavation and grading services on a road construction project in the vicinity of the intersection of Illinois Route 78 ("Route 78") and Illinois Route 64/United States Route 52 ("Route 64") in Mount Carroll, Carroll County, Illinois ("Site"). Illinois Route 78 runs generally north and south. Route 64 runs generally east and west at the Site.

5. On May 28, 2009, an Illinois EPA inspector conducted an inspection at the Site. Excavation and grading activities at the Site had resulted in the removal of grass and other stabilizing vegetation from the shoulder and adjacent property along Route 64. Numerous erosion gullies had formed in the exposed soil from storm water flow. The erosion gullies ran down hill to a drainage ditch located on south side of Route 64. No silt fencing, silt fabric, or other barriers had been installed to prevent the migration of soil and sediment into the drainage ditch.

6. When the Illinois EPA inspector arrived at the Site, Phoenix was pumping storm water containing soil and sediment through a hose running from the east side of Route 78 and discharging into the drainage ditch on the south side of Route 64. At the point where the hose discharged into the drainage ditch, Phoenix had created an impoundment area in the drainage ditch to receive the sediment-laden storm water. The water in the drainage ditch was murky and laden with soil and sediment.

7. Using a second hose, Phoenix was pumping the sediment-laden storm water out

of the impoundment area on the south side of Route 64. The hose discharged directly into a storm sewer running under Route 64.

8. The Illinois EPA inspector observed that the storm sewer was carrying the sediment-laden storm water north under Route 64. The storm sewer discharged into a ravine, which then flowed into Carroll Creek. No silt fencing or silt fabric had been installed to prevent the migration of soil and sediment into the ravine.

9. At the May 28, 2009 inspection, the Illinois EPA inspector noted significant amounts of sediment and soil that had accumulated in the ravine as a direct result of Phoenix's pumping of the sediment-laden storm water. The unnatural deposit of soil and sediment began at the point where the storm sewer discharged into the ravine, and extended downstream in the direction of Carroll Creek.

10. Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), provides, in pertinent 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.

11. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), 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. Phoenix is a “person” as that term is defined by 415 ILCS 5/3.315 (2010).

13. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides the following definition:

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

14. The soil and sediment-laden storm water that was discharged into the ravine on May 28, 2009, is a “contaminant” as that term is defined by 415 ILCS 5/3.165 (2010).

15. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), provides the following definition:

“Waters” means all accumulation 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 drainage ditch on the south side of Route 64, the storm sewer running under Routh 64, the water-filled ravine, and Carroll Creek, are “water[s]” of the State as that term is defined by 415 ILCS 5/3.550 (2010).

17. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), 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. The discharge of soil, sediment, and sediment-laden stormwater from the construction site rendered, or threatened to render, the water in the drainage ditch, the

storm sewer, the ravine, and Carroll Creek harmful or detrimental to public health, livestock, fish and other aquatic life, and created a nuisance. The discharge of soil, sediment and sediment-laden storm water therefore constituted "water pollution" as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2010).

19. By pumping soil, sediment, and sediment-laden storm water to the drainage ditches, storm sewer, and the ravine leading to Carroll Creek, Phoenix caused threatened or allowed water pollution, and thereby violated Section 12(a) of the Act, 415 ILCS 5/129a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, PHOENIX CORPORATION OF THE QUAD CITIES, on 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 the Respondent has violated Section 12(a) of the Act;
3. Ordering the Respondent to cease and desist from future violations of Section 12(a) of the Act;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of Section 12(a) of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;
5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, 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
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) (2010), provides, in pertinent 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.

19. On May 28, 2009, Phoenix deposited soil and sediment from its excavation and grading activities in the drainage ditch at the Site, without installing silt fencing or taking any other effective measures to prevent the soil and sediment from flowing into the storm sewer, the water-filled ravine, and Carroll Creek.

20. By depositing soil and sediment onto land, uncontrolled and in such manner as to allow the migration of the soil and sediment into the storm sewer, the water-filled ravine, and Carroll Creek, Phoenix created a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, PHOENIX CORPORATION OF THE QUAD CITIES, on 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 the Respondent violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010);
3. Ordering the Respondent to cease and desist from any further violations of Section 12(d) of the Act;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of Section 12(d) of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day the violation continued;
5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, 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
OFFENSIVE CONDITIONS

1-16. Complainant realleges and incorporates by reference herein paragraphs 1 through 16 of Count I, as paragraphs 1 through 16 of this Count III.

17. Pursuant to Sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2010), the Board has promulgated rules and regulations to establish general water quality standards, codified at 35 Ill. Adm. Code, Subtitle C ("Board Water Pollution Regulations").

18. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part, as follows:

Offensive Conditions

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.

19. On May 28, 2009, Phoenix caused or allowed pumping of soil and sediment-laden storm water, resulting in unnatural sludge and bottom deposits in the water-filled ravine leading to Carroll Creek. Phoenix thereby violated Section 302.203 of the Board Water Pollution regulations, 35 Ill. Adm. Code 302.203, and thereby also violated Sections 12(a) Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, PHOENIX CORPORATION OF THE QUAD CITIES, on 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 the Respondent violated Sections 12(a) of the Act, and 35 Ill. Adm. Code 302.203;
3. Ordering the Respondent to cease and desist from any further violations of Sections 12(a) of the Act, and 35 Ill. Adm. Code 302.201;
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of Section 12(a) of the Act, and 35 Ill. Adm. Code 302.203, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day the violations continued;
5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, 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 IV
NPDES PERMIT VIOLATION

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 IV.

16. As of May 28, 2009, the Respondent had not applied for, and did not have, an National Pollutant Discharge Elimination System ("NPDES") permit for point source discharges at the Site.

17. Section 12(f) of the Act, 415 ILCS 12(f) (2010), 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 ...including ...from any point source within the State, without an NPDES permit for point source discharges.

18. Section 301.325 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.325, provides, as follows:

"NPDES" means the National Pollutant Discharge Elimination System for issuing, establishing conditions for, and denying permits under Section 402 of the [Federal Clean Water Act ("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.

19. Regulations promulgated pursuant to the CWA, 33 U.S.C. 1251 *et seq.*, include NPDES regulations listed at Chapter 1, Part 122 of Title 40 of the Code of Federal Regulations. ("NPDES regulations"). Section 122.2 of the NPDES regulations, 40 C.F.R. 122.2, provides, in pertinent part, as follows:

* * *

Point source means any discernible, confined, and discrete conveyance, including

but not limited to, any pipe, ditch, channel, tunnel, conduit, well

20. The hoses used for pumping sediment-laden storm water from the impoundment to the storm inlet are "point source(s)" as that term is defined in 40 C.F.R. 122.2.

21. On May 28, 2009, Phoenix discharged sediment-laden storm water into the storm sewer running under Rout 64 though a 'point source', without first applying for and obtaining an NPDES Permit from Illinois EPA. Phoenix thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

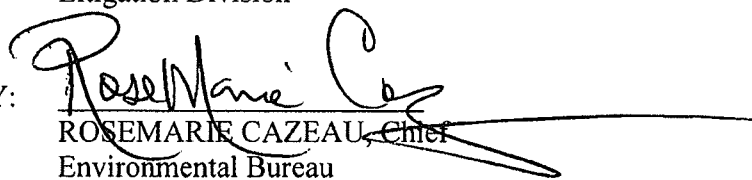
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, PHOENIX CORPORATION OF THE QUAD CITIES, on Count IV:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010);
3. Ordering the Respondent to cease and desist from any further violations of Section 12(f) of the Act;
4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000) against the Respondent for each day of violation of Section 12(f) of the Act;
5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, 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.

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by LISA MADIGAN,
Attorney General of the State of Illinois

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

BY:



ROSEMARIE CAZEAU, Chief
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Of Counsel:

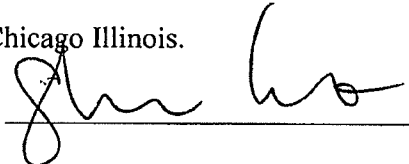
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CERTIFICATE OF SERVICE

I, CHRISTOPHER GRANT, an attorney, do certify that I caused to be served this 9th day of September, 2011, the foregoing Complaint, and Notice of Filing upon the persons listed below by certified mail, by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 W. Randolph, Chicago Illinois.



CHRISTOPHER GRANT

Service List:
Ms. Marjorie Ellen Decap
Registered Agent
Phoenix Corporation of the Quad Cities
23821 166th Avenue North
Port Byron, Illinois 61275