

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB NO.
	)	(Enforcement - Water)
	)	
KENNY CONSTRUCTION COMPANY,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that today, July 14, 2017, I have electronically filed with the Office of the Illinois Pollution Control Board the following Complaint, a true and correct copy of which is hereto attached and hereby served upon you.

Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to state that your failure to file an answer to this Complaint within 60 (sixty) 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 (20ILCS 3515/1 *et seq.*) to correct the alleged pollution.

PEOPLE OF THE STATE OF ILLINOIS,  
*ex. rel.* LISA MADIGAN, Attorney General  
of the State of Illinois

By: /s/ Elizabeth Dubats  
Elizabeth Dubats  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington Street, 18<sup>th</sup> Floor  
Chicago, IL 60602  
(312) 814-02069

**CERTIFICATE OF SERVICE**

I, Elizabeth Dubats, Assistant Attorney General, do hereby certify that I mailed a copy of the attached Notice of Electronic Filing and the Complaint filed in the above referenced case on the Respondent, Kenny Construction, c/o Kathrine Hodge, Hepler Broom LLP, 4340 Acer Grove Drive, Springfield, IL 62711, by certified mail with return receipt requested, today, July 14, 2017, prior to the hour of 5:00 p.m.

/s/ Elizabeth Dubats  
Elizabeth Dubats

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PEOPLE OF THE STATE OF ILLINOIS,	)	
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Complainant,	)	
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v.	)	PCB No. 2017-
	)	(Enforcement-Water)
KENNY CONSTRUCTION COMPANY,	)	
an Illinois Corporation,	)	
Respondent.	)	

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondent, KENNY CONSTRUCTION COMPANY, an Illinois corporation, as follows:

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

1. This Complaint is brought 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 (2014).

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 (2014), and charged with, *inter alia*, the duty of enforcing the Act.

3. At all times relevant to this Complaint, KENNY CONSTRUCTION COMPANY (“Respondent”) has been and is an Illinois Corporation, registered and in good standing with the Illinois Secretary of State.

4. At all times relevant to this Complaint, the Respondent owned and operated, and continues to own and operate, a construction company, specializing in the construction of overhead and underground electric power transmission and distribution systems, tunneling, and underground services.

5. At all times relevant to the Complaint, the Respondent was contracted for work on a construction project for the Illinois Department of Transportation (“IDOT”) near the intersection of York Road and Irving Park Road in the Village of Bensenville, DuPage County, Illinois (“Site”).

6. On June 5, 2015, the Respondent damaged a sanitary sewer line while backfilling the exposed sanitary sewer line.

7. On June 13, 2015, the Respondent plugged the sewer line and bypassed the sewage flow around the area of repair using a system of pumps to divert the wastewater from an upstream manhole to a downstream manhole in order to access and repair the damaged line.

8. While performing repair work on the line, the volume of the wastewater overwhelmed the diversion pumping system, and on June 13, 2015, excess sanitary wastewater was pumped into the Bensenville Ditch and into Silver Creek.

9. On June 19, 2015, the Village of Bensenville notified Illinois EPA of the sewer overflow/bypass.

10. Section 12(a) of the Act, 415 ILCS 5/12(a) (2014), 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.

11. Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), provides 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.

12. The Respondent, KENNY CONSTRUCTION, COMPANY, is a “person” as that term is defined in Section 3.315 the Act, 415 ILCS 5/3.315 (2014).

13. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides as follows:

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

14. Sanitary wastewater is a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

15. Section 3.545 of the Act, 415 ILCS 5/3.545 (2014), provides as follows:

“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.

16. Section 3.550 of the Act, 415 ILCS 5/3.550 (2014), provides 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.

17. The Bensenville Ditch and Silver Creek are “waters” of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2014).

18. The Respondent’s discharge of sanitary wastewater on June 13, 2015 into the Bensenville Ditch and Silver Creek likely rendered such waters harmful or detrimental or

injurious to (a) public health, safety or welfare, (b) domestic, commercial, industrial, agricultural, recreational, or other legitimate uses or (c) livestock, wild animals, birds, fish, or other aquatic life, and therefore constitutes “water pollution,” as that term is defined by 415 ILCS 5/3.545 (2014).

19. By causing, threatening, or allowing the discharge of sanitary wastewater into the environment so as to cause or tend to cause water pollution, the Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, KENNY CONSTRUCTION COMPANY, for the following relief:

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, 415 ILCS 5/12(a) (2014);
3. Ordering the Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against the Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

**COUNT II**  
**CREATING A WATER POLLUTION HAZARD**

1-17. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 9, and 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) (2014), 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.

19. By depositing sanitary wastewater on the ground at the Site and into Bensenville Ditch, which drained into Silver Creek, the Respondent created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, KENNY CONSTRUCTION COMPANY, for the following relief:

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(d) of the Act, 415 ILCS 5/12(d) (2014);
3. Ordering the Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2014);
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;

5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against the Respondent; and
6. Granting such other relief as the Board deems appropriate and just.

**COUNT III**  
**DISCHARGE OF CONTAMINANTS WITHOUT AN NPDES PERMIT**

1-16. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 9, and 11 through 17 of Count I as paragraphs 1 through 16 of this Count III.

17. Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), 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 [National Pollution Discharge Elimination System] 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.

18. Pursuant to the authority granted in Sections 13 and 27 of the Act, 415 ILCS 5/13 and 5/27 (2014), the Illinois Pollution Control Board (the “Board”) has promulgated rules and regulations to control water pollution in Illinois, codified at 35 Ill. Adm. Code, Subtitle C, Chapter 1 (“Board Water Pollution Regulations”).

19. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

- (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.

20. Section 301.240 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.240, provides the following definition:

“CWA” means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the “Clean Water Act”, Public Law 95-217, enacted December 12, 1977, as amended).

21. Section 1362(14) of the CWA, 33 U.S.C.A. § 1362(14), provides the following definition:

The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

22. The Respondent’s discharge of sanitary wastewater from the Bensenville sanitary sewer system on June 13, 2015 into Bensenville Ditch and Silver Creek was a discharge from a point source as defined by Section 1362(14) of the CWA, 33 U.S.C.A. § 1362(14).

23. As of the filing of this Complaint, the Illinois EPA has not issued any NPDES permit to the Respondent for any discharges from the Site.

24. By causing discharges of sanitary wastewater into the Bensenville Ditch and Silver Creek, the Respondent caused, threatened or allowed the discharge of contaminants from a point source into waters of the State without an NPDES permit, and thus violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

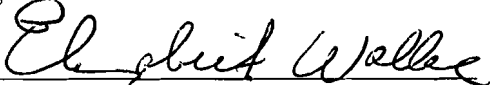
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against the Respondent, KENNY CONSTRUCTION COMPANY, for the following relief:

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) (2014), 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) (2014), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
4. Assessing a civil penalty against the Respondent of Ten Thousand Dollars (\$10,000.00) for each day during which each violation of the Act and any NPDES program-related regulation of the Board continued;
5. Taxing all costs in this action, including, but not limited to, attorney, expert witness and consultant fees, against the Respondent; and

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

PEOPLE OF THE STATE OF ILLINOIS  
ex rel. LISA MADIGAN, Attorney General  
of the State of Illinois

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

BY:   
ELIZABETH WALLACE, Chief  
Environmental Bureau

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