

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|----------------------------------|---|-----------------------|
| PEOPLE OF THE STATE OF ILLINOIS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB NO. |
| |) | (Enforcement - Water) |
| |) | |
| CASEY'S RETAIL COMPANY, |) | |
| an Iowa corporation |) | |
| Respondent. |) | |

NOTICE OF ELECTRONIC FILING

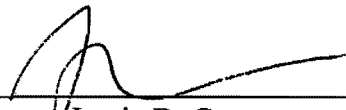
PLEASE TAKE NOTICE that today, June 9, 2016, I have electronically filed with the Office of the Illinois Pollution Control Board the following Complaint, a true and correct copy of which is hereto attached and hereby served upon you.

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.

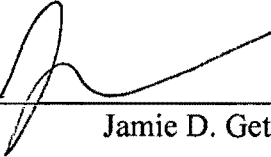
PEOPLE OF THE STATE OF ILLINOIS,
ex. rel. LISA MADIGAN, Attorney General
of the State of Illinois

By:  _____

Jamie D. Getz
Assistant Attorney General
Environmental Bureau
69 W. Washington Street, 18th Floor
Chicago, IL 60602
(312) 814-6986

CERTIFICATE OF SERVICE

I, Jamie Getz, 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, Douglas M. Beech, Casey's General Stores, Inc., One SE Convenience Blvd., Ankeny, IA 50021, by certified mail with return receipt requested and by electronic mail, today, June 9, 2016, prior to the hour of 5:00 p.m.



Jamie D. Getz

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|-----------------------------------|---|-----------------------|
| PEOPLE OF THE STATE OF ILLINOIS |) | |
| by LISA MADIGAN, Attorney |) | |
| General of the State of Illinois, |) | |
| |) | |
| Complainant, |) | No. |
| |) | (Enforcement – Water) |
| v. |) | |
| |) | |
| CASEY’S RETAIL COMPANY, |) | |
| an Iowa corporation, |) | |
| |) | |
| Respondent. |) | |

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 CASEY’S RETAIL COMPANY, 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”), against Respondent, CASEY’S RETAIL COMPANY, an Iowa Corporation (“Respondent”) pursuant to the terms and provisions of 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 by Section 4 of the Act, 415 ILCS 5/4 (2014), charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to the Complaint, Respondent was an Iowa corporation duly authorized to transact business in Illinois.

4. Respondent controlled the construction of a new Casey's General Store, a retail store located at 2950 4th Street, Peru, LaSalle County, Illinois ("Site"). Construction began on or before June 17, 2014, on a date better known to Respondent.

5. Storm water at the Site drains to the City of Peru storm water system which eventually drains into the Illinois River.

6. On June 17, 2014, Illinois EPA conducted an inspection of the Site. At the time of the inspection, unstabilized and disturbed soil were present at the Site, a silt fence used for storm water control was in need of repair, and cement materials from a concrete washout area were deposited on the ground outside of any containment structures.

7. On November 9, 2015, Illinois EPA conducted a follow up inspection of the Site. At the time of the inspection, construction of the Site was complete and soil was completely stabilized.

8. Unstabilized and disturbed soil, which lacks erosion and other control measures, as well as silt and uncontained cement materials, may contaminate storm water.

9. 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.

10. Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), 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.”

11. Respondent, a corporation, is a “person” as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2014).

12. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides the following definition:

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

13. Soil, silt, and cement laden storm water are each a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

14. Section 3.550 of the Act, 415 ILCS 5/3.550 (2014), 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 throughout, or border upon this State.

15. The City of Peru storm water system and the Illinois River are each a “water” of the State of Illinois as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2014).

16. Section 3.545 of the Act, 415 ILCS 5/3.545 (2014), 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.

17. The introduction of soil, silt, and cement laden water into the storm water drain at the Site is the discharge of contaminants into a water of the State as will or is likely to create a nuisance or render such waters harmful or detrimental to public health. It is therefore “water pollution” as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2014).

18. By failing to take measures to prevent soil, silt, and cement laden water from entering the storm sewers at the Site, which drain into the City of Peru storm water system and the Illinois River, Respondent caused, threatened, or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois in violation of 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 in favor of Complainant and against Respondent, CASEY’S RETAIL COMPANY, on 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 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 a civil penalty against the Respondent 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 violation;

5. Assessing all costs against the Respondent, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2014); and

6. Granting such other relief as this Court deems equitable and just.

COUNT II
WATER POLLUTION HAZARD

1-16. Complainant realleges and incorporates herein by reference paragraphs 1 through 8 and 10 through 17 of Count I as paragraphs 1 through 16 of this Count II.

17. 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 a place and manner so as to create a water pollution hazard.

18. Respondent disturbed land by construction activity at the Site and deposited soil, silt, and cement on the land without adequate soil erosion and sediment controls. Storm water could carry soil, silt, and cement from the Site into waters of the State.

19. By depositing soil, silt, and cement upon the land and failing to utilize proper containment and control measures, Respondent created a water pollution hazard, thereby violating 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 in favor of Complainant and against Respondent, CASEY'S RETAIL COMPANY, on this Count II:

1. Authorizing a hearing in this matter, at which time 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 a civil penalty against the Respondent 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 violation;
5. Assessing all costs against the Respondent, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2014); and
6. Granting such other relief as this Court deems equitable and just.

COUNT III
FAILURE TO COMPLY WITH NPDES STORM WATER PERMIT

1-14. Complainant realleges and incorporates herein by reference paragraphs 1 through 8 and 10 through 15 of Count I as paragraphs 1 through 14 of this Count III.

15. The CWA regulates, among other things, the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without a National Pollutant Discharge Elimination System (“NPDES”) permit. The United States Environmental Protection Agency (“USEPA”) administers the NPDES program in each state unless the USEPA has delegated the authority to do so in that State.

16. 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 a NPDES permit and to

implement a Storm Water Pollution Prevention Plan (“SWPPP”) for construction activity including clearing, grading, and excavation. The Illinois EPA is charged with the duty to abate violations of the NPDES permit by Section 1342(b)(7) of the CWA, 33 U.S.C. § 1342(b)(7) (2014).

17. 40 CFR § 122.26(a)(9)(i)(B) provides as follows:

a. Permit Requirement.

* * *

(9)(i) On or 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. . . .

18. 40 CFR § 122.26(b)(15)(1) provides in relevant part as follows:

(b) Definitions.

* * *

(15) Storm water discharge associated with small construction activity means the discharge of storm water from:

(i) 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. . . .

19. Respondent’s construction activity at the Site includes clearing, grading, and excavating land that totals 1.7 acres in area and is therefore a small construction activity as that term is defined in 40 CFR § 122.26(b)(15)(1).

20. On December 15, 2013, Illinois EPA issued Permit No. ILR10S598 to Respondent for the Site. Permit No. ILR10S598 authorizes storm water discharges associated with small construction activity under the General NPDES Permit For Storm Water Discharges

from Construction Site Activities ("General NPDES Permit"). A copy of the General NPDES Permit is attached hereto as Exhibit 1.

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

22. 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 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.

23. 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 the conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into waters of the State from a point source or into a well shall be unlawful.

24. Part V.B of the General NPDES Permit provides as follows:

The permittee shall retain a copy of the storm water pollution prevention plan and any revisions to said plan required by this permit at the construction site from the date of project initiation to the date of final stabilization.

25. At the time of the June 17, 2014 inspection, Respondent failed to have a Storm Water Pollution Prevention Plan (“SWPPP”) present on Site.

26. By failing to have a copy of the SWPPP available during the June 17, 2014 inspection, Respondent failed to comply with Part V.B of the General NPDES Permit.

27. Part IV of the General NPDES Permit, entitled “Storm Water Pollution Prevention Plans,” provides extensive requirements for the contents of a SWPPP, including a site description (IV.D.1), controls (IV.D.2), maintenance (IV.D.3), and inspections (IV.D.4) (See Exhibit 1).

28. After the June 17, 2014 inspection, Illinois EPA reviewed a copy of the Respondent’s SWPPP, which was provided by the Respondent online. Respondent’s SWPPP failed to include an adequate description of appropriate controls to be implemented at the Site, failed to include a description of procedures to maintain the erosion and sediment control measures, and failed to comply with ongoing inspection requirements.

29. By failing to comply with the SWPPP requirements, Respondent failed to comply with Parts IV.D.1-4 of the General NPDES Permit.

30. Part V of the General NPDES Permit, entitled “Retention of Records,” requires permittees to retain copies of the SWPPP and all other reports and notices that are required by the General NPDES permit (See Exhibit 1).

31. At the time of the June 17, 2014 inspection, Respondent did not possess copies of a SWPPP or other reports that are required by the General NPDES permit.

32. Respondent only submitted two single page documents to Illinois EPA which did not include all of the SWPPP requirements as described in paragraph 27, above. By failing to

maintain adequate documentation, Respondent failed to comply with Part V of the General NPDES Permit.

33. By failing to comply with the terms of the General NPDES Permit, as required by Respondent's NPDES Permit No. ILR10S598, Respondent violated Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

34. Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), provides as follows:

- (b) Every holder of an NPDES (National Pollutant Discharge Elimination System) permit is required to comply with the monitoring, sampling, recording and reporting requirements set forth in the permit and this Chapter.

35. Respondent failed to comply with the monitoring, sampling, recording, and reporting requirements set forth in its NPDES Permit in that Respondent failed to maintain a copy of its SWPPP or inspection records on Site at the time of the June 17, 2014 Illinois EPA inspection.

36. By failing to comply with the monitoring, sampling, recording, and reporting requirements set forth in the General NPDES Permit, Respondent violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b).


37. By violating Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a), Respondent thereby also violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2014).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, CASEY'S RETAIL COMPANY, on this Count III:

1. Authorizing a hearing in the matter, at which time 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 Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 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 Sections 305.102(b) and 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b) and 309.102(a);
4. Assessing against the Respondent, pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2014), a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Assessing all costs against the Respondent, including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2014); and
6. Granting such other relief as this Court deems equitable and just.

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

MATTHEW J. DUNN, Chief
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