



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 26, 2008

RECEIVED
CLERK'S OFFICE
SEP 30 2008
STATE OF ILLINOIS
Pollution Control Board

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

PCB09-20

Re: ***People v. Lewis Development, LLC***

Dear Clerk:

Enclosed for filing please find the original and ten copies of a Notice of Filing, Entry of Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Stephen Janasie
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

SJ/pk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

SEP 30 2008

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 LEWIS DEVELOPMENT, LLC)
 an Illinois limited liability corporation,)
)
 Respondent.)

PCB No. 09-20
(Water - Enforcement)

NOTICE OF FILING

To: Lewis Development, LLC
c/o Robert J. Coletta, R.A.
401 Main, Suite 1600
Peoria, IL 61602

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith 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 this 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.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2006), to correct the pollution alleged in the Complaint filed in this case.

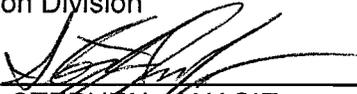
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

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

BY:



STEPHEN JANASIE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 26, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on September 26, 2008, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: Lewis Development, LLC
c/o Robert J. Coletta, R.A.
401 Main, Suite 1600
Peoria, IL 61602

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


STEPHEN JANASIE
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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SEP 30 2008

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
 Complainant,)
 vs.)
)
 LEWIS DEVELOPMENT, LLC)
 an Illinois limited liability corporation, P)
)
 Respondent.)

PCB No. 09-20
(Water - Enforcement)

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, STEPHEN JANASIE, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully 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

BY: 
STEPHEN JANASIE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 26, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant,)
)
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)
 LEWIS DEVELOPMENT, LLC)
 an Illinois limited liability corporation,)
)
 Respondent.)

PCB No. 09-20
(Water-Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, LEWIS DEVELOPMENT, LLC, an Illinois limited liability corporation, as follows:

COUNT I
STORMWATER VIOLATIONS

1. This count is brought on behalf of the People of the State of Illinois, ex rel. Lisa Madigan, the 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 ("the Act"), 415 ILCS 5/31 (2006).

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 (2006), and charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent, Lewis Development, LLC, is an Illinois limited liability corporation registered and in good standing with the Illinois Secretary of State's Office. Michael Lewis is Respondent's manager. Robert J. Coletta, 401 Main, Suite 1600, Peoria, Illinois 61602 is Respondent's registered agent.

4. At all times relevant to this Complaint, Respondent was the owner/developer of Village Grande development ("Site"), a housing development located at the end of Ancient Oaks Drive on the northwest side of Peoria, Illinois.

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

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;

* * *

6. Section 309.102 (a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), contains the following prohibition:

- 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.

7. 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.

8. 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.

9. Silt and sediment are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

10. 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.

11. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without a NPDES permit. The United States Environmental Protection Agency ("USEPA") administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations.

12. Storm water discharges are regulated by 40 CFR 122.26, which requires a person to obtain an NPDES permit and to implement a stormwater pollution prevention plan for construction activity including clearing, grading and excavation:

(a) Permit requirement.

(1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

* * *

(ii) A discharge associated with industrial activity (see § 122.26(a)(4));

* * *

(b) Definitions.

* * *

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. . . . The following categories of facilities are

considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

* * *

(x) Construction activity including clearing, grading and excavation, except operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

* * *

13. At all times relevant to this Complaint, Respondent was engaged in the construction of homes at the Site.

14. On or about June 14, 2002, an Illinois EPA inspector inspected the Site and observed that the Site's inadequate erosion control measures had caused an erosion problem at the Site. The Respondent's inadequate erosion control measures had allowed sediment to deposit in a pond adjacent to the Site ("Pond").

15. On or about April 13, 2004, the Illinois EPA inspector returned to the Site and observed that the Respondent had not maintained erosion control measures at the Site. Respondent's inadequate erosion control measures had continued to allow sediment to deposit in the Pond.

16. On or about June 4, 2004, the Illinois EPA inspector returned to the Site and observed that the Respondent had not maintained erosion control measures at the Site. Respondent's inadequate erosion control measures had continued to allow sediment to deposit in the Pond.

17. The Pond is a water of the State as that term is defined in Section 3.550 of the Act.

18. Respondent's failure to maintain adequate erosion control measures at the Site caused Respondent to deposit silt and sediment from the Site into the Pond. Thus, Respondent caused water pollution in waters of the State, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board deems appropriate.

COUNT II
NPDES PERMIT VIOLATIONS

1-17. Complainant realleges and incorporates herein by reference paragraphs 1 through 4 and paragraphs 7 through 19 of Count I as paragraphs 1 through 17 of this Count II.

18. Section 12(f) of the Act, 415 ILCS 5/12(f) (2006), 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, 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.

* * *

19. At all times relevant to this Complaint, Respondent did not have a general NPDES stormwater permit for the Site as required by 40 CFR 122.26.

20. Respondent has caused or allowed or threatened the discharge of contaminants into waters of the State without a NPDES permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), imposing a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board deems appropriate.

Respectfully 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



BY: _____
THOMAS DAVIS, Chief
Assistant Attorney General

Of Counsel
STEPHEN JANASIE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/ 782-9031
Dated: September 26, 2008