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CLERK'S OFFICE

JUN 23 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. )  
)  
PRAIRIE LANE DEVELOPMENT, L.L.C., )  
an Illinois corporation, )  
)  
Respondent. )

PCB No. 04-225  
(Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List.


PLEASE TAKE NOTICE that on June 23, 2004, the People of the State of Illinois filed with the Illinois Pollution Control Board a Complaint, true and correct copies of which are 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:

  
JENNIFER A. TOMAS  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph Street, Suite 2001  
Chicago, Illinois 60601  
(312) 814-0609

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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 an Illinois corporation, )  
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 Respondent. )

PCB No. 04- 225  
(Enforcement - Water)

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, PRAIRIE LANE DEVELOPMENT, L.L.C. ("Prairie"), 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 Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002), and is an action to restrain ongoing violations of the Act and for civil penalties.

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 (2002), and is charged, *inter alia*, with the duty of enforcing the Act. This Count is brought

pursuant to Section 31 of the Act, 415 ILCS 5/31 (2002).

3. At all times relevant to this Complaint, Prairie was and is an Illinois limited liability corporation registered in good standing with the Illinois Secretary of State's office.

4. Prairie is developing 72.6 acres subdivided into 57 residential home lots known as the Prairie Lane Subdivision. The property is located at the corner of Dawson Lake Road and Caledonia Road, Village of Timberlane, Boone County, Illinois ("Site").

5. On May 23, 2003, the Illinois EPA inspected the Site. There were disturbed areas at 3573 and 3561 Prairie Road at the Site containing no erosion control structures to protect unstable surfaces from eroding. A drainage ditch running between 3569 and 3581 Prairie Road contained noticeable siltation from erosion and a roadside ditch across from 3569 Prairie Road also contained excessive siltation and was bordered by disturbed areas containing no erosion control structures.

6. The two drainage ditches, referenced above, lead to Boone Lake, a private sportsmen's lake.

7. Section 3.545 of the Act, 415 ILCS 5/3.545 (2002), 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 3.315 of the Act, 415 ILCS 5/3.315 (2002), 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.

9. Respondent Prairie is a "person" as that term is defined in 415 ILCS 5/3.315 (2002).

10. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the following definition:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

11. Silt and loose dirt are "contaminants" as that term is defined in 415 ILCS 5/3.165 (2002).

12. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), 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.

13. The drainage ditches which flow into Boone Lake and Boone Lake itself are "waters" as that term is defined in 415 ILCS 5/3.550 (2002).

14. Section 12(a) of the Act, 415 ILCS 5/12(a) (2002),

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.

15. By allowing unstabilized areas to remain unprotected from erosion by runoff control structures, thereby causing, threatening and allowing silt-laden stormwater runoff, Prairie caused, threatened or allowed water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, PRAIRIE LANE DEVELOPMENT, L.L.C., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002);
3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2002);
4. Order Respondent to remediate the environmental damage caused to the waters of the State of Illinois;
5. Assess against the Respondent a civil penalty of Fifty

Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Grant such other relief as the Board deems appropriate and just.

COUNT II  
WATER POLLUTION HAZARD

1-13. Complainant realleges and incorporates by reference Paragraphs 1 through 13 of Count I as Paragraphs 1 through 13 of this Count II.

14. Section 12(d) of the Act, 415 ILCS 5/12(d)(2002), states 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.

15. By depositing contaminants on the land in such place and manner as to create a water pollution hazard to waters of the State, Prairie is in violation of Section 12(d) of the Act, 415 ILCS 5/12(d)(2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS,

respectfully requests that the Board enter an order against Respondent, PRAIRIE LANE DEVELOPMENT, L.L.C., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2002);
3. Order Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2002);
4. Order Respondent to remediate the environmental damage caused to the waters of the State of Illinois;
5. Assess against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Grant such other relief as the Board deems appropriate and just.

**COUNT III**  
**VIOLATIONS OF NATIONAL POLLUTANT DISCHARGE**  
**ELIMINATION SYSTEM PERMIT**

1-13. Complainant realleges and incorporates by



reference Paragraphs 1 through 13 of Count I as Paragraphs 1 through 13 of this Count III.

14. Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), 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.

15. Section 309.102(a) of the Board's 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.

16. Pursuant to Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Section 309.102(a) of the Board's Water Pollution regulations, 35 Ill. Adm. Code 309.102(a), Respondent is required to obtain coverage under the general National Pollutant Discharge Elimination System ("NPDES") stormwater

permit for construction site activities ("general NPDES stormwater permit"). Pursuant to the terms of the general NPDES stormwater permit, Respondent was to have applied for coverage under the permit no later than thirty (30) days prior to initiating construction activities at the Site.

17. Prairie had not obtained coverage under the general stormwater NPDES permit for the Site when the Illinois EPA inspected the Site on May 23, 2003.

18. By performing construction activities at the Site without first obtaining coverage under the general NPDES storm water permit and thereby causing, threatening or allowing the deposit of contaminants into waters of the State, Prairie violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Section 309.102(a) of the Board's Water Pollution regulations.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, PRAIRIE LANE DEVELOPMENT, L.L.C., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Section 309.102(a) of the Board's Water Pollution regulations, 35 Ill. Adm. Code 309.102(a);

3. Order Respondent to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2002), and Section 309.102(a) of the Board's Water Pollution regulations, 35 Ill. Adm. Code 309.102(a);

4. Order Respondent to remediate the environmental damage caused to the waters of the State of Illinois;

5. Assess against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each violation;

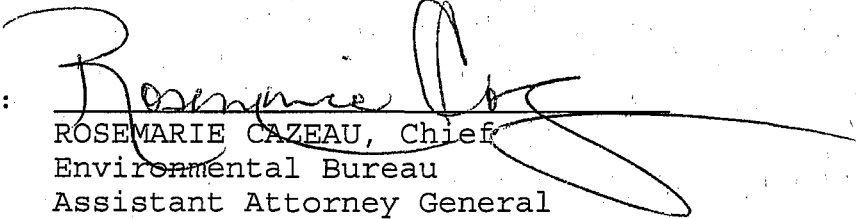
6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2002), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Grant 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:

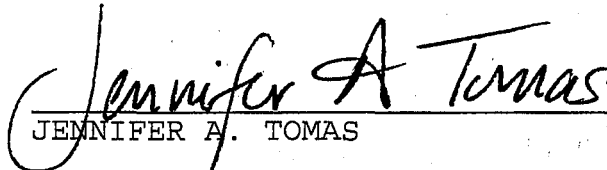
  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:

Jennifer A. Tomas  
Assistant Attorney General  
Environmental Bureau  
188 West Randolph Street, Suite 2001  
Chicago, Illinois 60601  
(312) 814-0609

CERTIFICATE OF SERVICE

I, JENNIFER A. TOMAS, an Assistant Attorney General, certify that on the 23<sup>rd</sup> day of June 2004, I caused to be served by First Class Mail the foregoing Complaint to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
JENNIFER A. TOMAS