

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
vs.)
)
HOME DEPOT U.S.A., INC.,)
a Delaware corporation,)
)
Respondent.)

RECEIVED
CLERK'S OFFICE

MAR 15 2005

PCB No. 05- 168
(Enforcement - W.P. 0183)
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

TO: Andrew H. Perellis
Seyfarth Shaw LLP
55 East Monroe Street, Suite 4200
Chicago, Illinois 60603-5803

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a Complaint, Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "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,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General
State of Illinois

BY: Zemeheret Bereket-AB
ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, IL 60601
(312) 814-3816

DATE: March 15, 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
ex rel. LISA MADIGAN, Attorney General)
of the State of Illinois,)
)
Complainant,)
)
v.)
)
HOME DEPOT U.S.A., INC.,)
A Delaware corporation,)
)
Respondent.)

RECEIVED
CLERK'S OFFICE

MAR 15 2005

STATE OF ILLINOIS
Pollution Control Board

PCB No. 05-168
(Enforcement - Public Water Supply)

COMPLAINT

NOW COMES THE Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and complains of Respondent, THE HOME DEPOT U.S.A., INC., as follows:

COUNT I

FAILURE TO OBTAIN A CONSTRUCTION PERMIT

1. This complaint is brought pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002), 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.

2. The Illinois Environmental Protection Agency ("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 charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent, The Home Depot U.S.A., Inc. ("Home Depot") is a Delaware corporation authorized to transact business in the State of Illinois and in good standing.

4. At all times relevant to this Complaint, Home Depot was engaged in the construction of a new Home Depot store number 1989, located on 143rd Street and Bell Road, Homer Township, Will County, Illinois ("construction site" or "project").

5. On August 31, 2003, Home Depot, through Illinois American Water Company, applied for a construction permit for the installation of an 88 linear feet of 6-inch water main extension and 2,303 linear feet of 10-inch main to serve its new Home Depot store at the construction site.

6. On September 5, 2003, the Illinois EPA inspected the construction site and discovered that the Home Depot had already installed the water main without first obtaining the required construction permit from the Illinois EPA.

7. On October 1, 2003, the Illinois EPA issued "As-Built" Plans Construction Permit No. 0431-FY2004 to Home Depot.

8. Section 15(a) of the Act, 415 ILCS 5/15(a) (2002), titled, Plans and Specifications; Demonstration of Capability, provides as follows:

- (a) Owners of public water supplies, their authorized representative, or legal custodians, shall submit plans and specifications to the Agency and obtain written approval before construction of any proposed public water supply installations, changes, or additions is started. Plans and specifications shall be complete and of sufficient detail to show all proposed construction, changes, or additions that may affect sanitary quality, mineral quality, or adequacy of the public water supply; and, where necessary, said plans and specifications shall be accompanied by

supplemental data as may be required by the Agency to permit a complete review thereof.

9. Section 602.101(a) of the Board Public Water Supply Regulations, 35 Ill. Adm. Code 602.101, titled, Construction Permit, provides as follows:

No person shall cause or allow the construction of any new public water supply installation or cause or allow the change of or addition to any existing public water supply, without a construction permit issued by the Agency. Public water supply installation, change, or addition shall not include routine maintenance, service pipe connections, hydrants and valves, or replacement of equipment, pipe, and appurtenances with equivalent equipment, pipe, and appurtenances.

10. Section 3.315 of the Act, 415 ILCS 5/3.315 (2002), defines person 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.

11. Home Depot, a corporation, is a person as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2002).

12. Section 3.365 of the Act, 415 ILCS 5/3.365 (2002), defines public water supply as follows:

“PUBLIC WATER SUPPLY” means all mains, pipes and structures through which water is obtained and distributed to the public, including wells and well structures, intakes and cribs, pumping stations, treatment plans, reservoirs, storage tanks and appurtenances, collectively or severally, actually used or intended for use for the purpose of furnishing water for drinking or general domestic use and which serve at least 15 service connections or which regularly serve at least 25 persons at least 60 days per year. A public water supply is either a “community water supply” or a “non-community water supply”.

13. Section 3.145 of the Act, 415 5/3.145 (2002), defines community water supply as follows:

“COMMUNITY WATER SUPPLY” means a public water supply which serves or is intended to serve at least 15 service connections used by residents or regularly serves at least 25 residents.

14. The water mains at issue are a public water supply, as the mains are structures through which water is obtained and distributed to the public and as it serves more than 15 service connections which regularly serve more than 25 persons as defined in Sections 3.365 and 3.145 of the Act, 415 ILCS 5/3.365 and 3.145 (2002).

15. As a person causing or allowing the construction of a public water supply, Respondent is required to first obtain a construction permit from the Illinois EPA prior to beginning construction of any water main.

16. Respondent constructed and installed 88 feet of 6-inch water main and 2,303 linear feet of 10-inch main without first obtaining a construction permit from the Illinois EPA.

17. By constructing and installing a water main at the construction site without first obtaining a construction permit from the Illinois EPA, Respondent violated Section 15(a) of the Act, 415 ILCS 5/15(a) (2002) and 35 Ill. Adm. Code 602.101(a).

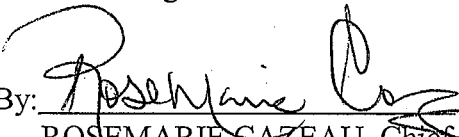
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent and in favor of Complainant:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 15(a) of the Act and 35 Ill. Adm. Code 602.101(a);
3. Ordering Respondent from further violations of Section 15(a) of the Act and 35 Ill. Adm. Code 602.101(a);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act and Board regulations, with an additional civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation;
5. Taxing all costs in this action, including 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
LISA MADIGAN, Attorney General
State of Illinois

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

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

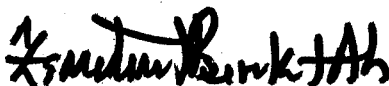
Of Counsel:

ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau North
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601
(312) 814-3816
(312) 814-2347 - fax

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served the attached Complaint, Notice of Filing, and Certificate of Service via United States Postal certified mail upon the following person:

Andrew H. Perellis
Seyfarth Shaw LLP
55 East Monroe Street, Suite 4200
Chicago, Illinois 60603-5803



ZEMEHERET BEREKET-AB
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Flr.
Chicago, Illinois 60601