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JUN 14 2005

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 10, 2005

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

PLB05-214

Re: ***People v. Barry Hayden, d/b/a Hayden Properties***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, COMPLAINT and APPEARANCE in regard to the above-captioned matter. Please file the originals and return file-stamped copies of the documents to our office in the enclosed, self-addressed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kristen Laughridge".

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

KL/pp
Enclosures

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JUN 14 2005

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
BARRY HAYDEN,)
d/b/a HAYDEN PROPERTIES,)
)
Respondent.)

PCB No. *05-214*
(Enforcement)

NOTICE OF FILING

To: Mr. Barry Hayden
Hayden Properties
122 Lincoln Place Court
Suite 202
Belleville, IL 62221

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 (2002), to correct the pollution alleged in the Complaint filed in this case.

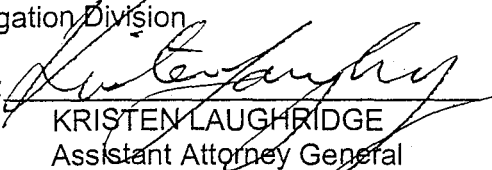
Respectfully submitted,

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:


KRISTEN LAUGHRIDGE
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 10, 2005

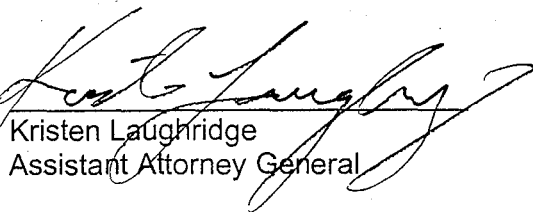
CERTIFICATE OF SERVICE

I hereby certify that I did on June 10, 2005, 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: Mr. Barry Hayden
Hayden Properties
122 Lincoln Place Court
Suite 202
Belleville, IL 62221

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

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601


Kristen Laughridge
Assistant Attorney General

This filing is submitted on recycled paper.

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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d/b/a HAYDEN PROPERTIES,)
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Respondent.)

PCB No. 05-214
(Enforcement)

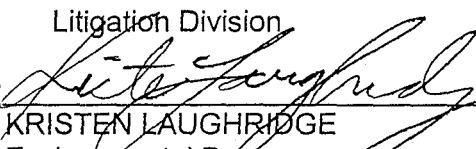
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, KRISTEN LAUGHRIDGE, 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: 
KRISTEN LAUGHRIDGE
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 10, 2005

JUN 14 2005

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 BARRY HAYDEN d/b/a HAYDEN PROPERTIES,)
)
 Respondent.)

PCB NO. 05-214
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, BARRY HAYDEN d/b/a HAYDEN PROPERTIES, as follows:

COUNT I
WATER POLLUTION

1. This Complaint is brought by the Attorney General on her own motion, pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2002).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly under Section 4 of the Act, 415 ILCS 5/4 (2002), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. Barry Hayden is a developer doing business as "Hayden Properties" and, in or about September 2003, commenced construction of homes in the Cedar Creek Subdivision near State route 158 and Biehl Road in St. Clair County, Illinois.

4. Section 12 of the Act, 415 ILCS 5/12 (2002), provides, in pertinent part, 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.

* * *

- (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.

* * *

5. 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.

6. The federal Clean Water Act regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without an 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.

7. 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));

* * *

(4) Discharges through large and medium municipal separate storm sewer systems. . . .

* * *

(9) (i) On and 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 a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

* * *

(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 of total land area that is a part of a larger common plan of development or sale if the larger common plan will ultimately disturb five

acres or more;

* * *

(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. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

* * *

8. On March 11, 2004, the Illinois EPA inspected the Cedar Creek Subdivision near State route 158 and Biehl Road in St. Clair County, Illinois. Five homes were under construction on a site of less than 5 acres and there were no adequate erosion controls in place. Barry Hayden had not obtained coverage under the State's general storm water NPDES permit.

9. Illinois EPA observed ongoing construction activities including clearing, grading, and excavating that had resulted in land disturbance of equal to or greater than one acre and less than five acres. The activities and site conditions threatened the discharge of silt and other contaminants from a point source into waters of the State so as to cause or tend to cause water pollution by creating a nuisance.

10. On March 18, 2004, the Respondent submitted a notice of intent for coverage under the State's general storm water NPDES permit to the Illinois EPA, which granted authorization on April 19, 2004.

11. Commencing on some date prior to March 11, 2004, and continuing until the subsequent implementation of a stormwater pollution prevention plan, the Respondent threatened the discharge of silt and other contaminants from the construction site into waters of the State so as to cause or tend to cause water pollution by creating a nuisance.

12. By so threatening to cause water pollution, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, BARRY HAYDEN:

- 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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose upon the Respondent a monetary penalty of not more than the statutory maximum; and
- D. Grant such other and further relief as the Board deems appropriate.

COUNT II
NPDES PERMIT VIOLATIONS

1-10. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 10 of Count I as paragraphs 1 through 10 of this Count II.

11. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), requires an NPDES permit:

Except as in compliance with the provisions of the Act, Board regulations, and the CWA [Clean Water Act], 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.

12. The activities and site conditions threatened the discharge of silt and other contaminants from a point source into waters of the State without an NPDES permit.

13. By threatening the discharge of contaminants into waters of the State without an NPDES permit, the 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) (2002).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against the Respondent, BARRY HAYDEN

- 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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2002), impose upon the Respondent a monetary penalty of not more than the statutory maximum; and
- D. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

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: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

KRISTEN LAUGHRIDGE
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 6/09/05