



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 16, 2006

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MAY 18 2006
STATE OF ILLINOIS
Pollution Control Board

PCB06-175

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

Re: ***People v. Tres Amigos Properties, LLC***

Dear Clerk Gunn:

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,

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

JB/pp
Enclosures

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CLERK'S OFFICE

MAY 18 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 TRES AMIGOS PROPERTIES, LLC,)
 an Illinois limited liability company,)
)
 Respondent.)

PCB No. *06-175*
(Enforcement)

NOTICE OF FILING

To: R. Lee Allen
607 East Adams Street, Suite 800
Springfield, Illinois 62701

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.

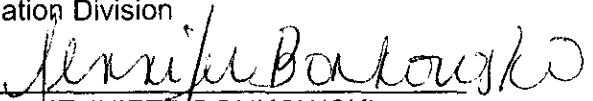
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2004), to correct the pollution alleged in the Complaint filed in this case.

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: 
JENNIFER BONKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 16, 2006


CERTIFICATE OF SERVICE

I hereby certify that I did on May 16, 2006, 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: R. Lee Allen
607 East Adams Street, Suite 800
Springfield, Illinois 62701

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


Jennifer Bonkowski
Assistant Attorney General

This filing is submitted on recycled paper.

5. Tres is the owner of the Hilton Garden Inn construction site ("site"), a 2.5 acre parcel located at 3100 South Dirksen Parkway, Springfield, Sangamon County, Illinois.

6. Tres was issued coverage under the NPDES general stormwater permit by the Illinois EPA on June 1, 2004.

7. Section 12 of the Act, 415 ILCS 5/12 (2004), provides the following prohibitions:

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.

* * *

8. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides:

- a) Except as in compliance with the provision 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.

9. The NPDES general stormwater permit requires Tres to implement the provisions of a storm water pollution prevention plan at the construction site, including erosion control measures.

10. On October 19, 2004, the Illinois EPA inspected the site to evaluate Tres' compliance with the NPDES Permit. Minimal erosion controls were in place, but were inadequate to prevent silt-laden discharge from flowing through the site's chain-link fence

towards I-55, onto Dirksen Parkway, and into several storm inlets on the site. These discharges would eventually be carried by storm water to an unnamed tributary of Sugar Creek.

11. By causing or allowing or threatening the discharge of contaminants into waters of the State in violation of the terms or conditions of its NPDES Permit, Tres has thereby violated Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

12. By failing to maintain adequate erosion controls at its site to prevent silt-laden storm water discharges as required by its NPDES Permit, Tres has caused, threatened or allowed the discharge of any contaminant into the waters of the State in violation of its NPDES permit, and has thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, TRES AMIGOS PROPERTIES, LLC, an Illinois limited liability company:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that 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. Assessing against Respondent a civil penalty of up to ten thousand dollars (\$10,000) per day of violation; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT II
FAILURE TO OBTAIN A CONSTRUCTION PERMIT

1-6. Complainant realleges and incorporates herein by reference paragraphs 1 through 6 of Count I as paragraphs 1 through 6 of this Count II.

7. Section 12(b) of the Act, 415 ILCS 5/12(b) (2004), provides as follows:

Sec. 12. Actions prohibited.

* * *

(b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

8. Section 309.154 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.154, states:

- a) No person shall cause or allow the construction of any new treatment works, disposal well or wastewater source for which an NPDES Permit is required or cause or allow the modification of any existing treatment works, disposal well or wastewater source for which an NPDES Permit is required unless such NPDES Permit contains an authorization to construct as a condition of such permit.
- b) Any holder of a valid NPDES Permit who proposes or is required as a condition of such NPDES Permit or of any order of the Pollution Control Board to construct or modify any treatment works, disposal well, wastewater source, or process modification which results in new or increased discharges of pollutants, shall complete, sign and submit an NPDES application for such construction or modification, in accordance with the instructions provided with the form, no later than 180 days in advance of the date on which construction or modification is to begin. No person shall commence construction until the holder of the NPDES Permit shall have received a modification to the NPDES Permit, or a new NPDES Permit if required, which contains an authorization to construct as a condition of such permit.
- c) The Agency shall not issue any authorization to construct unless the applicant submits adequate proof, including any of the

information or documents set forth in Section 309.221 as the Agency may require, which ensures that the proposed construction, modification or operation

- 1) Either conforms to the criteria promulgated by the Agency under Section 309.221 or is based on other criteria which the applicant proves will produce consistently satisfactory results; and
- 2) Will not cause a violation of the conditions of the NPDES Permit.

9. As of October 18, 2004, Tres had not obtained a construction permit from the Illinois EPA to connect the Hilton Garden Inn to the Springfield Sewer System.

10. As of October 18, 2004, the connection from the site to the Springfield sewer system had been made.

11. Tres' NPDES Permit does not contain an authorization to construct as a condition of the permit.

12. By failing to obtain a construction permit for connection of the site to the Springfield sewer system, Tres has violated Section 309.154 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.154, and Section 12(b) of the Act, 415 ILCS 5/12(b) (2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, TRES AMIGOS PROPERTIES, LLC, an Illinois limited liability company:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that 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. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

E. Granting such other relief as the Board may deem 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

Of Counsel:
JENNIFER BONKOWSKI
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: 5/16/06