

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
- vs -	)	PCB No. 06-
	)	(Enforcement - Water)
LAZAR BROTHERS TRUCKING, INC.,	)	
an Illinois corporation,	)	
	)	
Respondent.	)	

**NOTICE OF FILING**

TO: See Attached Service List (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is 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.

**NOTIFICATION**

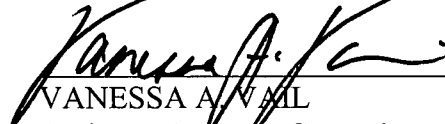
YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental facilities financing act [20 ILCS 3515/1 *et seq.*] to correct the alleged pollution.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN  
Attorney General of the State of Illinois

BY:

  
 \_\_\_\_\_  
 VANESSA A. VAIL  
 Assistant Attorney General  
 Environmental Bureau  
 188 W. Randolph St., 20<sup>th</sup> Floor  
 Chicago, Illinois 60601  
 312-814-5361

DATE: June 6, 2006

**SERVICE LIST**

**Registered Agent for Respondent**

Mr. Nicholas J. Harlovic  
Harlovic and Perko  
116 West Main Street  
West Dundee, Illinois 60118



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 (2004), and is charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to abate violations of the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act ("CWA"), 33 U.S.C. § 1342(b)(7) (2004).

3. At all times relevant to this Complaint, Respondent, Lazar Brothers Trucking, Inc. ("Lazar Bros."), was and is an Illinois corporation duly authorized to conduct business in Illinois. Lazar Bros. operates a trucking facility located at 91 Sola Drive, Gilberts, Kane County, Illinois ("Site").

4. The Site consists of approximately two (2) acres.

5. On November 19, 2004, the Illinois EPA conducted an inspection of the Site. During the inspection, Illinois EPA inspectors observed that a sanitary sewer had been constructed at the Site. During the inspection, the Illinois EPA also observed disturbed surfaces and piles of excavated soils, and that portions of the Site had been graded but not stabilized. Storm water run-off flows into storm sewer inlets on the Site, which then flows to Tyler Creek through the storm sewer system.

6. Upon information and belief, earthwork activities associated with general construction of a commercial building at

the Site occurred from approximately May 2002 through the summer of 2003, and sewer construction activities occurred from the summer of 2003 through the fall of 2003, followed by final construction activities in March 2005.

7. During the period of construction activities, there were no runoff control structures constructed at the Site to control the runoff from construction activities into the storm sewer inlets and Tyler Creek.

8. On April 12, 2005, the Illinois EPA issued an National Pollutant Discharge Elimination System General Storm Water Permit for Construction Activities ("NPDES Storm Water Permit") for storm water discharges associated with the construction activities at the Site. The application indicated that Respondent began construction activities on November 1, 2003.

9. Upon information and belief, the Site has been stabilized and erosion control has been implemented.

10. Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), 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.

11. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), provides 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.

12. Respondent Lazar Bros., a corporation, is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

13. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides as follows:

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

14. The silt, sediment, and other solid material exposed in the disturbed surfaces and piles of excavated soils at the Site are "contaminants" as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2004).

15. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), provides as follows:

"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.

16. Storm sewers and Tyler Creek are "waters" of the State of Illinois, as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004).

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

18. In pertinent part, 40 CFR 122.26, provides as follows:

(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));

\* \* \*

- (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.

\* \* \*

- (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. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility. . . .

19. From at least May 2002 through the fall of 2003, and in March 2005, Respondent performed small construction



activities at the Site without applying for an NPDES Storm Water Permit.

20. By performing small construction activities without an NPDES Storm Water Permit, Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, LAZAR BROTHERS TRUCKING, INC., on this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;

2. Finding that the Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004);

3. Ordering the Respondent to cease and desist from any future violations of Section 12(f) of the Act;

4. Assessing a civil penalty of Ten Thousand Dollars (\$10,000) per day for each violation of Section 12(f) of the Act against the Respondent;

5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II

FAILURE TO OBTAIN CONSTRUCTION PERMITS

1-16. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 16 of Count I as paragraphs 1 through 16 of this Count II.

17. On January 20, 2005, Illinois EPA issued a sewer operation permit to the Village of Gilberts to operate 480 feet of a 24-inch sanitary sewer and 4 manholes to serve one commercial building at the Site. Discharge from the sanitary sewer is to an existing 24-inch sanitary sewer tributary to Gilberts Sewage Treatment Plant.

18. Section 12(b) of the Act, 415 ILCS 5/12(b) (2004), provides, in pertinent part, as follows:

No person shall:

- (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.

19. Section 309.202(a) of the Illinois Pollution Control Board ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a), provides as follows:

Except for treatment works or wastewater sources which have or will have discharges for which NPDES Permits are required, and for which NPDES Permits have been issued by the Agency:

- a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency, except as provided in paragraph (b).

20. Section 301.265 of the Board regulations, 35 Ill. Adm.

Code 301.265, provides the following definition:

"Construction" means commencement of on-site fabrication, erection, or installation of a treatment works, sewer, or wastewater source; or the reinstallation at a new site of any existing treatment works, sewer, or wastewater source.

21. Section 301.390 of the Board regulations, 35 Ill. Adm.

Code 301.390, provides the following definition:

"Sewer" means a stationary means of transport or stationary system of transport, excluding natural waterways, constructed and operated for the purpose of collecting and transporting wastewater or land runoff, or both.

22. From approximately the summer of 2003 through the fall of 2003, followed by final construction activities in March 2005, on dates better known to Lazar Bros., Respondent constructed a sewer at the Site without the required construction permit.

23. By failing to obtain a permit from the Illinois EPA prior to constructing the sewer at the Site, Respondent violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2004), and Section 309.202(a) of the Board Water Regulations, 35 Ill. Adm. Code 309.202(a).

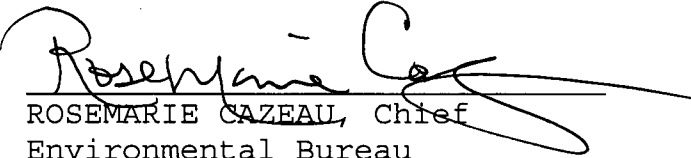
WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against Respondent, LAZAR BROTHERS TRUCKING, INC., on this Count II:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that the Respondent violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2004), and 35 Ill. Adm. Code 309.202(a);
3. Ordering the Respondent to cease and desist from any future violations of Section 12(b) of the Act, and 35 Ill. Adm. Code 309.202(a);
4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against the Respondent for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000) for each day of violation;
5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2004), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,  
by LISA MADIGAN, Attorney  
General of the State of Illinois

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

By:



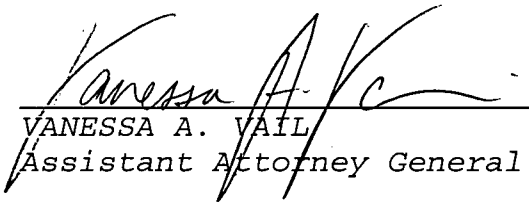
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

Of Counsel:

Vanessa A. Vail  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph Street, Suite 2001  
Chicago, Illinois 60601  
(312) 814-5361

CERTIFICATE OF SERVICE

I, VANESSA A. VAIL, an attorney, do certify that I caused to be served this 6th day of June 2006, the foregoing Complaint and Notice of Filing upon the persons listed on said Notice, by Certified Mail and U.S. MAIL.

  
VANESSA A. VAIL  
Assistant Attorney General