

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAR 28 2008

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 DISTINCTIVE HOMES, LTD., an Illinois limited)
 liability corporation, and DISTINCTIVE)
 COMPANIES, LTD., an Illinois limited liability)
 corporation,)
)
 Respondents.)

PCB No. 08-45


(Enforcement - Water)

NOTICE OF FILING

TO: Nancy J. Tikalsky
 Assistant Attorney General
 Environmental Bureau
 69 W. Washington
 Suite 1800
 Chicago, Illinois 60602

Pollution Control Board
 Attn: Clerk
 100 West Randolph Street
 James R. Thompson Center, Suite 11-500
 Chicago, Illinois 60601-3218

PLEASE TAKE NOTICE that today, March 27, 2008, I have filed with the Office of the Clerk of the Illinois Pollution Control Board Respondents' Appearance and Answer to Complaint, a true and correct copy of which is attached and hereby served upon you.


 One of the attorneys for Respondent

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STATE OF ILLINOIS
Pollution Control Board

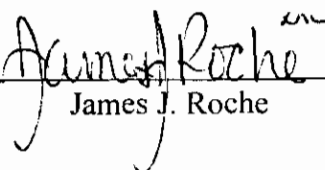
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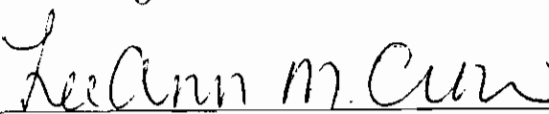
(Enforcement - Water)

APPEARANCE

The undersigned, as attorneys, enters the appearance of Respondents, DISTINCTIVE HOMES, LTD. and DISTINCTIVE COMPANIES, LTC.



 James J. Roche

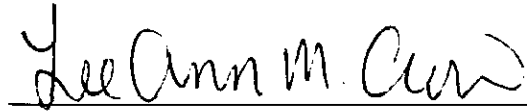


 LeeAnn M. Crow

JAMES J. ROCHE & ASSOCIATES
 Attorneys for Respondents
 642 North Dearborn
 Chicago, Illinois 60610
 (312)335-0044
 f:(312)335-9009

Certificate of Service

I, LeeAnn M. Crow, an attorney for Respondents, do certify that a true and correct copy of Respondents' Appearance and Answer to Complaint were sent by regular U.S Mail to the persons listed on the Notice of Filing on March 27, 2008.

A handwritten signature in black ink that reads "LeeAnn M. Crow". The signature is written in a cursive style with a horizontal line underneath it.

LeeAnn M. Crow as attorney for Respondents

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant,)
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RESPONDENT'S ANSWER TO COMPLAINT FOR
INJUNCTIVE RELIEF AND CIVIL PENALTIES

Respondents, DISTINCTIVE HOMES, LTD. and DISTINCTIVE COMPANIES, LTD., by and
through their attorneys, JAMES J. ROCHE & ASSOCIATES, in response to the PEOPLE OF THE
STATE OF ILLINOIS' Complaint for Injunctive Relief and Civil Penalties, state as follows:

COUNT 1

Failure to Obtain a Construction Permit

1. This count 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 EPA, pursuant to Section 42 of the Illinois Environmental Protection Act ("Act"), 415 ILCS
5/42 (2006).

ANSWER: Respondents have insufficient information or knowledge to either admit or deny the
allegation above, and so denies same.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in

Section 4 of the Act, 425 ILCS 5/4 (2006) and 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 Elimination System (“NPDES”) permit program under the Federal Clean Water Act (“CWA”), 33 U.S.C. § 1342(b)(7)(2006).

ANSWER: Respondents have insufficient information or knowledge to either admit or deny the allegation above, and so denies same.

3. At all times relevant to this complaint, Respondents, Distinctive Homes, Ltd. and Distinctive Companies, Ltd. (collectively “Distinctive”) have been and are Illinois limited liability corporations in good standing and duly authorized to do business in the State of Illinois. Their corporate office is located at 18304 Distinctive Drive, Orland Park, Cook County, Illinois.

ANSWER: Admit.

4. Distinctive owns Villas of Fountain Hills, a 38 acre residential development with 77 residential lots located at Wold Road one block south of 179th Street in the Village of Orland Park, Cook County, Illinois (“Site”).

ANSWER: Admit.

5. Storm water from the Site discharges to an unnamed tributary of Marley Creek.

ANSWER: Admit.

6. From approximately October 2001 through July 2003, or on a date or dates better known to Respondents, Respondents engaged in the construction and installation of 216 feet of 6" sanitary sewer service connection and 5,260 feet of 8" sanitary sewer extensions at the Site (collectively “sanitary sewer lines”).

ANSWER: Admit.

7. On or about August 2003, or **dates** better known to Respondents, **Respondents** began operating 216 feet of 6" sanitary sewer service connection and 5,260 feet of 8" sanitary sewer extensions at the Site.

ANSWER: Admit.

8. On September 1, 2006, the Illinois EPA conducted an inspection of the Site ("September 2006 Inspection").

ANSWER: Admit.

9. On September 8, 2006, the Illinois EPA confirmed that Respondent did not have a construction permit for the sanitary sewers issued by the Illinois EPA.

ANSWER: Respondents have insufficient information or knowledge to either admit or deny the allegation above, and so denies same.

10. On March 2, 2007, the Illinois EPA issued Respondents an "as-built" construction permit for the construction of the sanitary sewers at the Site.

ANSWER: Admit.

11. Respondents' ownership and development of the Site are subject to the Act and the rules and regulation promulgated by the Illinois Pollution Control Board ("Board") and the Illinois EPA. The Board's regulations for water pollution are found in Title 35, Subtitle C, Chapter I of the Illinois Administrative Code ("Board Water Pollution Regulations").

ANSWER: Admit.

12. Section 12 (b) of the Act, 415 ILCS 5/12(b)(2006), 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 designed to prevent water **pollution of any type** designated by the Board **regulations**, without a permit granted by the Agency, or in **violation** of any conditions imposed by **such** permit.

ANSWER: Admit.

13. Section 3.315 of the Act, 415 ILCS 5/3/315 (2006), 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.

ANSWER: Admit.

14. Distinctive Homes, Ltd. and Distinctive Homes, Ltd. are “persons” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3/315 (2006).

ANSWER: Admit.

15. The sanitary sewer lines at the Site are equipment or facilities designed to prevent water pollution by conveying house water, a contaminant to a wastewater treatment plant for treatment.

ANSWER: Admit.

16. Section 3.545 of the Act, 415 ILCS 5/3.545 (2006), 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.

ANSWER: Admit.

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2006) provides the following definition:

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

ANSWER: Admit.

18. Untreated wastewater that flows through the sanitary sewer lines is a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

ANSWER: Admit.

19. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006) contains 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.

ANSWER: Admit.

20. The sanitary sewers, the unnamed tributary to Marley Creek and Marley Creek are each a “water” of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2006).

ANSWER: Admit.

21. Section 309.202(a) of the board Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a) provides as follows:

Construction Permits

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).

ANSWER: Admit.

22. Section 301.390 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.390, provides as follows:

“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.

ANSWER: Admit.

23. The sanitary sewer lines, which are a stationary system of transport constructed and operated for the purpose of transporting wastewater, are a “sewer” as that term is defined in Section 301.390 of the board Water Pollution Regulations, 35 Ill. Adm. Code 301.390.

ANSWER: Admit.

24. By constructing, installing and operating the sanitary sewer at the Site without a construction permit from the Illinois EPA, Respondents, Distinctive, violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2006), and Section 309.202(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a).

ANSWER: Respondents deny each and every allegation set forth in Paragraph 24.

COUNT II

Failure To Obtain A NPDES General Storm Water Permit

1-13. Complainant realleges and incorporates by reference herein Paragraphs 1 through 5, 8, 11, 13 through 14, 16 through 17 and 19 through 20 of Count I as Paragraphs 1 through 13 of this Count II.

ANSWER: Respondents incorporate by reference herein their answers to Paragraphs 1 through 5, 8, 11, 13 through 14, 16 through 17 and 19 through 20 of this Complaint.

14. From approximately August 2001 through January 12, 2007, or on a date or dates better known to Respondents, Respondents engaged in the construction of a residential development, including

the clearing of large areas of land of all vegetation and creating piles of soil on the 38-acre Site.

ANSWER: Admit.

15. Prior to beginning the construction in August 2001, or on a date better known to Respondents, Respondents obtain NPDES general storm water permit no. ILR106470 from the Illinois EPA for the Site.

ANSWER: Admit.

16. On August 31, 2001, or on a date better known to Respondents, respondents began construction activities at the Site.

ANSWER: Admit.

17. On April 1, 2004, Respondents submitted a written Notice of Termination to the Illinois EPA requesting that its coverage under the NPDES general storm water permit no. ILR106470 for the Site be terminated. In August 2004 correspondence to the Illinois EPA, Respondent iterated their request to terminate its NPDES general storm water permit to ILR106470 for the site, citing its submission of their Notice of Termination dated April 1, 2004.

ANSWER: Admit.

18. At the time of the September 2006 Inspection, the Site was not covered by an NPDES general storm water permit nor was there an application pending with the Illinois EPA for an NPDES permit for construction activities at the Site.

ANSWER: Respondents have insufficient information or knowledge to either admit or deny the allegation above, and so denies same.

19. On January 12, 2007, the Respondents submitted to the Illinois EPA an application for an NPDES general storm water permit for the Site.

ANSWER: Admit.

20. In February 2007, the Illinois EPA issued to Respondents an NPDES general storm water permit for the Site.

ANSWER: Admit.

21. Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), 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, any 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 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.

ANSWER: Admit.

22. Sediment laden storm water is a “contaminant” as that term is defined Section 3.165 of the Act, 415 ILCS 5/3.165 (2006).

ANSWER: Respondents deny the allegation contained in Paragraph 22.

23. The CWA 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.

ANSWER. Respondents have insufficient information or knowledge to either admit or deny the allegation above, and so denies same.

24. 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.

ANSWER: Admit.

25. In pertinent part, 40 CFR 122.26(a) provides as follows:

(a) Permit requirement.

* * *

(1) Prior to October 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

* * *

(ii) A discharge associated with industrial activity;

ANSWER: Admit.

26. In pertinent part, 40 CFR 122.26(b) provides as follows:

* * *

(b) Definitions.

14) Storm water discharge associated with industrial activity means the discharge of storm water from any conveyance that is used for collecting and conveying storm water:

x) Construction activity including clearing, grading and excavating, except operations that result in 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 part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

ANSWER: Admit.

27. Section 309.102(a) of the board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

NPDES Permit Required

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.

ANSWER: Admit.

28. By Disturbing over five acres of land at the Site without first obtaining coverage under the NPDES general storm water permit for construction activities prior to clearing large areas of land of all vegetation and creating piles of soil on the 38-acre Site, from approximately August 2004 through January 12, 2007, or on a date or dates better known to Respondents, Respondents violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2006), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

ANSWER: Respondents deny each and every allegation contained in Paragraph 28.

AFFIRMATIVE DEFENSES

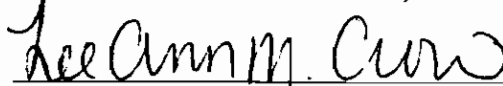
1. The Metropolitan Water Reclamation District and the Village of Orland Hills issued the requisite permits for the work performed at the Site.
2. The Metropolitan Water Reclamation District and the Village of Orland Hills inspected and approved the work performed at the Site.

WHEREFORE, Respondents, DISTINCTIVE HOMES, LTD. and DISTINCTIVE COMPANIES, LTD. pray the Board enter an order dismissing Complainant's case with prejudice and for such other and further relief deemed just and proper.

Respectfully submitted,

**DISTINCTIVE HOMES, LTD. and
DISTINCTIVE COMPANIES, LTD.**

By:



One of their attorneys

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