



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

October 23, 2008

RECEIVED  
CLERK'S OFFICE

OCT 28 2008

STATE OF ILLINOIS  
Pollution Control Board

PLB 09-29

John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center, Ste. 11-500  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Kaplan Development and Inv. Co.***

Dear Clerk:

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,

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

SJ/pjk  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF )  
ILLINOIS, )  
 )  
Complainant, )  
 )  
vs. )  
 )  
KALAN DEVELOPMENT AND )  
INVESTMENT COMPANY, )  
 )  
Respondent. )

PCB No. 09-29  
(Enforcement)

NOTICE OF FILING

To: Kaplan Development and Investment Co.  
Leonard Kaplan, R.A.  
5140 North Service Road  
Saint Peters, MO 63376

RECEIVED  
CLERK'S OFFICE  
OCT 28 2008  
STATE OF ILLINOIS  
Pollution Control Board

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 (2006), 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: \_\_\_\_\_

  
Stephen Janasie  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: October 23, 2008

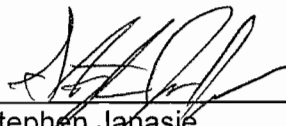
## CERTIFICATE OF SERVICE

I hereby certify that I did on October 23, 2008, 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: Kaplan Development and Investment Co.  
Leonard Kaplan, R.A.  
5140 North Service Road  
Saint Peters, MO 63376

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

To: John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

  
\_\_\_\_\_  
Stephen Janasie  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
)  
Complainant, )  
)  
)  
vs. )  
)  
)  
KALAN DEVELOPMENT AND )  
INVESTMENT COMPANY, )  
)  
)  
Respondent. )

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STATE OF ILLINOIS  
Pollution Control Board

PCB No. 09-29  
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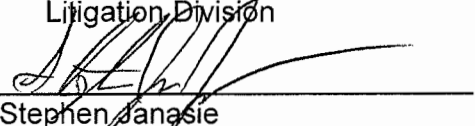
ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, STEPHEN JANASIE, Assistant Attorney General of the State of Illinois, hereby enters his 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:   
Stephen Janasie  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: October 23, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

KAPLAN DEVELOPMENT AND INVESTMENT COMPANY

Respondent.

PCB No. 09-  
(Enforcement)

RECEIVED  
CLERK'S OFFICE

OCT 28 2008

STATE OF ILLINOIS  
Pollution Control Board  
MADIGAN, Attorney

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent KAPLAN DEVELOPMENT AND INVESTMENT COMPANY, as follows:

COUNT I  
WATER POLLUTION VIOLATIONS

1. This Count is brought on behalf of the People of the State of Illinois, by LISA MADIGAN, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and which is charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent, KAPLAN DEVELOPMENT AND INVESTMENT COMPANY, is a Missouri company registered with the Missouri Secretary of State and Leonard Kaplan is its registered agent.

4. At all times relevant to this Complaint, Respondent was the operator of the Summit Springs lift station ("lift station"), serving the village of Caseyville, St. Clair County, Illinois. The lift station is used to collect untreated sewage and move that wastewater through

the village's wastewater treatment system to the Caseyville Township- West Sewage Treatment Plant.

5. At all times relevant to this Complaint, the lift station was operated off a temporary power source ("generator"), and as such was under the construction phase of Illinois EPA Water Pollution Control Permit No. 2003-IA-4132. Respondent was the permittee under this construction phase.

6. On or about July 1, 2005, a wastewater overflow of untreated sewage occurred at the lift station as a result of failure of the generator battery.

7. On or about October 17, 2005, a second wastewater overflow of untreated sewage occurred at the lift station as a result of failure of the generator battery.

8. On or about October 21, 2005, a third wastewater overflow of untreated sewage occurred at the lift station as a result of the failure of the generator battery.

9. On or about December 14, 2005, a fourth wastewater overflow of untreated sewage occurred at the lift station.

10. On or about December 14, 2005, Illinois EPA inspectors arrived at the lift station and observed that the wet well was overflowing into a nearby intermittent stream that is a tributary of Schoenberger Creek. The wet well was overflowing into the nearby intermittent stream at an estimated rate of two gallons per minute. The cause of the overflow was determined to be generator malfunction.

11. Section 12 of the Act, 415 ILCS 5/12 (2006), provides, in pertinent part, the following prohibitions:

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.

\* \* \*

12. Section 3.550 of the Act, 415 ILCS 5/3.550 (2006), provides 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.

13. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

14. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106, provides:

Offensive Discharges

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color,



odor and turbidity must be reduced to below obvious levels.

15. Section 306.304 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.304, provides:

**Overflows**

Overflows from sanitary sewers are expressly prohibited.

16. The intermittent stream is a water of the State as that term is defined in Section 3.550 of the Act.

17. The Respondent's operations of the lift station caused four separate wastewater overflows that caused, threatened, or allowed the discharge of untreated sewage into the environment in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).

18. The Respondent's fourth overflow discharged sewage into a nearby creek, in violation of Section 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2006).

19. Respondent's sanitary sewage overflows allowed untreated wastewater to be discharged into a nearby creek, leaving deposits of unnatural origin in the creek, in violation of Sections 302.203, 304.106, and 306.304 of the Board's Regulations, 35 Ill. Adm. Code 302.203, 304.106, and 306.304.

**PRAYER FOR RELIEF**

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

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. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), imposing a civil penalty of not more than the statutory maximum; and

E. Granting such other relief as the Board deems appropriate.

**COUNT II**  
**CONSTRUCTION VIOLATIONS**

1. Complainant realleges and incorporates herein by reference paragraphs 1 through 10, as well as paragraph 16, of Count I as paragraphs 1 through 11 of this Count II.

12. Section 12 of the Act, 415 ILCS 5/12 (2006), provides, in pertinent part, the following prohibitions:

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.

\* \* \*

13. Section 306.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a), provides:

System Reliability

(a) Malfunctions: All treatment works and associated facilities shall be constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, through such measures as multiple units, holding tanks, duplicative power sources, or such other

measures as may be appropriate.

14. Respondent's Illinois EPA Water Pollution Control Permit No. 2003-IA-4132

provides, in pertinent part, the following condition:

**SPECIAL CONDITION 1:**

Any connections to the sanitary sewer extension must be in accordance with this permit and the latest Revisions of Title 35, Subtitle C, Chapter 1.

\* \* \*

15. At all times relevant to this Complaint, the lift station was not configured in accordance with the requirements of its Illinois EPA Water Pollution Control Permit No. 2003-IA-4132, as it did not contain the necessary safeguards to ensure system reliability in the event of power failure, in violation of Permit Special Condition 1.

16. Respondent operated the lift station without the necessary safeguards against power or equipment failure, in violation of the terms of Respondent's Water Pollution Control Permit, Section 12(b) of the Act, 415 ILCS 5/12(b) (2006), and Section 306.102(a) of the Board's Regulations, 35 Ill. Adm. Code 306.102(a).

**PRAYER FOR RELIEF**

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- 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. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), imposing a civil

penalty of not more than the statutory maximum; and

E. Granting such other 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

Of Counsel:

Stephen Janasie  
500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: October 23, 2008