

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
ILLINOIS,)

Complainant,)

vs.)

MOLINE PLACE DEVELOPMENT,)
L.L.C. and CROSSTOWNE PLACE)
DEVELOPMENT, L.L.C.,)

Respondent.)

PCB No. 07-53
(Enforcement)

NOTICE OF ELECTRONIC FILING

To: See Attached Service List


PLEASE TAKE NOTICE that on December 28, 2009, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, a RESPONSE TO MOTION FOR EXTENSION OF TIME TO FILE RESPONSES TO REQUESTS TO ADMIT, a copy of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

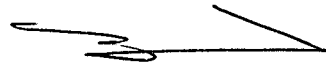
MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 28, 2009

CERTIFICATE OF SERVICE

I hereby certify that I did on December 28, 2009, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING and RESPONSE TO MOTION FOR EXTENSION OF TIME TO FILE RESPONSES TO REQUESTS TO ADMIT upon the persons listed on the Service List.



THOMAS DAVIS, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

MOLINE PLACE DEVELOPMENT, L.L.C.

c/o Michael R. Shamsie

455 42nd Avenue

P.O. Box 556

East Moline, IL 61244

CROSSTOWNE PLACE DEVELOPMENT, L.L.C.

c/o Michael R. Shamsie

455 42nd Avenue

P.O. Box 556

East Moline, IL 61244

Carol Webb

Hearing Officer

Illinois Pollution Control Board

1021 North Grand Avenue East

Springfield, IL 62794

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	No. PCB 07-053
)	(Enforcement-Water)
)	
MOLINE PLACE DEVELOPMENT, L.L.C.,)	
and CROSSTOWNE PLACE)	
DEVELOPMENT, L.L.C.,)	
)	
Respondents.)	

**RESPONSE TO MOTION FOR EXTENSION OF TIME
TO FILE RESPONSES TO REQUESTS TO ADMIT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, for its Response to Respondent's Motion for Extension of Time to File Responses to Requests to Admit, states as follows:

1. On January 3, 2007, Complainant filed its complaint against Moline Place Development, L.L.C. ("Moline Place") and Crosstowne Place Development, L.L.C. ("Crosstowne Place").
2. Michael R. Shamsie is the registered agent and managing member for both Moline Place and Crosstowne Place. Moline Place and Crosstowne Place share the same office address and that office address is also shared by Mr. Shamsie's engineering firm, Landmark Engineering Group, Inc. ("Landmark").
3. On June 4, 2009, the Board entered summary judgment in favor of the Complainant against Crosstowne Place after Crosstowne Place failed to retain counsel, failed to respond to the complaint, failed to respond to a request to admit and failed to respond to the Complainant's motion for summary judgment.
4. On August 31, 2009, the People filed a complaint in the Circuit Court of Rock Island

County against Moline Place and Landmark concerning the improper removal and disposal of asbestos containing building materials at the One Moline Place site being developed by Moline Place. That complaint has been docketed as: *People ex rel. Madigan vs. Landmark Engineering Group, Inc., et al.*, Rock Island County case no. 09-CH-356.

5. On October 22, 2009, Rynell J. Benckendorf, in house corporate counsel for Landmark, entered her appearance for Moline Place and Landmark in *People ex rel. Madigan vs. Landmark Engineering Group, Inc., et al.*

6. On October 27, 2009, Complainant mailed to Moline Place a Request for Admission of Fact and Genuineness of Documents in this matter.

7. On October 30, 2009, counsel for the Complainant asked Ms. Benckendorf if she would be entering an appearance in the Board matter but no answer was provided. Although Mr. Shamsie's affidavit states that Ms. Benckendorf "was representing the interests of Moline Place Development, LLC, in the instant matter" she never entered an appearance on behalf of Moline Place.

8. On November 20, 2009, by order of the same date, Ms. Benckendorf was granted leave to withdraw as counsel for Moline Place and Landmark in the Rock Island County Circuit Court case.

9. From the filing of the complaint in this case in January 2007 through December 2009, no attorney entered an appearance on behalf of Moline Place. Moline Place has not responded to the January 2007 complaint. Moline Place failed to respond to the Complainant's requests for admissions in a timely manner.

10. In *Vision Point of Sale, Inc. v. Ginger Haas*, 226 Ill. 2d 334, 875 N.E.2d 1065 (2007), while overruling a number of Appellate Court decisions limiting the Circuit Court's discretion in granting extensions of time to respond to requests for admission, the Supreme Court reaffirmed

its holding in *Bright v. Dicke*, 166 Ill. 2d 204, 652 N.E.2d 275 (1995), that:

“... it is the party moving for an extension of time pursuant to Rule 183 who must bear the burden of establishing good cause for the court to grant the time extension and who must submit to the court clear, objective reasons why it was unable to meet the original deadline and why an extension of time should be granted.”


Vison Point of Sale, Inc., 875 N.E.2d 1065, 1075. The same standard should be applied to motions for an extension of time pursuant to Section 101.618(b) of the Board's Procedural Rules, 35 Ill. Adm. Code 101.618(b).

11. The statement of Mr. Shamsie in his affidavit that Ms. Benckendorf was “representing the interests” of Moline Place in this case “until November 20, 2009” when she withdrew as counsel in a different matter does not satisfy Respondent’s burden of establishing good cause for an extension of time by submitting clear, objective reasons why it was unable to meet the original deadline.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 
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Dated: December 24, 2009