

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB NO.
)	(Enforcement-Water)
)	
S. A. LEWIS CONSTRUCTION, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on December 1, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601 a COMPLAINT and ENTRY OF APPEARANCE, copies of which are 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.

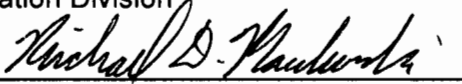
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2010), to correct the pollution alleged in the Complaint filed in this case.

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: 

MICHAEL D. MANKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031

Dated: December 1, 2011

CERTIFICATE OF SERVICE

I hereby certify that I did on December 1, 2011, cause to be served by Certified Mail, Return Receipt Requested, 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, COMPLAINT and ENTRY OF APPEARANCE upon the persons listed on the Service List.



MICHAEL D. MANKOWSKI
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

S. A. Lewis Construction, Inc.
c/o Thomas Michael Shade
Registered Agent
132 South Water Street, #515
Decatur, IL 62523

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
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Complainant,)	
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v.)	PCB No.
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S. A. LEWIS CONSTRUCTION, INC.,)	
an Illinois corporation,)	
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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, S. A. LEWIS CONSTRUCTION, INC., an Illinois corporation, as follows:

COUNT I
WATER POLLUTION

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

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 (2010), and charged, *inter alia*, with the duty of enforcing the Act.

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), after providing the Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. S. A. Lewis Construction, Inc. ("S. A. Lewis") is an Illinois corporation in good standing with the Illinois Secretary of State's Office.

5. At all times relevant to this Complaint, S. A. Lewis was the owner/developer of Summerfield Estates First Addition, a subdivision development located near the intersection of Long Creek Road and Camp Warren Lane, Long Creek, Macon County, Illinois ("the Site").

6. On May 15, 2010, S. A. Lewis submitted to the Illinois EPA a Notice of Intent ("NOI") requesting coverage, under a General National Pollutant Discharge Elimination System ("NPDES") Permit for Storm Water Discharges from Construction Site Activities ("the General NPDES Permit"), at the Site.

7. The NOI stated that the Site was 25.65 acres.

8. The NOI also listed the approximate construction start date as 6/15/2010.

9. In the NOI, Respondent stated that it had submitted a Storm Water Pollution Prevention Plan ("SWPPP") for the Site which it would make available at the Site.

10. The NOI stated that storm water from the Site discharges directly into Long Creek.

11. Steven Lewis, president of S. A. Lewis, signed the NOI, certifying that all provisions of the general permit to discharge storm water would be complied with.

12. The Illinois EPA received the NOI on May 18, 2010.

13. The Illinois EPA approved the Site's coverage under the General NPDES Permit on June 18, 2010.

14. Beginning on or about June 13, 2010, or a date better known to the Respondent, Respondent commenced construction work at the Site.

15. Beginning on June 22, 2010, or a date better known to the Respondent, and continuing until a time better known to the Respondent, uncontrolled sediment from the Site flowed along a ditch and down a slope onto neighboring property, including a private pond ("the Private Pond").

16. Section 12 of the Act, 415 ILCS 5/12 (2010), provides 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.

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides the following

definition:

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

18. Sediment is a contaminant.

19. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), 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.

20. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), 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.

21. Storm water runoff from the Site discharges to Long Creek, which is a "water" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).

22. Section 302.203 of the Illinois Pollution Control Board's ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 302.203, prohibits offensive conditions in waters of the State:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal, color or turbidity of other than natural origin. . . .

23. On June 24, 2010, the Illinois EPA inspected the Site and neighboring property.

24. On June 24, 2010, newly constructed detention pond ("North Detention Pond") was present on the north end of the Site.

25. A mud and sediment filled ditch flowed north, out of the North Detention Pond.
26. A trail of mud and sediment, some containing broken glass, flowed from the ditch, down a slope and onto neighboring property.
27. A length of failed silt fence was present at the top of the slope. A length of new silt fence was also located just south of the failed fencing.
28. The trail of sediment flowed through pile of firewood stacked on the south side of the neighboring property and terminated at the Private Pond.
29. On June 24, 2010, a large amount of sediment was present in the Private Pond, creating turbid, milky brown conditions.
30. The Pond is a "water" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).
31. On February 22, 2011, the Illinois EPA inspected the Site.
32. On February 22, 2011, the overflow pipe from the North Detention Pond was leaking.
33. Sediment-laden storm water was flowing from the North Detention Pond onto neighboring property and into the Private Pond.
34. The sediment-laden storm water continued on to Long Creek.
35. On February 22, 2011, storm water from the Site caused turbid conditions in the Private Pond and Long Creek.
36. Beginning in June of 2010, or a time better known by the Respondent, and continuing until at least February of 2011, Respondent caused, allowed or threatened the discharge of sediment from the Site into the Private Pond and Long Creek, both waters of the State, so as to cause or tend to cause water pollution.

37. Respondent failed to implement adequate erosion controls for the ground disturbed by its construction activities at the Site, resulting in the discharge of silt, clay and sediment from the Site in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

38. Respondent allowed silt, clay and sediment to enter the Private Pond and Long Creek creating offensive conditions in both waters.

39. By so causing, allowing, or threatening to allow offensive conditions in the Private Pond and Long Creek, the Respondent violated the water quality standard of Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

40. By so causing, allowing or threatening to cause water pollution, and by violating the water quality standard of Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, S. A. LEWIS CONSTRUCTION, INC.:

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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose a civil penalty of not more than the statutory maximum; and

E. Granting such other relief as the Board may deem appropriate.

COUNT II

DISCHARGE WITHOUT AN NPDES PERMIT

1-20. Complainant realleges and incorporates herein by reference paragraphs 1 through 14, paragraphs 12 through 21, and paragraph 30 of Count I as paragraphs 1 through 20 of this Count II.

21. Section 12 of the Act, 415 ILCS 5/12 (2008), 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.

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

- 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.

23. Respondent began construction activities at the Site on June 13, 2010, or a date better known by the Respondent.

24. Respondent's construction activities were part of a planned 25.65 acre development project.

25. Respondent's construction activities disturbed more than one acre of land.

26. From at least June 13, 2010, and continuing until June 18, 2011, when the Illinois EPA approved Respondent's coverage under the General NPDES Permit, the Respondent caused, threatened or allowed the discharge of sediment, a contaminant, into an the Private Pond and Long Creek, both waters of the State, without an NPDES permit.

27. By so causing, threatening or allowing the discharge of a contaminant into waters of the State without an NPDES permit, the Respondent has thereby violated Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, S. A. LEWIS CONSTRUCTION, INC.:

- 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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose a civil penalty of not more than the statutory maximum; and
- E. Granting such other relief as the Board may deem appropriate.

COUNT III

FAILURE TO COMPLY WITH NPDES PERMIT

1-21. Complainant realleges and incorporates herein by reference paragraphs 1 through 21, of Count II as paragraphs 1 through 21 of this Count II.

22. Part II.D.2. of the General NPDES Permit requires Respondent to post a copy of the letter of notification of coverage along with the General NPDES Permit or other indication that storm water discharges from the site are covered under an NPDES permit in a prominent place for public viewing at the Site.

23. Part V.B. of the General NPDES Permit requires Respondent to retain a copy of the SWPPP and any revisions to said plan required by the permit at the Site from the date of project initiation to the date of final stabilization.

24. Part IV.D.4.c. of the General NPDES Permit requires Respondent to retain copies of all storm water inspection reports at the Site.

25. On June 24, 2010, the Illinois EPA inspected the Site.

26. On June 24, 2010, copies of the notification of coverage, the General NPDES Permit, the SWPPP, and all inspection reports, were not posted or present at the Site.

27. By failing to post the notification of coverage, the General NPDES Permit, the SWPPP, and all inspection reports at the Site, the Respondent violated conditions of its permit and therefore violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, S. A. LEWIS CONSTRUCTION, INC.:

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. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose a civil penalty of not more than the statutory maximum; and

E. Granting such other relief as the Board may deem appropriate.

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
Environmental Bureau
Assistant Attorney General

Of Counsel:

MICHAEL D. MANKOWSKI
500 South Second Street
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Dated: 12/01/11