

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	PCB No. 05-204
v.)	
)	
LAKE STREET DEVELOPMENT LLC,)	
an Illinois Limited Liability Corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Mr. Jerry Marcus
Lake Street Development, LLC
707 Skokie Boulevard, Suite 410
Northbrook, Illinois 60062

PLEASE TAKE NOTICE that today, January 27, 2006, the People of the State of Illinois filed with the Illinois Pollution Control Board by electronic filing a Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, true and correct copies of which are attached and hereby served upon you.

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

BY: 
BRIDGET M. CARLSON
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
(312) 814-0608

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant,)	
)	PCB No. 05-204
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LAKE STREET DEVELOPMENT LLC,)	
an Illinois Limited Liability Corporation,)	
)	
Respondent.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT FOR STIPULATION AND PROPOSAL FOR SETTLEMENT WITH LAKE STREET DEVELOPMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2)(2004), moves that the Illinois Pollution Control Board ("Board") grant the Complainant and the Respondent, Lake Street Development, in the above-captioned matter, relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1)(2004). In support of this motion, Complainant states as follows:

1. The Complaint in this matter alleges violations of Section 12(b) of the Act, 415 ILCS 5/12(b)(2004), and 35 Ill. Adm. Code 309.202(a), and Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2004), and 35 Ill. Adm. Code 309.102(a).
2. Complainant is filing this Motion and a Stipulation and Proposal for Settlement with the Board.
3. The parties, People of the State of Illinois and Lake Street Development, have reached agreement on all outstanding issues in this matter.

4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

5. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2)(2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1)(2004).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN
Attorney General, State of Illinois

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

BY:



BRIDGET M. CARLSON
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0608

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	PCB No. 05-204
v.)	
)	
LAKE STREET DEVELOPMENT LLC,)	
an Illinois Limited Liability Corporation,)	
)	
Respondent.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency (“Illinois EPA”), and Lake Street Development, an Illinois Limited Liability Corporation (“Respondent”), have agreed to the making of this Stipulation and Proposal for Settlement (“Stipulation”) and submit it to the Illinois Pollution Control Board (“Board”) for approval. The parties agree that the statement of facts contained herein represent a fair summary of the evidence and testimony which would be introduced by the parties if a hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, Respondent agrees to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their terms.

I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2004).

II. AUTHORIZATION

The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

III. STATEMENT OF FACTS

A. Parties

1. On June 6, 2005, a Complaint was filed 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 upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2004), against the Respondent.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

3. At all times relevant to the Complaint, Respondent was and is an Illinois Limited Liability Company in good standing, that is authorized to transact business in the State of Illinois.

B. Site Description

1. At all times relevant to the Complaint, Respondent owned and operated a real estate development business which was constructing a four-story mixed use development structure located at Ten Lake Street, in Grayslake, Lake County, Illinois ("Site").

2. A sanitary sewer line previously ran through the southern portion of the property from the west to the east, and served residential homes off-Site to the west. From on or about February 17, 2004 to March 19, 2004, Respondent Lake Street installed a diversion/by-pass line of the sanitary sewer around the north end of the property to facilitate in the development of the Site.

3. Respondent Lake Street's modification of the sanitary sewer on-Site is subject to the Act and the Rules and Regulations promulgated by the Board. The Board's regulations controlling permits for sewer construction are found in Section 12(b) of the Act, 415 ILCS 5/12(b) (2004) and Title 35, Part 309 of the Illinois Administrative Code ("Board Water Pollution Permit Regulations").

4. Lake Street Development completed a diversion of an existing sewer line in early 2004 without securing an Illinois EPA construction permit to complete the construction work. Lake Street Development's permit application was pending at the Illinois EPA in September 2003. This diversion line followed the same route as the proposed sanitary sewer pending permit approval, at the time of installation it served the surrounding residences only and not the subject property owned by Respondent. Respondent did not connect to the new construction building to the by-pass line until after the Illinois EPA sewer ownership permit was issued.

5. On March 19, 2004, the Illinois EPA also determined that storm water

accumulating in the construction area was being pumped into a catch basin which is a tributary to a storm sewer that discharges into Grays Lake. Grays Lake is in the Mill Creek sub basin and Des Plaines River watershed.

6. As of March 19, 2004, Lake Street had not obtained a National Pollutant Discharge Elimination System ("NPDES") storm water permit to allow them to pump storm water off-Site.

C. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

- Count I: Failure to obtain an Illinois EPA construction permit prior to construction, in violation of Section 12(b) of the Act, 415 ILCS 5/12(b)(2004), and 35 Ill. Adm. Code 309.202(a).
- Count II: Failure to obtain a NPDES storm water permit prior to construction in violation of Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2004), and 35 Ill. Adm. Code 309.102(a).

D. Admission of Violations

The Respondent admits to the violation(s) alleged in the Complaint filed in this matter and referenced within Section III.C herein.

E. Compliance Activities to Date

Lake Street Development has obtained a NPDES permit for the discharge of storm water

from the Site.

F. Value of Settlement and Resulting Benefits

The issuance of Illinois EPA construction permits is the primary and most effective means by which Illinois EPA can ensure the protection of Illinois' valuable water resources. While the proper Illinois EPA permits are now in place, the Respondent's payment of a civil penalty will reinforce the importance of this permit process and encourage future compliance with the Act, as well as the Board's Water Pollution Regulations.

IV. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

1. No change in ownership, corporate status or operator of the facility shall in any way alter the responsibilities of the Respondent under this Stipulation and Proposal for Settlement. In the event of any conveyance of title, easement or other interest in the facility, the Respondent shall continue to be bound by and remain liable for performance of all obligations under this Stipulation.

V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties state the following:

1. Human health and the environment were minimally threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondent's failure to ensure that the proper Illinois EPA construction permit and NPDES permit was in place prior to construction and development of the Site's sewer lines.

2. The Site provides a social and economic benefit to the Respondent, and will increase the local tax base and provide additional income to area business and services.
3. The Site is a real estate development project in Grayslake, Illinois and is suitable for the area in which it occurred.
4. Obtaining a permit prior to construction at the Site and compliance with its terms was both technically practicable and economically reasonable. Obtaining a NPDES permit allows the Illinois EPA to track storm water runoff discharge and flow into Illinois water sources.
5. The Respondent Lake Street Development has subsequently complied with the Act and the Board Regulations. However, the acquisition of an NPDES does not remedy the time period during which construction took place at the site without a permit and in violation of the Act and Board Regulations.

VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance

with this Act by the respondent and other persons similarly subject to the Act;

5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties state as follows:

1. The Respondent failed to obtain a permit for construction on-Site sewer diversion activities prior to beginning construction activities at the Site, and failed to obtain a NPDES permit for storm water discharge to waters of the State. The violations began on or around February 17, 2004, and continued to March 19, 2004, and were individually resolved at various times in the following year.

2. The Respondent was diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified it of its noncompliance.

3. The Respondent delayed in paying the cost for the sewer construction permit of One Thousand Two Hundred Dollars (\$1,200.00). The Respondent also delayed in paying the storm water NPDES permit fee of Five Hundred Dollars (\$500). The civil penalty obtained herein exceeds any economic benefit that Respondent may have accrued.

4. Complainant has determined, based upon the specific facts of this matter that a penalty of Twenty Five Thousand Dollars (\$25,000.00) will serve to deter further violations and

aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

VIII. TERMS OF SETTLEMENT

A. Penalty Payment

1. a. The Respondent shall pay a civil penalty in the sum of Twenty Five Thousand Dollars (\$25,000.00). The Respondent stipulates that payment has been tendered to Respondent's attorney of record in this matter in a form acceptable to that attorney. Further, Respondent stipulates that said attorney has been directed to make the penalty payment on behalf of Respondent, within thirty (30) days from the date the Board adopts and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check or money order payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

The name and number of the case and Respondent's Federal Employer Identification Number ("FEIN") shall appear on the check. A copy of the certified check or money order and any

transmittal letter shall be sent to:

Ms. Bridget M. Carlson
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Mr. James Day
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, Respondent may be reached at the following address:

Mr. Jerome Marcus
707 Skokie Boulevard
Suite 410
Northbrook, Illinois 60062

4. In the event of default of this Section VIII.A, the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

B. Future Use

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.D, below, the Respondent hereby agrees that this Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h)(2004). Further, Respondent agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

C. Cease and Desist

The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C ("Allegations of Non-Compliance") of this Stipulation.

D. Release from Liability

In consideration of the Respondent's payment of the \$25,000.00 penalty and any specified costs and accrued interest, to Cease and Desist as contained in Section VIII.C and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on June 6, 2005. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondent's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

E. Right of Entry

In addition to any other authority, the Illinois EPA, its employees and representatives, and

the Attorney General, her agents and representatives, shall have the right of entry into and upon the Respondent's Site which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

F. Correspondence, Reports and Other Documents

Any and all correspondence, reports and any other documents required under this Stipulation, except for payments pursuant to Sections VIII.A ("Penalty Payment") of this Stipulation, shall be submitted as follows:

As to the Complainant

Ms. Bridget M. Carlson
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

Mr. James Day
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

As to the Respondent

Mr. Jerome Marcus
707 Skokie Boulevard
Suite 410
Northbrook, Illinois 60062

G. Enforcement of Board Order

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. Respondent agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and Respondent that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

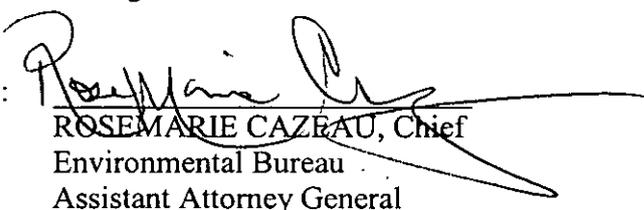
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WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

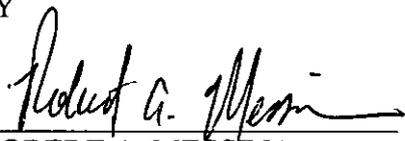
LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 1/23/06

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: 
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 1/16/06

SLM Equities Inc., Manager of
LAKE STREET DEVELOPMENT LLC

BY: _____
Mr. Stephen Marcus
President

DATE: _____

JDT Investments, Inc. Manager of
LAKE STREET DEVELOPMENT LLC

BY: _____
Mr. Joseph Tremont
President

DATE: _____

WHEREFORE, Complainant and Respondent request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

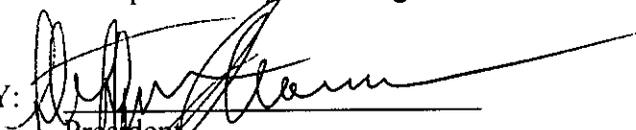
DATE: _____

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: _____
ROBERT A. MESSINA
Chief Legal Counsel

DATE: _____

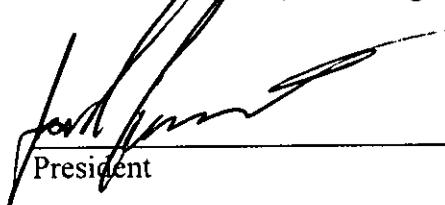
LAKE STREET DEVELOPMENT LLC
BY: SLM Equities Inc., its Manager

BY: 

President

DATE: 1/23/2006

LAKE STREET DEVELOPMENT LLC
BY: JDT Investments, Inc., its Manager

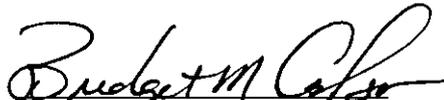
BY: 

President

DATE: 1/23/2006

CERTIFICATE OF SERVICE

I, BRIDGET M. CARLSON, an Assistant Attorney General, certify that on the 27th day of January 2006, I caused to be served by First Class Mail the foregoing Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement to the parties named on the attached Notice of Filing, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.


BRIDGET M. CARLSON

It is hereby certified that a copy of the Stipulation and Proposal for Settlement was filed via electronic filing, with the Illinois Pollution Control Board on January 27, 2006.

BY: 
BRIDGET M. CARLSON