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JAN 03 2007
STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 28, 2006

The Honorable Dorothy Gunn
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

PCB07-53

Re: ***People v. Moline Place Development, LLC, et al.***

Dear Clerk Gunn:

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,


Thomas Davis, Chief
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JLH/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
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JAN 03 2007

STATE OF 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.,)
)
 Respondents.)

PCB No. 07-53
(Enforcement)

NOTICE OF FILING

To: 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

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.

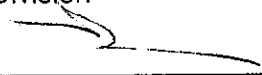
FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2004), to correct the pollution alleged in the Complaint filed in this case.

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: 

THOMAS DAVIS, Chief
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 28, 2006

CERTIFICATE OF SERVICE


I hereby certify that I did on December 28, 2006, 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: 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

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

To: Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Thomas Davis, Chief
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
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 vs.)
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 MOLINE PLACE DEVELOPMENT,)
 L.L.C. and CROSSTOWNE PLACE)
 DEVELOPMENT, L.L.C.,)
)
 Respondent.)

PCB No. **07-53**
(Enforcement)

ENTRY OF APPEARANCE


On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, RAYMOND J. CALLERY, 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

RAYMOND J. CALLERY
Assistant Attorney General

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: December 28, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PEOPLE OF THE STATE OF ILLINOIS,)
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 MOLINE PLACE DEVELOPMENT, L.L.C.and)
 CROSSTOWNE PLACE DEVELOPMENT,)
 L.L.C,)
)
 Respondents.)

PCB NO. 07-53
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, MOLINE PLACE DEVELOPMENT, L.L.C. and CROSSTOWNE PLACE DEVELOPMENT, L.L.C., as follows:

COUNT I
WATER POLLUTION-MOLINE PLACE

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 (2004).

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 (2004), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2004), after providing the Respondents with notice and the opportunity for a meeting with the Illinois EPA.

4. The Respondent, Moline Place Development, L.L.C. ("Moline Place"), is an Illinois limited liability company whose registered agent is Michael R. Shamsie, 455 42nd Avenue, P.O. Box 556, East Moline, Illinois, 61244. Moline Place owns and is developing a residential housing area called One Moline Place located at 6th Street and 11th Avenue, in Moline, Rock Island County, Illinois.

5. The Respondent, CrossTowne Place Development, L.L.C. ("CrossTowne Place"), is an Illinois limited liability company whose registered agent is Michael R. Shamsie, 455 42nd Avenue, P.O. Box 556, East Moline, Illinois, 61244. CrossTowne Place owns and is developing a residential housing area called CrossTowne Place located near the intersection of 11th Avenue and Hospital Road, in Silvis, Rock Island County, Illinois.

6. At all times relevant to this Complaint, One Moline Place includes two sites: the site east of 6th Street (the "east site") consisting of thirteen acres and the site west of 6th Street (the "west site") consisting of sixteen acres. The east site is to include fourteen homes, seventeen cottages/villas, twenty-four condominiums, and thirty-six townhouses. The west site is to include an existing building (the former nurses' dormitory at Moline Hospital) to be converted into sixty independent living units, eighteen homes, twenty-four condominiums, and fifteen villas.

7. At all times relevant to this Complaint, CrossTowne Place consists of three and 2/10ths (3.2) acres and is to include twelve homes.

8. On November 8, 2002, Illinois EPA issued National Pollutant Discharge Elimination System ("NPDES") permit # ILR107509 to Moline Place. NPDES permit # ILR107509 was terminated on August 14, 2003 prior to site stabilization based upon representations from Moline Place that construction had been completed and the site stabilized. On May 17, 2004, Illinois EPA issued National Pollutant Discharge Elimination System ("NPDES") permit # ILR10A460 to Moline Place.

9. On January 24, 2005, Illinois EPA issued National Pollutant Discharge Elimination System ("NPDES") permit # ILR10C205 to CrossTowne Place.

10. Both the east site and the west site of One Moline Place discharge storm water either to local streets and from there into the City of Moline ("City") storm sewers or directly into the City storm sewers at the site. The City's storm sewer system discharges into a portion of the Mississippi River known as the Sylvan Slough.

11. CrossTowne Place discharges storm water into a small unnamed stream that passes along the south side of the site and eventually discharges into the Mississippi River.

12. The unnamed stream adjacent to CrossTowne Place, the Sylvan Slough, and the Mississippi River are "waters" of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), as follows:

"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 3.545 of the Act, 415 ILCS 5/3.545 (2004), 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.

14. Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2004), provide:

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 contaminants into the waters of the State, as defined herein, including but not limited to, water 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.

15. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Admin.

Code 309.102(a) provides:

- 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.

16. The federal Clean Water Act 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. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations.

17. Storm water discharges are 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:

(a) Permit requirement.

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

* * *

- (ii) A discharge associated with industrial activity (see § 122.26(a)(4));

* * *

- (4) Discharges through large and medium municipal separate storm sewer systems. . . .

* * *

- (9) (i) On and after October 1, 1994, for discharges composed entirely of storm water, that are not required by paragraph (a)(1) of this section to obtain a permit, operators shall be required to obtain a NPDES permit only if:

* * *

- (B) The discharge is a storm water discharge associated with small construction activity pursuant to paragraph (b)(15) of this section;

* * *

(b) Definitions.

* * *

- (14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. . . . The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

* * *

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

* * *

- (15) Storm water discharge associated with small construction activity means the discharge of storm water from:

* * *

(i) Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

* * *

18. On March 24, 2004, James KammueLLer, Illinois EPA, Division of Water Pollution Control/Field Operations Section, Peoria Region, inspected the construction site at One Moline Place and observed that the roadway for the development had been installed and that house construction work was occurring on the east side of 6th Street.

19. During a phone conversation on March 25, 2004, Mike Waldon, Moline Public Works Director, reported to Mr. Kammuehler that the City of Moline had to remove sediment from adjacent public roadways during the construction project which confirmed that storm water runoff controls were inadequate.

20. During a phone conversation on April 2, 2004, Mr. Kammuehler advised Michael R. Shamsie, agent for Moline Place, to renew the previously terminated NPDES storm water permit or obtain new coverage until final stabilization was achieved at the site, to modify the Storm Water Pollution Prevention Plan ("SWPPP"), and to include the washing of tires on construction-related vehicles to reduce tracking of mud onto public roadways.

21. On May 12, 2004, the Illinois EPA sent Moline Place a Violation Notice ("VN") letter citing failure to obtain coverage under the general NPDES storm water permit, failure to provide or follow an adequate SWPPP, and unlawful discharge of contaminants onto public roadways and into city storm sewers.

22. On May 20, 2004, Mr. Kammuehler returned to One Moline Place, met with Mr. Shamsie and reported that the failure to control erosion continued to be a problem with sediment leaving the site at numerous locations and entering city streets, sidewalks, and storm inlets.

23. By letter dated June 21, 2004, Mr. Shamsie responded to the VN letter, and included with this letter a new Notice of Intent ("NOI") submitted April 12, 2004, notice of coverage under the general NPDES storm water permit dated May 17, 2004, a revised SWPPP addressing expected construction activities for the project, and additional documentation.

24. On July 23, 2004, the Illinois EPA sent Moline Place a letter rejecting its proposed Compliance Commitment Agreement ("CCA"). An August 10, 2004 inspection noted that some work on erosion controls had been done but that sediment was still leaving the site.

25. On March 9, 2005, the Illinois EPA sent Moline Place a Notice of Intent to Pursue Legal Action ("NIPLA") letter, reciting the violations included in the VN letter.

26. On March 23, 2005, Mr. KammueLLer again inspected the construction site at One Moline Place and observed continuing inadequacies in storm water pollution prevention measures. Sediment was still discharging from both the east and west sites to streets, sidewalks, and storm inlets.

27. On March 28, 2005, a meeting was held by telephone conference pursuant to the NIPLA letter and the parties discussed the measures that had been implemented and what remained to be accomplished to stabilize the exposed soil.

28. On April 22, 2005, Mr. Shamsie submitted a revised SWPPP.

29. By letter dated June 2, 2005, Mr Shamsie forwarded copies of agreements purporting to transfer liability for storm water pollution prevention for eighteen lots to other builders. Although Illinois EPA has not received information on the exact acreage of these transfers, it is believed that the acreage transferred to date is substantially less than fifty percent (50%) of the entire thirty-one acre site.

30. By letter dated August 16, 2005 Illinois EPA informed the Respondent that it remained responsible for storm water controls and sediment releases from the site under the terms of its NDPES permit.

31. Mr. KammueLLer re-inspected the construction site at One Moline Place on November 9, 2005, January 27, 2006, and March 23, 2006. The violations observed in the earlier inspections continued.

32. Respondent caused, allowed or threatened to cause water pollution by failing to provide adequate storm water pollution controls, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2004).

33. These violations occurred repeatedly from at least March 24, 2004 and continue through the present.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, MOLINE PLACE DEVELOPMENT, L.L.C.:

- 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. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT II
PERMIT VIOLATIONS-MOLINE PLACE

1-31. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 31 of Count I as paragraphs 1 through 31 of this Count II.

32. Respondent failed to obtain coverage under the general NPDES storm water permit for construction site activities, in violation of 35 Ill. Adm. Code 309.102(a).

33. By violating 35 Ill. Adm. Code 309.102(a), Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, MOLINE PLACE DEVELOPMENT, L.L.C.:

- 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. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

COUNT III
WATER POLLUTION-CROSSTOWNE PLACE

1-17. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count III.

18. On November 16 and 17, 2004, Mr. Kammueler of the Illinois EPA inspected the construction site at Crosstowne Place and observed that approximately half the site was barren and without adequate erosion control measures. He also noted at this time that storm water drained to the west and south into an unnamed stream and sediment deposits in the stream. He further observed a small retention pond with sediment deposits upstream of the pond outlet area along barren slopes at the rear of homes.

19. During a phone conversation with Mr. Kammueler on November 22, 2004, Mr. Shamsie, agent for CrossTowne Place, agreed to apply for a NPDES storm water permit which was lacking as to the CrossTowne site and provide additional erosion control measures along the south and west edges of the site.

20. On January 5, 2005, Illinois EPA sent CrossTowne Place a VN letter citing its failure to obtain coverage under the general NPDES storm water permit, its failure to provide or follow an adequate SWPPP, and the unlawful discharge of contaminants into the environment.

21. On January 25, 2005, Mr. Kammueler returned to inspect the status of storm water controls and, although the NPDES permit coverage had been applied for, various compliance items remained as noted during the November 16 and 17, 2004 site inspections.

22. By letter dated February 21, 2005, Mr. Shamsie responded to the VN letter, disputing some the recommended compliance items while providing commitments for others yet to be done.

23. On March 21, 2005, the Illinois EPA sent CrossTowne a letter rejecting its proposed CCA due to the nature and seriousness of the violations and because construction was begun prior to obtaining a permit.

24. On April 25, 2005, Mr. Shamsie sent a response to the CCA rejection, providing certain compliance updates.

25. On May 2, 2005, the Illinois EPA sent CrossTowne Place a NIPLA letter, reciting the violations included in the VN letter.

26. On May 13, 2005, Mr. Shamsie sent Mr. Kammuller a set of photos for areas of the site that had been either sodded or hydro seeded. Mr. Shamsie did not request a meeting pursuant to the NIPLA notice.

27. Mr. Kammuller re-inspected the construction site at CrossTowne Place on January 27, 2006. He observed at that time that the lots on the west end of the cul-de-sac, near the retention pond, were not seeded and did not have sod placement. The vegetation density was also inadequate and the retention pond outfall did not appear to have been modified to allow the pond to hold water.

28. Respondent caused, allowed or threatened to cause water pollution by failing to provide adequate storm water pollution controls, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2004).

29. These violations occurred repeatedly from at least November 16, 2004.

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, CROSSTOWNE PLACE DEVELOPMENT, L.L.C.:

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. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter;

E. Awarding to Complainant its costs and reasonable attorney's fees; and

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

COUNT IV
PERMIT VIOLATIONS-CROSSTOWNE PLACE

1-17. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count IV.

18-27. Plaintiff realleges and incorporates herein by reference paragraphs 18 through 27 of Count III as paragraphs 18 through 27 of this Count IV.

28. Respondent failed to obtain coverage under the general NPDES storm water permit for construction site activities, in violation of 35 Ill. Adm. Code 309.102(a).

29. By violating 35 Ill. Adm. Code 309.102(a), Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2004).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, CROSSTOWNE PLACE DEVELOPMENT, L.L.C.:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

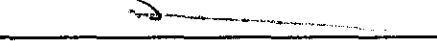
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- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

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
Raymond J. Callery
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

Dated: 12/27/06