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JUN 29 2001

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant)
)
 v.)
)
 LAKEWOOD HOMES, INC., an Illinois)
 corporation,)
)
 Respondent.)

PCB No. 01-174
(Enforcement)

NOTICE OF FILING

TO: See Attached Service List

PLEASE TAKE NOTICE that we have today filed a Complaint, Motion to Request Relief from the Hearing Requirement, Stipulation and Proposal for Settlement and a Certificate of Service on behalf of the People of the State of Illinois, copies of which are attached herewith and served upon you.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act (20 ILCS 3515/1 et seq. 1994) to correct the alleged pollution.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
JAMES E. RYAN, Attorney General
State of Illinois

BY:

Christine S. Bucko
CHRISTINE S. BUCKO
Assistant Attorney General
Environmental Bureau
188 W. Randolph St. - 20th Flr.
Chicago, IL 60601
(312) 814-3401

DATED: June 29, 2001

lakewood\nof

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Via Certified Mail

John H. Mays, Registered Agent
Lakewood Homes, Inc.
222 N. LaSalle Street, Ste. 800
Chicago, Illinois 60601

Via Regular U.S. Mail

Bill Forcade
Jenner & Block
One IBM Plaza, 37th Flr.
Chicago, Illinois 60606

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PEOPLE OF THE STATE OF ILLINOIS,)
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LAKEWOOD HOMES, INC., an Illinois)
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Respondant.)

PCB No. 01-174
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COMPLAINT

Now comes Complainant, People of the State of Illinois, by JAMES E. RYAN, Attorney General of the State of Illinois, and by MICHAEL J. WALLER, State's Attorney of Lake County, and complains of Respondents, LAKEWOOD HOMES, INC., as follows:

I.

WATER QUALITY VIOLATION

1. This complaint is brought by the Attorney General on his own motion and upon the request of the Illinois Environmental Protection Agency ("Illinois EPA" or "Agency"), and the State's Attorney of Lake County, Illinois, pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2000).

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to the Act, 415 ILCS 5/4 (2000), and charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent LAKEWOOD HOMES, INC. ("Lakewood") is an Illinois corporation, headquartered at 2500 Higgins Road, Suite 1250, Hoffman Estates, Cook County, Illinois. Lakewood is a developer and builder of residential homes and commercial real

estate.

4. On information and belief, in 1998, Lakewood purchased a parcel of property in Round Lake Beach, Lake County, Illinois, commonly known as Coventry Estates Subdivison ("Site"), and is currently the owner of this Site as of the date of the filing of this Complaint.

5. Beginning in 1998, on such dates as better known to Respondent, and continuing to the present, Lakewood has been and is developing the Site for residential use.

6. Storm water runoff from the Site is collected by various storm water sewers and drainage swales throughout the Site. This system channels the storm water runoff into an on-site retention basin. This retention basin discharges via a directly-connected storm sewer into Fourth Lake.

7. Section 3.56 of the Act, 415 ILCS 5/3.56 (2000), 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.

8. Fourth Lake is a "water" as that term is defined by the Act, 415 ILCS 5/3.56 (2000). Water which enters the storm sewer from the retention basin flows directly into Fourth Lake and also meets the definition of "waters" as that term is defined by the Act, 415 ILCS 5/3.56 (2000).

9. Section 3.06 of the Act, 415 ILCS 5/3.06 (2000), provides the following definition:

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

10. Silt and sediment are "contaminants" as that term is defined by the Act, 415 ILCS 5/3.06 (2000).

11. From at least April 16, 1999 and continuing to the present, Lakewood caused or allowed the discharge of storm water containing silt and/or sediment from the Site.

12. Section 12(a) of the Act, 415 ILCS 5/12(a) (2000), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminant 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;

13. Section 302.203 of the Illinois Pollution Control Board ("Board") Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides in pertinent part as follows:

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. . .

14. From at least April 16, 1999 and continuing until the present, Lakewood caused or allowed storm water discharges from the site. These discharges contained contaminants, to wit: silt and/or sediment, which are deposited into the waters of the State, to wit: Fourth Lake. These discharges caused water pollution at Fourth Lake in that unnatural color, turbidity and a silt plume occurred.

15. From at least April 16, 1999 and continuing to the present, Lakewood caused water pollution at Fourth Lake.

16. Lakewood, by its conduct described above, has knowingly and repeatedly violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2000), and Section 302.203 of the Board Water Pollution Regulations, 35 Adm. Code 302.203.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, LAKEWOOD HOMES, INC., for the following relief:

1. Authorize a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act and 35 Ill. Adm. Code 302.203;
3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act and 35 Ill. Adm. Code 302.203;
3. Order Respondent to remediate the environmental damage caused to Fourth Lake;
5. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day each violation occurred;
6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Grant such other relief as the Board deems appropriate and just.

II.

CREATING A WATER POLLUTION HAZARD

1-11. Complainant realleges and incorporates by reference herein Paragraphs 1 through 11 of Count I as Paragraphs 1 through 11 of this Count II.

12. Section 12(d) of the Act, 415 ILCS 5/12(d) (2000), provides as follows:

No person shall:

- d. Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

13. From at least April 16, 1999 until on or about May 26, 1999, Lakewood constructed a temporary discharge trench from the retention basin to a partially constructed storm sewer that directly flows into Fourth Lake. Lakewood caused or allowed open soil excavations at this location on the Site to come into contact with storm water flow from the Site. These open soil excavations created a water pollution hazard in that a contaminant, to wit: silt and/or sediment, was added to the storm water runoff from the Site, which in turn was discharged directly into Fourth Lake.

14. From at least May 1999 and continuing until present, Lakewood caused or allowed additional open soil excavations at its Site to come into contact with storm water flow from the Site. These additional open soil excavations created a water pollution hazard in that a contaminant, to wit: silt and/or sediment, was added to the storm water runoff from the Site, which in turn was discharged directly into Fourth Lake.

15. From at least April 16, 1999 continuing to the present, Lakewood caused or allowed a water pollution hazard at Fourth Lake.

16. Lakewood, by its conduct described above, has knowingly and repeatedly violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2000).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, LAKEWOOD HOMES, INC., for the following relief:

1. Authorize a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(d) of the Act;
3. Order Respondent to cease and desist from any further violations of Section 12(d) of the Act;
4. Order Respondent to remediate the environmental damage caused to Fourth Lake;
5. Assess against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Grant such other relief as the Board deems appropriate and just.

III.

DISCHARGE WITHOUT PERMIT

1-11. Complainant realleges and incorporates by reference herein Paragraphs 1 through 11 of Count I as Paragraphs 1 through 11 of this Count III.

12. Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), provides as follows:

No person shall:

- f. Cause or 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 sewer 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.

13. Section 39(b) of the Act, 415 ILCS 5/39(b) (2000), provides in pertinent part as follows:

The Agency may issue general NPDES permits for discharges from categories of point sources which are subject to the same permit limitations and conditions. Such general permits may be issued without individual applications and shall conform to regulations promulgated under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended.

* * *

The Agency shall adopt filing requirements and procedures which are necessary and appropriate for the issuance of NPDES permits, and which are consistent with the Act or regulations adopted by the Board, and with the Federal Water Pollution Control Act, as now or hereafter amended, and regulations pursuant thereto.

14. Regulations promulgated under Section 402 of the Federal Water Pollution Control Act include Part 122 of the Code of Federal Regulations, Title 40 (40 CFR 122 et seq.). Section

122.1(b)(2)(iv), 40 CFR 122.1(b)(2)(iv), provides as follows:

(b) Scope of the NPDES permit requirement.

(2) The following are point sources requiring NPDES permits for discharges:

(iv) Discharges of storm water as set forth in §122.26.

15. Storm water discharges associated with industrial activity are defined in Section 122.26(b)(14)(x), 40 CFR 122.26(b)(14)(x), as including certain construction activities:

§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(b) Definitions.

(14) Storm water discharges associated with industrial activity means the discharge from any conveyance which is used for collecting and conveying storm water and which 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 this subsection:

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five acres of total land area which are not part of a larger common plan of development or sale. . . .

16. Beginning in late 1998 on dates better known to Respondent, and continuing to the present, Lakewood initiated and continued construction activity at the Site in the form of excavation, grading and clearing. This construction activity disturbed, and continues to disturb, an area greater than five (5) acres. The construction activity at the Site meets the definition of "industrial activity" for which an NPDES permit for

storm water discharges is required.

17. Section 122.26(c)(1), 40 CFR 122.26(c)(1), allows individuals to seek coverage under a general storm water permit:

- c. Application requirements for storm water discharges associated with industrial activity
 - 1. Individual application. Dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit.

18. Section 122.28(b)(2), 40 CFR 122.28(b)(2), requires that a notice of intent to be covered by the general permit be filed to comply with the requirements that a permit be obtained prior to discharging:

§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).

(b) Administration.

(2) Authorization to discharge. . .
[D]ischargers. . . seeking coverage under a general permit shall submit to the Director a written notice of intent to be covered by the general permit. A discharger. . . who fails to submit a notice of intent in accordance with the terms of the permit is not authorized to discharge. . . A complete and timely, notice of intent (NOI), to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of §§ 122.6, 122.21 and 122.26.

19. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides the following:

NPDES Permit Required

- a. Except as in compliance with the provisions of the Act, Board regulations, and the CWA [Clean Water Act], 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.

20. From late 1998 on dates better known to Respondent, until May 27, 1999, Lakewood did not file a Notice of Intent for coverage under the general storm water discharge permit for the Site.

21. From late 1998 on dates better known to Respondent, and continuing until May 27, 1999, Lakewood discharged storm water from the Site as a result of industrial activity without an NPDES permit.

22. Lakewood, by its conduct described above, has knowingly and repeatedly violated Section 12(f) of the Act, 415 ILCS 5/12(f)(2000), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Adm. Code 309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, LAKEWOOD HOMES, INC., for the following relief:

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

2. Find that Respondent has violated Section 12(f) of the Act and Section 309.102(a) of the Board Water Pollution Regulations, 35 Adm. Code 309.102(a);

3. Order Respondent to cease and desist from any further violations of Section 12(f) of the Act and Section 309.102(a) of the Board Water Pollution Regulations, 35 Adm. Code 309.102(a);

3. Order Respondent to remediate the environmental damage caused to Fourth Lake;

4. Assess against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation of the Act and the Board regulations;

6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2000), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Grant such other relief as the Board deems appropriate and just.

IV.

DISCHARGE IN VIOLATION OF PERMIT

1-12. Complainant realleges and incorporates by reference herein Paragraphs 1 through 12 of Count III as Paragraphs 1 through 12 of this Count IV.

13. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides the following:

NPDES Permit Required

- a. Except as in compliance with the provisions of the Act, Board regulations, and the CWA [Clean Water Act], 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.

14. On May 27, 1999, Lakewood submitted a Notice of Intent to discharge storm water to the Illinois EPA and was covered under the Illinois EPA's General National Pollutant Discharge Elimination System ("NPDES") Permit to Discharge Storm Water No. ILR103814. This permit was reissued on June 1, 1998 under NPDES

Permit No. ILR10, with an expiration date of May 31, 2003 (See Exhibit A). Lakewood's coverage under this general permit began on May 27, 1999.

15. Section 309.146(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.146(a), provides as follows:

- a) The Agency shall require every holder of an NPDES Permit, as a condition of the NPDES permit issued to the holder, to
 - 1) Establish, maintain and retain records;
 - 2) Make reports;
 - 3) Install, calibrate, use and maintain monitoring equipment or methods (including where appropriate biological monitoring methods);
 - 4) Take samples of effluents (in accordance with such methods, at such locations, and at such intervals, and in such manner as may be prescribed); and
 - 5) Provide such other information as may reasonably be required.

16. Part IV, Section D. 4. of General NPDES Permit No. ILR10 (Exhibit A) provides as follows:

Part IV. STORM WATER POLLUTION PREVENTION PLANS

D. Contents of the Plan.

4. Inspections. Qualified personnel (provided by the permittee) shall inspect disturbed areas of the construction site that have not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater or equivalent snowfall.

- d. The permittee shall complete and submit within 5 days an "Incidence of Noncompliance" (ION) report for

any violation of the storm water pollution prevention plan observed during an inspection conducted, including those not required by the Plan. Submission shall be on forms provided by the Agency and include specific information on the cause of noncompliance, actions which were taken to prevent any further causes of noncompliance, and a statement detailing any environmental impact which may have resulted in noncompliance.

17. Part V, Section A. of General NPDES Permit No. ILR10 provides as follows:

Part V. RETENTION OF RECORDS

- A. The permittee shall retain copies of storm water pollution prevention plans and all reports and notices required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized. This period may be extended by request of the Agency at any time.

18. From on or about May 27, 1999 and continuing to at least April 20, 2000, Lakewood failed to inspect disturbed areas of the construction site that had not been finally stabilized, structural control measures, and locations where vehicles enter or exit the site within 24 hours of the end of a storm that is 0.5 inches or greater, as required by NPDES Permit No. ILR10.

19. From on or about May 27, 1999 and continuing to the present, Lakewood failed to submit Incidence of Noncompliance reports to the Illinois EPA, as required by NPDES Permit No. ILR10.

20. From on or about May 27, 1999 and continuing to the present, Lakewood failed to establish, maintain and retain

records and make reports, as required by 35 Ill. Adm. Code 309.146(a).

21. Lakewood, by its conduct described above, has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), Sections 309.102(a) and 309.146(a) of the Board Water Pollution Regulations, 35 Adm. Code 309.102(a) and 309.146(a) and NPDES Permit No. ILR10.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, LAKEWOOD HOMES, INC., for the following relief:

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

2. Find that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), Sections 309.102(a) and 309.146(a) of the Board Water Pollution Regulations, 35 Adm. Code 309.102(a) and 309.146(a) and NPDES Permit No. ILR10;

3. Order Respondent to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), Sections 309.102(a) and 309.146(a) of the Board Water Pollution Regulations, 35 Adm. Code 309.102(a) and 309.146(a) and NPDES Permit No. ILR10;

3. Order Respondent to remediate the environmental damage caused to Fourth Lake;

4. Assess against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation of the Act and the Board regulations;

6. Order Respondent to pay all costs, pursuant to Section

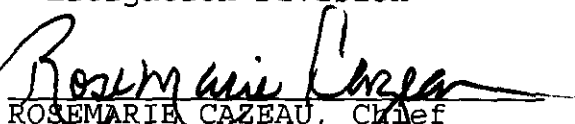
42(f) of the Act, 415 ILCS 5/42(f), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

7. Grant such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. JAMES E. RYAN,
Attorney General of the
State of Illinois


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

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

ex rel. MICHAEL J. WALLER
State's Attorney of Lake County

BY:


MARGARET A. MARCOUILLER
Chief Deputy, Civil Division
Assistant State's Attorney

Of Counsel:

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Civil Division
18 North County Street, 3rd Fl
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JUN 29 2001

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
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 Complainant)
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 LAKEWOOD HOMES, INC., an Illinois)
 corporation,)
)
 Respondent.)

PCB No. 01-174
 (Enforcement)

**AGREED MOTION TO REQUEST RELIEF
 FROM THE HEARING REQUIREMENT**

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by their attorneys JAMES E. RYAN, Attorney General of the State of Illinois, and MICHAEL J. WALLER, State's Attorney of Lake County, Illinois, at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, LAKEWOOD HOMES, INC., an Illinois corporation, by its attorneys, JENNER & BLOCK, and request relief from the hearing requirement in the above-captioned matter. In support thereof, the parties state as follows:

1. The parties have filed a Stipulation and Proposal for Settlement with the Illinois Pollution Control Board in the matter.
2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2)(2000), provides:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1)

3. The parties hereto have filed a Stipulation and Proposal for Settlement and agree that a formal hearing is not necessary to conclude this matter and wish to avail themselves of Section 31(c)(2) of the Act.

WHEREFORE, Complainant and Respondent request relief from the hearing requirement pursuant to Section 31(c)(2) of the Act.

Respectfully submitted,

Complainant

Respondents

PEOPLE OF THE STATE OF ILLINOIS

LAKWOOD HOMES, INC.

JAMES E. RYAN
Attorney General
State of Illinois

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

ROSEMARIE CAZEAU, Chief
Environmental Bureau

By: Christine S. Bucko
CHRISTINE S. BUCKO
Assistant Attorney General

By: [Signature]

Dated: 6-26-01

Dated: 6/26/01

MICHAEL J. WALLER
State's Attorney
Lake County, Illinois

MARGARET A. MARCOUILLER
Chief Deputy, Civil Division

By: Lisle A. Stalter
LISLE A. STALTER
Assistant State's Attorney

Dated: 6-27-01

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUN 29 2001

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
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LAKEWOOD HOMES, INC., an Illinois)
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Respondent.)

PCB No. 01-174
(Enforcement)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by their attorneys JAMES E. RYAN, Attorney General of the State of Illinois, and MICHAEL J. WALLER, State's Attorney of Lake County, Illinois, at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), and Respondent, LAKEWOOD HOMES, INC., an Illinois corporation, by its attorneys, JENNER & BLOCK, do hereby submit this Stipulation and Proposal for Settlement ("Stipulation"). The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full 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, or used for any purpose, in this or any other proceeding except to enforce the terms hereof by the parties to this Stipulation. Notwithstanding the previous sentence, this Stipulation and any Illinois Pollution Control Board ("Board") Order accepting same may be

used in any future enforcement action as evidence of a past adjudication of a violation of the Act for purposes of Section 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/42(h) (2000). This agreement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

**I.
JURISDICTION**

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Act, 415 ILCS 5/1 *et seq.* (2000).

**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 this Stipulation.

**III.
APPLICABILITY**

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

IV.
STATEMENT OF FACTS

A. Parties

1. The Attorney General of the State of Illinois and State's Attorney for Lake County have commenced this action on their own motion and at the request of the Illinois EPA pursuant to Section 31 of the Act, 415 ILCS 5/31 (2000).

2. The Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2000), and is charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent LAKEWOOD HOMES, INC. ("Lakewood") is an Illinois corporation, headquartered at 2500 Higgins Road, Suite 1250, Hoffman Estates, Cook County, Illinois. Lakewood is a developer and builder of residential homes.

B. Site Description

1. In mid-to-late 1998, Lakewood purchased a parcel of property in Round Lake Beach, Lake County, Illinois, commonly known as the Coventry Estates Subdivision ("Site"). Respondent alleges that in 1996, the Village of Round Lake Beach, Illinois ("Village") approved the prior owner's plans for the Site in Village Ordinance 96-25-55, which included the Site stormwater management plan. After acquisition, Lakewood began developing the Site for residential use. As each parcel of land was developed into a residential home, Lakewood sold that parcel to individual homeowners. Respondent asserts that title already has passed to individual homeowners for approximately 95% of the parcels of property at the site. Respondent further asserts that the remaining 5% of the parcels of property at the Site are the

subject of contracts between Lakewood and individual homeowners, and title is to be conveyed to these homeowners in the future.

2. Stormwater runoff from the Site is collected by various stormwater sewers and drainage swales throughout the Site. This system channels the stormwater runoff into certain on-site retention basins. The retention basin discharges via a directly-connected storm sewer into Fourth Lake.

V.
VIOLATIONS

The Complaint alleges the following violation of the Act, 415 ILCS 5/1, *et seq.* (2000), and the Board Water Pollution Regulations, 35 Ill. Adm. Code, Subtitle C, and is outlined as follows:

- COUNT I - WATER QUALITY VIOLATION: Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2000), and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203
- COUNT II - CREATING A WATER POLLUTION HAZARD: Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2000);
- COUNT III - DISCHARGING WITHOUT PERMIT: Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).
- COUNT IV - DISCHARGING IN VIOLATION OF PERMIT: Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2000), Sections 309.102(a) and 309.146(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.146(a), and Part IV, Section D.4. and Part V, Section A. of General NPDES Permit No. ILR10.

VI.
NATURE OF RESPONDENT'S OPERATIONS

Lakewood is in the residential real estate development and construction business. Lakewood purchased the Site from the prior owner in 1998.

VII.
EXPLANATION OF PAST FAILURES TO COMPLY WITH THE ACT

Lakewood alleges that its contractual arrangement with the prior owner required that the property conveyed be fully permitted. Lakewood was informed and believed that the prior owner's consulting engineer had submitted all required documentation to the Illinois EPA to secure all necessary permits for the Site.

Lakewood alleges that in October 1998, it began implementing the prior owner's plans that the Village had approved in 1996 for Site development. In November 1998, Lakewood constructed a stormwater detention pond ("Pond") at the Site, as delineated on the plans that the Village had approved. Lakewood alleges that it constructed and operated the Pond as specified in the approved plans, and the Village inspected and approved the installation. Lakewood further asserts that it believed that it was in compliance with its environmental obligations at the Site at all times.

Lakewood alleges that, during a period of heavy rainfall in April 1999, the Pond filled to capacity. On April 16, 1999, Village officials ordered Lakewood to dig a channel from the Pond to the portion of the storm sewer discharge line that had already been completed. This was done to protect downstream homeowners'

properties from flooding. Lakewood alleges that it complied with the Village's emergency order.

In June 1999, the Illinois EPA issued Lakewood a Violation Notice ("VN"), alleging that (1) water quality violations had occurred when the water that flowed from the channel dug on the Village's emergency order discharged into Fourth Lake; and (2) Lakewood had discharged stormwater without an NPDES permit.

Lakewood alleges that it believed that it substantially, if not fully, complied with its pollution prevention and permitting obligations. Lakewood further alleges its belief that a proper stormwater management plan was prepared, approved and implemented at the Site. Lastly, Lakewood alleges its belief that the alleged sediment-containing stormwater discharge observed in 1999 was due to the Village's emergency order.

VIII.
FUTURE PLANS OF COMPLIANCE

Respondent shall cease and desist from future violations of the Act and the Board regulations, including but not limited to, those Sections of the Act and Board regulations that were the subject matter of the Complaint as outlined in Section V. of this Stipulation.

IX.
IMPACT ON THE PUBLIC RESULTING FROM NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2000), 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 as follows:

1. The purpose of obtaining a stormwater discharge permit prior to beginning actual construction is to protect the public from the threat of or actual water pollution, as well as to allow the Illinois EPA to review the adequacy of water pollution control projects prior to initiating work. In this case, the Complainant alleges that these public policy concerns were not addressed prior to stormwater being discharged from the Site, such that excess silt entered Fourth Lake and increased sedimentation in that shallow body of water and altered the biological and ecological system for at least one year.

2. The parties agree that Respondent's development is of social and economic benefit.

3. The parties agree that Respondent's development is located in a suitable area.

4. The Complainant alleges that it was practicable and economically reasonable for the Respondent to obtain the

appropriate Illinois EPA permit prior to beginning construction, to develop and implement a stormwater pollution prevention plan ("SWPPP") and to ensure adequate personnel to conduct inspections and implement the SWPPP at the Site in compliance with its permit, and alleges that subsequent damage to the Fourth Lake environment could have been avoided. Lakewood alleges that its belief that it did comply with all statutory and regulatory requirements, and that achieving the objectives stated by the Illinois EPA was neither practicable nor economically reasonable in that the April 1999 discharge was a direct result of the Village's emergency order.

5. Complainant also alleges that the Respondent applied for coverage under Illinois' general stormwater permit about seven (7) months after it commenced construction at the Site and that stormwater discharge flow, with accompanying silt and sediment accumulation in Fourth Lake, was not alleviated to any appreciable degree until late 2000. Lakewood alleges its belief that it did comply with Illinois general stormwater permitting requirements before and during construction at the Site. Completion of construction and final cover at the Site is not anticipated to be completed prior to late spring 2001.

X.

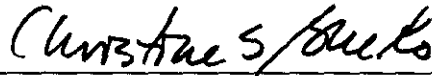
CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2000), provides as follows:

In determining the appropriate civil penalty to be imposed under subdivisions (a), (b) (1), (b) (2), or (b) (3) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to

CERTIFICATE OF SERVICE

I, CHRISTINE S. BUCKO, an Assistant Attorney General in this case, do certify that on the 29th day of June 2001, I caused to be served the foregoing Notice of Filing, Complaint, Motion to Request Relief from the Hearing Requirement and Stipulation and Proposal for Settlement by first class mail to the persons on the attached service list by depositing same in the U.S. mail depository located at 100 W. Randolph St., Chicago, Illinois in an envelope with sufficient postage prepaid.



CHRISTINE S. BUCKO

the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the violator 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 violator because of delay in compliance with requirement;
4. the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

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

1. Respondent's construction activities began in late 1998 and are anticipated to continue until late spring 2001.

Complainant alleges that, from late 1998 until May 27, 1999, Respondent did not have a stormwater discharge permit for the Site. The Complainant also alleges that environmental damage to Fourth Lake occurred during that time and continued into the year 2000 as a result of excess siltation and sedimentation from stormwater flows from the Site. Lakewood alleges that it complied at all times with Illinois stormwater requirements.

2. Complainant further alleges that the Respondent obtained a stormwater discharge permit about seven (7) months after beginning construction and that alterations to the drainage and retention systems at the Site did not take place until mid-to-late summer 2000. Lakewood alleges that it complied at all times with Illinois stormwater requirements. Final cover is not

expected at the Site until late spring 2001.

3. Complainant also alleges that the Respondent received an economic benefit by reason of non-compliance in that funds for compliance were not expended prior to the occurrence of the violations. Complainant alleges that these costs include engineering fees for preparation of stormwater discharge permit application, the preparation of a SWPPP, personnel and equipment costs to implement the SWPPP, alterations to the original design of the site stormwater system and associated construction costs. In addition, Complainant further alleges that the manner of the construction of the original stormwater system (i.e. construction of the sewer and ditch prior to completion of the retention systems) enabled earlier construction and sale of homes at the Site, resulting in a higher cash flow for Respondent for the remainder of development and construction time at the Site. The Respondent alleges that it operated in compliance with Illinois requirements at all times, received no economic benefit by reason of any alleged noncompliance, and voluntarily expended significant additional sums to address stormwater management concerns expressed by the Illinois EPA, the Village and other interested parties.

4. Twenty-Five Thousand Dollars (\$25,000.00) in civil penalty and payment of an additional Thirty-Five Thousand Dollars (\$35,000.00) to enhance the environmental conditions at Fourth Lake, is a reasonable penalty based on the violations alleged by Complainant and will aid in enhancing voluntary compliance with the Act.

5. Respondent has no history of prior adjudicated violations with the Illinois EPA.

XI.
TERMS OF SETTLEMENT

A. **NONADMISSION:**

Respondent specifically denies any violation of Section 12(a), (d) and (f) of the Act, 415 ILCS 5/12(a), (d) and (f) (2000), and 35 Ill. Adm. Code 302.203, 309.102(a) and 309.146(a), and denies Complainant's allegations that damage to the Fourth Lake environment occurred, but agrees to this Stipulation to avoid the cost of litigation.

B. **PENALTY:**

1. Respondent shall pay the Twenty-Five Thousand Dollars (\$25,000.00) civil penalty within thirty (30) days from the date on which the Board adopts a final order approving this Stipulation. The payment shall be made to the Illinois Environmental Protection Agency for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL. 62702-9276

The name and number of the case and Respondent's FEIN NO. 36-3710191, shall appear on the face of the check.

2. In order to promote the goals of the Act to restore, protect and enhance the quality of the environment, Lakewood shall make a payment of Thirty-Five Thousand Dollars (\$35,000.00) to the Lake County Forest Preserve District

("District"). This payment shall be used for the preservation, protection and perpetuation of the ecological habitat of Fourth Lake, including the Fourth Lake Fen and Rollins Savanna. This payment shall be used, as a first priority, to assist in the acquisition of purple loosestrife beetles for the above-noted ecological habitat. In the event this first priority is sufficiently met, as determined by the District, then any surplus from this payment may be transferred to the District's Land Acquisition Fund. The payment required under this Section shall be paid within thirty (30) days after the Board adopts a final order approving this Stipulation, by certified check to the Lake County Forest Preserve District and delivered to:

Steven K. Messerly, Executive Director
Lake County Forest
2000 N. Milwaukee Ave.
Libertyville, IL. 60048

The name and number of the case and Respondent's FEIN 36-3710191 shall appear on the face of the check. Respondent shall notify the Illinois EPA in writing that it has complied with this provision and shall provide such notice to the Illinois EPA at the following address:

Charles Gunnarson, Assistant Counsel, DLC
Illinois EPA
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62702-9276

C. INTEREST:

Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g)(2000), interest shall accrue on any penalty amount not paid within the time prescribed herein, at the maximum rate

allowable under Section 1003(a) of the Illinois Income Tax Act,
35 ILCS 5/1003(a) (2000):

1. Interest on unpaid penalties shall begin to accrue from the date the penalty payment is due and continue to accrue to the date payment is received;

2. Where partial payment is made on any payment amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing;

3. All interest on penalties owed Complainant shall be paid by certified check payable to the Illinois Environmental Protection Agency for deposit in the Environmental Protection Trust Fund and delivered to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62702-9276

The name and number of the case and Respondent's FEIN shall appear on the face of the certified check.

D. PAYMENT, COLLECTION AND NOTIFICATION:

For purposes of payment, collection and notifications, the parties may be reached at the following addresses:

Charles Gunnarson, Ass't Counsel
Illinois EPA
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62702-9276

Lakewood Homes, Inc.
c/o Jenner & Block
One IBM Plaza
Chicago, IL 60611
ATTN: Bill Forcade

Christine S. Bucko, AAG
Environmental Bureau
188 W. Randolph, 20th flr.
Chicago, IL 60601

Lisle Stalter, ASA
Lake County SAO
18 N. County, 3rd flr.
Waukegan, IL 60085

E. CEASE AND DESIST:

1. Respondents shall at all times obtain all required permits prior to conducting their construction activities and shall comply with their permits and any and all limitations contained therein.

2. Respondents shall cease and desist from future violations of the Act and Board regulations, including but not limited to, those sections of the Act and Board regulations that were the subject matter of the complaint as outlined in Section V. of this Stipulation.

XII.
COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This settlement agreement in no way affects Respondent's responsibility to comply with any federal, state or local regulations, including but not limited to, the Act, 415 ILCS 5/1, *et seq.* (2000), and the Board's Water Pollution Control regulations.

XIII.
RIGHT OF ENTRY

In addition to any other authority, the Illinois EPA, its employees and representatives, the Illinois Attorney General and State's Attorney of Lake County, their agents and representatives, shall have right of entry to Lakewood's Coventry Estates development at all reasonable times, for the purposes of conducting inspections. In conducting any inspection of Lakewood's Coventry Estates development, the Illinois EPA, its employees and representatives, the Attorney General and the State's Attorney of Lake County, their agents and represent-

atives, may take any photographs or samples as they deem necessary in order to conduct their inspection.

XIV.
SEVERABILITY

It is the intent of the parties hereto that the provisions of this Stipulation shall be severable and should any provisions be declared by a court of competent jurisdiction to be inconsistent with state and federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect. In the event that any provisions of this Stipulation shall be declared inconsistent with provisions of the Act, 415 ILCS 5/1, *et seq.* (2000), the provisions of the Act shall be controlling.

XV.
RELEASE FROM LIABILITY

In consideration of and upon Respondent's payment of the full amount provided for above in Section XI.B., including the required payment to the Lake County Forest Preserve District specified in Section XI.B.2. of this Stipulation and commitment to refrain from future violations of the Act, the Complainant shall release, waive and discharge Respondent from any further liability and/or penalties from violations of the Act, Board regulations and permit conditions that were specifically alleged in the Complaint, as outlined in Section V. above. However, nothing in this Stipulation shall be construed as a waiver by the Complainant of the right to redress future violations or obtain penalties with respect thereto.

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

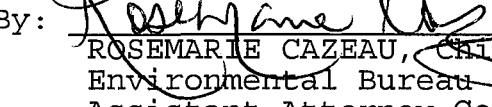
AGREED:

FOR THE COMPLAINANT:

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General
State of Illinois

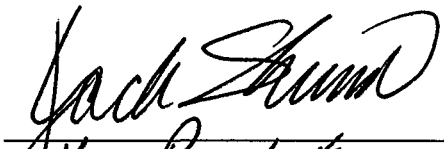
MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

By: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

Dated: 6/18/01

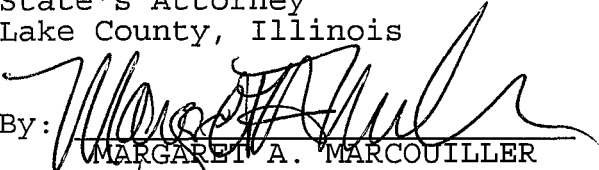
FOR THE RESPONDENT:

LAKWOOD HOMES, INC.

By: 
Vice President
Lakewood Homes, Inc.

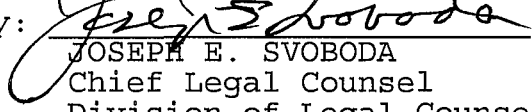
Dated: 6-21-01

MICHAEL J. WALLER
State's Attorney
Lake County, Illinois

By: 
MARGARET A. MARCOUILLER
Chief Deputy, Civil Division
Assistant State's Attorney

Dated: 6/26/01

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
JOSEPH E. SVOBODA
Chief Legal Counsel
Division of Legal Counsel

Dated: 6-14-01

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