

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

JUN 06 2005

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN,)
Attorney General of the State)
of Illinois,)

Complainant,)

v.)

LAKE STREET DEVELOPMENT LLC,)
an Illinois Limited Liability corporation,)

Respondent.)

PCB No. 05-

204

NOTICE OF FILING

TO: Mr. Stephen L. Marcus
Registered Agent
Lake Street Development, LLC
707 Skokie Boulevard, Suite 410
Northbrook, Illinois 60062

PLEASE TAKE NOTICE that I have today filed the Complaint with the Office of the Clerk of the Illinois Pollution Control Board, a true and correct copy of which is attached hereto and herewith served upon you. Pursuant to 35 Ill. Adm. Code 103.204(f), I am required to advise you that failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the 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. Pursuant to 415 ILCS 5/31(c)(1), I am required to advise you that financing may be available through the Illinois Environmental Facilities Financing Act to correct the violations.

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

BY:

Bridget M. Carlson
BRIDGET M. CARLSON

Assistant Attorney General
Environmental Bureau
188 West Randolph Street, Suite 2001
Chicago, Illinois 60601
(312) 814-0608

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PEOPLE OF THE STATE OF ILLINOIS,)
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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN,
Attorney General of the State of Illinois, on her own motion and at the request of the Illinois
Environmental Protection Agency, complains of Respondent, LAKE STREET
DEVELOPMENT, LLC, an Illinois limited liability corporation, as follows:

COUNT I

**FAILURE TO OBTAIN AN ILLINOIS EPA CONSTRUCTION PERMIT
PRIOR TO CONSTRUCTION**

1. This Complaint is brought on behalf of the People of the State of Illinois, *ex rel.*
LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request
of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and
provisions of Subsection 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31
(2002), and is an action for civil penalties.

2. The Illinois EPA is an administrative agency of the State of Illinois created by the

15. Section 3.545 of the Act, 415 ILCS 3.545 (2002), provides the definition for “water pollution”:

“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.

16. By constructing and installing a new sanitary sewer line at the Site, Respondent Lake Street constructed equipment capable of causing or contributing to water pollution, or designed to prevent water pollution.

17. Section 309.202 of the Board Water Pollution Permit Regulations, 35 Ill. Adm. Code 309.202, provides as follows:

Except for treatment works or wastewater sources which have or will have discharges for which NPDES Permits are required, and for which NPDES Permits have been issued by the Agency:

- a) No person shall cause or allow the construction of any new treatment works, sewer or wastewater source or cause or allow the modification of any existing treatment works, sewer or wastewater source without a construction permit issued by the Agency, except as provided in paragraph (b).
- b) Construction permits shall not be required for the following:
 - 1) Storm sewers that transport only land runoff; or
 - 2) Any treatment works, sewer or wastewater source designed and intended to serve a single building and eventually treat or discharge less than an average of 1500 gallons per day (5700 l/day) of domestic sewage and which will discharge, if at all, directly to a publicly owned or publicly regulated sanitary or combined sewer; or

- 3) Any sewer required by statute to secure a permit pursuant to Section 3 of "An Act to provide for, license and regulate mobile homes and mobile home parks", P.A. 77-1472, (Ill. Rev. Stat. 1981, ch. 111, par. 713); or
- 4) Any treatment works, pretreatment works, sewer or wastewater source that, on the effective date of this Subpart B, is being constructed or will be constructed under the authorization of a permit already issued by the Agency or its predecessors, provided however, that all construction must be completed within four years from the effective date of this Subpart B; or
- 5) Privately owned sewers tributary to industrial treatment works owned by the same person if the additional waste load does not exceed the permitted design capacity of the industrial treatment works.

18. Respondent Lake Street's construction of a new sewer line on the Site does not fall under any of the exceptions of Section 309.202(b) of the Board Construction Permit Regulations, 35 Ill. Adm. Code 309.202(b).

19. Respondent Lake Street constructed a new sanitary sewer line. By constructing a new sewer line without a construction permit, Respondent Lake Street violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2002), and Section 309.202(a) of the Board Construction Permit Regulations, 35 Ill. Adm. Code 309.202(a).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, LAKE STREET DEVELOPMENT, LLC, on this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(b) of the Act, 415 ILCS 5/12(b)

(2002), and Section 309.202(a) of the Board Construction Permit Regulations, 35 Ill. Adm. Code 309.202(a);

3. Ordering the Respondent to cease and desist from any further violations of the Act and regulations;

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

5. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 42(f) (2002); and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II

FAILURE TO OBTAIN A NPDES STORM WATER PERMIT PRIOR TO CONSTRUCTION

1 - 13. Plaintiff re-alleges and incorporates by reference herein paragraphs 1 through 10 and paragraphs 13 through 15 of Count I as paragraphs 1 through 13 of this Count II.

14. During the March 19, 2004, inspection of the Site, Illinois EPA discovered that all storm water that accumulates in the construction Site is pumped out into the street. Despite the presence of disturbed earth, the Site lacked stabilizing or erosion control structures to protect disturbed earth from eroding and depositing silt and sediment in the storm water runoff from the Site.

15. During the March 19, 2004, Illinois EPA inspection, the storm water diversion pipe and hose was observed leading directly to a catch basin. That catch basin is tributary to a storm sewer that discharges into Grays Lake. Grays Lake is in the Mill Creek sub-basin and Des Plaines River Watershed.

16. Respondent Lake Street had not obtained a NPDES Permit prior to channeling storm water runoff from the Site.

17. Sections 12(a) and (f) of the Act, 415 ILCS 5/12(a) and (f) (2002) provide in applicable part as follows:

Actions prohibited. 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 contaminant into the waters of the State, as defined herein, including, but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

18. Section 309.102(a) of the Board Construction Permit Regulations, 35 Ill. Adm. Code 309.102(a), entitled NPDES Permit Required, provides as follows:

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.

19. Section 3.550 of the Act, 415 ILCS 5/3.550 (2002), proves the definition for

“waters” 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.

20. Grays Lake is a “water” as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2002).

21. Section 3.165 of the Act, 415 ILCS 5/3.165 (2002), provides the definition of

“contaminant”:

“CONTAMINANT” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

22. Soil and sediment that accumulates in storm water is a contaminant as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2002).

23. The storm water discharge leading directly to a catch basin is a point source discharge into waters of the State.

24. Section 301.325 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 301.325, provides the definition for “NPDES”:

“NPDES” means the National Pollutant Discharge Elimination System for issuing, establishing conditions for, and denying permits under Section 402 of the CWA. All terms used in connection with NPDES which have been defined in the CWA or regulations adopted thereunder shall have the meanings specified therein, unless specifically noted otherwise.

25. Section 301.240 of the Board Water Pollution Regulations, 35 Ill. Adm. Code

301.240, provides the definition for "CWA":

"CWA" means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the "Clean Water Act", Public Law 95-217, enacted December 12, 1977, as amended.)

26. By discharging silt laden storm water directly from the construction Site into a tributary of Grays Lake without obtaining a NPDES permit, Respondent caused, threatened or allowed the discharge of contaminants into waters of the State so as to cause or tend to cause water pollution.

27. By causing, threatening or allowing the discharge of contaminants into waters of the State, so as to cause or tend to cause water pollution, Respondent Lake Street violated Sections 12(a) and (f) of the Act, 415 ILCS 12(a) and (f) (2002), and Section 309.102(a) of the Board Construction Permit Regulations, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board enter an order in favor of Complainant and against Respondent, LAKE STREET DEVELOPMENT, LLC, on this Count II:

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

2. Finding that Respondent violated Sections 12(a) and (f) of the Act, 415 ILCS 12(a) and (f) (2002), and Section 309.102(a) of the Board Construction Permit Regulations, 35 Ill. Adm. Code 309.102(a);

3. Ordering the Respondent to cease and desist from any further violations of the Act and regulations;

4. Assessing against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation of Section 12(f) of the Act, 415 ILCS 5/12(f)(2002) continued;

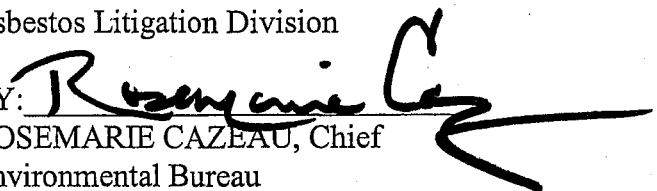
5. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a)(2002), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

6. Awarding to Complainant its costs and reasonable attorney's fees pursuant to Section 42(f) of the Act, 415 ILCS 42(f) (2002); and

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

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
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

OF COUNSEL:

Bridget M. Carlson
Assistant Attorney General
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, IL 60601
(312) 814-0608

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the Complaint was sent by certified mail with return receipt requested to the person listed on the Notice of Filing on June 6, 2005.

BY: Bridget M. Carlson
BRIDGET M. CARLSON

It is hereby certified that the original plus nine (9) copies of the foregoing were hand-delivered to the following person on June 6, 2005:

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

BY: Bridget M. Carlson
BRIDGET M. CARLSON