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JAN 18 2006

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 12, 2006

PCB06-132

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


Re: ***People v. Lake Pointe Estates LLC***

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,


Jennifer Bonkowski
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

JB/pp
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JAN 18 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF
ILLINOIS,

Complainant,

vs.

LAKE POINTE ESTATES LLC, an
Illinois limited liability corporation,

Respondent.

PCB No. 06-132
(Enforcement)

NOTICE OF FILING

To: Lake Pointe Estates LLC
c/o Thomas Giacomini, R.A.
509 Five Forks Drive
Springfield, IL 62707

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: 
JENNIFER BONKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 12, 2006

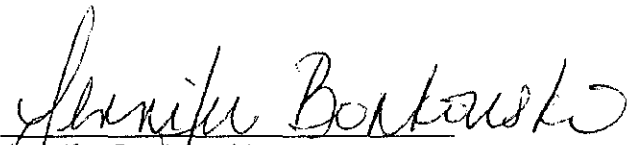
CERTIFICATE OF SERVICE

I hereby certify that I did on January 12, 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: Lake Pointe Estates LLC
c/o Thomas Giacomini, R.A.
509 Five Forks Drive
Springfield, IL 62707

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


Jennifer Bonkowski
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JAN 18 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS,)
)
Complainant,)
)
vs.)
)
LAKE POINTE ESTATES LLC, an)
Illinois limited liability corporation,)
)
Respondent.)

PCB No. 06-132
(Enforcement)

ENTRY OF APPEARANCE


On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, JENNIFER BONKOWSKI, Assistant Attorney General of the State of Illinois, hereby enters her 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

BY:


JENNIFER BONKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 12, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JAN 18 2006

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

v.

LAKE POINTE ESTATES LLC, an Illinois
limited liability company,

Respondent.

PCB No. 06132
(Water-Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, LAKE POINTE ESTATES LLC, an Illinois limited liability company, as follows:

COUNT I
NPDES PERMIT VIOLATIONS

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 (2002), 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 Respondent with notice and the opportunity for a meeting with the Illinois EPA.

4. Lake Pointe Estates LLC is an Illinois limited liability company in good standing. The company is engaged in the development of the "Lake Pointe Subdivision" in Springfield, Sangamon County, Illinois.

5. Section 12 of the Act, 415 ILCS 5/12 (2004), provides the following prohibitions:

No person shall:

* * *

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

* * *

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

- a) Except as in compliance with the provision 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.

7. 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, including 40 CFR 122.26.

8. Storm water discharges are regulated by 40 CFR 122.26, which requires a person to obtain an NPDES permit and to implement a stormwater 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 to development or sale if the larger common plan will ultimately disturb equal to or greater than one and less than five acres.

9. The Illinois EPA had issued construction permits to Lake Pointe Estates LLC for the installation of 2,002 feet of sanitary sewer for plats 4 and 5 on April 12, 2002, of 1,030 feet of sanitary sewer for plat 7 on May 2, 2003, and 864 feet of sanitary sewer for plat 8 on August 15, 2003. Each construction permit included the following special condition: "The Permittee to Construct shall be responsible for obtaining an NPDES Storm Water Permit prior to initiating construction if construction activities associated with this project will result in the disturbance of one (1) or more acres total land area."

10. Subsequent to April 2002, and continuing through at least August 2005, there have been ongoing construction activities at the subdivision including clearing, grading, and excavating that resulted in land disturbances of greater than one acre. The measures or controls provided to prevent or minimize pollution from storm water runoff at the subdivision were inadequate. Plats 4 and 5 are approximately 11.9 acres in total land area. Plats 7 and 8 are approximately 13.7 acres in total land area.

11. After the company submitted applications and proposed pollution prevention plans to the Illinois EPA, the Illinois EPA issued storm water NPDES permits to Lake Pointe Estates LLC for plats 4, 5 and 7 on July 3, 2003, and for plat 8 on October 14, 2003. Each permit required the implementation of specified site stabilization and management practices to control storm water runoff and the continuation of maintenance, monitoring and inspections to ensure the effectiveness of the measures or controls provided.

12. Commencing on some date prior to April 2002, and continuing until subsequent site stabilization via the implementation of a storm water pollution prevention plan and/or natural vegetative processes and other means, by failing to maintain adequate erosion controls at its site as required by its NPDES Permit, Lake Pointe Estates LLC has caused, threatened or allowed the discharge of any contaminant into the waters of the State in violation of its NPDES permit, and has thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), as well as Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, LAKE POINTE ESTATES LLC, an Illinois limited liability company:

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

Respectfully submitted,
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: _____

THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

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

Dated: 1/12/06