

ILLINOIS POLLUTION CONTROL BOARD
May 19, 2011

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 11-6
) (Enforcement - Water)
AMERICAN CONSTRUCTION, LLC, an)
Illinois limited liability company, and REAL)
ESTATE ELMHURST, LLC, an Illinois)
limited liability company,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by G.L. Blankenship):

On August 9, 2010, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against American Construction, LLC, an Illinois limited liability company (ACL) and Real Estate Elmhurst, LLC, an Illinois limited liability company (REEL) (collectively “respondents”). *See* 415 ILCS 5/31(c)(1) (2008); 35 Ill. Adm. Code 103.204. The complaint concerns the respondents’ commercial business complex known as “Stone Cottage Shoppes” located at the northeast corner of Route 83 and North Avenue, Elmhurst, DuPage County (Site). The People and REEL now seek to settle without a hearing. ACL is not a party to this stipulation. For the reasons below, the Board accepts the People’s and REEL’s stipulation and proposal for settlement.

Under the Environmental Protection Act (Act) (415 ILCS 21 (2008)), the Attorney General and the State’s Attorneys may bring actions before the Board on behalf of the people to enforce Illinois’ environmental regulations. In this case, the People allege that REEL violated the following provisions in the manner described: 1) Section 12(a) of the Act (415 ILCS 5/12(a) (2008)) by causing, threatening, or allowing the discharge of a contaminant into the environment so as to cause or tend to cause water pollution in Illinois (count I); Section 12(a) of the Act (415 ILCS 5/12(a) (2008)) and Section 302.203 of the Board’s water pollution regulations (35 Ill. Adm. Code 302.203 (2008)) by causing and allowing “offensive conditions” as defined in Section 302.203 of the Board’s water pollution regulations (35 Ill. Adm. Code 302.203 (2008)) (count II); Section 12(f) of the Act (415 ILCS 5/12(f) (2008)) and Section 309.102(a) of the Board’s water pollution regulations (35 Ill. Adm. Code 309.102(a) (2008)) by causing or allowing over one acre and less than five acres of land at the Site to be disturbed without first obtaining coverage under the NPDES storm water general permit for construction site activities prior to initiating such activities at the Site (count III); and Section 12(b) of the Act (415 ILCS 5/12(b) (2008)) and Section 309.202(a) of the Board’s water pollution regulations (35 Ill. Adm. Code 309.202(a) (2008)) by commencing and completing construction of a Sanitary Sewer without a permit from the Illinois Environmental Protection Agency (count IV).

On March 30, 2011, the People and REEL filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2008)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2008)). See 35 Ill. Adm. Code 103.300(a). The Board provided notice of the stipulation, proposed settlement, and request for relief from hearing. The Board published newspaper notice in the *Elmhurst Press* on April 15, 2011. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. See 415 ILCS 5/31(c)(2) (2008); 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of REEL's operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2008)). The People and REEL have satisfied Section 103.302. REEL admits the alleged violations and agrees to pay a civil penalty of \$1,000. The Board accepts the stipulation and proposed settlement.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Real Estate Elmhurst, LLC (REEL), must pay a civil penalty of \$1,000 no later than June 20, 2011, which is the first business day following the 30th day after the date of this order. REEL must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Trust Fund. The case number, case name, and REEL's social security number or federal employer identification number must be included on the certified check or money order.
3. REEL must send the certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2008)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2008)).
5. REEL must cease and desist from the alleged violations.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2008); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on May 19, 2011, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish at the end.

John Therriault, Assistant Clerk
Illinois Pollution Control Board