

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS, )  
 by LISA MADIGAN, Attorney )  
 General of the State of Illinois, )  
 )  
 Complainant, )  
 )  
 v. )  
 )  
 GALENA HILLSIDE HOMES, INC., an )  
 Illinois corporation, )  
 Respondent. )


PCB No. 06-178  
 (Enforcement - Water)

**NOTICE OF FILING**

TO: See Attached Service List

PLEASE TAKE NOTICE that on the 25th day of May, 2006, I filed with the Clerk of the Illinois Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief From Hearing Requirement, copies of which are attached hereto and are hereby served upon you.

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

BY:   
 STEPHEN J. SYLVESTER  
 Assistant Attorney General  
 Environmental Bureau North  
 188 West Randolph St., 20<sup>th</sup> Floor  
 Chicago, Illinois 60601  
 312-814-2087

DATE: September 25, 2006

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**SERVICE LIST**

Mr. Bradley Halloran  
Chief Hearing Officer  
Illinois Pollution Control Board  
100 West Randolph Street, 11th Floor  
Chicago, IL 60601

Mr. Joseph E. Nack  
Nack, Richardson, & Nack P.C.  
106 North Main Street  
P.O. Box 336  
Galena, IL 61036

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PCB No. 06-178  
 (Enforcement - Water)

**MOTION TO REQUEST RELIEF FROM HEARING REQUIREMENT**

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On May 24, 2006, a Complaint was filed with the Illinois Pollution Control Board ("Board") in this matter. On September 25, 2006, a Stipulation and Proposal for Settlement was filed with the Board.
2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), effective August 1, 1996, allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement.
3. Section 31(c)(2) of the Act, 415 5/31(c)(2) (2004), provides as follows:  
  
 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). Unless the Board, in its discretion, concludes that a

hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

4. No hearing is currently scheduled in the instant case.

5. The Complainant requests the relief conferred by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2004).

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2004).

Respectfully submitted,

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

BY:



STEPHEN J. SYLVESTER  
Assistant Attorney General  
Environmental Bureau North  
188 West Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601  
312-814-2087

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS	)	
by LISA MADIGAN, Attorney General	)	
of the State of Illinois,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	PCB No. 06-178
GALENA HILLSIDE HOMES, INC., an	)	(Enforcement - Water)
Illinois corporation,	)	
	)	
Respondent.	)	

**STIPULATION AND PROPOSAL FOR SETTLEMENT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Galena Hillside Homes, Inc. ("GHH"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. 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 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 in any other proceeding regarding the claims asserted in the Complaint except as otherwise provided herein. If the Board approves and enters this Stipulation, GHH agrees to be bound by the Stipulation and Board Order and not to contest its validity in any subsequent proceeding to implement or enforce its terms.

## I. JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2004).

## 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 it.

## III. STATEMENT OF FACTS

### A. Parties

1. On May 24, 2006, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31(2004), against GHH.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2004).

3. At all times relevant to the Complaint, GHH was and is an Illinois corporation that is authorized to transact business in the State of Illinois.

### B. Site Description

1. At all times relevant to the Complaint, GHH excavated/harvested topsoil from a parcel of land approximately 3.6 acres in size, which it owns, located off Posey Road in the East 1/2 of Section 36, Township 29 North, Range 1 East, Jo Daviess County, Illinois ("Site").

2. Stormwater run-off from the Site flows directly into the East Fork of the Galena

River ("River"), which flows through the Site.

**C. Allegations of Non-Compliance**

Complainant contends that GHH has violated the following provisions of the Act and Board Water Pollution Regulations:

- Count I: Water Pollution, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).
- Count II: Creating a Water Pollution Hazard, in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).
- Count III: Failure to obtain an NPDES Stormwater Permit, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and 35 Ill. Adm. Code 309.102(a).

**D. Admission of Violations**

GHH admits to the violations alleged in the Complaint filed in this matter and referenced within Section III.C herein.

**IV. APPLICABILITY**

This Stipulation shall apply to and be binding upon the Complainant and GHH, and any officer, director, agent, or employee of GHH, as well as any successors or assigns of GHH. GHH shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation.

**V. COMPLIANCE WITH OTHER LAWS AND REGULATIONS**

This Stipulation in no way affects the responsibilities of GHH to comply with any other federal, state or local laws or regulations including, but not limited to, the Act and the Board regulations, 35 Ill. Adm. Code, Subtitles A through H.

**VI. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE**

Section 33(c) of the Act, 415 ILCS 5/33(c)(2004), 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 the following:

1. The environment was threatened by GHH's failure to implement stormwater pollution control measures at the Site, and the Illinois EPA's information gathering responsibilities hindered by GHH's failure to obtain a National Pollutant Discharge Elimination System ("NPDES") permit prior to initiating soil excavating/harvesting activities at the Site.
2. The Site has social and economic benefit.
3. GHH's soil excavating/harvesting activities at the Site were suitable for the area in which they occurred.



4. Obtaining an NPDES permit prior to engaging in soil excavating/harvesting activities at the Site and compliance with the permit's terms was both technically practicable and economically reasonable.

5. GHH has subsequently complied with the Act and Board Water Pollution Regulations.

## VII. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2004), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent 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 respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

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

1. GHH failed to obtain an NPDES Stormwater permit prior to initiating soil excavation/harvesting activities at the Site. The violations began on or around April 22, 2005. GHH received an NPDES permit from Illinois EPA on January 5, 2006.

2. GHH was diligent in attempting to come back into compliance with the Act and Board Water Pollution Regulations, once the Illinois EPA notified it of its noncompliance.

3. The civil penalty obtained negates any economic benefit that Respondent may have accrued, as a result of the delay in compliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$10,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board Water Pollution Regulations.

5. To Complainant's knowledge, GHH has no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

## VIII. TERMS OF SETTLEMENT

### A. Penalty Payment

1. GHH shall pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. GHH stipulates that payment has been tendered to GHH's attorney of record in this matter in a form acceptable to that attorney. Further, GHH stipulates that said attorney has been directed to make the penalty payment on behalf of GHH, within thirty (30) days from the date the Board adopts

and accepts this Stipulation, in a manner prescribed below. The penalty described in this Stipulation shall be paid by certified check or money order payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and submitted to:

Illinois Environmental Protection Agency  
Fiscal Services Section  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

The name and number of the case and GHH's Federal Employer Identification Number (FEIN) shall appear on the check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Stephen J. Sylvester  
Assistant Attorney General  
Environmental Bureau  
188 W. Randolph St., 20<sup>th</sup> Floor  
Chicago, Illinois 60601

2. Pursuant to Section 42(g) of the Act, 415 ILCS 5/42(g) (2004), interest shall accrue on any payment not paid within the time period prescribed above at the maximum rate allowable under Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003 (2004). Interest on any unpaid payment shall begin to accrue from the date the payment is due and continue to accrue until the date payment is received. When partial payment(s) are made, such partial payment shall be first applied to any interest on unpaid payment then due and owing. All interest on payment owed shall be paid by certified check, money order or electronic funds transfer, payable to the Illinois EPA, designated to the Illinois Environmental Protection Trust Fund and delivered to the address and in the manner described above.

3. For purposes of payment and collection, GHH may be reached at the following address:

James L. Miller  
402 Fourth Street  
Galena, Illinois 61036

4. For purposes of payment and collection, GHH's attorney may be reached at the following address:

Joseph E. Nack  
Nack, Richardson, & Nack P.C.  
106 North Main Street  
P.O. Box 336  
Galena, IL 61036

5. In the event of default of this Section VIII.A., the Complainant shall be entitled to all available relief including, but not limited to, reasonable costs of collection and reasonable attorney's fees.

**B. Future Use**

Notwithstanding any other language in this Stipulation to the contrary, and in consideration of the mutual promises and conditions contained in this Stipulation, including the Release from Liability contained in Section VIII.D., below, GHH hereby agrees that this Stipulation may be used against GHH in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations promulgated thereunder for all violations alleged in the Complaint in this matter, for purposes of Section 39(a) and (i) and/or 42(h) of the Act, 415 ILCS 5/39(a) and(i) and/or 5/42(h)(2004). Further, GHH agrees to waive any rights to contest, in any subsequent enforcement action or permit proceeding, any allegations that these alleged violations were adjudicated.

**C. Cease and Desist**

GHH shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint as outlined in Section III.C. ("Allegations of Non-Compliance") of this Stipulation.

**D. Release from Liability**

In consideration of GHH's payment of the \$10,000.00 penalty and any specified costs and accrued interest, completion of all activities required hereunder, to Cease and Desist as contained in Section VIII.C. and upon the Pollution Control Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges GHH from any further liability or penalties for violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on May 24, 2006. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against GHH with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on GHH's failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in

law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than GHH.

**E. Right of Entry**

In addition to any other authority, the Illinois EPA, its employees and representatives, and the Attorney General, her agents and representatives, shall have the right of entry into and upon GHH's facility which is the subject of this Stipulation, at all reasonable times for the purposes of carrying out inspections. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives may take photographs, samples, and collect information, as they deem necessary.

**F. Enforcement of Board Order**

1. Upon the entry of the Board's Order approving and accepting this Stipulation and Proposal for Settlement, that Order is a binding and enforceable order of the Illinois Pollution Control Board and may be enforced as such through any and all available means.

2. GHH agrees that notice of any subsequent proceeding to enforce the Board Order approving and accepting this Stipulation and Proposal for Settlement may be made by mail and waives any requirement of service of process.

3. The parties agree that, if the Board does not approve and accept this Stipulation and Proposal for Settlement, then neither party is bound by the terms herein.

4. It is the intent of the Complainant and GHH that the provisions of this Stipulation and Proposal for Settlement and any Board Order accepting and approving such shall be severable, and should any provision be declared by a court of competent jurisdiction to be inconsistent with state or federal law, and therefore unenforceable, the remaining clauses shall remain in full force and effect.

**G. Execution of Document**

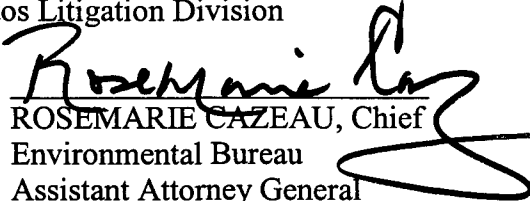
This Stipulation and Proposal for Settlement shall become effective only when executed by all parties and accepted and approved by the Board. This Stipulation and Proposal for Settlement may be executed by the parties in one or more counterparts, all of which taken together, shall constitute one and the same instrument.

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

PEOPLE OF THE STATE OF ILLINOIS,

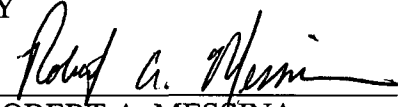
LISA MADIGAN  
Attorney General  
State of Illinois

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

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: 9/20/06

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: 9/15/06

GALENA HILLSIDE HOMES, INC.

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DATE: \_\_\_\_\_



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

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN  
Attorney General  
State of Illinois

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

BY: \_\_\_\_\_  
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

DATE: \_\_\_\_\_

ILLINOIS ENVIRONMENTAL PROTECTION  
AGENCY

BY: \_\_\_\_\_  
ROBERT A. MESSINA  
Chief Legal Counsel

DATE: \_\_\_\_\_

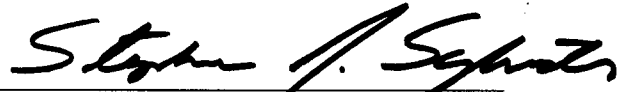
GALENA HILLSIDE HOMES, INC.

BY: James J. Miller  
Name: James Miller  
Title: Pres. dot

DATE: 8-15-06

**CERTIFICATE OF SERVICE**

I, STEPHEN J. SYLVESTER, an Assistant Attorney General in this case, do certify that I caused to be served this 25th day of May, 2006, the foregoing Stipulation and Proposal for Settlement, Motion to Request Relief From Hearing Requirement and Notice of Filing upon the persons listed on the Service List by depositing same in an envelope, first class postage prepaid, with the United States Postal Service at 100 West Randolph Street, Chicago, Illinois, at or before the hour of 5:00 p.m.



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STEPHEN J. SYLVESTER