ILLINOIS POLLUTION CONTROL BOARD May 7, 2009

PEOPLE OF THE STATE OF ILLINOIS,)	
Complainant,)	
ν.)	PCB 08-45
)	(Enforcement - NPDES)
DISTINCTIVE HOMES LTD. and)	
DISTINCTIVE COMPANIES, LTD.,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by S.D. Lin):

On February 13, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a two-count complaint against Distinctive Homes, LTD and Distinctive Companies, LTD (collectively "Distinctive"). *See* 415 ILCS 5/31(c)(1) (2006); 35 Ill. Adm. Code 103.204. The complaint concerned Distinctive's residential development located at Wolf Road, one block south of 179th Street, Village of Orland Park, Cook County. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposal for settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the people to enforce Illinois' environmental regulations. *See* 415 ILCS 5/31 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that Distinctive violated Sections 12(b) and 12(f) of the Act, and 309.102(a) of the Board's Water Pollution Regulations.¹ 35 Ill. Adm. Code 309.102(a). The People further allege that respondents violated these provisions by constructing, installing, and operating a sanitary sewer at the site without a construction permit from the Illinois Environmental Protection Agency; and by failing to obtain a National Pollutant Discharge Elimination System (NPDES) stormwater permit for construction site activities.

On April 3, 2009, the People and Distinctive filed a stipulation and proposal for 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) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)). *See* 35 III. Adm. Code 103.300(a). The Board provided notice of the stipulation and proposal for settlement, and request for relief from hearing in the *Daily Southtown Star* newspaper on April 9, 2009. 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) (2006); 35 III. Adm. Code 103.300(b).

¹ In the original complaint the People cited to a section of the Board's Water Pollution Regulations which does not exist, Section 309.202(a). The Board assumes this to be a scrivener's error, and the correct section to be 309.102(a), similar to Count I.

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposals for settlement. 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 Distinctive'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) (2006)). The People and Distinctive have satisfied Section 103.302. Distinctive does not affirmatively admit the alleged violations and agrees to pay a civil penalty of \$10,000.00. The Board accepts the stipulation and proposal for settlement.

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

<u>ORDER</u>

- 1. The Board accepts and incorporates by reference the stipulation and proposal for settlement.
- 2. Distinctive Homes, LTD and Distinctive Companies, LTD must pay a civil penalty of \$10,000.00 no later than June 8, 2009, which is the first business day after the 30th day after the date of this order. Distinctive Homes, LTD and Distinctive Companies, LTD must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Fund. The case number, case name, and Distinctive Homes, LTD and Distinctive Companies, LTD's federal employer identification numbers must be included on the certified check or money order.
- 3. Distinctive Homes, LTD and Distinctive Companies, LTD 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) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
- 5. Distinctive Homes, LTD and Distinctive Companies, LTD 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) (2006); *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 7, 2009, by a vote of 5-0.

In T. Theriaut

John Therriault, Assistant Clerk Illinois Pollution Control Board