ILLINOIS POLLUTION CONTROL BOARD July 21, 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.)	

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 four-count complaint against American Construction, LLC, an Illinois limited liability company (American Construction), and Real Estate Elmhurst, LLC, an Illinois limited liability company (Real Estate Elmhurst), (collectively, respondents). The complaint concerns the development of a commercial business complex at a 1.75 acre site located at the northeast corner of Route 83 and North Avenue in Elmhurst, DuPage County (site). The People and American Construction now seek to settle without a hearing. Real Estate Elmhurst is not a party to this stipulation, having previously entered into a stipulation and proposal for settlement that was accepted by the Board on May 19, 2011. For the reasons below, the Board directs the Clerk to provide public notice of the People's and American Construction's stipulation, proposed settlement and request for relief from the hearing requirement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2008)), the Attorney General and the State's Attorneys may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2008); 35 III. Adm. Code 103. In this case, the People allege that American Construction 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); (2) Section 302.203 of the Board's water pollution regulations (35 III. Adm. Code 302.203) and Section 12(a) of the Act (415 ILCS 5/12(a) (2008)) by causing and allowing offensive conditions at the site (count II); (3) Section 309.102(a) of the Board's regulations (35 III. Adm. Code 309.102(a)) and Section 12(f) of the Act (415 ILCS 5/12(f) (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 National Pollutant Discharge Elimination System storm water general permit for construction site activities (count III); and (4) Section 309.202(a) of the Board's regulations (35 III. Adm. Code 309.202(a)) and Section 12(b) of the Act (415 ILCS 5/12(b) (2008)) by commencing and completing construction

of a sanitary sewer without a permit from the Illinois Environmental Protection Agency (count IV).

On July 8, 2011, the People and American Construction 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)), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a). Under the proposed stipulation, American Construction admits the alleged violations and agrees to pay a civil penalty of \$2,500.

Unless the Board determines that a hearing is needed, the Board must cause notice of the stipulation, proposed settlement and request for relief from the hearing requirement. Any person may file a written demand for hearing within 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board will deny the request for relief and hold a hearing. *See* 415 ILCS 5/31(c)(2) (2008); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk to provide the required notice.

IT IS SO ORDERED.

I, John Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on July 21, 2011, by a vote of 5-0.

John Therriault, Clerk

Illinois Pollution Control Board