

ILLINOIS POLLUTION CONTROL BOARD
September 8, 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 four-count complaint against American Construction, LLC (American Construction), an Illinois limited liability company, and Real Estate Elmhurst, LLC, an Illinois limited liability company. 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. 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 accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. *See* 415 ILCS 5/31 (2010); 35 Ill. 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) (2010)) 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 Ill. Adm. Code 302.203) and Section 12(a) of the Act (415 ILCS 5/12(a) (2010)) by causing and allowing offensive conditions at the site (count II); (3) Section 309.102(a) of the Board's regulations (35 Ill. Adm. Code 309.102(a)) and Section 12(f) of the Act (415 ILCS 5/12(f) (2010)) 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 Ill. Adm. Code 309.202(a)) and Section 12(b) of the Act (415 ILCS 5/12(b) (2010)) 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) (2010)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), 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). In an order dated July 21, 2011, the Board directed the Clerk of the Board to provide notice of the stipulation, proposed settlement and request for relief from the hearing requirement. The newspaper notice was published in the *Elmhurst Press* on July 29, 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) (2010); 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. *See* 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 American Construction'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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. American Construction admits the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)), which may mitigate or aggravate the civil penalty amount. American Construction agrees to pay a civil penalty of \$2,500. The People and American Construction have satisfied Section 103.302. 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. American Construction, LLC (American Construction), must pay a civil penalty of \$2,500 no later than October 11, 2011, which is the first business day following the 30th day after the date of this order. American Construction 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 name, case number and American Construction's federal tax identification number must appear on the face of the certified check or money order.
3. American Construction must submit payment of the civil penalty to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276

Springfield, Illinois 62794-9276

American Construction must send a copy of the certified check or money order and any transmittal letter to:

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, 18th Floor
Chicago, Illinois 60602

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. American Construction must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.

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) (2010); *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 T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 8, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board