

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
)
 Complainant,)
 vs.)
)
 LOUIE'S TRENCHING SERVICE, INC., an)
 Illinois corporation, and CITY OF GALENA, an)
 Illinois municipal corporation,)
)
 Respondents.)

PCB No. 06-191
(Enforcement-Water)


NOTICE OF FILING

TO: See attached service list (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board a Motion to Request Relief from Hearing, and a Stipulation and Proposal for Settlement as to Respondents Louie's Trenching Service and City of Galena, a copy of which is attached and hereby served upon you.

Respectfully submitted,

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

By: 
KATHERINE M. HAUSRATH
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0660

SERVICE LIST

City of Galena
Tom Brusch, Mayor
312 ½ North Main Street
Galena, Illinois 61036

Louis A. Timp, Registered Agent
Louie's Trenching Service
9720 Rte. 20 W.
Galena, Illinois 61036

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Complainant,)	
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LOUIE'S TRENCHING SERVICE, INC., an)	PCB No. 06-191
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Illinois municipal corporation,)	
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Respondents.)	

**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 June 27, 2006, the Complaint was accepted for hearing by the Pollution Control Board ("Board") in this matter. On June 27, 2006, a Stipulation and Proposal for Settlement as to Respondents, Louie's Trenching Service, Inc. and City of Galena, was filed with the Board. If accepted, the Stipulation and Proposal for Settlement with Respondents Louie's Trenching Service, Inc. and City of Galena, will dispose of the case.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2004), 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. Section 31(c)(2) provides:

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).

3. No hearing is currently scheduled in the instant case.
4. The Complainant requests the relief conferred by Section 31(c)(2) of the

Act.

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: 

KATHERINE M. HAUSRATH
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601
(312) 814-0660

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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LOUIE'S TRENCHING SERVICE, INC., an)
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PCB 06-191
(Enforcement - Water)

Respondents.

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 LOUIE'S TRENCHING SERVICE, INC., an Illinois corporation, and CITY OF GALENA, an Illinois municipal corporation, 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, Respondents agree to be bound by the Stipulation and Board Order and not to contest their validity in any subsequent proceeding to implement or enforce their 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 _____, 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 the Respondents.

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 this Stipulation, Respondent, Louie's Trenching Service, Inc. ("LTS"), was and is an Illinois corporation in good standing.

4. At all times relevant to this Stipulation, Respondent, City of Galena ("Galena"), was and is a municipal corporation duly organized and existing under the laws of the State of Illinois.

B. Site Description

1. At all times relevant to this Stipulation, Respondent, Galena, has owned 6.3 acres located just south of Route 20, along the east bank of the Galena River, in the City of Galena, Jo Daviess County, Illinois ("Site").

2. On May 30, 2003, the Illinois EPA issued to Galena National Pollutant Discharge Elimination System ("NPDES") Permit No. ILR10B623, granting coverage under the NPDES general permit to discharge storm water during construction site activities.

3. On a date prior to October 18, 2004, Galena hired LTS to construct the Galena Recreational Greenway, a bicycle path along the Galena River, at the Site and provided LTS with a Storm Water Pollution Prevention Plan ("SWPPP") prepared on behalf of the City by MSA Professional Services Inc. The SWPPP required LTS to install sediment and erosion control fences and rock check dams. It also required LTS to inspect all such controls at least once each week.

C. Allegations of Non-Compliance

Complainant contends that the Respondents, LTS and Galena, have violated the following provisions of the Act and Board regulations:

- Count I:** Water Pollution
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).
- Count II:** Violation of NPDES Permit
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), and
Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill.
Adm. Code 309.102(a).

D. Admission of Violations

The Respondents, LTS and Galena, admit 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 the Respondents, LTS and Galena, and any officer, director, agent, or employee of the Respondents, as well as any successors or assigns of the Respondents. The Respondents, LTS and Galena, shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of their 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 the Respondents, LTS and Galena, 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. Adrn. 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. Respondents' violations threatened human health and the environment.

Respondents' violations resulted in the threat of discharge of sediment-laden storm water into the Galena River from at least November 1, 2004 through March 18, 2005.

2. The Galena Recreational Greenway has a social and economic benefit.
3. The Galena Recreational Greenway is suitable for the area in which it is located.
4. Properly implementing the erosion control requirements contained in the SWPPP, and displaying the SWPPP at the Site and at the Galena City Hall was both technically practicable and economically reasonable.
5. Respondents, LTS and Galena, have subsequently complied with the Act and the Board 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. The Respondents failed to properly implement the SWPPP at the Site, which resulted in the threatened discharge of silt-laden storm water from at least November 1, 2004 to March 18, 2005. Additionally, Plaintiff alleges that on November 1, 2004, the SWPPP was not available at the Site, nor was a SWPPP available on that date upon inquiry by the Illinois EPA from the Galena City Hall.
2. Respondents were diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified them of their noncompliance.
3. The failure to properly install the erosion controls at the Site resulted in little or no economic benefit to the Respondents. The penalty obtained negates the economic benefit accrued as a result of Respondents' noncompliance.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Nine Thousand Dollars (\$9,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Respondents, LTS and Galena, have 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. The Respondents, LTS and Galena, shall pay a civil penalty in the sum of Nine Thousand Dollars (\$9,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation. Each Respondent shall pay Four Thousand Five Hundred Dollars (\$4,500.00). The Respondents, LTS and Galena, stipulate that payment has been tendered to Respondents', LTS and Galena, attorneys of record in this matter in a form acceptable to those attorneys. Further, Respondents, LTS and Galena, stipulate that said attorneys have been directed to make the penalty payment on behalf of Respondents, LTS and Galena, 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, money order or electronic funds transfer 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 Respondent's, LTS, Federal Employer Identification Number (FEIN), 36-3003209, shall appear on LTS' check. The name and number of the case and Respondent's, Galena, FEIN, 366005888, shall appear on Galena's check. A copy of the certified check, money order or record of electronic funds transfer and any transmittal letter shall be sent to:

Katherine M. Hausrath
Assistant Attorney General
Environmental Bureau
188 W. Randolph St., 20th Floor
Chicago, Illinois 60601

James Allen Day
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

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 511003 (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, Respondent, LTS, may be reached at the following address:

Louie's Trenching Service
Louis A. Timp, Registered Agent
9720 Rt. 20 W.
Galena, Illinois 61036

4. For purposes of payment and collection, Respondent, Galena, may be reached at the following address:

Tom Brusch, Mayor
City of Galena
312 ½ North Main Street
Galena, Illinois 61036

Andy Lewis, City Engineer
City of Galena
312 ½ North Main Street
Galena, Illinois 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, the Respondents, LTS and Galena, hereby agree that this Stipulation may be used against the Respondents 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, Respondents LTS and Galena, agree 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

The Respondents, LTS and Galena, 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 the Respondents' payment of the \$9,000.00 penalty and any specified costs and accrued interest, 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 the Respondents 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 _____. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of

Illinois against the Respondents, LTS and Galena, 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 the Respondent'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 the Respondents.

E. 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. Respondents, LTS and Galena, agree 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 waive 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 no party is bound by the terms herein.

4. It is the intent of the Complainant and Respondents 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.

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WHEREFORE, Complainant and Respondents, LTS and Galena, 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: Rose Marie Cazeau/rab
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

DATE: 6/8/06

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

BY: Robert A. Messina
ROBERT A. MESSINA
Chief Legal Counsel

DATE: 6/1/06

LOUIE'S TRENCHING SERVICE, INC., an Illinois
corporation,

BY: Robert A. Hahn
Name: Robert A. Hahn
Title: Corp. Sec.

DATE: 6/12/06

CITY OF GALENA, an Illinois municipal
corporation,

BY: Tom Brusch


DATE: 6/16/06

Name: Tom Brusch

Title: Mayor of Galena

CERTIFICATE OF SERVICE

I, KATHERINE M. HAUSRATH, an Assistant Attorney General, do certify that I caused to be mailed this 27 day of June, 2006, the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement as to Respondents Louie's Trenching Service, Inc. and City of Galena, and Notice of Filing, upon the persons listed on said notice, by certified mail.


KATHERINE M. HAUSRATH
Assistant Attorney General
Environmental Bureau
188 West Randolph, 20th Floor
Chicago, IL 60601
312-814-0660