

ILLINOIS POLLUTION CONTROL BOARD

August 4, 2006

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 06-191
)	(Enforcement - Water)
LOUIE’S TRENCHING SERVICE, INC., an)	
Illinois corporation, and CITY OF GALENA,)	
an Illinois municipal corporation,)	
)	
Respondents.)	

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On June 27, 2006, the Office of the Attorney General, on her own motion and at the request of the People of the State of Illinois (People), filed a two-count complaint against Louie’s Trenching Service, Inc. and the City of Galena (respondents). *See* 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. Accompanying the complaint was a stipulation and proposal for settlement. The complaint concerns respondents’ 2004 activities during the construction of the Galena Recreational Greenway bike path on 6.3 acres at just south of U.S. Route 20, along the east bank of the Galena River, in Galena, Jo Daviess County. For the reasons below, the Board accepts the parties’ stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2004)), 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 (2004); 35 Ill. Adm. Code 103. In this case, the People allege that respondents violated Section 12(a) and (f) of the Act (415 ILCS 5/12(a) and (f) (2004)) and 35 Ill. Adm. Code 309.102(a). The People further allege that respondents violated these provisions by failure to implement adequate erosion controls (1) discharge of contaminants causing or tending to cause water pollution; and (2) causing, threatening, or allowing the discharge of silt-laden storm water into the Galena River in violation of the City of Galena’s NPDES permit ILR10B623.

On June 27, 2006, the People and respondents 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) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)), 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). The Board provided notice of the stipulation, proposed settlement, and request for relief from hearing. The Board published newspaper notice in *The Gazette* on July 5, 2006. 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) (2004); 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. 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 Respondents' 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) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

Respondents admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004)), which may mitigate or aggravate the civil penalty amount. Respondents agree to pay a civil penalty of \$9,000, which the parties stipulate negates any economic benefit derived from delayed compliance. Each respondent must pay \$4,500. The People further assert that the penalty will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

The People and respondents have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement. This docket is now closed.

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. The Board assesses a total penalty of \$9,000 against the respondents. Each of respondents, Louie's Trenching Service, Inc. and City of Galena, through its attorney of record, must individually pay a civil penalty of \$4,500 no later than September 5, 2006, which is the first business day after the 30th day after the date of this order. Each of respondents must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Environmental Protection Trust Fund. The case number, case name, and each respondent's federal employer identification number must be included on its respective certified check or money order.
3. Each of respondents, Louie's Trenching Service, Inc. and City of Galena, through its attorney of record, must send the certified check, money order, or electronic funds transfer to the following person at the indicated address:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Each of respondents, Louie's Trenching Service, Inc. and City of Galena, through its attorney of record, must send a copy of the certified check, money order, or

record of electronic funds transfer and any transmittal letter to the following person at the indicated address:

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

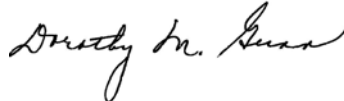
James Allen Day, Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2004)).
6. Respondents 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) (2004); *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, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 4, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board