## ILLINOIS POLLUTION CONTROL BOARD November 2, 2006

PEOPLE OF THE STATE OF ILLINOIS,	)	
Complainant,	)	
v.	)	PCB 06-178 (Enforcement - Water)
GALENA HILLSIDE HOMES, INC., an	)	(Emoreement water)
Illinois corporation,	)	
Respondent.	)	

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

On May 24, 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 three-count complaint against Galena Hillside Homes, Inc. (Galena Hillside Homes). See 415 ILCS 5/31(c)(1) (2004); 35 Ill. Adm. Code 103.204. The complaint concerns Galena Hillside Homes' excavation and harvesting of topsoil from 3.6 acres of land off Posey Road in the east half of Section 36, Township 29 North, Range 1 East, in Jo Daviess County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2004)), 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 (2004); 35 Ill. Adm. Code 103. In this case, the People allege that, during specified times between April 2005 and January, 2006, Galena Hillside Homes violated Section 12(a), (d), and (f) of the Act (415 ILCS 5/12(a), (d), and (f) (2004)) and 35 Ill. Adm. Code 309.102(a). The People further allege that Galena Hillside Homes violated these provisions by (1) causing, threatening, or allowing water pollution; (2) creating a water pollution hazard; and (3) failing to obtain a National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit.

On September 25, 2006, the People and respondent 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)). 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 Galena Gazette on October 4, 2006; any timely hearing request was due to be filed October 25, 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. 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.

Under the proposed stipulation, respondent Galena Hillside Homes admits the alleged violations, and agrees to pay a total civil penalty of \$10,000. The People assert this penalty will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

The People and respondent Galena Hillside Homes 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 respondent, Galena Hillside Homes, must pay a civil penalty of \$10,000. Payment must be made no later than December 4, 2006, which is the first business day after the 30th day after the date of this order. Respondent's attorney of record must pay the civil penalty by certified check, money order, or electronic funds transfer, payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund. The case number, case name, and respondent's federal employer identification number must be included on the certified check, money order, or electronic funds transfer statement.
- 3. Respondent, through its attorney of record, must send the certified check, money order, or electronic funds transfer to the indicated address:

Illinois Environmental Protection Agency Fiscal Services Division 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

4. Respondent, through its attorney of record, must send a copy of the certified check, money order, or electronic funds transfer and any transmittal letter to the following persons at the indicated addresses:

Stephen J. Sylvester Assistant Attorney General Environmental Bureau

## 188 W. Randolph St., 20<sup>th</sup> Floor Chicago, Illinois 60601

- 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. Respondent 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 November 2, 2006, by a vote of 4-0.

Dorothy M. Gunn, Clerk

Illinois Pollution Control Board