ILLINOIS POLLUTION CONTROL BOARD February 21, 2008

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 06-80
)	(Enforcement - Water)
FULFORD CONSTRUCTION, INC.,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On November 21, 2005, the Attorney General, on her own motion and at the request of the Illinois Environmental Protection Agency (People), filed a two-count complaint against Fulford Construction, Inc. (respondent). The complaint concerns a residential subdivision developed by respondent and known as Woodfield Estates Subdivision, located in the Village of Shiloh, St. Clair County. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2006)), 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 (2006); 35 Ill. Adm. Code 103. In this case, the People allege that respondent violated Sections 12(b) and (f) of the Act (415 ILCS 5/12(b), (f) (2006)) and 35 Ill. Adm. Code 309.102(a) and 309.202(a) of the Board's regulations. According to the complaint, respondent violated these provisions by causing or allowing or threatening the discharge of contaminants into waters of the State without a National Pollutant Discharge Elimination System (NPDES) permit and failing to obtain a construction permit from the Illinois Environmental Protection Agency prior to connecting single family lot aeration units to a storm sewer system.

On January 9, 2008, 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) (2006)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2006)), 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. The newspaper notice was published in the *Belleville News Democrat* on January 26, 2008. 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) (2006); 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 respondent'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) (2006)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Respondent does not affirmatively admit the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2006)), which may mitigate or aggravate the civil penalty amount. Respondent agrees to pay a civil penalty of two thousand dollars (\$2,000.00). The People and respondent 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. Fulford Construction, Inc. must pay a civil penalty of two thousand dollars (\$2,000.00) no later than March 24, 2008, which is the first business day following the 30th day after the date of this order. Fulford Construction, Inc. must pay the civil penalty by certified check or money order payable to the Illinois Environmental Protection Agency, designated to the Illinois Environmental Protection Trust Fund. The case name, case number, and Fulford Construction, Inc.'s Federal Employer Identification Number must appear on the face of the certified check or money order.
- 3. Fulford Construction, Inc. 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

Fulford Construction, Inc. must send copies of the certified check or money order and any transmittal letter to:

Peggy Kingen Assistant Attorney General Environmental Bureau 500 South Second Street Springfield, Illinois 62702 Joey Logan-Wilkey Assistant Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276

- 4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2006)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2006)).
- 5. Fulford Construction, Inc. 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) (2006); *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 Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on February 21, 2008, by a vote of 4-0.

John Therriault, Assistant Clerk Illinois Pollution Control Board