



RECEIVED
CLERK'S OFFICE

SEP 18 2008

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 17, 2008

John T. Therriault, Assistant Clerk
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Washington Trails Edge, LLC***
PCB No. 07-104

Dear Clerk:

Enclosed for filing please find the original and one copy of a Notice of Filing, Motion for Relief from Hearing Requirement and Stipulation and Proposal for Settlement in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Michael D. Mankowski".

Michael D. Mankowski
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

MDM/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
WASHINGTON TRAILS EDGE, LLC,)
an Illinois limited liability company,)
)
Respondents.)

PCB No. 07-104
(Enforcement - Water)

RECEIVED
CLERK'S OFFICE
SEP 18 2008
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

To: Gary A. Peters
Howard & Howard Attorneys P.C.
One Technology Plaza
211 Fulton Street, Suite 600
Peoria, IL 61602

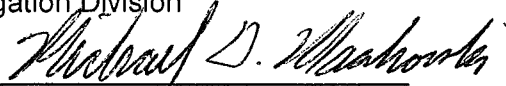
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
MICHAEL D. MANKOWSKI
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 17, 2008

CERTIFICATE OF SERVICE

I hereby certify that I did on September 17, 2008, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT:

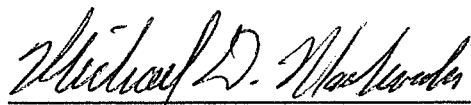
To: Gary A. Peters
Howard & Howard Attorneys P.C.
One Technology Plaza
211 Fulton Street, Suite 600
Peoria, IL 61602

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therrault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601

A copy was also sent by First Class Mail with postage thereon fully prepaid to:

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Springfield, IL 62794



MICHAEL D. MANKOWSKI
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
)
WASHINGTON TRAILS EDGE, LLC,)
an Illinois limited liability company,)
)
Respondents.)

PCB No. 07-104
(Enforcement - Water)

RECEIVED
CLERK'S OFFICE

SEP 18 2008

STATE OF ILLINOIS
Pollution Control Board

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2006), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006). In support of this motion, Complainant states as follows:

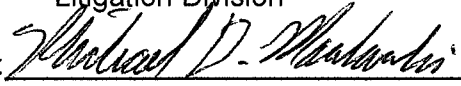
1. The parties have reached agreement on all outstanding issues in this matter.
2. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
3. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2006).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2006).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
MICHAEL D. MANKOWSKI
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: September 17, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 v.)
)
 WASHINGTON TRAILS EDGE, LLC,)
 an Illinois limited liability company,)
)
 Respondent.)

PCB No. 07-104
(Water-Enforcement)

RECEIVED
CLERK'S OFFICE

SEP 18 2008

STATE OF ILLINOIS
Pollution Control Board

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 WASHINGTON TRAILS EDGE, LLC ("Respondent"), 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. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 et seq. (2006), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On April 19, 2007, 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 (2006), against the Respondent.

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 (2006).

3. At all times relevant to the Complaint, Respondent was and is an Illinois limited liability company in good standing in the State of Illinois.

4. The Respondent owns a multi-section subdivision under construction called Trails Edge Subdivision ("site") that is located west of Dallas Road in Washington, Tazewell County, Illinois.

5. Runoff from the site drains to a stormwater retention pond and into an unnamed natural stream which eventually flows into Farm Creek.

6. On March 26, 2004, the Illinois EPA issued to the Respondent coverage under NPDES general stormwater permit number ILR10A144 for Section 3 of Trails Edge Subdivision ("Section 3").

7. On August 23, 2004, the Illinois EPA issued to the Respondent coverage under NPDES general stormwater permit number ILR10B231 for Section 5 of Trails Edge Subdivision ("Section 5").

8. On July 12, 2006, the Illinois EPA issued to the Respondent coverage under NPDES general stormwater permit number ILR10F822 for Section 6 of Trails Edge Subdivision ("Section 6").

B. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act and Board regulations:

Count I: NPDES PERMIT VIOLATIONS, in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006).

Count II: WATER POLLUTION, in violation of Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a) and (d) (2006) and Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

C. Non-Admission of Violations

The Respondent represents that it has entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondent does not affirmatively admit the allegations of violation within the Complaint and referenced within Section I.B herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

The Respondent has developed and implemented a proper SWPPP for the site. Construction sites are being properly controlled. Areas of the site not currently under construction have been properly stabilized as required by the Respondent's general stormwater permit.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondent, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondent in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2006).

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2006), 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 to this Stipulation state the following:

1. The water quality of the unnamed stream and Farm Creek was adversely affected by the lack of stormwater controls at the site.
2. There is social and economic value in building new homes in the area.
3. Construction of the subdivision was suitable for the area in which it occurred.
4. Using the proper erosion controls at the site and applying for and complying with a General NPDES stormwater permit was both technically practicable and economically reasonable.
5. Respondent has subsequently complied with the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(H) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2006), 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 lack of stormwater controls was first observed by the Illinois EPA on April 12, 2005. On subsequent inspections in 2005, 2006, and 2007, the Illinois EPA observed improvement in the stormwater controls used at the site. However, significant erosion was observed on numerous visits. Substantial compliance with the Act and Board Regulations has been achieved at the site.

2. Once made aware of its violations of the Act and Board Regulations, the Respondent made a diligent attempt in resolving the violations. The Respondent has subsequently brought the site into substantial compliance.

3. Respondent benefitted economically as a result of the noncompliance in this matter.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Twenty One Thousand Dollars (\$21,000.00) will serve as an incentive to the Respondent and others involved in construction to obtain the required construction permits and to comply with the terms of the NPDES general stormwater permit.

5. A review of Illinois EPA records does not indicate any previous enforcement action taken by the Illinois EPA against the Respondent.

6. The Respondent did not voluntarily disclose to the Illinois EPA the violations that are the subject of this case.

7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty of Twenty One Thousand Dollars (\$21,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF"). Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondent's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Michael D. Mankowski
Assistant Attorney General
Environmental Bureau
500 South Second Street
Springfield, Illinois 62702

C. Cease and Desist

The Respondent 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 I.B ("Allegations of Non-Compliance") of this Stipulation.

D. Release from Liability

In consideration of the Respondent's penalty payment of the Twenty One Thousand Dollars (\$21,000.00) and any specified costs and accrued interest, its commitment to Cease and Desist as contained in Section V.C. above, completion of all activities required hereunder, and upon the Board's acceptance and approval of the terms of this Stipulation and Proposal for Settlement, the Complainant releases, waives and discharges the Respondent 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 November 1, 2006. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent 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 (2006), or entity other than the Respondent.

E. Enforcement and Modification of Stipulation

Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

F. Execution of Stipulation

The undersigned representatives for each party to this Stipulation 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.

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

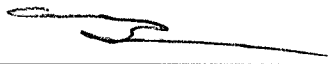
LISA MADIGAN
Attorney General
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency


BY:


THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATE:

9/16/08

BY:

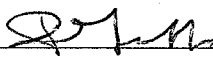

ROBERT A. MESSINA
Chief Legal Counsel

DATE:

8/5/08

Washington Trails Edge, LLC

BY:


Name: Paul GIBB

Title: mgr.

DATE:

8-22-2008

