

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 09-24
)	(Enforcement)
VILLENEAUVE DEVELOPMENT)	
COMPANY, an Illinois partnership,)	
)	
Respondent.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

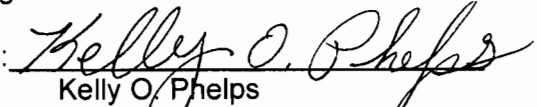
PLEASE TAKE NOTICE that on January 31, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR RELIEF FROM HEARING REQUIREMENT, AGREED MOTION TO SUBSTITUTE PARTY RESPONDENT FOR MISNOMER 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: 
Kelly O. Phelps
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 31, 2011

CERTIFICATE OF SERVICE

I hereby certify that I did on January 31, 2011, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT, AGREED MOTION TO SUBSTITUTE PARTY RESPONDENT FOR MISNOMER and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.



Kelly O. Phelps
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Phillip E. Couri
Couri and Couri
552 Lincoln Avenue
Winnetka, IL 60093

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 09-24
)	(Enforcement)
VILLENEAUVE DEVELOPMENT)	
COMPANY, an Illinois partnership,)	
)	
Respondent.)	

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) (2008), 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) (2008). In support of this motion, Complainant states as follows:

1. A Complaint was filed October 17, 2008, with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. 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) (2008).

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) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

Kelly O. Phelps
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: January 31, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
) Complainant,)
)
) vs.) PCB No. 09-024
)
VILLENEAUVE DEVELOPMENT)
COMPANY, an Illinois partnership,)
)
) Respondent.)

AGREED MOTION TO SUBSTITUTE PARTY RESPONDANT FOR MISNOMER

The parties hereby mutually agree and consent to substitute Respondent, VILLENEAUVE DEVELOPMENT COMPANY, an Illinois partnership, in the place of and instead of Respondent, DENNIS LAHOOD d/b/a, VILLENEAUVE SUBDIVISION, an Illinois limited liability corporation, in this instant matter to correct misnomer instanter. The Parties make their motion before this Honorable Board in accordance with and pursuant to Regulation 103.202(c), 35 Ill. Admin. Code § 103.202.

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 VILLENEAUVE DEVELOPMENT COMPANY ("Respondent") ("Parties to the Stipulation"), 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.* (2008), and the Board's Regulations, alleged in the Complaint

except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On October 17, 2008, 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 (2008), 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 (2008).

3. At all times relevant to the Complaint, Respondent was and is the ~~managing agent for the~~ developer of Villeneuve Subdivision ("site"), located southeast of the intersection of Route 116 and 24 in East Peoria, Tazewell County, Illinois. Villeneuve Subdivision includes a lower elevation area consisting of approximately 10 acres along Route 116 and an upper area consisting of approximately 66 acres on the bluff along Route 24.

4. On August 15, 2005, Illinois EPA issued Respondent General NPDES Stormwater Permit Number ILR10D540 for construction activities at the Villeneuve Subdivision.

5. On January 17, 2006, personnel from the Illinois EPA Division of Water Pollution Control/Field Operations Section, Peoria Regional Office, inspected Villeneuve Subdivision.

6. During the January 17, 2006 inspection, the developer's construction company failed to have erosion controls present on the lower area of Villeneuve Subdivision. Sediment was entering an unnamed stream along Route 116 that flows into the Illinois River.

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7. On January 17, 2006, short sections of silt fence in the upper area of Villeneuve Subdivision were improperly placed by the developer's construction company on slopes and ravines and overrun with sediment. Sediment from these areas had discharged into the ravines and had also entered the stormwater inlets near the site entrance.

8. General NPDES Stormwater Permit Number ILR10D540 was terminated on July 3, 2007.

B. Allegations of Non-Compliance

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

Count I: Section 12(a) of the Act, 415 ILCS 5/12(a) (2008), Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

Respondent caused water pollution through the discharge of sediment from the site into an unnamed stream, ravines, and stormwater inlets.

Count II: Section 12(f) of the Act, 415 ILCS 5/12(f) (2008).

Respondent violated the terms of its general NPDES stormwater permit by failing to implement adequate erosion controls at the site.

C. Admission of Violations

The Respondent neither admits nor denies the violations alleged in the Complaint filed in this matter and referenced herein.

D. Compliance Activities to Date

Prior to the filing of the Complaint, Respondent met with representatives of the Attorney General of the State of Illinois and the Illinois Environmental Protection Agency. Following that meeting, Respondent implemented adequate stormwater pollution and erosion controls at the site. Respondent has also committed to advise buyers of real estate located in Villeneuve Subdivision that a General NPDES Permit for Construction

Site Activities must be acquired from the Illinois EPA prior to development of one acre or more of land.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. 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 (2008).

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2008), 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 the Stipulation state the following:

1. Human health and the environment were threatened by the violations.

2. A subdivision has social and economic benefit.
3. Construction of the subdivision was suitable for the area in which it was constructed.
4. The implementation of adequate stormwater pollution and erosion controls at the site 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)(2008), 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 to the Stipulation state as follows:

DL

1. The Respondent's construction company failed to implement adequate stormwater pollution and erosion controls and discharged sediment from the site into an unnamed stream, ravines, and stormwater inlets. The violations began on or around January 17, 2006, and each violation was individually resolved on or before July 20, 2009, after Respondent was notified by the Office of the Attorney General and the Illinois EPA of its failure to comply with the Act and Board regulations.

2. The Respondent was diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified it of its noncompliance.

3. The Respondent received no economic benefit from the noncompliance.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Fifteen Thousand Dollars (\$15,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent has 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.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Fifteen Thousand Dollars (\$15,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If the Respondent fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondent not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. 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:

Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. Respondent must advise buyers of real estate located in Villeneuve Subdivision that a General NPDES Permit for Construction Site Activities must be acquired from the Illinois EPA prior to development of one acre or more of land.

2. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent's payment of the \$15,000.00 penalty and its commitment to cease and desist as contained in Section V.D. above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent from any further liability or penalties for the 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 October 17, 2008. The Complainant reserves, and this

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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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

F. 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.

G. Execution of Stipulation

The undersigned representatives for the Parties to the 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 the Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

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

BY:



THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY:



JOHN J. KIM
Chief Legal Counsel

DATE:

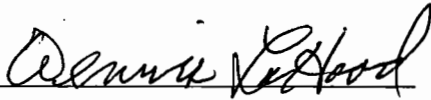
12/30/10

DATE:

12/28/10

VILLENEAUVE DEVELOPMENT
COMPANY

BY:



Name: Dennis LaHood

Title: Managing Agent

DATE:

JANUARY 17, 2011