

ILLINOIS POLLUTION CONTROL BOARD
March 3, 2016

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney General of)	
State of Illinois)	
)	
Complainant,)	
)	
v.)	PCB 10-20
)	(Enforcement - Water)
MONTALBANO BUILDERS, INC., an)	
Illinois corporation, CORTLAND-I-88, L.L.C.,)	
an Illinois limited liability company, and MBC)	
XIV, LLC, a revoked Delaware limited liability)	
company, and RB RESOLUTION)	
PROPERTIES, LLC, an Illinois limited)	
liability company,)	
)	
Respondent.)	

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On May 15, 2013, the People filed a Second Amended Complaint (Comp.) in this matter naming Montalbano Builders, Inc., Cortland I-88, LLC, MCB XIV, LLC, RB Resolution Properties, LLC, and Douglas J. Johnson as respondents. The four count complaint concerns a residential subdivision, owned by Montalbano, known as “Chestnut Grove,” located on the south side of Route 38 East near the intersection of Route 38 and Hahn Drive in Cortland, DeKalb County.¹ On June 6, 2013, the Board accepted the complaint for hearing.

The Board granted a motion to voluntarily dismiss Douglas J. Johnson as a respondent on October 17, 2013. People v. Montalbano Builders, Inc., et. al., PCB 10-20 (Oct. 17, 2013). The Board accepted a stipulation and proposed settlement between the complainant and Cortland I-88, LLC in an October 15, 2015 order. People v. Montalbano Builders, Inc., et. al., PCB 10-20 (Oct. 15, 2015). On December 8, 2015, the People filed a stipulation and proposal for settlement with RB Resolution Properties, LLC (RB Resolution) and amended that filing on December 16, 2015. Neither Montalbano Builders, Inc. nor MCB XIV, LLC were included in the proposal for settlement. For the reasons below, the Board grants the motion for relief from the hearing requirement and accepts the parties’ stipulation and proposed settlement.

¹ RB Resolution’s answer to the second amended complaint along with the stipulation and proposed settlement refers to the location of the alleged violations as “Chestnut Grove subdivision” rather than “Mission Oaks” as mentioned in the second amended complaint. Chestnut Grove is located near Mission Oaks in Cortland, DeKalb County.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2014)), the Attorney General may bring actions before the Board to enforce Illinois' environmental requirements on behalf of the People. *See* 415 ILCS 5/31 (2014); 35 Ill. Adm. Code 103. In this case, the People allege that RB Resolution violated Section 12(a) of the Act (415 ILCS 5/12(a) (2014)) by causing, threatening or allowing water pollution from the Chestnut Grove construction site into waters of the State.²

The parties' filing of a stipulation and proposal for settlement accompanied by a request for relief from the hearing requirement is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2014)), 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 in the DeKalb *Daily Chronicle* on February 1, 2016. The Board did not receive any requests for hearing and therefore grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2014); 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) (2014)), which bears on the reasonableness of the circumstances surrounding the alleged violations. In this case, RB Resolution neither admitted nor denied the violations alleged in Count I of the second amended complaint but agreed to certain future compliance actions at the Chestnut Grove site. The stipulation does not include a monetary penalty for RB Resolution, but instead RB Resolution must complete all work tasks identified in the Illinois Environmental Protection Agency approved Site Management Plan for Chestnut Grove. *Stip.* at 6. In consideration of RB Resolution's compliance actions at Chestnut Grove, the People agree to release, waive and discharge RB Resolution from any further liability or penalties for the violations alleged in the complaint. The stipulation addresses the Section 42(h) factors and the parties have satisfied Section 103.302. The Board, therefore, 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. Respondent, RB Resolution Properties, LLC (RB Resolution) must submit to the Illinois Environmental Protection Agency (Illinois EPA) a certification specifying that it has completed all of the work identified in the Illinois EPA approved site

² The People alleged only those violations included in Count I of the four-count second amended complaint against RB Resolution.

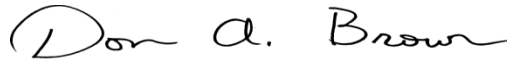
management plan by September 30, 2016.

3. RB Resolution must cease and desist from future violations of the Act and Board regulations that were the subject matter of the second amended 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) (2014); 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, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on March 3, 2016, by a vote of 5-0.



Don A. Brown, Assistant Clerk
Illinois Pollution Control Board