

ILLINOIS POLLUTION CONTROL BOARD  
October 15, 2015

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. )

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

On May 15, 2013, the People filed both a Motion for Leave to File Second Amended Complaint and 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 “Mission Oaks,” located on the south side of Route 38 East near the intersection of Route 38 and Hahn Drive in Cortland, DeKalb County. 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). On August 19, 2015, the People filed a stipulation and proposal for settlement with Cortland I-88, LLC (Cortland). None of the other three remaining parties were included in the proposal for settlement. The People and Cortland 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 (2014)), 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 (2014); 35 Ill. Adm. Code 103. In this case, the People allege that Cortland violated Section 12(a) of the Act by causing,

threatening or allowing water pollution from the Mission Oaks construction site into waters of the State.<sup>1</sup> 415 ILCS 5/12(a) (2014).

On August 19, 2015, the People and Cortland 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) (2014)). This filing 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. The newspaper notice was published in DeKalb, Illinois' *Daily Chronicle* on September 10, 2015. 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) (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 Cortland'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. Cortland neither admits nor denies the alleged violations. Finally, Section 103.302 requires the parties to include "[t]he proposed penalty, if any, supported by the factors in mitigation or aggravation of penalty, including the factors set forth in Section 42(h) of the Act. The stipulation addresses the Section 42(h) factors. Rather than pay a civil penalty, under the stipulation and proposal for settlement, Cortland must establish, and certify that it has established, ground cover at the Mission Oaks site. The People and Cortland 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. Cortland I-88, LLC (Cortland) must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.

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<sup>1</sup> The People alleged only those violations included in Count I of the four-count second amended complaint against Cortland.

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, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 15, 2015, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

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John T. Therriault, Clerk  
Illinois Pollution Control Board