

is usually sent to a surge lagoon and then dried in holding lagoons before being applied to land. Stip. at 3-4. The superintendent of the plant indicated that the plant had discharged lime sludge into the ravine from 1964 until 1978. During repairs to the pump in the surge lagoon in January 1999, 6,000 gallons of water carrying over 1,000 pounds of lime sludge were released into the ravine. The previous discharges and the January 1999 discharges resulted in lime sludge deposits both in the ravine and extending into Lake Charleston. Stip. at 4. Much of the sludge was deposited in an area of Lake Charleston known as Cox Cove. Stip. at 5, 7.

In June 1999, Charleston undertook repairs by permanently sealing the overflow pipe from the surge lagoon to the outfall of the ravine. Stip. at 4-5. Based on studies by a retired college botany professor and a college geology/geography professor, Charleston proposed that the sludge deposits in the ravine be left undisturbed. The Illinois Environmental Protection Agency (Agency) concurred with Charleston's proposal. During the last half of 2000, Charleston conducted a remediation plan for Lake Charleston by dredging Cox Cove and pumping the material from the dredging operation to its sludge lagoons. Charleston also installed rip rap along the shoreline of Cox Cove. Tr. at 9-11; stip. at 5-7.

HEARING

On January 31, 2001, Lorelei Sims filed a letter with the Board requesting that a hearing be held in this matter. If a person timely files a demand for hearing, Section 31(a)(2) of the Act provides that the Board shall deny the request for relief from the hearing requirement and hold a hearing in accordance with Section 31(c)(1) of the Act. Sims timely filed the request for hearing, and on February 15, 2001, the Board denied the request for relief from the hearing requirement. In accordance with Section 31(c)(1) of the Act, the Board held a hearing in Mattoon, Illinois on April 17, 2001¹.

Sims testified that from February 26, 1999, to March 5, 1999, she witnessed lime sludge being dumped from the plant into Cox Cove. Tr. at 16. She provided photographs of the lime sludge to the regional Agency office and presented the photographs at hearing. Tr. at 17; Exh. B.

During the hearing, Sims asked if the lime sludge was a by-product of the plant or was brought in to be processed. Bill Riebe, City Manager for the City of Charleston, answered that it was a by-product. Tr. at 13-14. Sims also asked that Charleston acknowledge that the lime sludge was dumped when she took the photographs in February and March 1999, not in January 1999 or during the 1970s. Tr. at 14. Riebe answered that he was only aware of the January 1999 dumping and was unaware of any dumping that had occurred in February and March of 1999. Riebe acknowledged that Charleston dumped lime sludge into the ravine prior to 1978. Tr. at 14-15.

Riebe said that Charleston took full responsibility for its "wrongful acts" and had corrected the problems both in terms of infrastructure and procedures. Tr. at 12-13. Delbert

¹ The hearing transcript is cited as "Tr. at ".

Haschemeyer, the attorney for the people, testified at hearing that Charleston had already performed the remediation set forth in the stipulation and proposal for settlement – namely dredging Cox Cove, pumping the material from the dredging operation to the plant’s sludge lagoons, and installing rip rap along the shoreline of Cox Cove. Tr. at 9-11.

Sims admitted that she was not objecting to the fine in the stipulation and proposal for settlement. Sims said that she was “unaware of repair work”, but did not object to the repairs. Tr. at 21. Sims indicated that her primary concerns with the settlement have to do with “[a]cknowledgement, disclosure.” Tr. at 21.

DISCUSSION

The Board commends Sims for bringing this matter to the attention of the Agency. However, Sims has not objected to either the fine or the repair work. At hearing, there was no record of Sims objecting to the remediation plan for Lake Charleston. As Sims testified, her primary concern is that Charleston only acknowledges discharging lime sludge during January 1999 as opposed to February and March 1999.

The Board is satisfied that Charleston has taken full responsibility for the discharges, repaired the pipe from the surge lagoon to the ravine after March 1999 which eliminated the unlawful discharges, engaged in a remediation plan for Cox Cove, and is agreeing to pay a stipulated penalty of \$25,000. The Board finds that Sims’ objections to Charleston’s acknowledgement and disclosure do not affect the stipulation and proposal for settlement.

CONCLUSION

The Board accepts the stipulation and proposal for settlement filed by the parties in this matter. Charleston must continue to comply with any federal, State, or local regulations including, but not limited to, the Act and the Board’s regulations.

This opinion constitutes the Board’s findings of fact and conclusions of law in this matter.

ORDER

1. The Board hereby accepts the stipulation and proposal for settlement executed by the People of the State of Illinois and Charleston. The stipulation and proposal for settlement is incorporated by reference as though fully set forth herein.
2. Charleston must pay a civil penalty of \$25,000. Payment must be made within 30 days of the date of this order, that is, on or before July 7, 2001. Such payment must be made by certified check or money order payable to the Illinois Environmental Protection Agency, for deposit in the Environmental Protection Trust Fund. The case number, case name, and Charleston’s Federal Employer

Identification number must also be included on the certified check or money order and clearly indicate that payment is directed to the Environmental Protection Trust Fund.

3. The check or money order must be sent by first class mail to:

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

A copy of the payment transmittal and check shall be simultaneously submitted to:

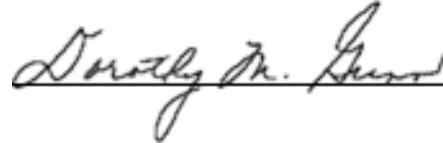
Office of the Attorney General
Donna Lutes, Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

4. Any such penalty not paid within the time prescribed incurs interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003 (2000)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest does not accrue during the pendency of an appeal during which payment of the penalty has been stayed.
5. The record indicates that Charleston has completed the remediation plan for Lake Charleston according to Section V of the stipulation and proposal for settlement.
6. If Charleston fails to comply with any material requirement set forth in this stipulation and proposal for settlement, Charleston shall pay in liquidated penalties the sum of \$500 per month of noncompliance, until such time as the requirements are complied with, said penalty to be paid to the Environmental Protection Trust Fund in the manner provided above.
7. Charleston must cease and desist future violations of any federal, State, or local statutes and regulations.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (2000)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.520, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of June 2001 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board