

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2001

STEPHEN M. LARDNER,)
)
 Complainant,)
)
 v.) PCB 00-92
) (Enforcement – Noise, Citizens)
 DOMINICK'S FINER FOODS, INC., THE)
 LANDOWNER OF LONGMEADOW)
 COMMONS, WASTE MANAGEMENT,)
 MUNDELEIN DISPOSAL, and ONYX)
 WASTE SERVICES, INC. f/k/a BFI,)
)
 Respondents.)

ORDER OF THE BOARD (by S.T. Lawton, Jr.):

On May 23, 2001, complainant Stephen Lardner, filed motions to voluntarily dismiss respondents, Mundelein Disposal, Inc. (Mundelein Disposal), Waste Management, Inc. (Waste Management), and Onyx Waste Services, Inc.¹ (Onyx), from this noise case. On the same date, Lardner filed corresponding motions to accept joint stipulations and proposed settlements with Mundelein Disposal and Waste Management. The Board grants the motion to dismiss Onyx, but denies the remaining motions for the reasons below.

This is complainant's second request to the Board to accept of a proposed stipulation and proposal for settlement, which has not been presented at hearing. On January 17, 2001, complainant and Mundelein Disposal filed a stipulation and proposal for settlement with the Board. On February 15, 2001, the Board adopted an order that did not accept the stipulation and proposed settlement. In addition to discussing service deficiencies, the Board explained that it would not accept a stipulation and proposal for settlement, which had not been presented at hearing. The Board left the parties free to represent their stipulation at hearing. Lardner v. Dominick's Finer Foods et. al. (February 15, 2001), PCB 00-92, slip op. at 2.

DISCUSSION

The Board first discusses why it does not accept the stipulations and proposed settlements between Lardner and respondents, Mundelein Disposal and Waste Management. The Board then addresses the two corresponding motions to dismiss Mundelein Disposal and Waste Management from

¹ The Board notes that on May 8, 2000, counsel for Onyx filed an appearance, which stated that the company was formerly known as BFI Waukegan Hauling Company.

this proceeding.

Stipulations and Proposed Settlements

As the Board advised these parties in its February 15, 2001 order, the Board does not enter orders accepting stipulations and proposals for settlement in citizen's enforcement cases unless they have been presented at hearing. See Lardner (February 15, 2001), PCB 00-92, slip op. at 2. If the parties want the Board to accept and enter their settlement agreements into a Board order, they must present their joint stipulations and proposals for settlement at hearing.

The Board's recent opinion and order that amended its procedural rules directly addressed this issue. The Board's final opinion stated that:

The Act does not address settlement of citizen enforcement actions. Accordingly, the Board will hold a hearing when parties to a citizen enforcement action ask the Board to approve the terms of a proposed settlement. If the parties do not desire a hearing on the proposed settlement, they may file a motion to dismiss the case. Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130 (December 21, 2000), R00-20, slip op at 11; see also, *e.g.* Corning v. Thurela's (August 15, 1996), PCB 96-69, slip op. at 1-2 ("the parties must present the proposed stipulation and settlement at hearing and allow for interested persons to comment").

Motions to Dismiss Mundelein Disposal and Waste Management

On May 23, 2001, Lardner filed motions to dismiss Onyx, Mundelein Disposal, and Waste Management from this case. The Board grants the motion to dismiss Onyx, but denies the other two motions because they were filed in conjunction with the rejected joint stipulations and proposed settlements with these parties.

CONCLUSION

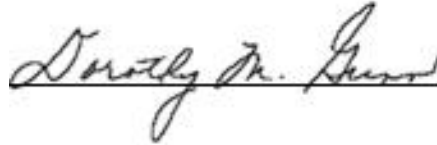
In summary, the Board grants the motion to voluntarily dismiss Onyx. The case caption in future orders will reflect this dismissal. The Board denies the motions to dismiss Mundelein Disposal and Waste Management, which appear to be linked to the rejected accompanying joint stipulations and proposed settlements.

As there appears to be some continuing procedural confusion in this case, the Board's hearing officer will contact the parties in the near future to discuss the direction of any future proceedings in this matter, and to schedule any necessary hearing. In the meantime, the Board reiterates that if the parties want the substance of the proposed stipulation and settlement agreements to be incorporated into a Board order, they must re-present the stipulation at hearing. However, if the parties do not wish the substance of the proposed stipulation and settlement agreements to be incorporated into a Board order, they may enter into a private agreement. The substance of the agreement would not be presented to, or

considered by the Board, and the complainant would file a simple motion to withdraw the complaint.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 9th day of August 2001 by a vote of 6-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board