

ILLINOIS POLLUTION CONTROL BOARD
November 19, 1987

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 86-110
)
VILLAGE OF DUNLAP,)
)
Respondent.)

GERALD T. KARR, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF COMPLAINANT.

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon Complainant's July 28, 1986 Complaint which alleges the following: Failure to procure required construction permit(s) in violation of 35 Ill. Adm. Code Section 309.202; failure to procure operating permit(s) in violation of 35 Ill. Adm. Code Section 309.203; violation of Ill. Rev. Stat. ch 111 1/2 par 1012(a) by allowing individual citizens to connect to the City's new sewer extension.

Hearing was held on September 17, 1987; no members of the public were present. At hearing the parties introduced an executed Stipulation and Proposal For Settlement [Stipulation] and Admissions Of Violation. The Stipulation is attached and adequately addresses the facts in this matter. Accordingly, this opinion will not contain the customary discussion of the issues. Respondent admits to the violations and agrees to pay a penalty of \$500 to the Environmental Protection Trust Fund.

In evaluating this enforcement action and proposed settlement agreement, the Board has considered the facts and circumstances in light of the specific criteria of Ill. Rev. Stat. ch. 111 1/2 par. 1033(c) and finds the Stipulation and Proposal For Settlement acceptable under 35 Ill. Adm. Code 103.180. Accordingly, the Board orders Respondent to comply with the order set forth below.

This Opinion and Order constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board
that:

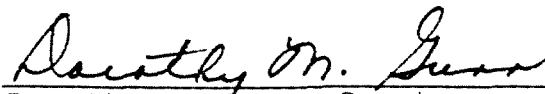
1. The Board hereby accepts the Stipulation and Proposal For Settlement executed by the Illinois Environmental Protection Agency and the Village of Dunlap, filed on September 17, 1987. The terms and conditions of the Stipulation and Proposal For Settlement, which is attached hereto, are incorporated into this Order.
2. The Board makes the following findings of violations against Respondents:
 - a) Violation of Ill. Rev. Stat. ch 111 1/2 par. 1012(a);
 - b) Violation of 35 Ill. Adm. Code Section 309.202;
 - c) Violation of 35 Ill. Adm. Code Section 309.203.
3. Respondent shall, by certified check or money order, payable to the State of Illinois designated for deposit into the Environmental Protection Trust Fund, pay the sum of \$500 (five hundred dollars). The sum shall be paid within 30 days of the date of this Order. Payment shall be mailed to:

Fiscal Services Division
Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, IL 62706

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 19th day of November, 1987 by a vote of 6-1.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

STATE OF ILLINOIS)
)
COUNTY OF PEORIA)

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 - vs -) PCB 86-
)
VILLAGE OF DUNLAP,)
)
 Respondent.)

STIPULATION AND PROPOSAL FOR SETTLEMENT

Now comes Complainant, Illinois Environmental Protection Agency, by its Attorney Neil F. Hartigan, Attorney General of the State of Illinois, and Respondent, Village of Dunlap, a municipal corporation, by its Village President, Kenneth Donsbach, and do hereby submit this Stipulation and Proposal for Settlement. The parties agree that the statement of facts contained herein represents a fair summary of the evidence and testimony which would be introduced by the parties if a full hearing were held. The parties further stipulate that this statement of facts is made and agreed upon for purposes of settlement only and that neither the fact that a party has entered into this Stipulation, nor any of the facts stipulated herein, shall be introduced into evidence in this or any other proceeding except to enforce the terms hereof by the parties to this agreement. This agreement shall be null and void unless the Illinois Pollution Control Board (hereinafter "Board") approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

STATEMENT OF FACTS

1. Complainant, Illinois Environmental Protection Agency (hereinafter "Agency"), is an administrative agency established in the executive branch of the State government by Section 4 of the Illinois Environmental Protection Act (hereinafter "the Act"), Ill.Rev.Stat., 1985, ch. 111 1/2, par. 1001 et seq., and charged, inter alia, with the duty of enforcing the Act, pursuant to Title VIII thereof and recovering civil penalties pursuant to Title XII thereof.

2. Respondent, Village of Dunlap (hereinafter "Respondent"), is a municipal corporation located in Peoria County, Illinois.

3. Sometime in February, 1985, Respondent caused or allowed the construction of a 615 foot sewer extension, which was connected to the Village's existing sanitary system.

4. At no time did Respondent apply for or receive a construction permit from the Agency to install the extension to its existing sewer system, in violation of Section 12(b) of the Act and Ill. Adm. Code Section 309.202(a).

5. Beginning sometime in February, 1985 Respondent operated the 615 foot sewer extension without applying for or receiving an operating permit from the Agency, in violation of Section 12(b) of the Act and 35 Ill. Adm. Code 309.203.

6. Sometime after the construction of the sewer extension, Respondent caused or allowed the residents to tap-on to the

sewer and further allowed the residents to place their public water supply pipes in the same trenches as the sewer pipes, in violation of Section 12(a) of the Act.

7. Respondent was notified of the violations of Sections 12(a) and 12(b) of the Act and 35 Ill. Adm. Code 309.202(a) and 309.203 on April 1, 1986. At this time Respondent was also notified of the Agency's intent to bring an enforcement action and was offered an opportunity to meet with Agency representatives in order to resolve the conflicts which have resulted in the filing of a complaint, in accordance with the requirements of Section 31(d) of the Act. Ill.Rev.Stat. 1985, ch. 111 1/2, par. 1031(d). The Section 31(d) meeting was held on April 29, 1986.

8. Prior to the 31(d) meeting, Respondent submitted to the Agency an application on January 13, 1986, for an operating permit for the sewer extension. On January 21, 1986, the Agency issued an operating permit to the Village of Dunlap for the sewer extension (attached as Exhibit 1).

9. Respondent's construction and operation of the sewer extension from February 1985 until January 21, 1986 constituted a violation of Section 12(b) of the Act and 35 Ill. Adm. Code 309.202(a) and 309.203 during that time period. The placement of the sewer tap-ons and the public water supply pipe in the same trench constitutes a violation of Section 12(a) of the Act.

PROPOSAL FOR SETTLEMENT

As a result of the settlement discussions between the parties and of actions taken by Respondent, the parties believe that the public interest will be best served by resolution of this enforcement action under the terms and conditions provided herein. This proposal for settlement is expressly conditioned upon and effective only with the approval thereof in all respects by the Board. All statements contained herein are agreed to for purposes of settling this action only and shall be null and void and of no effect in any further proceeding or cause of action if the Board does not approve this proposal for settlement in its entirety.

TERMS OF SETTLEMENT

The Village of Dunlap and the Agency have agreed to the following Terms of Settlement. These terms shall be in full settlement of the action filed herein by the Agency and Respondent's liability for all violations alleged in the Complaint.

1. The Agency contends and Respondent admits the facts as set out in the Complaint constitute the following violations of the Act and the Board Regulations:

Count I: Section 12(b) of the Act and
35 Ill. Adm. Code 309.202(a).

Count II: Section 12(b) of the Act and
35 Ill. Adm. Code 309.203.

Count III: Section 12(a) of the Act.

2. The violations alleged in the Complaint filed in this action by the Agency and which Respondent admits, are to date, the only prior violations of the Illinois Environmental Protection Act and Rules and Regulations of the Illinois Pollution Control Board.

3. Respondent has agreed that it will correct all service connections where the sewer tap-ons and the water supply pipes are placed in the same trench, so as to conform to Agency Design Standards and the State Plumbing Code, by May 31, 1986.

4. Respondent agrees to cease and desist from any and all violations of the Illinois Environmental Protection Act and Rules and Regulations of the Illinois Pollution Control Board.

5. Respondent agrees to abide by all terms and conditions of all operating permits issued by the Agency.

6. The parties enter into this Stipulation and Proposal for Settlement and Respondent agrees to pay a penalty specified in this paragraph in order to avoid the substantial costs, inconveniences and uncertainties of further litigation. In order to resolve this dispute and as a condition of settlement, Respondent agrees to pay a penalty of five hundred dollars (\$500.00) into the Environmental Protection Trust Fund within thirty (30) days from the date on which the Board adopts a final order approving, accepting and incorporating this Stipulation and Proposal for Settlement. The Agency deems the payment to be appropriate to aid in the enforcement of the Act under the circumstances of this case.

WHEREFORE, Complainant and Respondent jointly request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

For Complainant

For Respondent

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

VILLAGE OF DUNLAP

By: Joseph E. Svobeda
JOSEPH/E. SVOBODA
Manager, Enforcement Programs

Kenneth Donsbach
KENNETH DONSBACH
Village President

Dated: 7/8/86
gkst01b

7/24/86

CERTIFICATE OF SERVICE

I, GERALD T. KARR, an attorney hereby certify that I caused a true and accurate copy of the attached Complaint and Stipulation And Proposal For Settlement to be served upon,

Kenneth Donsbach
Village President
Village of Dunlap
P.O. Box 116
Dunlap, Illinois 61525

by causing said copies to be mailed registered mail postage prepaid, to the address indicated above, from 100 West Randolph Street, Chicago, Illinois 60601 on July 28, 1986.

Gerald T. Karr

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