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JUN 9 2003

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

STATE OF ILLINOIS  
Pollution Control Board

**Lisa Madigan**  
ATTORNEY GENERAL

June 4, 2003

The Honorable Dorothy Gunn  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph  
Chicago, Illinois 60601

Re: ***People v. Village of Sims, an Illinois municipal corporation; Followell Construction Company, Inc., an Illinois corporation; and Lamac Engineering Company, an Illinois corporation***

Dear Clerk Gunn:

Enclosed for filing please find the original and ten copies of a NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT in regard to the above-captioned matter. Please file the original and return a file-stamped copy of the document to our office in the enclosed self-addressed, stamped envelope.

Thank you for your cooperation and consideration.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jane E. McBride".

Jane E. McBride  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706  
(217) 782-9031

JEM/pp  
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 9 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, )

vs. )

VILLAGE OF SIMS, an Illinois )  
municipal corporation; FOLLOWELL )  
CONSTRUCTION COMPANY, INC., )  
an Illinois corporation; and )  
LAMAC ENGINEERING COMPANY, )  
an Illinois corporation, )

Respondent. )

PCB No. 03-224  
(Enforcement)

NOTICE OF FILING

To: Mr. Jay H. Fyie, Esq.  
Fyie & Hawkins  
Attorneys for the Village of Sims  
Box 279  
115 Northeast Third Street  
Fairfield, IL 62837-0279

Mr. Richard L. Kline, Esq.  
Attorney for Lamac Engineering Co.  
120 E. Fifth Street  
P.O. Box Drawer 400  
Mt. Carmel, IL 62863-0400

Mr. John S. Brewster, Esq.  
Winters, Brewster, Crosby & Schafer  
Attorneys for Followell Construction Company, Inc.  
111 West Main, P.O. Box 700  
Marion, IL 62959

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.


FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (1994), to correct the pollution alleged in the Complaint filed in this case.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
JANE E. McBRIDE  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: June 4, 2003

## CERTIFICATE OF SERVICE

I hereby certify that I did on June 4, 2003, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

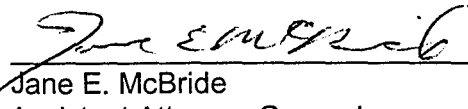
To: Mr. Jay H. Fyie, Esq.  
Fyie & Hawkins  
Attorneys for the Village of Sims  
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115 Northeast Third Street  
Fairfield, IL 62837-0279

Mr. Richard L. Kline, Esq.  
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Mr. John S. Brewster, Esq.  
Winters, Brewster, Crosby & Schafer  
Attorneys for Followell Construction Company, Inc.  
111 West Main, P.O. Box 700  
Marion, IL 62959

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
Suite 11-500  
100 West Randolph  
Chicago, Illinois 60601

  
Jane E. McBride  
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS, )

Complainant, )

vs. )

PCB No. 03-224  
(Enforcement)

VILLAGE OF SIMS, an Illinois )  
municipal corporation; FOLLOWELL )  
CONSTRUCTION COMPANY, INC., )  
an Illinois corporation; and )  
LAMAC ENGINEERING COMPANY, )  
an Illinois corporation, )

Respondents. )


ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, JANE E. McBRIDE, Assistant Attorney General of the State of Illinois, hereby enters her appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN  
Attorney General of the  
State of Illinois

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

BY:   
JANE E. McBRIDE  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: 6/4/03

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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JUN 9 2003

STATE OF ILLINOIS  
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,  
  
Complainant,  
  
v.  
  
VILLAGE OF SIMS, an Illinois municipal corporation; FOLLOWELL CONSTRUCTION COMPANY, INC., an Illinois corporation; and LAMAC ENGINEERING COMPANY, an Illinois corporation,  
  
Respondents.

PCB No. 03-224  
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, complains of Respondents, VILLAGE OF SIMS, an Illinois municipal corporation, FOLLOWELL CONSTRUCTION COMPANY, an Illinois corporation, and LAMAC ENGINEERING COMPANY, an Illinois corporation, as follows:

COUNT I  
WATER MAIN SEPARATION DISTANCE VIOLATIONS

1. This Complaint is brought by the Attorney General on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2000).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2000), and charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board ("Board").

3. This Complaint is brought pursuant to Section 31 of the Act, 415 ILCS 5/31 (2000), after providing the Respondents with notice and the opportunity for a meeting with the Illinois EPA.

4. Respondent Village of Sims (hereinafter, the "Village") is an Illinois municipal corporation located in the county of Wayne.

5. Respondent Followell Construction Company, Inc. is an Illinois corporation in good standing, located in Marion, Williamson County, Illinois. Its registered agent is Ben Followell, 104 Water Tower Road, PO Box 756, Marion, IL 62959.

6. Respondent Lamac Engineering Company is an Illinois corporation in good standing, located in Mount Carmel, Wabash County, Illinois. Its registered agent is Richard L. Kline, 120 E. 5<sup>th</sup> Street, Mount Carmel, IL 62863-2120.

7. Respondent Village owns and operates a public water supply serving its residents.

8. Respondent Village's public water supply serves approximately 421 consumers through 161 direct connections. The Village obtains water from the Wayne City Public Water Supply by way of a booster station, located at the Wayne City Water Treatment Plant.

9. On or about April 14, 1997, the Illinois EPA issued Construction Permit No. 1204-FY 1997 to the Village for the installation of new water main in the Village. On or about March 19, 1999, the Illinois EPA issued an operating permit to the Village for the new water main.

10. The Village employed Lamac Engineering Company to perform certain design work on the water main project.

11. Respondent Lamac Engineering Company prepared plans and specifications for the water main project.

12. The Village employed Followell Construction Company, Inc. to construct the water main project.

13. As owner of the water mains, Respondent Village had direct responsibility for supervising the water main project.

14. Section 15(a) of the Act, 415 ILCS 5/15(a)(2000), provides:

- (a) Owners of public water supplies, their authorized representative, or legal custodians, shall submit plans and specifications to the Agency and obtain written approval before construction of any proposed public water supply installations, changes, or additions is started. Plans and specifications shall be complete and of sufficient detail to show all proposed construction, changes, or additions that may affect sanitary quality, mineral quality, or adequacy of the public water supply; and, where necessary, said plans and specifications shall be accompanied by supplemental data as may be required by the Agency to permit a complete review thereof.

15. Sections 18(a)(1), (a)(2) and (a)(3) of the Act, 415 ILCS 5/18(a)(1), (a)(2) and (a)(3) (2000), provide:

a. No person shall:

- 1. Knowingly cause, threaten or allow the distribution of water from any public water supply of such quality or quantity as to be injurious to human health; or
- 2. Violate regulations or standards adopted by the Board under this Act;
- 3. Construct, install or operate any public water supply without a permit granted by the Agency, or in violation of any condition imposed by such a permit.

16. Section 601.101 of the Board's Public Water Supply Rules, 35 Ill. Adm. Code 601.101, provide, in pertinent part:

Owners and official custodians of a public water supply in the State of Illinois shall provide pursuant to the Environmental Protection Act [415 ILCS 5] (Act), the Pollution Control Board (Board) Rules, and the Safe Drinking Water Act (42 U.S.C. 3000f *et. seq.*) continuous operation and maintenance of public water



supply facilities so that the water shall be assuredly safe in quality, clean, adequate in quantity, and of satisfactory mineral characteristics for ordinary domestic consumption.

17. Section 601.105 of the Board's Public Water Supplies Rules, 35 Ill. Adm. Code 601.105, defines "water main" as:

[A]ny pipe for the purpose of distributing potable water which serves or is accessible to more than one property, dwelling, or rental unit, and is exterior to buildings.

18. Section 602.101 of the Board's Public Water Supplies Rules, 35 Ill. Adm. Code 602.101, provides:

\* \* \*

b) All work performed on a public water supply shall be in accordance with accepted engineering practices.

19. Section 607.104(b) of the Board's Public Water Supplies Rules, 35 Ill. Adm. Code 607.104(b), provides:

b) There shall be no arrangement or connection by which an unsafe substance may enter a supply.

20. Section 653.119 of the EPA's Public Water Supplies Rules, 35 Ill. Adm. Code 653.119, provides, in pertinent part:

Water mains and sewer services lines shall be protected from sanitary sewers, storm sewers, combined sewers, house sewer services connections and drains as follows:

a) Water mains:

1) Horizontal Separation:

A) Water mains shall be laid at least ten feet horizontally from any existing or proposed drain, storm sewer, sanitary sewer, combined sewer or sewer service connection.

\*\*\*

2) Vertical separation:

A) A water main shall be laid so that its invert is 18 inches above the crown of the drain or sewer or whenever water mains cross storm sewers, sanitary sewers or sewer service connections. The vertical separation shall be maintained for that portion of the water main located within ten feet horizontally of any sewer or drain crossed. A length of water main pipe shall be centered over the sewer to be crossed with joints equidistant from the sewer or drain.

b) Water service lines:

1) The horizontal and vertical separation between water service lines and all storm sewers, sanitary sewers, combined sewers or any drain or sewer service connection shall be the same as the water main separation described in (a) above.

\*\*\*

c) Special conditions - Alternate solutions shall be presented to the Agency when extreme topographical, geological or existing structural conditions make strict compliance with (a) and (b) above technically and economically impractical. Alternate solutions will be approved provided watertight construction structurally equivalent to approved water main material is proposed.

d) Water mains shall be separated from septic tanks, disposal fields and seepage beds by a minimum of 25 feet.

21. Section 8.6. of the Recommended Standards for Water Works, 1982 Edition, provides, in pertinent part:

Separation of Water Mains, Sanitary Sewers and Storm Sewers

Section 8.6.2:

Parallel Installation

Water mains shall be laid at least 10 feet horizontally from any existing or proposed sewer. The distance shall be measured edge to edge. In cases where it is not practical to maintain a ten foot separation, the reviewing authority may allow deviation on a case-by-case basis, if supported by data from the design engineer. Such deviation may allow installation of the water main closer to a sewer, provided that the water main is laid in a separate trench or an undisturbed

earth shelf located on one side of the sewer at such an elevation that the bottom of the water main is at least 18 inches above the top of the sewer.

### Section 8.6.3

#### Crossings

Water mains crossing sewers shall be laid to provide a minimum vertical distance of 18 inches between the outside of the water main and the outside of the sewer. This shall be the case where the water main is either above or below the sewer. At crossings, one full length of water pipe shall be located so both joints will be as far from the sewer as possible. Special structural support for the water and sewer pipes may be required.

### Section 8.6.4

#### Exception

The reviewing authority must specifically approve any variance from the requirements of Sections 8.6.2 and 8.6.3 when it is impossible to obtain the specified separation distances.

22. Section 370.350 of the Illinois Recommended Standards for Sewage Works, 35

Ill. Adm. Code 370.350, provides in pertinent part:

370.350 Protection of Water Supplies

\* \* \*

2) Minimum Distances

The following minimum distances apply to clay and loam soils and, as a minimum, shall be doubled for sand. In areas where creviced limestone or gravel may be encountered, the Agency shall be contacted for a determination as to what minimum separation distances and special construction will be required.

- A) Non-watertight sewers and sewer appurtenances such as manholes and wetwells shall not be located closer than 50 feet from water works structures.

23. On January 11, 2000, a representative of the Village contacted the Marion Regional Office of the Illinois EPA, and stated that Followell Construction installed a water main

that was not properly separated from the Village's sewer system and that the contractor was refusing to confirm that the systems were properly separated.

24. On January 11, 2000, a representative of the Illinois EPA directed the Village to expose the water main to determine its distance from the sewer system, and to relocate the water main if it was within ten feet horizontal distance or eighteen inches vertical distance from the sewer system.

25. On February 1, 2000, a representative of Lamac Engineering contacted the Illinois EPA and stated that he was not aware of the location of the sewer system and did not know whether it was separated from the Village's public water system.

26. On February 1, 2000, a representative of the Village contacted the Illinois EPA and stated that the Village had exposed the water main near Lift Station No. 3 and found a distance of four feet of horizontal distance between the water main and the manhole, six feet of horizontal distance between the water main and the lift station, and eight inches of vertical distance between the sewer main where the water main crossed it.

27. On February 2, 2000, representatives of the Illinois EPA, the Village and Lamac Engineering visited the site of Lift Station No. 3 on the sewer collection system, located on the west side of County Highway 900E at the intersection of Richardson Street. The Illinois EPA inspector confirmed the failure to provide adequate separation, and also observed that the water main and sewer main appeared to lack adequate separation a distance of one half to one quarter mile from the lift station. The inspector advised the Village to expose the lines leading away from the lift station to determine whether they were properly separated.

28. At the time of the January 11, 2000, and February 1 and 2, 2000, discussions between a representative of the Illinois EPA and Respondents, it was determined that Respondent Lamac Engineering had released at least three different versions of the plans

prepared for this project. Each set differed and the three sets were not in agreement as to significant specific features on the system. One or more set of these plans were utilized by Respondent Followell at the job site as construction plans.

29. On August 9, 2000, representatives of the Illinois EPA, the Village, Lamac Engineering, and Followell Construction met at the site and discussed the various areas throughout the project requiring correction.

30. Respondents Lamac and Followell claim that Respondent Village was responsible for providing as-built plans showing the location of existing sewer system prior to installation but never did so, and further claim that the Village still had not supplied such plans as of August 9, 2000. If this claim is taken as true, knowing that the as-built plans were not available, Respondents Lamac and Followell proceeded with the installation without adequate information to assure compliance with the Act and the Board's public water supplies rules.

31. On April 18, 2001, the parties completed work to correct the separation distances. During the relocation of the water main, the Illinois EPA inspector noted the following violations and corrective actions:

- a. At Lift Station No. 3 on the sewer collection system, the water main was cut on the west side of County Highway 900E, where it crossed under the gravity sewer line. The contractor relocated the water main twenty-five feet to the south of the lift station.
- b. At a location in proximity to the Borah residence, the water main was cased and placed greater than eighteen inches below the sewer service connection.
- c. On Robinson Street, the contractor cased and installed the water main on the south side of the street, locating it greater than eighteen inches under each sewer service connection. The contractor reconnected the water main at the north side of the street greater than ten feet from the sewer manhole.
- d. On Moyer Street, the contractor relocated the water main and hydrant

more than twenty-five feet to the west of Lift Station No. 5 on the sewer collection system. The contractor also relocated the water service line and meter.

- e. At Lift Station No. 1 on the sewer collection system, the contractor relocated the water main twenty-five feet from the lift station.

32. By causing or allowing installation of new water main in a manner so that the installation did not meet the horizontal and vertical separation distances required by the EPA's Public Water Supplies rules, as set forth in Paragraph 30, Respondent Village has violated Sections 18(a)(1), (2) and (3) of the Act, 415 ILCS 5/18(a)(1), (2), (3)(2000), 35 Ill. Adm. Code 601.101(b), and 35 Ill. Adm. Code 607.104(b).

33. By failing to comply with the conditions of its Construction Permit #1204-FY1997, Respondent Village has violated Section 15 of the Act, 415 ILCS 5/15 (2000), and 35 Ill. Adm. Code 602.101(b).

34. By causing or allowing installation of new water main in a manner so that the installation did not meet the horizontal and vertical separation distances required by the EPA's Public Water Supplies rules, as set forth in Paragraph 30, Respondents Followell Construction Company, Inc. and Lamac Engineering Company have violated Sections 18(a)(1), (2) and (3) of the Act, 415 ILCS 5/18(a)(1), (2), (3) (2000), and 35 Ill. Adm. Code 607.104(b).

35. By failing to comply with the conditions of its Construction Permit #1204-FY1997, Followell Construction Company, Inc. and Lamac Engineering Company have violated Section 15 of the Act, 415 ILCS 5/15 (2000), and 35 Ill. Adm. Code 602.101(b).

#### **PRAYER FOR RELIEF**

WHEREFORE, Complainant, People of the State of Illinois, respectfully request that the Board enter an order against the Respondents Village of Sims, Followell Construction Company, Inc. and Lamac Engineering Company:

- A. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
- B. Finding that each Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondents to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondents a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation continued thereafter, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a)(2000);
- E. Awarding to Complainant its costs and reasonable attorney's fees; and
- F. Granting such other relief as the Board may deem appropriate.

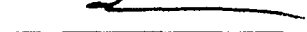
PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,

Attorney General of the  
State of Illinois,

MATTHEW J. DUNN, Chief  
Environmental Enforcement/Asbestos  
Litigation Division

Of Counsel  
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BY:   
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General