

BEFORE THE 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.)

RECEIVED
CLERK'S OFFICE
JUN 12 2003
STATE OF ILLINOIS
Pollution Control Board

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

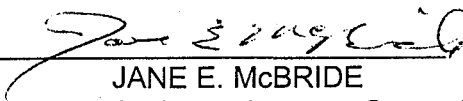
PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT WITH FOLLOWELL CONSTRUCTION COMPANY, INC., copies of which are attached hereto and herewith served upon you.

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

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: June 9, 2003

BY: 
JANE E. McBRIDE
Assistant Attorney General
Environmental Bureau

CERTIFICATE OF SERVICE

I hereby certify that I did on June 9, 2003, send by First Class 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, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT WITH FOLLOWELL CONSTRUCTION COMPANY, INC.

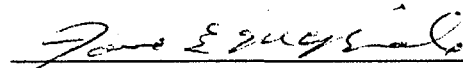
To: Mr. Jay H. Fyie, Esq.
Fyie & Hawkins
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Mr. John S. Brewster, Esq.
Winters, Brewster, Crosby & Schafer
Attorneys for Followell Construction Company, Inc.
111 West Main, P.O. Box 700
Marion, IL 62959

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,)
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 Complainant,)
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 v.)
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 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)

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2002), moves that the Illinois Pollution Control Board grant the Complainant and Respondent Followell Construction Company, Inc., ("Followell") relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2002). In support of this motion, Complainant states as follows:

1. On June 9, 2003, Complainant filed a Complaint with the Board, alleging violations by Respondent Followell in the installation of new water main requirements.
2. The Complainant and Respondent Followell have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.

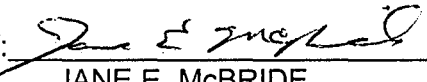
4. Complainant and Respondent Followell agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2002).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2002).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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: 4/9/03

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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF)
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 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)

STIPULATION AND PROPOSAL FOR SETTLEMENT
WITH FOLLOWELL CONSTRUCTION COMPANY, INC.

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), and the Respondent FOLLOWELL CONSTRUCTION COMPANY, INC. do hereby submit this Stipulation and Proposal for Settlement. The parties stipulate 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 on those issues for which a settlement is proposed. The parties agree that the purpose of this Stipulation and Proposal for Settlement is to resolve Complainant's claims against Respondent Followell Construction Company, Inc. as set forth in the pending Complaint. 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. Notwithstanding the previous sentence, this Stipulation and Proposal for Settlement or Illinois Pollution Control Board ("Board") Order accepting same may be used in any future enforcement action as evidence of a

past adjudication of violations, as provided in Sections 39(i) and 42(h) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/39(i) and 42(h) (2002). This agreement shall be null and void unless the Board approves and disposes of this matter on each and every one of the terms and conditions of the settlement set forth herein.

I.

JURISDICTION

The Board has jurisdiction of the subject matter herein and of the parties consenting hereto pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et seq.* (2002). The Complaint states a cause of action upon which relief may be granted.

II.

AUTHORIZATION

The authorized representatives for each signatory to this Stipulation and Proposal for Settlement certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and Proposal for settlement and to legally bind that party to it.

III.

APPLICABILITY

This Stipulation and Proposal for Settlement shall apply to and be binding upon the Complainant and Respondent Followell Construction Company, Inc., as well as the successors and assigns of Respondent Followell Construction Company, Inc. and any of its officers, directors, agents, employees or servants. Respondent Followell Construction Company, Inc. shall not raise as a defense to any action undertaken to enforce the terms and conditions of this Stipulation and Proposal for Settlement or the Board Order approving it, the failure of its officers, directors, agents, employees or servants to take such action as shall be required to

comply with the provisions of this Stipulation and Proposal for Settlement.

IV.

STATEMENT OF FACTS

Pursuant to the requirements of 35 Ill. Adm. Code 103.302, the parties submit the following stipulation of facts pertaining to the nature, extent, and causes of the violations and the nature of Respondents' operations and control equipment.

1. The Complaint and this Stipulation and Proposal for Settlement are brought pursuant to the statutory authority of the Attorney General to prosecute civil actions to obtain civil penalties for violations of the Act, 415 ILCS 5/1 et seq. (2000), and at the request of the Illinois Environmental Protection Agency.

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

3. 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.

4. 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. 5th Street, Mount Carmel, IL 62863-2120.

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

6. 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.

7. 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.

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

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

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

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

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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, Respondent Followell Construction Company, Inc. has 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).

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

V.

FUTURE PLANS OF COMPLIANCE

The Respondent Followell Construction Company, Inc. shall diligently conform to the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board's regulations, 35 Ill. Adm. Code, Subtitles A through H.

VI.

IMPACT ON THE PUBLIC RESULTING FROM NONCOMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c) (2002), provides:

* * *

- c. In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:
 - i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
 - ii. the social and economic value of the pollution source;
 - iii. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
 - iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
 - v. any subsequent compliance.

In response to these factors, the parties incorporate by reference the Statement of Facts and also state as follows:

1. The injury to or interference with the health, general welfare and physical property of the people would be characterized as having the potential for contaminating the public water supply of the Village of Sims and negatively impacting public health by potentially

causing disease. The degree of injury would be potentially severe.

2. If installed with the proper separation distance, the water and sewer line project at issue is of social and economic benefit to the Village of Sims.

3. The water and sewer lines, if installed with the proper separation distance, are located in a suitable site for such lines and the site has been found suitable by the Illinois EPA for such use.

4. Compliance with the Act and Board regulations is technically practicable and economically reasonable.

5. The project has been reconstructed to bring it into compliance with the Act and applicable regulations.

VII.

COMPLIANCE WITH OTHER LAWS AND REGULATIONS

This Stipulation and Proposal for Settlement in no way affects the responsibility of Respondent Followell Construction Company, Inc. to comply with any federal, state, or local laws or regulations, including but not limited to the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board's rules and regulations, 35 Ill. Adm. Code, Subtitles A through H.

VIII.

DETERMINATION OF APPROPRIATE CIVIL PENALTY

Section 42(h) of the Act, 415 ILCS 5/42(h) (2002), provides:

* * *

h. In determining the appropriate civil penalty to be imposed under subdivisions (a), (b)(1), (b)(2), (b)(3) or (b)(5) of this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including, but not limited to the following factors:

(1) the duration and gravity of the violation;

- (2) the presence or absence of due diligence on the part of the violator in attempting to comply with the requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
- (3) any economic benefits accrued by the violator because of delay in compliance with requirements;
- (4) the amount of monetary penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Act by the violator and other persons similarly subject to the Act; and
- (5) the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator.

In response to these factors, the parties incorporate by reference the Statement of Facts and also state as follows:

1. The alleged violations required reconstruction of portions of the project, resulting in expenditure of approximately seven thousand five hundred dollars (\$7,500.00) by Respondent Followell Construction Company, Inc. more than was initially contemplated.
2. Reconstruction has corrected the project so as to return it to compliance.
3. Respondents realized no economic benefit from noncompliance.
4. Complainant has determined, in this instance, that a penalty of five thousand dollars (\$5,000.00) will serve to deter future violations and aid in future voluntary enforcement of the Act and applicable Board rules and regulations.
5. Complainant has also determined that Respondent Followell Construction Company, Inc. has no known history of prior adjudicated violations.

IX.

NONADMISSION OF LIABILITY

This Stipulation and Proposal for Settlement is entered into for the purpose of settling

and compromising disputed claims without the expense of contested litigation. By entering into this Stipulation and Proposal for Settlement and complying with its terms, Followell Construction Company, Inc. does not affirmatively admit the allegations of violation within the Complaint, and this Stipulation and Proposal for Settlement shall not be interpreted as including such admission.

X.

PROPOSAL FOR SETTLEMENT

1. Respondent Followell Construction Company, Inc. shall pay a penalty of five thousand dollars (\$5,000.00), within thirty (30) days of the Board's Order approving this Stipulation and Proposal for Settlement. Payment shall be by certified check made payable to, "Illinois Environmental Protection Agency, for deposit into the Environmental Protection Trust Fund," and shall be submitted to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

The name, number of the case, and the Respondent's Federal Employer Identification Number ("FEIN") shall appear on the check. Respondent Followell's FEIN is 37-1286435.

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

Donna Lutes
Illinois Attorney General's Office
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706

2. In the event the penalty is not paid in a timely fashion, interest shall accrue and be paid by Respondent Followell Construction Company Inc. at the rate set forth in Section 1003(a) of the Illinois Income Tax Act, 35 ILCS 5/1003(a) (2002), pursuant to Section 42(g) of

the Act, 415 ILCS 5/42(g) (2002).

3. If Respondent Followell Construction Company, Inc. fails to comply with any material requirement set forth in this Stipulation and Proposal for Settlement, Respondent Followell Construction Company, Inc. shall pay in liquidated penalties the sum of five hundred dollars (\$500.00) 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.

4. Respondent Followell Construction Company, Inc. shall cease and desist from future violations of any federal, state, or local environmental statutes and regulations, including, but not limited to, the Act, 415 ILCS 5/1 *et seq.* (2002), and the Board's rules and regulations, 35 Ill. Adm. Code, Subtitles A through H.

XI.

ABATEMENT OF VIOLATIONS

This Stipulation and Proposal for Settlement, upon its adoption by the Board, constitutes an order to abate violations of the Act and regulations thereunder.

XII.

RELEASE FROM LIABILITY

The Complainant shall release, waive and discharge Respondent Followell Construction Company, Inc. from any further liability or penalties for violations of the Act and Board regulations which were specifically the subject matter of the Complaint herein, upon receipt by Complainant of the payment required in Section IX.1., and upon compliance with the terms of this Stipulation and Proposal for Settlement. However, nothing in this Stipulation and Proposal for Settlement shall be construed as a waiver by Complainant of the right to redress future violations or obtain penalties with respect thereto, nor shall anything contained herein constitute

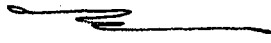
a waiver by Respondent to contest and defend any and all alleged future violations or penalties.

WHEREFORE, Complainant and Respondent Followell Construction Company, Inc. request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

**AGREED:
FOR THE COMPLAINANT:**

LISA MADIGAN
Attorney General of the State of Illinois

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

DATED: 5/06/03

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: 
JOSEPH E. SVOBODA
Chief Legal Counsel

DATED: 5/2/03

FOR THE RESPONDENTS:


Ben Followell, President
FOLLOWELL CONSTRUCTION COMPANY, INC.

DATED: 5/28/03