

ILLINOIS POLLUTION CONTROL BOARD
September 4, 2003

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 03-224
) (Enforcement – Public Water Supply)
VILLAGE OF SIMS, an Illinois municipal)
corporation, FOLLOWELL)
CONSTRUCTION COMPANY, INC., an)
Illinois corporation, and LAMAC)
ENGINEERING COMPANY, an Illinois)
corporation,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by D.C. Karpel):

On June 9, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint with the Board against three respondents: the Village of Sims (Village); Followell Construction Company, Inc. (Followell Construction); and Lamac Engineering Company (Lamac Engineering). The People allege that respondents violated the Environmental Protection Act (Act) (415 ILCS 5/15, 18(a)(1), (2), (3) (2002)) and the Board's public water supply regulations (35 Ill. Adm. Code 601.101(b), 602.101(b), 607.104(b)) by causing or allowing a new water main to be installed too close to a sewer system. The parties now seek to settle. For the reasons below, the Board accepts the parties' stipulations and proposed settlements.

The Village, which is located in Wayne County, owns and operates a public water supply serving approximately 421 consumers through 161 direct connections. The Village retained Lamac Engineering to design, and Followell Construction to build, the new water main that is the subject of the complaint. Over June 12 and 26, 2003, the People filed with the Board three separate stipulations and proposed settlements: one with the Village; one with Followell Construction; and one with Lamac Engineering.

Each of the three stipulations and proposed settlements was accompanied by a motion for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2002), *amended by* P.A. 93-152, eff. July 10, 2003). These filings are authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2002), *amended by* P.A. 93-152, eff. July 10, 2003), which requires that the public have an opportunity to request a hearing whenever the State and a respondent propose settling an enforcement action without a public hearing. *See* 35 Ill. Adm. Code 103.300(a).

The Board provided notice of each stipulation, proposed settlement, and request for relief. Notices were published in the *Wayne County Press*: the notices for the Village and Followell Construction on June 26, 2003; and the notice for Lamac Engineering on July 31, 2003. The Board did not receive any requests for hearing. The Board grants the parties' requests for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2002), *amended by* P.A. 93-152, eff. July 10, 2003; 35 Ill. Adm. Code 103.300(b).

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. *See* 35 Ill. Adm. Code 103.302. These requirements include stipulating to facts on the nature, extent, and causes of the alleged violations and the nature of respondents' operations. Section 103.302 also requires that the parties stipulate to facts called for by Section 33(c) of the Act (415 ILCS 5/33(c) (2002), *amended by* P.A. 93-152, eff. July 10, 2003), which bears on the reasonableness of the circumstances surrounding the alleged violations. Among other things, the stipulation states that the water main project has been reconstructed to comply with the Act and Board rules. The Board finds that the People and each respondent have satisfied Section 103.302.

Each stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2002), *amended by* P.A. 93-152, eff. July 10, 2003), which may mitigate or aggravate the civil penalty amount. The stipulations provide that none of the respondents benefited economically from the alleged violations. None of the respondents admit the alleged violations, but the Village agrees to pay a \$500 civil penalty, while Followell Construction and Lamac Engineering agree to pay a \$5,000 civil penalty each. The Board accepts each of the three stipulations and proposed settlements.

This opinion constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board accepts and incorporates by reference each of the three stipulations and proposed settlements.
2. No later than October 6, 2003, which is the first business day following the 30th day after the date of this order:
 - a. The Village must pay a civil penalty of \$500;
 - b. Followell Construction must pay a civil penalty of \$5,000; and
 - c. Lamac Engineering must pay a civil penalty of \$5,000.
3. Each respondent must pay the applicable civil penalty by certified check or money order, payable to the "Illinois Environmental Protection Agency, for deposit into the Environmental Protection Trust Fund." The case number, case name, and respondent's federal employer identification number must be included on the certified check or money order.

4. Each respondent must send the certified check or money order to:

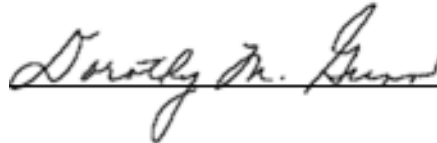
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

5. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002), *amended by* P.A. 93-152) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
6. Each respondent must cease and desist from future violations.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 4, 2003, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board