

ILLINOIS POLLUTION CONTROL BOARD  
March 3, 2005

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 05-96
	)	(Enforcement - Water, Public Water
VILLAGE OF NORTH CITY, an Illinois	)	Supply)
municipal corporation; LAWRENCE A. LIPE	)	
& ASSOCIATES, INC., an Illinois	)	
corporation, ALTMAN-CHARTER	)	
COMPANY, a Missouri corporation; and	)	
FURLONG EXCAVATING, INC., an Illinois	)	
corporation,	)	
	)	
Respondents.	)	

INTERIM OPINION AND ORDER OF THE BOARD (by J.P. Novak):

On November 17, 2004, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Village of North City; Lawrence A Lipe & Associates, Inc.; Altman-Charter Company; and Furlong Excavating, Inc. (the respondents). See 415 ILCS 5/31(c)(1) (2002); 35 Ill. Adm. Code 103.204. The complaint concerns the respondents' construction or installation of a sewage lift station and water main in the Village of North City, Franklin County. Three of the four parties now seek to settle. For the reasons below, the Board accepts the parties' stipulations and proposed settlements as to the respondents, Lawrence A Lipe & Associates, Inc.; Altman-Charter Company; and Furlong Excavating, Inc. This leaves still pending the case against the sole remaining respondent, the Village of North City.

Under the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. See 415 ILCS 5/31 (2002); 35 Ill. Adm. Code 103. In this case, the People allege that the respondents violated Sections 12(c) and 15(a) of the Environmental Protection Act (415 ILCS 5/12(c) and 15(a) (2002)) and 35 Ill. Adm. Code 309.202(a), 602.101(b), and 653.119(b)(1)(A) by (1) construction or installation of a sewage lift station in the village of North City without a permit; (2) failing to submit complete plans and specifications for a 1999 water main permit; and (3) construction or installation of a water main without complying without maintaining at least 10 feet horizontal separation between sewer and water lines. The People ask the Board to order the respondents to cease and desist from further violation and pay a civil penalty of \$50,000 per violation and \$10,000 for each day the violations continued.

### **LAWRENCE A. LIPE & ASSOCIATES, INC. STIPULATION AND SETTLEMENT**

On November 22, 2004, the People and Lawrence A. Lipe & Associates, Inc. filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2002)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2002)), 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). On December 2, 2004, the Board ordered publication of the necessary notice relating to this stipulation and proposal for settlement agreement, and request for relief from hearing. The Board published newspaper notice in the *Benton Evening News* on December 8, 2004. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2002); 35 Ill. Adm. Code 103.300(b). Under the proposed stipulation, Lawrence A. Lipe admits the alleged violations and agrees to pay a civil penalty of \$5,000.

### **FURLONG EXCAVATING, INC. STIPULATION AND SETTLEMENT**

On December 28, 2004, the People and Furlong Excavating, Inc. filed a separate stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2002)). On January 6, 2005, the Board ordered publication of the necessary notice relating to this stipulation and proposal for settlement agreement, and request for relief from hearing. The Board published newspaper notice in the *Benton Evening News* on February 2, 2005. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2002); 35 Ill. Adm. Code 103.300(b). Under the proposed stipulation, Furlong Excavating, Inc. neither admits nor denies the alleged violations but agrees to pay a civil penalty of \$500. Furlong Excavating, Inc. further agrees to perform a supplemental environmental project by donation of \$2,000 to the Benton School District Greening Program.

### **ALTMAN-CHARTER COMPANY STIPULATION AND SETTLEMENT**

On January 6, 2005, the People and Altman-Charter Company also filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (2002)). On January 20, 2005, the Board ordered publication of the necessary notice relating to this stipulation and proposal for settlement agreement, and request for relief from hearing. The Board published newspaper notice in the *Benton Evening News* on February 2, 2005. The Board did not receive any requests for hearing. The Board grants the parties' request for relief from the hearing requirement. *See* 415 ILCS 5/31(c)(2) (2002); 35 Ill. Adm. Code 103.300(b). Under the proposed stipulation, Altman-Charter Company neither admits nor denies the alleged violations but agrees to pay a civil penalty of \$2,000.

Section 103.302 of the Board's procedural rules sets forth the required contents of stipulations and proposed settlements. 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 the

respondent's 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)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

The People and the three settling respondents, Lawrence A Lipe & Associates, Inc.; Altman-Charter Company; and Furlong Excavating, Inc., have satisfied Section 103.302. The Board accepts the three separate stipulations and proposed settlements. The remaining respondent, the Village of North City, is not a participant in any of the stipulations and settlement agreements. The case remains open as to the sole remaining respondent, the Village of North City.

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

### **ORDER**

1. The Board accepts and incorporates by reference the stipulations and proposed settlements between the People and the respondents.
2. The three settling respondents, Lawrence A Lipe & Associates, Inc.; Altman-Charter Company; and Furlong Excavating, Inc., must cease and desist from the alleged violations.
3.
  - a) Lawrence A. Lipe has admitted the violations in the complaint. The Board hereby finds that Lawrence A. Lipe violated Sections 12(c) and 15(a) of the Environmental Protection Act (415 ILCS 5/12(c) and 15(a) (2002)) and 35 Ill. Adm. Code 309.202(a), 602.101(b), and 653.119(b)(1)(A)
  - b) Lawrence A. Lipe must pay a civil penalty of \$5,000 no later than April 4, 2005, which is the first business day after the 30th day after the date of this order. Lawrence A. Lipe must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Lawrence A. Lipe's social security number or federal employer identification number must be included on the certified check or money order.
  - c) Lawrence A. Lipe 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
4.
  - a) Furlong Excavating, Inc. must pay a civil penalty of \$500 no later than April 4, 2005, which is the first business day after the 30th day after the date of this order. Furlong Excavating, Inc. must pay the civil penalty by

certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Furlong Excavating, Inc.'s social security number or federal employer identification number must be included on the certified check or money order.

- b) Furlong Excavating, Inc. 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

- c) Furlong Excavating, Inc. must further perform a supplemental environmental project by donating \$2,000 to the Benton School District Greening Program no later than April 4, 2005, which is the first business day after the 30th day after the date of this order, at an address to be determined by the People.

5. a) Altman-Charter Company must pay a civil penalty of \$2,000 no later than April 4, 2005, which is the first business day after the 30th day after the date of this order. Altman-Charter Company must pay the civil penalty by certified check or money order, payable to the Environmental Protection Trust Fund. The case number, case name, and Altman-Charter Company's social security number or federal employer identification number must be included on the certified check or money order.

- b) Altman-Charter Company 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

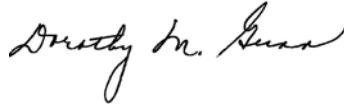
6. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).

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 interim opinion and order on March 3, 2005, by a vote of 5-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board