

ILLINOIS POLLUTION CONTROL BOARD
March 17, 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.)

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 the Village of North City (North City); Lawrence A. Lipe & Associates, Inc. (Lipe); Altman-Charter Company (Altman-Charter); and Furlong Excavating, Inc. (Furlong) (collectively, Respondents). *See* 415 ILCS 5/31(c)(1) (2000); 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.

Lipe, Altman-Charter, and Furlong separately filed a stipulation and proposed settlement accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Environmental Protection Act (Act) (415 ILCS 5/31(c)(1) (2002)). Although the Board published the required notice of the three proposed settlements in the *Benton Evening News*, no person responded by requesting that a hearing be held. In an order dated March 3, 2005, the Board granted relief from the hearing requirement and accepted the settlement proposed by the People with regard to Lipe, Altman-Charter, and Furlong. *See* 415 ILCS 5/31(c)(2) (2002); 35 Ill. Adm. Code 103.300.

Today, the Board considers two motions filed separately on March 10, 2005. In the first, the People and North City filed a stipulation and proposed settlement accompanied by a Motion for Relief from Hearing Requirement. In the second, the People move for a modification of the final order entered March 3, 2005 with regard to Altman-Charter. The Board will consider each of the two motions separately below.

NORTH CITY STIPULATION AND SETTLEMENT

On March 10, 2005, the People and North City filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement of Section 31(c)(1) of the Act. This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2000)). See 35 Ill. Adm. Code 103.300(a). Under the proposed stipulation, North City admits the alleged violations and agrees to pay a civil penalty of \$500.

Unless the Board determines that a hearing is needed, the Board must cause notice of the stipulation, proposed settlement, and request for relief from the hearing requirement. Any person may file a written demand for hearing within 21 days after receiving the notice. If anyone timely files a written demand for hearing, the Board will deny the parties' request for relief and hold a hearing. 415 ILCS 5/31(c)(2) (2000); 35 Ill. Adm. Code 103.300(b), (c). The Board directs the Clerk of the Board to provide the required notice.

MOTION FOR MODIFICATION

On March 10, 2005, the People filed a Motion for Modification of Final Order (Mot.). In their motion, the People note that, "[i]n the stipulation filed by the People on January 6, 2005, Altman-Charter agreed to pay a civil penalty of \$500, and further agreed to perform a supplemental environmental project by a donation of \$2,000 to the Benton School District Greening Program." Mot. at 1. In addition, "the People respectfully contend that the Board mistakenly issued an incorrect Order as to what was agreed to between the People and Altman-Charter Company." *Id.*

The Board's procedural rules provide that motions for the Board to modify its final orders must be filed within 35 days after the order is received (35 Ill. Adm. Code 101.520), and the Board finds that the People's motion filed March 10, 2005 is timely. The Board notes that, in the first paragraph of its March 3, 2005 order, it expressly "accepts and incorporates by reference the stipulations and proposed settlements between the People and the respondents" including Altman-Charter. However, the Board finds that, due to an inadvertent administrative error, paragraph 5 of the order does not accurately reflect the stipulation and proposed settlement filed by the People and Altman-Charter on January 6, 2005. Because a timely-filed motion for modification stays the effect of a final order until disposition of the motion (35 Ill. Adm. Code 101.520(c)), the Board extends payment deadlines to maintain the 30-day payment period allowed Altman-Charter in the parties' proposed settlement.

Accordingly, the People's Motion for Modification of Final Order is granted, and paragraph 5 of the Board's March 3, 2005 order is modified by replacing it with the following:

5. a) Altman-Charter Company must pay a civil penalty of \$500 no later than April 18, 2005, which is the first business day after the 30th day after the date of this order. Altman-Charter 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 must sent eh certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
Springfield, IL 62794-9276

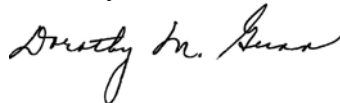
- c) Altman-Charter must further perform a supplemental environmental project by donating \$2,000 to the Benton School District Greening Program no later than April 18, 2005, which is the first business day after the 30th day after the date of this order, at an address to be determined by the People.

Except for the modification of paragraph 5 described above, the provisions of the Board's March 3, 2005 order remain in effect as issued on that date.

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 order on March 17, 2005, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board