

ILLINOIS POLLUTION CONTROL BOARD
August 4, 2006

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 05-215
) (Enforcement - Land)
FIRST ROCKFORD GROUP, INC., and)
SCHLICHTING AND SONS EXCAVATING,)
INC.,)
)
Respondents.)

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 06-103
) (Enforcement - Land)
FIRST ROCKFORD GROUP, INC., an Illinois) (Consolidated)
corporation,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On June 15, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a one-count complaint against First Rockford Group, Inc. (First Rockford), Heritage Engineering, Ltd., and Schlichting & Sons Excavating, Inc. (Schlichting) (collectively, respondents), and a two-count complaint against Village Of Cherry Valley (Cherry Valley). The Board accepted the complaint on July 7, 2005, and docketed the matter as PCB 05-215.¹

In the complaint of PCB 05-215, the People allege that Schlichting and the other respondents violated Section 15 of the Environmental Protection Act (Act) (415 ILCS 5/15 (2004)), and provisions of the Board's rules at 35 Ill. Adm. Code 602.101(a). In the second

¹ The Board has accepted stipulation and settlement agreements filed by the People with Heritage Engineering, Ltd. and Cherry Valley by orders dated November 3, 2005 and February 2, 2006. See People v. First Rockford Group, Inc., Village of Cherry Valley, Heritage Engineering, Ltd., and Schlichting & Sons Excavating, Inc., PCB 05-215 (Nov. 3, 2005) and People v. First Rockford Group, Inc., Village of Cherry Valley, and Schlichting & Sons Excavating, Inc., PCB 05-215 (Feb. 2, 2006). The caption in PCB 05-215 has been changed to reflect those orders.

count of the complaint, the People allege that Cherry Valley violated Section 15 of the Act (415 ILCS 5/15 (2004)) and the Board's rules at 35 Ill. Adm. Code 602.101(a) and 652.101(a). The People allege that respondents violated these provisions by constructing and installing potable water lines at the Golf Hill subdivision in Cherry Valley, Winnebago County.

On December 15, 2005, the People filed a complaint against First Rockford. The complaint concerns residential subdivisions developed by a corporation owned by First Rockford named Spring Creek Meadows L.L.C. (Spring Creek). Spring Creek was created in part to develop the residential subdivisions of Winchester Hills, Wexford Place, and Wyndridge in Machesney Park, Winnebago County that are the subject matter of this complaint. The Board docketed the complaint as PCB 06-103, and accepted the complaint for hearing on January 5, 2006. The Board consolidated PCB 05-215 with PCB 06-103 on February 2, 2006.

On June 19, 2006, the People and Schlichting 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) (2004)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2004)). See 35 Ill. Adm. Code 103.300(a). The stipulation and proposed settlement applies only to the People and Schlichting. Under the proposed stipulation, Schlichting neither admits nor denies the violations alleged in the complaint, but agrees to pay a civil penalty of \$10,000.

The Board provided notice of the stipulation, proposed settlement, and request for relief from hearing. The Board published newspaper notice in the *Rockford Register Star* on June 24, 2006. 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) (2004); 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. 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 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) (2004)), which bears on the reasonableness of the circumstances surrounding the alleged violations.

As previously stated, Schlichting neither admits nor denies the violations alleged in the complaint, but agree to pay a civil penalty of \$10,000. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2004), *as amended by* P.A. 93-575, (eff. Jan. 1, 2004), which may mitigate or aggravate the civil penalty amount. The People determined that a civil penalty of \$10,000 was appropriate.

The People and Schlichting have satisfied Section 103.302. The Board accepts the stipulation and proposed settlement.

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

ORDER

1. The Board accepts and incorporates by reference the stipulation and proposed settlement.
2. Schlichting & Sons Excavating, Inc. (Schlichting) must pay a civil penalty of \$10,000 within 30 days from the date of this order.
3. Schlichting must pay the civil penalty by certified check, money order or electronic funds transfer, payable to the Environmental Protection Trust Fund. The case number, case name, and respondents' federal employer identification or social security numbers must be included on the certified check or money order. If submitting an electronic funds transfer to the Agency, the electronic funds transfer must be made in accordance to the specific instructions provided to Schlichting.
4. Schlichting must submit the certified check, money order or electronic funds transfer to:

Illinois Environmental Protection Agency
Fiscal Services Section
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
5. A copy of the certified check, money order or record of the electronic funds transfer and any transmittal letter must be sent to the following:

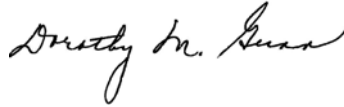
Rebecca A. Burlingham
Supervising Attorney
Environmental Bureau
188 W. Randolph Street, 20th Floor
Chicago, Illinois 60601
6. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2004)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act. 35 ILCS 5/1003(a) (2004).
7. Schlichting must cease and desist from the alleged 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) (2004); *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 August 4, 2006, by a vote of 4-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board