

ILLINOIS POLLUTION CONTROL BOARD
October 18, 2001

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 00-122
) (Enforcement – Public Water Supply)
CITY OF LAWRENCEVILLE, JOHN A.)
GORDON, P.E., and GORDON & PRICE,)
INC.,)
)
Respondents.)

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

On January 18, 2000, the People of the State of Illinois (People) filed a one-count complaint against respondents City of Lawrenceville (City), John A. Gordon, P.E. (Gordon), Gordon & Price, Inc. (G&P), David Guillaum d/b/a D&G Construction (Guillaum), and Wayne Lapington d/b/a Lapington Trucking and Excavating (Lapington). *See* 415 ILCS 5/31(c)(1) (2000); 35 Ill. Adm. Code 103.204.

The People allege that, by allowing the construction of water and sewer mains in the same trench within two feet of each other, the City, Gordon, and G&P violated Sections 12(b), 15, 18(a)(1), and 18(a)(2) of the Environmental Protection Act (415 ILCS 5/12(b), 15, 18(a)(1), 18(a)(2) (2000)); Sections 309.202(a), 601.101, 602.101(a), 602.101(b), and 607.104(b) of the Board's regulations (35 Ill. Adm. Code 309.202(a), 601.101, 602.101(a), 602.101(b), and 607.104(b)); and Section 653.119(a)(1)(A) of the Illinois Environmental Protection Agency's regulations (35 Ill. Adm. Code 653.119(a)(1)(A)). The water and sewer main at issue are located in Lawrenceville, Lawrence County.

On August 16, 2000, the People filed a request for relief from the hearing requirement and a stipulation and proposal for settlement with Guillaum and Lapington. On September 21, 2000, the Board granted the request for relief from the hearing requirement and accepted the stipulation and settlement.

On September 19, 2001, the People and the City 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) (2000)). 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). The Board provided notice of the stipulation, proposed settlement, and request for relief, including published notice in *The Lawrenceville Daily Record* on September 21, 2001. 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) (2000); 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 City'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) (2000)). The People and the City have satisfied Section 103.302. The City neither admits nor denies the alleged violations in the complaint but proposes to perform a \$2,000 Supplemental Environmental Project (SEP) as a penalty.

On October 1, 2001, Gordon and G&P filed a pleading before the Board. Gordon and G&P stated that they were not opposed to the stipulation but that they disputed the accuracy of the statement of facts in the stipulation. The Board finds that the statement of facts pertains to the stipulation only. The Board will not employ the statement of facts from the stipulation in making decisions with respect to any future hearings, opinions, or orders involving complainant and Gordon or G&P. However, the stipulation and proposed settlement between complainant and the City does not release Gordon or G&P from liability.

This opinion and order 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. The City must perform a \$2,000 SEP as a penalty. The SEP involves the creation of a five-acre nature preserve on the southern edge of the Embarras River between the Big Four Railroad and State Highway One lying south and adjacent to the Embarras River in Lawrence County.
3. In the event that the City does not perform the SEP by December 31, 2001, the City must pay a civil penalty of \$2,000 by no later than January 31, 2002. The City must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency for deposit into the Environmental Protection Agency Trust Fund. The case number, case name, and the City's federal employer identification number must be included on the certified check or money order.
 - a. The City must send the certified check or money order to:

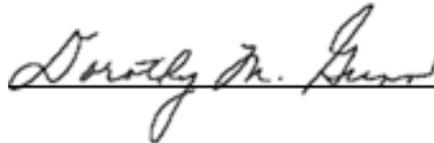
Illinois Environmental Protection Agency
Fiscal Services Division
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

- b. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2000)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2000)).
4. The City 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) (2000); *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 October 18, 2001, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board