

ILLINOIS POLLUTION CONTROL BOARD  
September 21, 2000

PEOPLE OF THE STATE OF ILLINOIS, )  
)  
Complainant, )  
)  
v. ) PCB 00-122  
) (Enforcement – Public Water Supply)  
CITY OF LAWRENCEVILLE, JOHN A. GORDON, P.E., )  
GORDON & PRICE, INC., )  
DAVID GUILLAUM d/b/a D & G CONSTRUCTION, )  
and WAYNE LAPINGTON d/b/a LAPINGTON )  
TRUCKING AND EXCAVATING, )  
)  
Respondents. )  
)

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

On January 18, 2000, the People of the State of Illinois filed a complaint against the City of Lawrenceville (City), John A. Gordon, P.E. (John Gordon), Gordon & Price, Inc. (G & P), David Guillaum d/b/a D & G Construction (D & G), and Wayne Lapington d/b/a Lapington Trucking and Excavating (Lapington).<sup>1</sup> The complaint alleges that the respondents committed various violations of the Environmental Protection Act (Act) and Board rules in the construction of water and sewer mains in Lawrenceville, Lawrence County, Illinois.

The complaint alleges that by allowing the construction of water and sewer mains in the same trench within two feet of each main; City, John Gordon, G & P, violated Sections 12(b), 15 and 18(a)(1) and (a)(2) of the Act (415 ILCS 5/12(b), 15, 18(a)(1), 18(a)(2); Section 309.202(a) of the Board's Construction Permit Rules (35 Ill. Adm. Code 309.202(a)); and Sections 601.101, 602.101(a) and (b), 607.104(b), and 653.119(a)(1)(A) of the Board's Public Water Supply Rules (35 Ill. Adm. Code 601.101, 602.101(a), (b), 607.104(b), 653.119(a)(1)(A)).

The complaint alleges that by allowing the construction of water and sewer mains in the same trench within two feet of each main, D & G and Lapington violated Sections 12(b) and 18(a)(1) and (a)(2) of the Act (415 ILCS 5/12(b), 18(a)(1), 18(a)(2)); Section 309.202(a) of the Board's Construction Permit Rules (35 Ill. Adm. Code 309.202(a)); and Sections 602.101, 607.104(b), and 653.119(a)(1)(A) of the Board's Public Water Supply Rules (35 Ill. Adm. Code 602.101, 607.104(b), 653.119(a)(1)(A)).

On August 16, 2000, the Agency, along with respondents D & G and Lapington, filed a joint stipulation and proposal for settlement, accompanied by a motion requesting relief from the hearing requirement of Section 31(c)(1) of the Act (415 ILCS 5/31(c)(1) (1998)).<sup>2</sup> Pursuant to Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (1998)), the Board caused publication of the required newspaper notice of the stipulation and proposal for settlement and request for relief from the hearing requirement. The notice appeared in *The Lawrenceville Daily Record* on August 21, 2000. The Board did not receive any requests for hearing. Accordingly, the Board grants a waiver from the hearing requirement.

<sup>1</sup> Complainant's September 13, 2000, indicates the correct spelling is Lapington.

<sup>2</sup> On September 5, 2000, respondents John Gordon, and G & P filed a motion asserting that John Gordon, and G & P, are not parties to this stipulated agreement. On September 13, 2000, the complainant filed a response asserting that the stipulation, taken in reasonable context, makes it clear that the settlement refers only to D & G and Lapington.

The stipulation and proposal for settlement sets forth the facts relating to the nature, operations, and circumstances surrounding the allegations in the complaint. D & G and Lapington agree to each pay a civil penalty of \$5,000.

The Board accepts the stipulation and proposal for settlement filed by the parties in this matter. D & G and Lapington must continue to comply with any federal, State, or local regulations including, but not limited to, the Act and the Board's regulations.

This order concludes this case as to D & G and Lapington only. The People's action against the City, John Gordon, and G & P shall proceed as expeditiously as is practicable.

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

#### ORDER

1. The Board hereby accepts the stipulation and settlement agreement executed by the People of the State of Illinois and D & G and Lapington, concerning the water and sewer main construction in Lawrenceville, Lawrence County, Illinois. The stipulation and settlement agreement is incorporated by reference as though fully set forth herein.
2. D & G and Lapington shall each pay four installments of \$1,250 for the sum of \$5,000 each. The first installment shall be paid within 30 days of the date of this order, that is, on or before October 21, 2000. The remaining payments shall be due every 90 days until the penalty is satisfied. Such payment shall be made by certified check or money order payable to the Illinois Environmental Protection Agency, designated to the Environmental Protection Trust Fund. The case number, case name, and the Federal Employer Identification number shall also be included on the certified check or money order and should clearly indicate that payment is directed to the Environmental Protection Trust Fund.
3. The check or money order shall be sent by first class mail to:

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

A copy of the payment transmittal and check shall be simultaneously submitted to:

Donna Lutes  
Illinois Attorney General's Office  
Environmental Bureau  
500 South Second Street  
Springfield, Illinois 62706

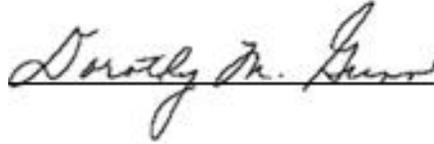
4. Any such penalty not paid within the time prescribed shall incur interest at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act, (35 ILCS 5/1003 (1998)), as now or hereafter amended, from the date payment is due until the date payment is received. Interest shall not accrue during the pendency of an appeal during which payment of the penalty has been stayed.
5. D & G and Lapington shall cease and desist future alleged violations of any federal, State, or local statutes and regulations.

6. If D & G and/or Lapington fail to comply with any material requirement set forth in this stipulation and proposal for settlement, D & G and/or Lapington shall pay in liquidated penalties the sum of \$500 per month on noncompliance, until such time as the requirements are complied with, said penalty to be paid to the Environmental Protection Trust Fund.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/41 (1998)) provides for the appeal of final Board orders to the Illinois Appellate Court within 35 days of the date of service of this order. Illinois Supreme Court Rule 335 establishes such filing requirements. See 172 Ill. 2d R. 335; see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 21st day of September 2000 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