

ILLINOIS POLLUTION CONTROL BOARD

October 2, 2003

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB 03-128
)	(Enforcement - Water)
ROBERT HAMM d/b/a THREE R'S PIER)	
BUILDERS,)	
)	
Respondent.)	

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

On February 26, 2003, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Robert Hamm, an individual doing business as Three R's Pier Builders (Hamm). The People alleged that Hamm violated Sections 12(a), (c), and (d) of the Environmental Protection Act (Act) (415 ILCS 5/12(a), (c), (d) (2002)) and Sections 302.203 and 306.304 of the Board's regulations (35 Ill. Adm. Code 302.203, 306.304) because Hamm severed and blocked a sanitary sewer line, discharging 10,000 gallons of sewage into Fox Lake. The complaint concerns Hamm's boat dock and pier construction business at 34678 N. Michael Road in Ingleside, Lake County. The parties now seek to settle. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

On September 2, 2003, the People filed a stipulation and proposed settlement with Hamm, 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), *amended by* P.A. 93-152, eff. July 10, 2003). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2002), *amended by* P.A. 93-152, eff. July 10, 2003), 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).

The Board provided notice of the stipulation, proposed settlement, and request for relief. Notice was published in the *Fox Lake Press* on September 5, 2003. 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), *amended by* P.A. 93-152, eff. July 10, 2003; 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. *See* 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 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), *amended by* P.A. 93-152, eff. July 10, 2003), which bears on the reasonableness of the circumstances surrounding the alleged

violations. Among other things, the stipulation states that Hamm “is currently in compliance, after the Village of Fox Lake repaired the sewer.” Stipulation at 5. The Board finds that the parties have satisfied Section 103.302.

The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2002), *amended by* P.A. 93-152, eff. July 10, 2003), which may mitigate or aggravate the civil penalty amount. Hamm neither admits nor denies the alleged violations, but agrees to pay a \$2,500 civil penalty, which the stipulation states will deter future violations by Hamm and others. 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. Hamm must pay a civil penalty of \$2,500 by November 3, 2003, which is the first business day following the 30th day after the date of this order. Hamm must pay the civil penalty by certified check or money order, payable to the Illinois Environmental Protection Agency, for deposit into the Environmental Protection Trust Fund. The case number, case name, and Hamm’s social security number or federal employer identification number must be included on the certified check or money order.
3. Hamm must send the certified check or money order to:

Illinois Environmental Protection Agency
Fiscal Services
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002), *amended by* P.A. 93-152, eff. July 10, 2003) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2002)).
5. Hamm must cease and desist from future violations.

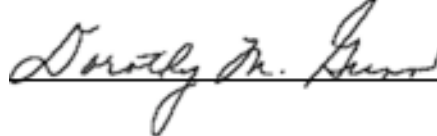
IT IS SO ORDERED.

Board Member W.A. Marovitz dissented.

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 opinion and order on October 2, 2003, by a vote of 6-1.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in black ink. The signature is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board