

ILLINOIS POLLUTION CONTROL BOARD
February 2, 2006

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 05-215
) (Enforcement - Land)
FIRST ROCKFORD GROUP, INC.,)
VILLAGE OF CHERRY VALLEY, 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. (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 respondents and Cherry Valley 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 count of the

¹ On September 26, 2005, the People and one of the respondents, Heritage Engineering, Ltd. (individually, Heritage), filed a stipulation and proposed settlement, accompanied by a request for relief from the hearing requirement. The Board accepted that stipulation and settlement agreement by an order dated November 3, 2005. People v. First Rockford Group, Inc., Village of Cherry Valley, Heritage Engineering, Ltd., and Schlichting & Sons Excavating, Inc., PCB 05-215 (Nov. 3, 2005). The caption in PCB 05-215 has been changed to reflect that acceptance.

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 and Cherry Valley 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.

MOTION TO CONSOLIDATE

On January 5, 2006, the People filed a motion to consolidate PCB 06-103 with PCB 05-215. In the motion, the People allege that settlement terms have been reached with First Rockford regarding PCB 05-215 and PCB 06-103. Mot. at 2. The People assert that the terms include First Rockford's payment of a single penalty and the completion of a single supplemental environmental project (SEP). *Id.* The People argue that to separate the settlement terms between the two matters would be ineffective and cause duplication of time and effort on behalf of both parties and the Board. Mot. at 3.

The People assert that Cherry Valley would not be prejudiced by the consolidation in light of the stipulation and proposal for settlement filed on December 23, 2005. Mot. at 2. The People assert that Schlichting and Sons would not be prejudiced by the consolidation as settlement terms regarding PCB 05-215 have been verbally reached between the People and Schlichting and Sons. *Id.* The People contend that the factual and legal issues in matters PCB 05-215 and PCB 06-103 include the same respondent and can be incorporated into one stipulation and proposal for settlement, have identical burdens of proof, and would not result in any prejudice should the matters be consolidated. Mot. at 3.

To date, no response to the motion to consolidate has been filed. If a party files no response to a motion within 14 days, the party will be deemed to have waived objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d).

The Board has the authority to consolidate proceedings, and will do so if consolidating is in the interest of convenient, expeditious and complete determination of claims, and if consolidation would not cause material prejudice to any party. 35 Ill. Adm. Code 101.406. The Board finds that consolidation is appropriate in this instance, and grants the People's motion. The consolidation is reflected in today's caption.

CHERRY VALLEY STIPULATION

On December 23, 2005, the People and Cherry Valley 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)). Under the proposed stipulation, Cherry Valley admits the alleged violations and agrees to pay a civil penalty of \$14,500.

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 January 5, 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, Cherry Valley admits the violations alleged in the complaint, and agree to pay a civil penalty. 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 \$14,500 was appropriate.

The People and Cherry Valley 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. The Village Of Cherry Valley (Cherry Valley) must pay a civil penalty of \$14,500 within 30 days from the date of this order.
3. Cherry Valley 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 respondents.
4. Cherry Valley 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:

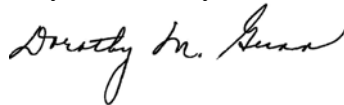
Ms. Bridget Carlson
Assistant Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

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. Cherry Valley 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 February 2, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board