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MAY 13 2008

STATE OF ILLINOIS
Pollution Control Board

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 9, 2008

PCB08-89

John T. Therriault
Assistant Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center, Ste. 11-500
100 West Randolph
Chicago, Illinois 60601

Re: ***People v. Gelco Management & Developers LLC***

Dear Clerk:

Enclosed for filing please find the original and one copy of a Notice of Filing, Appearance and Complaint in regard to the above-captioned matter. Please file the originals and return file-stamped copies to me in the enclosed envelope.

Thank you for your cooperation and consideration.

Very truly yours,

Stephen J. Janasie
Environmental Bureau
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031

SJJ/pjk
Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAY 13 2008

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
 ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 GELCO MANAGEMENT &)
 DEVELOPERS LLC, an Illinois)
 limited liability corporation,)
)
 Respondent.)

PCB No. 0889
(Enforcement)

NOTICE OF FILING

To: GELCO MANAGEMENT & DEVELOPERS LLC.
an Illinois limited liability corporation
c/o Joshua Bradley
Attorney at Law
1010 W. DeYoung Street
Marion, IL 62959

PLEASE TAKE NOTICE that on this date I mailed for filing with the Clerk of the Pollution Control Board of the State of Illinois, a COMPLAINT, a copy of which is attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2006), to correct the pollution alleged in the Complaint filed in this case.

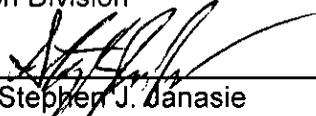
Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: _____


Stephen J. Janasie
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 9, 2008

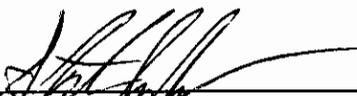
CERTIFICATE OF SERVICE

I hereby certify that I did on May 9, 2008, send by certified mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box a true and correct copy of the following instruments entitled NOTICE OF FILING, ENTRY OF APPEARANCE and COMPLAINT:

To: GELCO MANAGEMENT & DEVELOPERS LLC.
an Illinois limited liability corporation
c/o Joshua Bradley
Attorney at Law
1010 W. DeYoung Street
Marion, IL 62959

and the original and ten copies by First Class Mail with postage thereon fully prepaid of the same foregoing instrument(s):

To: John T. Therriault, Assistant Clerk
Illinois Pollution Control Board
James R. Thompson Center
Suite 11-500
100 West Randolph
Chicago, Illinois 60601



Stephen J. Jarasie
Assistant Attorney General

This filing is submitted on recycled paper.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

MAY 13 2008

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
)
 Complainant,)
)
 vs.)
)
 GELCO MANAGEMENT &)
 DEVELOPERS LLC, an Illinois)
 limited liability corporation,)
)
 Respondent.)

PCB No. 08-89
(Enforcement)

ENTRY OF APPEARANCE

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, STEPHEN J. JANASIE, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
LISA MADIGAN
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
Stephen J. Janasie
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 9, 2008

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
FRANKLIN COUNTY, ILLINOIS

RECEIVED
CLERK'S OFFICE
MAY 13 2008

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF)
ILLINOIS, ex. rel. LISA MADIGAN,)
Attorney General of the State of Illinois,)
)
Complainant,)
)
vs.)
)
GELCO MANAGEMENT &)
DEVELOPERS LLC, an Illinois)
limited liability corporation,)
)
Respondent.)

PCB No. 08- 89

COMPLAINT

The PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, on her own motion, complains of the Respondent, GELCO MANAGEMENT & DEVELOPERS LLC, an Illinois limited liability corporation, as follows:

COUNT I

VIOLATIONS OF THE NATIONAL EMISSIONS STANDARDS FOR ASBESTOS

1. This count is brought on behalf of the People of the State of Illinois, ex rel. Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5/31 (2006).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2006), and charged, *inter alia*, with the duty of enforcing the Act.

3. The Respondent, GELCO MANAGEMENT & DEVELOPERS, LLC, is an

Illinois limited liability corporation in good standing.

4. GELCO MANAGEMENT & DEVELOPERS, LLC, is the owner of property located at 350 Fifth Street in Benton, Franklin County, Illinois, which contains a building formerly known as the Lincoln School.

5. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2006) provides as follows:

No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto;

6. The regulations on National Emission Standards for Hazardous Air Pollutants (“NESHAP”) for asbestos, 40 CFR Part 61, Subpart M, were adopted pursuant to Section 112 of the Clean Air Act, 42 USC §7412. Asbestos is regulated as a hazardous air pollutant because it is a carcinogen. Regulated asbestos-containing materials contain more than one percent asbestos and are generally “friable,” which means such materials, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

7. 40 CFR §61.141 provides the following pertinent definitions:

Adequately wet means sufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

Category I nonfriable asbestos-containing material (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy.

Category II nonfriable ACM means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos as determined using the methods specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy that,

when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Demolition means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.

Facility means any institutional, commercial, public, industrial, or residential structure, installation, or building. . . .

Friable asbestos material means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763 section 1, Polarized Light Microscopy, that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. If the asbestos content is less than 10 percent as determined by a method other than point counting by polarized light microscopy (PLM), verify the asbestos content by point counting using PLM.

In poor condition means the binding of the material is losing its integrity as indicated by peeling, cracking, or crumbling of the material.

Nonfriable asbestos-containing material means any material containing more than 1 percent asbestos as determined using the method specified in appendix E, subpart E, 40 CFR part 763, section 1, Polarized Light Microscopy, that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

Owner or operator of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

Remove means to take out RACM or facility components that contain or are covered with RACM from any facility.

Resilient floor covering means asbestos-containing floor tile, including asphalt and vinyl floor tile, and sheet vinyl floor covering containing more than 1 percent asbestos as determined using polarized light microscopy according to the method specified in appendix E, subpart E, 40 CFR part 763, Section 1, Polarized Light Microscopy.

8. 40 CFR §61.145 provides in pertinent part as follows:

Standard for demolition and renovation.

(a) *Applicability.* To determine which requirements of paragraphs (a), (b), and ©) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (b) and ©) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

* * *

(1) In a facility being demolished, all the requirements of paragraphs (b) and ©) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is

(I) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or

(ii) At least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

* * *

b) *Notification requirements.* Each owner or operator of a demolition or renovation activity to which this section applies shall:

(1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service, or hand delivery is acceptable.

* * *

©) *Procedures for asbestos emission control.* Each owner or operator of a

demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

(1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. . . .

* * *

(6) For all RACM, including material that has been removed or stripped:

(I) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with §61.150; and

(ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.

(iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.

(iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(3) of this section need not be wetted.

* * *

(8) Effective 1 year after promulgation of this regulation, no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. Every 2 years, the trained on-site individual shall receive refresher training in the provisions of this regulation. The required training shall include as a minimum: applicability; notifications; material identification; control procedures for removals including, at least, wetting, local exhaust ventilation, negative pressure enclosures, glove-bag procedures, and High Efficiency Particulate Air (HEPA) filters; waste disposal work practices; reporting and recordkeeping; and asbestos hazards and worker protection. Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site.

* * *

9. 40 CFR §61.150 provides in pertinent part as follows:

(b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(1) A waste disposal site operated in accordance with the provisions of §61.154, or

(2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of §61.155.

(3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

* * *

10. The Illinois Department of Public Health has not licensed the Respondent to remove, handle or disturb regulated asbestos-containing material (“RACM”).

11. During June 2007, the Respondent commenced the demolition of the former Lincoln School and thereby disturbed regulated asbestos-containing materials, including pipe insulation, transite and floor tile. At the time of the Illinois EPA’s inspection most of the school was demolished.

12. The Lincoln School is a “facility” and GELCO MANAGEMENT & DEVELOPERS LLC is an “owner” and “operator” of a “demolition” as these terms are defined at 40 CFR 61.141.

13. On June 27, 2007, the Illinois EPA responded to a complaint regarding the demolition of the Lincoln School. During this investigation, there were substantial amounts suspected asbestos-containing materials within the demolished facility, scattered throughout the site and within uncovered roll off waste containers. At the request of the Illinois EPA, the

Respondent halted the demolition operation.

14. The Illinois EPA observed approximately 108 cubic feet of pipe insulation, transite and floor tile within a dumpster located on the site. The Illinois EPA estimated that at least 400 linear feet of pipe insulation had been disturbed during demolition activities. In addition, the Illinois EPA observed two overhangs approximately 558 square feet each that were covered with transite that had been mostly demolished.

15. On June 29, 2007, the Illinois EPA obtained 13 samples of pipe insulation at the Lincoln School, and subsequently determined through laboratory analyses that all of the samples contained greater than 1 percent asbestos (ranging from 50 percent to 83 percent asbestos). The amount of friable pipe insulation present at the facility exceeded 260 linear feet. Thus, the pipe insulation was “regulated asbestos-containing material” as that term is defined at 40 CFR 61.141 and therefore the demolition project was subject to the asbestos NESHAP work practices and other requirements. .

15. On June 29, 2007, the Illinois EPA also obtained 3 samples of transite and 2 samples of floor tile. The transite sampled contained approximately 20 percent asbestos while the floor tile contained approximately 5 percent asbestos. The transite and floor tile were in “poor condition” as that term is defined in 40 CFR 61.141, rendered friable during demolition activities and were therefore RACM.

16. The owner and operator of a demolition subject to the asbestos NESHAP regulations is required by 40 CFR 61.145(b)(1) to provide notification of the demolition at least 10 working days prior to commencing such activity. GELCO MANAGEMENT & DEVELOPERS LLC did not provide written notification to the Illinois EPA prior to the

commencement of the demolition of the facility, thereby violating 40 CFR 61.145(b)(1) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2006).

17. The Respondent failed to remove all regulated asbestos-containing materials prior to the commencement of the demolition operation and to utilize equipment or methods to properly control the emission of asbestos. The Respondent failed to adequately wet and keep wet all regulated asbestos-containing materials removed or disturbed during the demolition; failed to have at least one representative trained in the provisions of the NESHAP and the means of compliance with the NESHAP; and failed to deposit asbestos-containing waste material as soon as practical in an appropriate waste disposal site, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d) (2006), and 40 CFR §§61.145(c)(6), 61.145 (c)(8) and 61.150(b).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum; and
- E. Grant such other and further relief as the Board deems appropriate.

COUNT II

AIR POLLUTION VIOLATIONS

1-17. Complainant realleges and incorporates herein by reference paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count II.

18. Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), provides:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the [Pollution Control] Board under this Act;

* * *

19. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

20. Section 3.115 of the Act, 415 ILCS 5/3.115 (2006), provides the following definition:

'Air pollution' is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

21. By failing to remove all regulated asbestos-containing material prior to the demolition, to utilize equipment or methods to properly control the emission of asbestos, and to collect and contain all regulated asbestos-containing waste material in leak-tight wrapping in preparation for disposal as soon as practicable at a site permitted to accept such waste, the Respondent threatened the emission of contaminants into the environment so as to tend to cause air pollution and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2006), and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum; and
- E. Grant such other and further relief as the Board deems appropriate.

COUNT III

NONPAYMENT OF STATUTORILY REQUIRED FEES

1-17. Complainant realleges and incorporates herein by reference paragraphs 1 through 17 of Count I as paragraphs 1 through 17 of this Count III.

20. Section 9.13(b) of the Act, 415 ILCS 5/9.13(b) (2006) provides as follows:

* * *

(b) If demolition or renovation of a site has commenced without proper filing of the 10-day Notice, the fee is double the amount otherwise due. This doubling of the fee is in addition to any other penalties under this Act, the federal NESHAP, or otherwise, and does not preclude the Agency, the Attorney General, or other authorized persons from pursuing an enforcement action against the owner or operator for failure to file a 10-day Notice prior to commencing demolition or renovation activities.

* * *

18. GELCO MANAGEMENT & DEVELOPERS LLC has not paid the statutory fee of three hundred dollars (\$300.00) required by Section 9.13 of the Act, 415 ILCS 5/9.13 (2006).

19. By failing to pay the statutorily required fee, the Respondent has violated Section 9.13 of the Act, 415 ILCS 5/9.13 (2006).

PRAYER FOR RELIEF

WHEREFORE, the Complainant, the People of the State of Illinois, respectfully requests that this Board grant the following relief:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated the Act and regulations as alleged herein;
- C. Ordering Respondent to cease and desist from any further violations of the Act

and associated regulations;

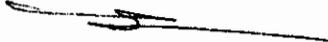
D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2004), impose a civil penalty of not more than the statutory maximum; and

E. Grant such other and further relief as the Board deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

Of Counsel:

Stephen J. Janasie
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: May 9, 2008