

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)

Complainant,)

vs.)

No. PCB 2011-3
(Enforcement)

ALDEN MANAGEMENT SERVICES, INC.,)

an Illinois corporation and ALDEN LONG ,)

GROVE REHABILITATION AND HEALTH)

CARE CENTER, INC., an Illinois corporation,)

Respondents.)

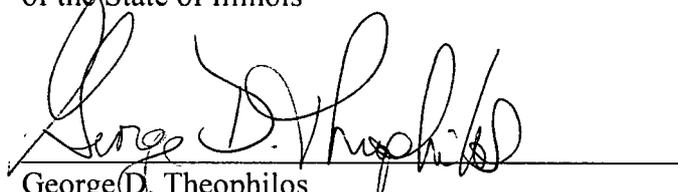
NOTICE OF FILING

To: See attached Service List

PLEASE TAKE NOTICE that on the 30th day of December, 2010, the People of the State of Illinois, filed with the Illinois Pollution Control Board, a **MOTION FOR RELIEF FROM HEARING REQUIREMENT** and a **STIPULATION AND PROPOSAL FOR SETTLEMENT**, true and correct copies of which are attached hereto and is hereby served upon you.

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

By:



George D. Theophilos
Assistant Attorney General
Environmental Bureau
69 West Washington Street, 18th Fl.
Chicago, IL 60602
(312) 814-6986

DATE: December 30, 2010

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Bradley P. Halloran, Esq.
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Alden Management Services
4200 West Peterson Avenue
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Complainant,)	
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)	
Respondents.)	

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and hereby moves for relief from the hearing requirement in this case pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2010), and Section 103.300 of the Illinois Pollution Control Board ("Board") Procedural Rules, 35 Ill. Adm. Code 103.300. In support of this Motion, the Complainant states as follows:

1. Section 31(c)(2) of the Act allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties submit to the Board a Stipulation and Proposal for Settlement. Section 31(c)(2) provides as follows:

Notice; complaint; hearing.

* * *

(c)(2) Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision

(1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

2. Board Procedural Rule 103.300 provides, in relevant part, as follows (emphasis in original):

Request for Relief from Hearing Requirement in State Enforcement Proceeding.

(a) Whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a proposed stipulation and settlement accompanied by a request for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act

3. On July 16, 2010, the Complaint in this matter was filed with the Board.

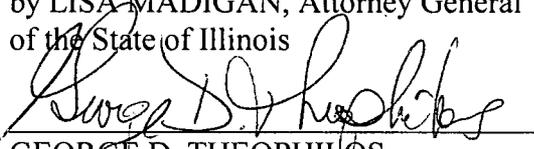
4. Subsequently, the parties to this action reached agreement on a Stipulation and Proposal For Settlement, which is being filed with the Board concurrently with this motion. No hearing is currently scheduled in this case.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully moves for relief from the requirement of a hearing pursuant to Section 31(c)(2) of the Act and Board Procedural Rule 103.300.

Respectfully submitted,

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

BY:


GEORGE D. THEOPHILOS
Assistant Attorney General

Environmental Bureau/North
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
312-814-6986

DATE: December 30, 2010

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Respondents.)	

STIPULATION AND PROPOSAL FOR SETTLEMENT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Environmental Protection Agency ("Illinois EPA"), and Alden Management Services, Inc. and Alden Long Grove Rehabilitation And Health Care Center, Inc. ("Respondents"), have agreed to the making of this Stipulation and Proposal for Settlement ("Stipulation") and submit it to the Illinois Pollution Control Board ("Board") for approval. This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Board's approval of this Stipulation and issuance of relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/1 *et seq.* (2010), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the parties to this Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties to the Stipulation

1. On July 16, 2010, a Complaint was filed on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois EPA, pursuant to Section 31 of the Act, 415 ILCS 5/31 (2010), against the Respondents.

2. The Illinois EPA is an administrative agency of the State of Illinois, created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2010).

3. At all times relevant to the Complaint, Respondent Alden Management Services, Inc., was and is an Illinois corporation, currently registered and in good standing with the Illinois Secretary of State's Office with an office at 420 West Peterson Avenue, Chicago, Illinois 60646. Alden Management Services, Inc.

4. Respondent, Alden Long Grove Rehabilitation Center, Inc. is located on Old Hicks Road, east of Illinois Route 53 and just west of Illinois Route 83, Long Grove, Lake County, Illinois.

5. The Alden Long Grove Rehabilitation Center includes a waste water treatment plant ("WWTP"). Discharges from the WWTP are regulated under the terms and conditions of National Pollutant Elimination System ("NPDES") Permit IL0051934 issued by the Illinois EPA to the Alden Long Grove Rehabilitation Center on January 9, 2009. Receiving waters for the WWTP's effluent discharge is an unnamed tributary of Buffalo Creek, which is part of the Des Plaines River watershed.

6. The WWTP consists of an on-site comminutor with a bypass bar screen for preliminary treatment. The WWTP's main treatment system is located approximately 600 feet off-

site and consists of a two-cell lagoon. The first cell is 0.5 acres attached to a 1 acre secondary cell. Both lagoons were designed to have an operating depth of 5 feet, giving the system a total capacity of 3.1 million gallons. The secondary cell also includes two 1,444 square foot intermittent sand filters, a dual siphoning dosing chamber and a four-foot diameter chlorine contact tank for tertiary treatment.

7. The WWTP's main treatment system is surrounded by a low density subdivision comprised of homes that are on individual septic systems and private wells.

8. The WWTP's main treatment system borders protected wetland areas which are part of conservation easements held by the Village of Long Grove Conservancy District. The wetlands on the eastern perimeter are classified as permanent open water wetlands with floating aquatic habitat. The wetlands to the south of the WWTP's main treatment system, which includes the unnamed tributary to Buffalo Creek and the discharge point permitted under NPDES Permit # IL0051934, are classified as seasonably flooded. The northern portion of the WWTP's main treatment system drains into a wooded forestry wetland. All of the wetlands surrounding the WWTP's main treatment system are in the Buffalo Creek Sub Basin.

B. Allegations of Non-Compliance

Complainant and the Illinois EPA contend that the Respondents have violated the following provisions of the Act and Board regulations:

Count I: Water Pollution - in violation of Section 12(a) of the Act.

Count II: Violation Of General Use Water Quality Standards - Section 12(a) of the Act, and Sections 302.203, 304.105, and 304.106 the Board Water Pollution regulations

Count III: Water Pollution Hazard – in violation of Section 12(d) of the Act.

Count IV: Sanitary Sewer Overflows - in violation of Section 12(a) of the Act, and

Section 306.304 of the Board Water Pollution regulations.

- Count V: Systems Reliability Violations - Section 12(a) of the Act, and Section 306.102(a) of the Board Water Pollution regulations
- Count VI: Failure To Have Certified Operator - Section 12(a) of the Act, and Section 312.101 of the Board Water Pollution regulations
- Count VII: Discharging In Violation of NPDES Permit Requirements - Special Conditions 2 and 5 of NPDES Permit # IL0051934, and Section 12(f) of the Act.
- Count VIII: Discharging To Waters Without An NPDES Permit – in violation of Section 12(f) of the Act, and Section 309.102(a) of the Board Water Pollution Regulations.
- Count IX: Failure to have a certified WWTP operator in violation of Section 312.101 Board's Regulations

C. Non-Admission of Violations

The Respondents represent that they have entered into this Stipulation for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Stipulation and complying with its terms, the Respondents do not affirmatively admit the allegations of violation within the Complaint and referenced within Section III. herein, and this Stipulation shall not be interpreted as including such admission.

D. Compliance Activities to Date

Respondents retained a new operator for the WTP, brush was removed and improvements were made to the access road, the aerators were repaired and made operational, flow and hour meters were put into operation, sand filters were cleaned, and the lagoons were cleaned to the clay liner.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Complainant, the Illinois EPA and the Respondents, and any officer, director, agent, or employee of the Respondents, as well as any

successors or assigns of the Respondents. The Respondents shall not raise as a defense to any enforcement action taken pursuant to this Stipulation the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Stipulation. This Stipulation may be used against the Respondents in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act and the Board Regulations for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2010).

III. IMPACT ON THE PUBLIC RESULTING FROM ALLEGED NON-COMPLIANCE

Section 33(c) of the Act, 415 ILCS 5/33(c)(2010), provides as follows:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any subsequent compliance.

In response to these factors, the parties to this Stipulation state the following:

1. Human health and the environment were threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondents' violations.

2. There is social and economic benefit to the facility.
3. Operation of the facility was suitable for the area in which it occurred.
4. Providing adequate equipment and operation of the WWTP to comply with Act and PCB regulations is both technically practicable and economically reasonable.
5. Respondents have subsequently complied with the Act and the Board Regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h)(2010), provides as follows:

In determining the appropriate civil penalty to be imposed under . . . this Section, the Board is authorized to consider any matters of record in mitigation or aggravation of penalty, including but not limited to the following factors:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the respondent in attempting to comply with requirements of this Act and regulations thereunder or to secure relief therefrom as provided by this Act;
3. any economic benefits accrued by the respondent because of delay in compliance with requirements, in which case the economic benefits shall be determined by the lowest cost alternative for achieving compliance;
4. the amount of monetary penalty which will serve to deter further violations by the respondent and to otherwise aid in enhancing voluntary compliance with this Act by the respondent and other persons similarly subject to the Act;
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the respondent;
6. whether the respondent voluntarily self-disclosed, in accordance with subsection i of this Section, the non-compliance to the Agency; and
7. whether the respondent has agreed to undertake a "supplemental environmental project," which means an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action brought under this Act, but which the respondent is not otherwise legally required to perform.

In response to these factors, the parties to this Stipulation state as follows:

1. Poor operation and maintenance of the WWTP led to sanitary sewer overflows and unlawful discharges to receiving waters. The violations began on or around February 27, 2009, and were individually resolved at various times later in 2009.

2. Respondents were diligent in attempting to come back into compliance with the Act, Board regulations and applicable federal regulations, once the Illinois EPA notified issued a notice of violation.

3. Respondents saved the money they should have spent previously to adequately maintain and operate its WTTP and collection system in a manner that would have prevented sanitary sewer overflows. Using cost figures provided by the Respondents regarding improvements made to the system, the Illinois EPA determined that the Respondents realized an economic benefit from noncompliance of \$638 using the United States Environmental Protection Agency's BEN computer model for calculating economic benefit from noncompliance. This economic benefit amount is accounted for in the penalty amount.

4. Complainant and the Illinois EPA have determined, based upon the specific facts of this matter, that a penalty of Forty Thousand Dollars (\$40,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's and the Illinois EPA's knowledge, Respondents have no previously adjudicated violations of the Act.

6. Self-disclosure is not at issue in this matter.

7. The settlement of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondents shall pay a civil penalty in the sum of Forty Thousand Dollars (\$40,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondents fail to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondents shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, the Complainant shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

2. Pursuant to Section 42(g) of the Act, interest shall accrue on any penalty amount owed by the Respondents not paid within the time prescribed herein. Interest on unpaid penalties shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any penalty amount that is due, such partial payment shall be first applied to any interest on unpaid penalties then owing.

C. Payment Procedures

All payments required by this Stipulation shall be made by certified check or money order payable to the Illinois EPA for deposit into the Environmental Protection Trust Fund ("EPTF").

Payments shall be sent by first class mail and delivered to:

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

The name, case number and the Respondents's federal tax identification number shall appear on the face of the certified check or money order. A copy of the certified check or money order and any transmittal letter shall be sent to:

Environmental Bureau
Illinois Attorney General's Office
69 West Washington Street
Chicago, Illinois 60602

D. Release from Liability

In consideration of the Respondents's payment of the \$40,000.00 penalty, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant and the Illinois EPA releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act and Board Regulations that were the subject matter of the Complaint herein. The release set forth above does not extend to any matters other than those expressly specified in Complainant's Complaint filed on July 16, 2009. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondents with respect to all other matters, including but not limited to, the following:

- a. criminal liability;
- b. liability for future violation of state, federal, local, and common laws and/or regulations;
- c. liability for natural resources damage arising out of the alleged violations; and
- d. liability or claims based on the Respondents' failure to satisfy the requirements of this Stipulation.

Nothing in this Stipulation is intended as a waiver, discharge, release, or covenant not to sue

for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Illinois or the Illinois EPA may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondents.

E. Enforcement and Modification of Stipulation

1. Upon the entry of the Board's Order approving and accepting this Stipulation, that Order is a binding and enforceable order of the Board and may be enforced as such through any and all available means.

F. Execution of Stipulation

The undersigned representatives for each party to this Stipulation certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Stipulation and to legally bind them to it.

[Remainder of this page left blank intentionally.]

WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

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

FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

BY:

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY:

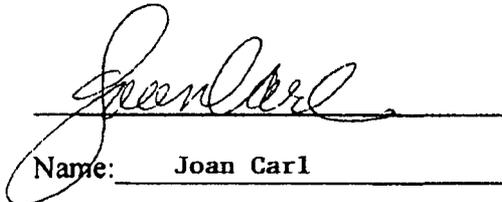
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

ALDEN MANAGEMENT SERVICES, INC.
and ALDEN LONG GROVE
REHABILITATION AND HEALTH
CARE CENTER, INC

BY:



Name: Joan Carl

Title: Vice President

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FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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Illinois Environmental Protection Agency

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

BY:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY:


JOHN J. KIM
Chief Legal Counsel

DATE:

12/28/10

DATE:

12/22/10

ALDEN MANAGEMENT SERVICES, INC.
and ALDEN LONG GROVE
REHABILITATION AND HEALTH
CARE CENTER, INC

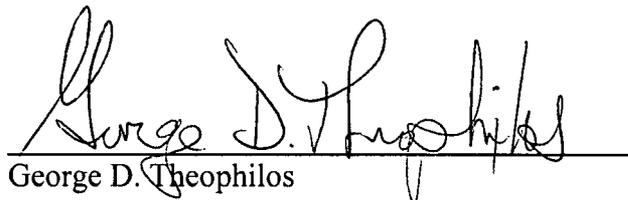
BY: _____

Name: _____

Title: _____

CERTIFICATE OF SERVICE

I, George D. Theophilos, an Assistant Attorney General, do certify that I caused the foregoing **MOTION FOR RELIEF FROM HEARING REQUIREMENT** and **STIPULATION AND PROPOSAL FOR SETTLEMENT** to be electronically mailed to the persons listed on the attached Service List on this the 30th day of December, 2010.


George D. Theophilos