



ILLINOIS POLLUTION CONTROL BOARD

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WEB SITE

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February 1, 2012

TO: Service List, PCB 08-89 (People of the State of Illinois v. Gelco Managers and Development, LLC)

FR: John Therriault, Assistant Clerk 

RE: Board Opinion and Order (September 22, 2011)

In the order noted above, the first sentence of the second paragraph of the ORDER section on page 2, states that "Gelco must pay a civil penalty of \$4,500 no later than October 24, 2011..."

The first sentences of the second paragraph of the ORDER section on page 2 states that "Gelco must pay a civil penalty of \$45,000 no later than October 24, 2011..."

A corrected version is enclosed and is available on the Board's Web site at www.ipcb.state.il.us.

ILLINOIS POLLUTION CONTROL BOARD
September 22, 2011

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 08-089
) (Enforcement - Air)
GELCO MANAGERS AND)
DEVELOPMENT, LLC, an Illinois limited)
liability corporation,)
)
Respondent.)

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On May 13, 2008, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a three-count complaint against Gelco Managers and Development, LLC (Gelco). The complaint concerns Gelco's property formerly known as the Lincoln School at 350 Fifth Street in Benton, Franklin County. The parties now seek to settle without a hearing. For the reasons below, the Board accepts the parties' stipulation and proposed settlement.

Under the Environmental Protection Act (Act) (415 ILCS 5 (2010)), the Attorney General and the State's Attorneys may bring actions before the Board on behalf of the People to enforce Illinois' environmental requirements. *See* 415 ILCS 5/31 (2010); 35 Ill. Adm. Code 103. In the first count, the People allege that Gelco violated: 40 CFR 61.145(b)(1)¹ and Section 9.1(d) of the Act (415 ILCS 5/9.1(d) (2010))² by not providing written notification to the Illinois EPA prior to the commencement of the demolition of the facility; and Section 9.1(d) of the Act (415 ILCS 9.1(d) (2010)), and 40 CFR §§61.145(c)(6), 61.145 (c)(8) and 61.150(b) by failing 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, failing to adequately wet and keep wet all regulated asbestos-containing materials removed or disturbed during the demolition, failing to have at least one representative trained in the provisions of the NESHAP and the means of compliance with the NESHAP and failing to

¹ Although the Board generally does not have jurisdiction over federal CAA regulations, Section 9(b) of the Act provides that federal National Emissions Standards for Hazardous Air Pollutants (NESHAP) "are applicable to the state and enforceable under the Act." 415 ILCS 5/9(b) (2010). Pursuant to Section 112(b)(1) of the CAA, 42. U.S.C. 7412(b)(1) (2007), the Administrator of the U.S. Environmental Protection Agency lists asbestos as a hazardous air pollutant. Asbestos is a known human carcinogen for which there is no safe level of exposure.

²The pleadings in this case refer to the 2006 version of the Illinois Compiled Statutes. As there is no difference between the relevant sections in the 2004 and 2010 statutes, the Board will consistently reference the 2010 statutes.

deposit asbestos-containing waste material as soon as practical in an appropriate waste disposal site. In count two, the People allege that Gelco violated Section 9(a) of the Act (415 ILCS 5/9(a) (2010)), and Section 201.141 of the Board's Air Pollution Regulations (35 Ill. Adm. Code 201.141) 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, thus threatening the emission of contaminants into the environment so as to tend to cause air pollution. In count three, the People allege that Gelco violated Section 9.13 of the Act (415 ILCS 5/9.13 (2010)) by failing to pay the statutorily required fee.

On July 26, 2011, the People and Gelco 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) (2010)). This filing is authorized by Section 31(c)(2) of the Act (415 ILCS 5/31(c)(2) (2010)), 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. The newspaper notice was published in *Benton Evening News* on August 15, 2011. 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) (2010); 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 Gelco'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) (2010)), which bears on the reasonableness of the circumstances surrounding the alleged violations. Gelco neither admits nor denies the alleged violations. The stipulation also addresses the factors of Section 42(h) of the Act (415 ILCS 5/42(h) (2010)), which may mitigate or aggravate the civil penalty amount. Gelco agrees to pay a civil penalty of \$45,000. The People and Gelco 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. Gelco must pay a civil penalty of \$45,000 no later than October 24, 2011, which is the first business day following the 30th day after the date of this order. Gelco 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 name, case number, and Gelco's federal tax

identification number must appear on the face of the certified check or money order.

3. Gelco must submit payment of the civil penalty to:

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

Gelco must send a copy of the certified check or money order and any transmittal letter to:

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

4. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2010)) at the rate set forth in Section 1003(a) of the Illinois Income Tax Act (35 ILCS 5/1003(a) (2010)).
5. Gelco must cease and desist from future violations of the Environmental Protection Act and Board regulations that were the subject of the complaint.

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) (2010); *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, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 22, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board

