

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS, )  
 )  
 )  
 Complainant, )  
 )  
 )  
 v. )  
 )  
 STEVE SODERBERG d/b/a STEVE'S )  
 CONCRETE AND EXCAVATING, )  
 )  
 Respondent. )

PCB 08-87  
 (Enforcement - Water)

NOTICE OF FILING


TO: See Attached Service List

PLEASE TAKE NOTICE that on October 27, 2008, the People of the State of Illinois filed with the Illinois Pollution Control Board its Motion To Deem Facts Admitted And For Summary Judgment As To Respondent Steven Soderberg d/b/a Steve's Concrete And Excavating, a true and correct copy of which is attached and hereby served upon you.

Respectfully submitted,

LISA MADIGAN  
 Attorney General  
 State of Illinois

BY:

  
 George D. Theophilos  
 Assistant Attorney General  
 Environmental Bureau  
 69 W. Washington St., 18th Floor  
 Chicago, Illinois 60602  
 (312) 814-6986

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

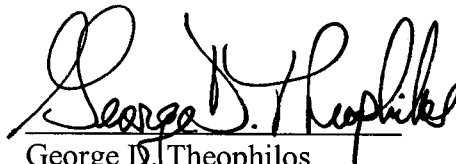
Mr. STEVE SODERBERG d/b/a  
STEVE'S CONCRETE AND EXCAVATING  
222 18<sup>th</sup> Avenue  
Rockford, Illinois 61104

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601

Ms. Joey Logan-Wilkey, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62702

**CERTIFICATE OF SERVICE**

I, George D. Theophilos, an Assistant Attorney General, certify that on the 27<sup>th</sup> day of October, 2008, I caused to be served by First Class Mail the foregoing Motion To Deem Facts Admitted And For Summary Judgment As To Respondent Steven Soderberg d/b/a Steve's Concrete And Excavating to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

  
George D. Theophilos

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant, )

v. )

STEVE SODERBERG d/b/a STEVE'S )  
CONCRETE AND EXCAVATING )

Respondent. )

PCB No. 08-87

(Enforcement- Water)

**MOTION TO DEEM FACTS ADMITTED AND FOR SUMMARY JUDGMENT  
AS TO RESPONDENT STEVE SODERBERG d/b/a STEVE'S CONCRETE AND  
EXCAVATING**

Now comes the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to Sections 103.204 and 101.516 of the Illinois Pollution Control Board's Procedural Rules, 35 Ill. Adm. Code 103.204 and 101.516, and hereby moves for the entry of an order deeming all material facts in Complainant's Complaint as admitted against Respondent STEVE SODERBERG d/b/a STEVE'S CONCRETE AND EXCAVATING as to Counts I through IV of the Complaint. Further, Complainant moves this Illinois Pollution Control Board ("Board") for summary judgment as to Counts I through IV of the Complaint against Respondent STEVE SODERBERG d/b/a STEVE'S CONCRETE. In support thereof, Complainant states as follows:

1. On May 7, 2008, the Complainant filed its Complaint against Respondent, STEVE SODERBERG d/b/a STEVE'S CONCRETE ("Soderberg") individually for alleged violations that originated from a spill at 2239 Charles Street, Rockford, Winnebago County, Illinois ("Site"). Complainant alleged violations of Sections 12(a), 12(d), and 12(f) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/12(a), 12(d), 12(f) (2008). Complainant

further alleged violations of Section 309.102(a) and 302.203 of the Board's water pollution regulations, 35 Ill. Adm. Code 309.102(a), 302.203. Specifically, the Complaint alleged that the Defendant caused or tended to cause water pollution, created a water pollution hazard, discharged without a National Pollutant Discharge Elimination System (NPDES) permit, and created offensive condition.

2. The Proof of Service indicated that Soderberg had been served with the Complaint on July 16, 2008. (Exhibit 1, hereto) Further, Respondent Soderberg participated in telephonic status conferences with Hearing Officer Bradley P. Halloran and the Complainant on July 24, 2008 and September 25, 2008

3. On September 25, 2008, Hearing Officer Bradley P. Halloran stated in his order that all parties participated in a telephonic status conference and noted to Respondent, Soderberg that an answer was required by September 19, 2008 and neither the Board nor the Complainant had received Respondent's answer. (Exhibit 2)

4. As of the date of the filing of this Motion, Soderberg has not filed an Answer, nor otherwise pled, to the Complaint.

5. Section 103.204(d) and (e) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), provides as follows:

- (d) Except as provided in subsection (e) of this Section, the respondent may file an answer within 60 days after receipt of the complaint if respondent wants to deny any allegations in the complaint. All material allegations of the complaint will be taken as admitted if no answer is filed or if not specifically denied by the answer, unless respondent asserts a lack of knowledge sufficient to form a belief. Any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing.
- (e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in

- (e) If the respondent timely files a motion under Section 103.212(b) or 35 Ill. Adm. Code 101.506, the 60-day period to file an answer described in subsection (d) of this Section will be stayed. The stay will begin when the motion is filed and end when the Board disposes of the motion.

6. By failing to answer the Complaint on or before September 19, 2008, and by failing to file a motion staying the 60-day period in which to file an Answer as required by Section 103.204(d) and (e) of the Board's Procedural Rules, 35 Ill. Adm. Code 103.204(d) and (e), Soderberg has admitted the material allegations asserted in the Complaint.

7. Complainant therefore requests that the Board enter an order finding that pursuant to Section 103.204(d) and (e), 35 Ill. Adm. Code 103.204(d) and (e), Soderberg has admitted all material allegations asserted in the Complaint.

8. Complainant's Complaint sufficiently states facts establishing the following violations of the Act and the Board Water Pollution Regulations against Soderberg:

Count I: Water Pollution: Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006);

Count II: Water Pollution Hazard: Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006);

Count III: Discharging Without a Permit: Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2006) and Section 309.102(a), 35 Ill. Adm. Code 309.102(a);

Count IV: Creating An Offensive Condition: Violation of Section 302.203 of the Board Water Pollution Regulation, 35 Ill. Adm. Code 302.203.

9. Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), provides as follows:

- (b) If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment.

10. If the Board finds that Soderberg has admitted all material allegations in Complainant's Complaint, than the record shows that there is no issue of material fact remaining for review. Therefore, pursuant to Section 101.516(b) of the Board's Procedural Regulations, 35 Ill. Adm. Code 101.516(b), Complainant is entitled to summary judgment in its favor as a matter of law.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully request that that Board issue an order in favor of Complainant and against Respondent STEVE SODERBERG, d/b/a STEVE'S CONCRETE AND EXCAVATION, as follows:

1. Ordering all material allegations in the Complaint admitted against Respondent Steve Soderberg;
2. Finding that Respondent Steve Soderberg violated Sections 12(a), 12(d) and 12(f) of the Act, 415 ILCS 5/12(a), 12(d), 12(f) (2006) and Sections 309.102(a) and 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), 302.203;
3. Granting summary judgment in favor of Complainant and against Respondent Steve Soderberg on Counts I through IV of the Complaint; and

**REMEDY**

The May 15, 2008 Board Order in this cause provides, in pertinent part:

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any (including whether to impose a civil penalty), and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any (including a specific total dollar amount and the portion of that amount attributable to the respondent's economic benefit, if any, from delayed complaint), and supporting its position with facts and argument that address any or all of the Section 42(h) factors...

4. Pursuant to the May 15, 2008 Board Order, Complainant is proposing a remedy for Respondent's violations of Sections 12(a), 12(d), and 12(f) of the Act, 415 ILCS 5/12(a), 12(d), 12(f) (2006), and Sections 103.204(a) and 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 103.204(a), 302.203.

**Impact on the Public Resulting from Respondent's Alleged Non-Compliance**

Section 33(c) of the Act, 415 ILCS 5/33(c) (2006), 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 Complainant states the following:

1. The impact to the public resulting from Respondent's removal of an above ground fuel storage tank was that diesel fuel spilled on to the ground, and into a culvert, then flowed into Keith Creek and collected in the curves and vegetation of the creek. Keith Creek flows by an elementary school.
2. Keith Creek, which is the site of the spill, has social value.



3. The creek is suitable to the area in which it is located.

4. Preventing a diesel spill from the above ground tank was both technically practicable and economically reasonable.

5. Complainant states that the Site has been completely remediated.

A civil penalty should be assessed against Soderburg because of the potentially severe impact the exposure to diesel fuel has on human health and the environment.

**Explanation of Civil Penalties Requested**

Section 2(b) of the Act, 415 ILCS 5/2(b) (2006), provides:

It is the purpose of this Act, as more specifically described in later sections, to establish a unified, state-wide program supplemented by private remedies, to restore, protect and enhance the quality of the environment, *and to assure that adverse effects upon the environment are fully considered and borne by those who cause them.* (Emphasis added.)

The primary purpose of civil penalties is to aid in the enforcement of the Act. *See People v. McHenry Shores Water Co.*, 295 Ill. App. 3d 628, 638 (2d Dist. 1998). Civil penalties should reflect the severity of the violation(s) of the Act. *Southern Illinois Asphalt Company, Inc. v. Pollution Control Board*, 60 Ill. App. 2d 204, 208 (5th Dist. 1975). But the Act authorizes civil penalties regardless of whether violations resulted in actual pollution. *ESG Watts, Inc. v. Illinois Pollution Control Board*, 282 Ill. App. 3d 43, 52 (4th Dist. 1996). Moreover, the award of a civil penalty “serves the legislative purpose of aiding enforcement of the Act, for through penalties upon those who blatantly disregard applicable rules and regulations, others, who might consider cutting corners at the expense of the environment, are deterred.” *Wasteland, Inc. v. Illinois Pollution Control Board*, 118 Ill. App. 3d 1041, 1055 (3d Dist. 1983) (subsequently cited by the First District; *see e.g. Standard Scrap Metal Co. v. Pollution Control Board*, 142 Ill. App 3d 655, 665 (1st Dist.1986)).

Section 42 of the Act provides guidance for calculating civil penalties for violations of the Act. The statutory maximums provided in the Act have been used as "a natural or logical benchmark from which to begin considering factors in aggravation and mitigation of the penalty amounts." *Illinois EPA v. Allen Barry, Individually and d/b/a Allen Barry Livestock*, PCB No. 88-71, p. 72 (May 10, 1990).

Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), provides in pertinent part, as follows:

- a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues;

If the Board finds that Respondent violated the statutory and regulatory provisions alleged in Counts I through IV of the Complaint, on May 12, 2006, the date when a diesel fuel spill occurred in Keith Creek after Respondent, Soderberg, removed an above ground fuel storage tank and continuing to at least May 22, 2006, the maximum statutory penalty that Section 42(a) of the Act, 415 ILCS 5/42(a) (2006), authorizes for those violations is \$570,000 including the penalty for continuing violations of \$10,000 per day.

Penalties for violations of the Act and the Board Air Pollution Regulations are calculated according to the formula contained in Section 42(a), 415 ILCS 5/42(a) (2006). The statutory maximum is calculated as follows:

**Count I**

1 violation of Section 12(a)	\$ 50,000
1 violations continuing 10 days	\$ 100,000

**Count II**

1 violation of Section 12(d)	\$ 50,000
1 violation continuing 10 days	\$ 100,000

**Count III**

1 violation of 12(f)	\$ 10,000
1 violation of 309.102(a)	\$ 10,000
1 violation continuing 10 days	\$ 100,000

**Count IV**

1 violation of 302.203	\$ 50,000
1 violation continuing 10 days	\$ 100,000

<b>Total</b>	<b>\$ 570,000</b>
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**Consideration of Section 42(H) Factors**

Section 42(h) of the Act, 415 ILCS 5/42(h) (2006), provides as follows:

In determining the appropriate civil penalty to be imposed under ..., 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 violator 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 violator.

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 Complainant states as follows:

1. The duration of the violations that are the subject of the Complaint are alleged by Complainant to have occurred on May 12, 2006 through at least May 22, 2006 and resulted in an estimated amount of approximately 10 gallons of diesel fuel to spill into Illinois waters and to cause water pollution.

2. Respondent failed to act diligently in this matter, as evidenced by his failure to report the spill, failure to take any measures to prevent the spill from flowing into Keith Creek, and only hiring a clean-up crew after he was notified of the spill.

3. Respondent accrued no economic benefit as a result of the violations.

4. Complainant states that a maximum civil penalty payment of Twelve Thousand Dollars (\$12,000.00) will serve to deter further violations by Respondent and to otherwise aid in enhancing voluntary compliance with the Act and Board Regulations, Soderberg and other persons similarly subject to the Act and Board Regulations.

5. To Complainant's knowledge, Soderberg has had no previously adjudicated violations.

6. Soderberg did not voluntarily disclose the spill to the Illinois EPA.

7. Soderberg has not offered to perform a supplemental environmental project.

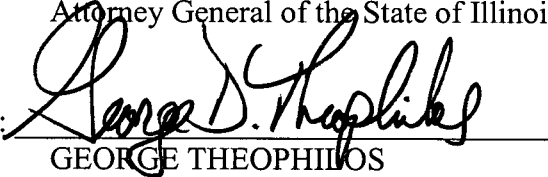
These aggravating and mitigating factors provide guidance to the Board in determining the appropriate amount of a civil penalty in an environmental enforcement case. Accordingly, the Complainant brings these factors to the Board's attention.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, respectfully requests that the Board grant its Motion to Deem Facts Admitted and for Summary Judgment against Respondent, STEVE SODERBERG, d/b/a STEVE'S CONCRETE AND EXCAVATING, and award the relief requested herein, and take such other action as the Board believes to be appropriate and just.

Respectfully submitted,

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

BY:



GEORGE THEOPHILOS  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
Tel: 312-814-6986  
[gtheophilos@atg.state.il.us](mailto:gtheophilos@atg.state.il.us)

**EXHIBIT 1**



RECEIVED  
ATTORNEY GENERAL  
ENVIRONMENTAL

OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

July 8, 2008

Richard Meyers, Sheriff  
Winnebago County  
650 W. State St.  
Rockford, Illinois 61102  
ATTN: Legal Process



Re: People of the State of Illinois v. Steve Soderberg d/b/a Steve's Concrete and Excavating  
PCB 2008-087 / Winnebago County

Dear Sheriff Meyers:

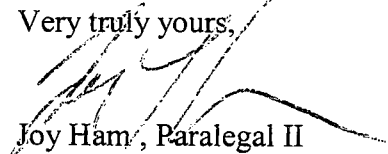
Enclosed please find a second copy of a Notice and Complaint with the Illinois Pollution Control Board to be served on :

Mr. Steve Soderberg  
222 18<sup>th</sup> Ave  
Rockford, Illinois

Please serve the enclosed this Notice and Complaint on the individual listed above. A self addressed stamped envelope has been included.

Please feel free to contact me if you have any questions. Thank you very much for your assistance in this matter.

Very truly yours,

  
Joy Ham, Paralegal II  
Environmental Bureau  
Illinois Attorney General's Office  
69 West Washington Street, 18<sup>th</sup> floor  
Chicago, Illinois 60602  
(312) 814-0669

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

2008 JUL 13 11 3 46

Complainant,

2008

v.

PCB 2008-087

(Enforcement - Water)

STEVE SODERBERG d/b/a STEVE'S  
CONCRETE AND EXCAVATING,

Respondent.

NOTICE OF FILING

TO: See Attached Service List

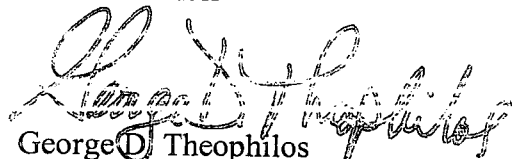
PLEASE TAKE NOTICE that on May 7, 2008, the People of the State of Illinois filed with the Illinois Pollution Control Board a Complaint, a true and correct copy of which is attached and hereby served upon you.

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the 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.

Respectfully submitted,

LISA MADIGAN  
Attorney General  
State of Illinois

BY.



George D Theophilos  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602  
(312) 814-6986

THIS FILING IS SUBMITTED ON RECYCLED PAPER



SERVICE LIST

Ms. Joey Logan-Wilkey, Esq.  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
Springfield, IL 62702

Mr. STEVE SODERBERG d/b/a  
STEVE'S CONCRETE AND EXCAVATING  
1720 Charles Road  
Rockford, Illinois 61104



**EXHIBIT 2**

ILLINOIS POLLUTION CONTROL BOARD  
September 25, 2008

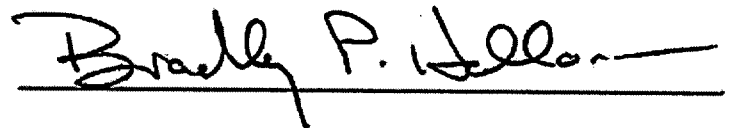
PEOPLE OF THE STATE OF ILLINOIS	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 08-87
	)	(Enforcement – Water)
STEVE SODERBERG d/b/a STEVE'S	)	
CONCRETE AND EXCAVATING,	)	
	)	
Respondent.	)	
	)	

**HEARING OFFICER ORDER**

On September 25, 2008, all parties participated in a telephonic status conference with the hearing officer. It is noted that respondent's answer was due to be filed on September 19, 2008. The respondent represented that it had mailed its answer to the complainant on September 16, or 17, 2008. To date, the Board or the complainant has not yet received respondent's answer. The parties were directed to submit a proposed discovery schedule to the hearing officer on or before October 2, 2008.

The parties or their legal representatives are directed to appear at a telephonic status conference with the hearing officer on November 13, 2008, at 9:30 a.m. The telephonic conference must be initiated by the complainant, but each party is nonetheless responsible for its own appearance. At the conference the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.



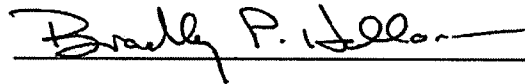
Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 W. Randolph Street  
Chicago, Illinois 60601  
312.814.8917

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were mailed, first class, on September 25, 2008, to each of the persons on the attached service list.

It is hereby certified that a true copy of the foregoing order was hand delivered to the following on September 25, 2008:

John T. Therriault  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph St., Ste. 11-500  
Chicago, Illinois 60601

A handwritten signature in black ink, reading "Bradley P. Halloran", is written over a horizontal line.

Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois

**Electronic Filing - Received, Clerk's Office, October 27, 2008**

PCB 2008-087  
George D. Theophilos  
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69 West Washington Street, Suite 1800  
Chicago, IL 60602

PCB 2008-087  
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IEPA  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

PCB 2008-087  
Steve Soderberg  
Steve's Concrete and Excavating  
1720 Chrles Road  
Rockford, IL 61104