

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

**GELCO MANAGEMENT & DEVELOPERS LLC,
an Illinois limited liability corporation,**

Respondents.

PCB No. 08-89

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on July 26, 2011, I electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, c/o John T. Therriault, Assistant Clerk, James R. Thompson Center, 100 W. Randolph St., Ste. 11-500, Chicago, IL 60601, a MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT, copies of which are attached hereto and herewith served upon you.

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

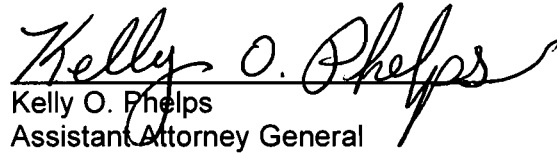
BY:


Kelly O. Phelps
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 26, 2011

CERTIFICATE OF SERVICE

I hereby certify that I did on July 26, 2011, cause to be served by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the following instruments entitled NOTICE OF ELECTRONIC FILING, MOTION FOR RELIEF FROM HEARING REQUIREMENT and STIPULATION AND PROPOSAL FOR SETTLEMENT upon the persons listed on the Service List.


Kelly O. Phelps
Assistant Attorney General

This filing is submitted on recycled paper.

SERVICE LIST

Joshua M. Bradley
Attorney at Law
1010 W. DeYoung Street
P.O. Box 57
Marion, Illinois 62959

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,

Complainant,

vs.

PCB No. 08-89

GELCO MANAGEMENT & DEVELOPERS LLC,
an Illinois limited liability corporation,

Respondent.

MOTION FOR RELIEF FROM HEARING REQUIREMENT

NOW COMES Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, and pursuant to Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2008), moves that the Illinois Pollution Control Board grant the parties in the above-captioned matter relief from the hearing requirement imposed by Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2008). In support of this motion, Complainant states as follows:

1. A Complaint was filed on May 13, 2008, with the Illinois Pollution Control Board ("Board") in this matter.
2. The parties have reached agreement on all outstanding issues in this matter.
3. This agreement is presented to the Board in a Stipulation and Proposal for Settlement, filed contemporaneously with this motion.
4. All parties agree that a hearing on the Stipulation and Proposal for Settlement is not necessary, and respectfully request relief from such a hearing as allowed by Section 31(c)(2) of the Act, 415 ILCS 5/31(c)(2) (2008).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, hereby requests that the Board grant this motion for relief from the hearing requirement set forth in Section 31(c)(1) of the Act, 415 ILCS 5/31(c)(1) (2008).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: 

Kelly O. Phelps
Environmental Bureau
Assistant Attorney General

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: July 26, 2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	
)	PCB No. 08-89
GELCO MANAGEMENT & DEVELOPERS)	
LLC, an Illinois limited liability corporation,)	
)	
Respondent.)	
)	

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 the Respondent, GELCO MANAGEMENT & DEVELOPERS LLC ("Gelco"), ("Parties to the Stipulation"), 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.* (2008), and the Board's Regulations, alleged in the Complaint except as otherwise provided herein. It is the intent of the Parties to the Stipulation that it be a final adjudication of this matter.

I. STATEMENT OF FACTS

A. Parties

1. On May 13, 2008, 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 (2008), against the Respondent.

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 (2008).

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. 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. 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. Respondent Gelco did not deposit asbestos-containing waste material ("ACWM") generated during demolition activities on the subject property in an appropriate waste disposal site until September 2007. Respondent, Gelco did not timely pay the statutory fee required by Section 9.13 of the Illinois Environmental Protection Act.

B. Allegations of Non-Compliance

Complainant contends that the Respondent has violated the following provisions of the Act, Board Regulations and the NESHAP for asbestos.

Count I: Violations of the National Emissions Standards for Asbestos

By failing to provide written notification to the Illinois EPA prior to the commencement of the demolition of the facility, Respondent violated NESHAP regulations, 40 CFR § 165.145(b)(1). By failing to adequately wet and keep wet all regulated asbestos-containing materials removed or disturbed during the demolition, Respondent violated 40 CFR § 61.145(c)(6). By failing to have at least one representative trained in the provisions of the NESHAP and the means of compliance with the NESHAP Respondent violated 40 CFR § 61.145(c)(8). By failing to deposit its asbestos containing waste material at an "EPA-approved site" or a waste disposal site as soon as is practical, Respondent violated 40 CFR § 61.150(b). By violating the afore-mentioned provisions of Section 111, 112, 165, or 173 of the Clean Air Act, Respondent 415 ILCS 5/9.1(d)(1) (2008).

Count II: Air Pollution Violations.

Respondent threatened the emission of contaminants into the environment so as to tend to cause air pollution by failing to remove all RACM prior to the demolition, failing to utilize equipment or methods to properly control the emission of asbestos, and failing 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 in violation Section 9(a) of the Act, 415 ILCS 5/9(a) (2008) and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

Count III: Nonpayment of the Statutorily Required Fees.

By failing to pay the statutory fee of three hundred dollars (\$300.00) Respondent violated Section 9.13 of the Act.

C. Non-Admission of Violations

The Respondent neither admits nor denies the violation(s) alleged in the Complaint filed in this matter and referenced herein.

D. Compliance Activities to Date

Respondent has demolished the site, properly abated all RACM and properly disposed of all ACM from the site. The Respondent is now in compliance with the Act, Board regulations, and applicable federal regulations.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation, and any officer, director, agent, or employee of the Respondent, as well as any successors or assigns of the Respondent. The Respondent 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 Respondent 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 (2008).

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

After the Board finds a violation, the Board considers the factors set forth in Section 33(c) of the Act, 415 ILCS 5/33(c) (2008), to create an appropriate remedy. Those factors are:

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. Human health and the environment were threatened by Respondent's failure to comply with any of the applicable statutory and regulatory requirements and commencing the demolition of a property containing RACM and ACM without first conducting an inspection, without providing written notice to Illinois EPA, without having anyone on site trained in the provisions of the NESHAP and the means of compliance with the NESHAP, and without making an effort to remove and dispose of RACM and ACWM prior to demolition activities and as soon as practicable.
2. There was a social and economic benefit to the Respondent's demolition activities.
3. Respondent's demolition activities were suitable for the area in which they

occurred, if they had occurred in compliance with statutory and regulatory requirements.

4. Complying with the applicable statutory and regulatory reporting requirements was both technically practicable and economically reasonable.

5. Respondent has subsequently complied with the Act and the Board Regulations.

CONSIDERATION OF SECTION 42(h) FACTORS

To impose a civil penalty, the Board must consider the factors contained within Section 42(h) of the Act, 415 ILCS 5/42(h) (2004). Those factors are:

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

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 Respondent failed to comply with the applicable statutory and regulatory requirements. Given Respondent's disregard for the Act, Board regulations, and applicable federal regulations there is a serious gravity to these violations.
2. Respondent was diligent in attempting to come back into compliance with the Act, Board regulations, and applicable federal regulations after Illinois EPA made Respondent aware of the violations.
3. There was a nominal economic benefit in Respondent's delay in coming into compliance with the applicable statutory and regulatory requirements.
4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Forty-Five-Thousand Dollars (\$45,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.
5. To Complainant's knowledge, Respondent has no previously adjudicated violations of the Act.
6. Respondent did not self report the violations.
7. The adjudication of this matter does not include a supplemental environmental project.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondent shall pay a civil penalty in the sum of Forty-Five-Thousand Dollars (\$45,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. 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 Respondent'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
500 South Second Street
Springfield, Illinois 62706

C. Future Compliance

1. In addition to any other authorities, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, shall have the right of entry into and upon the Respondent's facility which is the subject of this Stipulation, at all reasonable times for the purposes of conducting inspections and evaluating compliance status. In

conducting such inspections, the Illinois EPA, its employees and representatives, and the Attorney General, her employees and representatives, may take photographs, samples, and collect information, as they deem necessary.

2. This Stipulation in no way affects the responsibilities of the Respondent to comply with any other federal, state or local laws or regulations, including but not limited to the Act and the Board Regulations.

3. The Respondent shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

D. Release from Liability

In consideration of the Respondent's payment of the \$45,000.00 penalty, its commitment to cease and desist as contained in Section V-C above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent 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 May 13, 2008. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent 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 Respondent's 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315, or entity other than the Respondent.

E. Enforcement and Modification of Stipulation

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 the Parties to the 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.

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


PEOPLE OF THE STATE OF ILLINOIS, FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

LISA MADIGAN
Attorney General
State of Illinois


LISA BONNETT, Interim Director
Illinois Environmental Protection Agency

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

BY:


THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

BY:


JOHN J. KIM
Chief Legal Counsel

DATE:

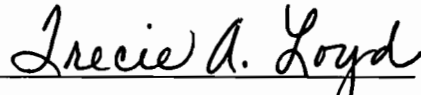
7/25/11

DATE:

7/20/11

GELCO MANAGEMENT &
DEVELOPERS LLC, an Illinois limited
liability corporation,

BY:



Name: TRECIE A. LOYD

Title: MEMBER MANAGER

DATE:

6/13/11