

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	PCB No. 11-74
)	(Enforcement)
ADOLF M. LO and RENEE C. LO,)	
d/b/a LO FARMS,)	
)	
Respondents.)	

NOTICE OF ELECTRONIC FILING

To: See Attached Service List

PLEASE TAKE NOTICE that on March 30, 2012, 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: *Rachel R Medina*
RACHEL R. MEDINA
Assistant Attorney General
Environmental Bureau

500 South Second Street
Springfield, Illinois 62706
217/782-9031
Dated: March 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that I did on March 30, 2012, 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.



Rachel R. Medina
Assistant Attorney General

This filing is submitted on recycled paper.

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v.)	PCB NO. 11-74
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ADOLF M. LO and RENEE C. LO,)	
d/b/a LO FARMS,)	
)	
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) (2010), 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) (2010). In support of this motion, Complainant states as follows:

1. On April 22, 2011, a Complaint was filed 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) (2010).

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) (2010).

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
LISA MADIGAN
ATTORNEY GENERAL

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

BY: *Rachel R. Medina*
RACHEL R. MEDINA
Environmental Bureau
Assistant Attorney General

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LO FARMS,)	
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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 ADOLF M. LO and RENEE C. LO d/b/a LO FARMS ("Respondents") ("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.* (2010), 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 April 22, 2011, 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, Respondents conducted a farming business known as Lo Farms at 1404 N. Rising Rd., Champaign, IL 61822 ("site"). The Respondents are also the owners of the site.

4. At all times relevant to this Complaint, neither Adolf M. Lo and Renee C. Lo, nor Lo Farms had a permit to conduct on-site waste storage, waste disposal, or open burning of refuse on the site.

B. Allegations of Non-Compliance

Complainant contends that the Respondents have violated the following provisions of the Act:

Count I: Air Pollution

By causing, threatening, or allowing the emission of contaminants into the environment so as to cause or tend to cause air pollution, the Respondents have violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010).

By causing or allowing the open burning of refuse at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, the Respondents have violated Section 9(c) of the Act, 415 ILCS 5/9(c) (2010).

Count II: Waste Disposal Violation

By disposing, treating, storing, or abandoning waste at a site that does not meet the requirements of the Act and of the regulations and the standards promulgated thereunder, the Respondents are violating Section 21(e) of the Act, 415 ILCS 5/21(e) (2010).

C. Admission of Violations

The Respondents admit to the violations alleged in the April 22, 2011 Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

The Respondents have removed and properly disposed of or recycled all waste on-site and have ceased the burning of waste from the site that was the subject of the Complaint, including, but not limited to, construction or demolition debris and landscape waste.

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 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 the Stipulation state the following:

1. Human health and the environment were threatened by the Respondents' violations.
2. The parties agree that the Respondents' operations of the farm for agricultural purposes is of economic benefit to the surrounding community. Any social benefit is derived primarily from those employed by Respondents through their business Lo Farms.
3. Operation of the farm is suitable for the area.
4. Proper disposal of waste generated from the site 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.
8. whether the respondent has successfully completed a Compliance Commitment Agreement under subsection (a) of Section 31 of this Act to remedy the violations that are the subject of the complaint.

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

1. The Respondents demolished and subsequently open burned a two-story farm house at the site on March 17, 2010. On September 10, 2010, Illinois EPA staff observed that burned remains of the farm house, scrap metal, landscape waste and additional debris remained at the site.

2. Respondents began clean-up efforts following the filing of the Complaint and completed clean-up of the site on or about October 2, 2011. On November 17, 2011, the Illinois EPA inspected the property and confirmed the site had come back into compliance with the Act, Board regulations and applicable federal regulations.

3. Any economic benefit derived from delaying the disposal of waste was nominal.

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of Ten Thousand Dollars (\$10,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. In both *Illinois EPA v. Renee C. Lo*, AC 07-53, and *Illinois EPA v. Adolph M. Lo*, AC 07-54, the Illinois EPA alleged violations of 21(p)(1), (p)(3), and (p)(7) of the Act. As a result

of the allegations, the State obtained an Order directing Ms. Lo to pay a civil penalty of \$4,500.00 and Mr. Lo to pay a civil penalty of \$1,500.00.

6. Self-disclosure is not at issue in this matter.
7. The settlement of this matter does not include a supplemental environmental project.
8. The Respondents did not successfully complete a Compliance Commitment Agreement prior to the filing of the Complaint in this matter.

V. TERMS OF SETTLEMENT

A. Penalty Payment

1. The Respondents, jointly and severally, shall pay a civil penalty in the sum of Ten Thousand Dollars (\$10,000.00) within thirty (30) calendar days from the date the Board adopts and accepts this Stipulation and issues an Order.

B. 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 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:

Rachel R. Medina
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

D. Future Compliance

1. The Respondents shall not allow for the improper storage or disposal of waste and further shall not conduct open burning of waste at any property in Illinois in violation of the Act or Board regulations.

2. 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 Respondents' 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.

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

4. The Respondents shall cease and desist from future violations of the Act and Board Regulations.

E. Release from Liability

In consideration of the Respondents' payment of the \$10,000.00 penalty, their commitment to future compliance as contained in Section V.D. above, completion of all activities required hereunder, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondents from any further liability or penalties for the violations of the Act 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 April 22, 2011. 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 may have against any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), or entity other than the Respondents.

F. 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.

G. 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,

LISA MADIGAN
Attorney General
State of Illinois

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

BY: 
THOMAS DAVIS, Chief
Environmental Bureau
Assistant Attorney General

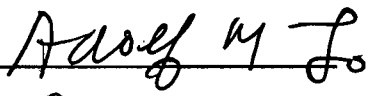
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FOR THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

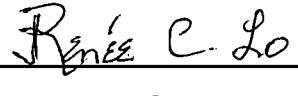
BY: 
JOHN J. KIM
Interim Director

DATE: 3/27/12

ADOLF M. LO


DATE: 02-08-2012

RENEE C. LO d/b/a LO FARMS


DATE: 02-08-2012