

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

Complainant, )

PCB 09-005

v. )

(Enforcement - Water)

ALDEN BENNETT CONSTRUCTION )  
COMPANY, INC., an Illinois corporation, )  
and BLOOMINGDALE HORIZON I )  
LIMITED PARTNERSHIP, a registered )  
Illinois limited partnership, )

Respondents. )

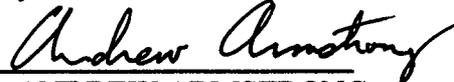
NOTICE OF FILING

TO: Kenneth J. Fisch  
Law Offices of Kenneth J. Fisch  
4200 West Peterson Avenue  
Suite 140  
Chicago, Illinois 60646  
(Registered Agent—  
Alden Bennett Construction Company, Inc.  
and Bloomingdale Horizon I Limited Partnership)

PLEASE TAKE NOTICE that today I have electronically filed with the Office of the Clerk of the Pollution Control Board a Stipulation and Proposal for Settlement and a Motion to Request Relief from Hearing, true and correct copies of which are attached and hereby served upon you.

Respectfully submitted,

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

By: 

ANDREW ARMSTRONG  
Assistant Attorney General  
Environmental Bureau  
69 West Washington, 18th Floor  
Chicago, Illinois 60602  
(312) 814-0660

DATE: October 29, 2008

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the State of Illinois, )

Complainant, )

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ALDEN BENNETT CONSTRUCTION )  
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**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 BENNETT CONSTRUCTION COMPANY, INC. and BLOOMINGDALE HORIZON I LIMITED PARTNERSHIP ("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.* (2006), and the Board 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 14, 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 (2006), 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 (2006).

3. At all times relevant to the Complaint, Respondent Bloomingdale Horizon I Limited Partnership ("Bloomingdale Horizon I") was and is a registered Illinois limited partnership in good standing, organized and operating under the laws of the State of Illinois. At all times relevant to the Complaint, Respondent Bloomingdale Horizon I owned a 5.2-acre parcel of land located at 160 West Lake Street, Bloomingdale, DuPage County, Illinois ("Construction Site").

4. From March 16, 2006 to August 29, 2007, the Construction Site was covered by Illinois General National Pollutant Discharge Elimination System ("NPDES") Construction Site Permit number ILR10E858 ("NPDES Permit No. ILR10E858"), authorizing storm water discharges at the Site.

5. At all times relevant to the Complaint, Respondent Alden Bennett Construction Company, Inc. ("Alden Bennett") was and is an Illinois corporation in good standing, organized and operating under the laws of the State of Illinois.

6. From some date prior to November 1, 2006 to at least May 29, 2007, the precise dates best known to the Respondents, Respondent Alden Bennett acted as general contractor for

the construction of the Bloomingdale Horizon Senior Living Center at the Construction Site, and conducted construction activities at the Construction Site.

**B. Allegations of Non-Compliance**

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

- Count I:**        Water Pollution  
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2006).
- Count II:**       Creating a Water Pollution Hazard  
Violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2006).
- Count III:**      Failure to Comply With NPDES Permit  
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f); Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102; and terms of NPDES Permit No. ILR10E858.

**C. Admission of Violations**

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

**D. Compliance Activities to Date**

1. On August 29, 2007, the Illinois EPA received from the Respondents a Notice of Termination of coverage under NPDES Permit No. ILR10E858. The Notice of Termination stated that construction activities on the Site had been completed.

**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 their 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 (2006).

### **III. IMPACT ON THE PUBLIC RESULTING FROM 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 parties to this Stipulation state the following:

1. The environment was threatened and the Illinois EPA's information gathering responsibilities hindered by the Respondents' violations.
2. There was social and economic benefit afforded by the Construction Site.
3. The Construction Site was suitable for the area in which it is located, so long as it was operated in accordance with all applicable statutory, regulatory, and permit requirements.
4. Compliance with all applicable statutory, regulatory, and permit requirements for the Construction Site was both technically practicable and economically reasonable.
5. Construction activities at the Construction Site were completed as of August 29, 2007. The Respondents have committed to comply with the Act, Board Regulations, and all applicable permits issued by the Illinois EPA, with respect to the violations alleged in the Complaint filed in this matter.

#### **IV. 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 . . . 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. From at least November 1, 2006 to May 29, 2007, the precise dates best known by the Respondents, the Respondents during certain periods failed to install proper erosion control measures at the Site, thereby causing, threatening, or allowing soil and/or debris from construction activities at the Site to discharge into the waters of the State of Illinois; creating a water pollution hazard; and violating the terms of NPDES Permit No. ILR10E858. From at least March 16, 2006 to March 22, 2007, the precise dates best known by the Respondents, the Respondents failed to create, maintain, and make available to the Illinois EPA all of the weekly site inspection reports required by NPDES Permit No. ILR10E858. From at least March 16, 2006 to May 29, 2007, the precise dates best known by the Respondents, the Respondents failed to submit to the Illinois EPA Incident of Noncompliance reports after violations of the Storm Water Pollution Prevention Plan ("SWPPP") for the Construction Site had occurred, as was

required by NPDES Permit No. ILR10E858. On November 1, 2006, Respondents did not provide a copy of the SWPPP for the Construction Site to the Illinois EPA inspector who had requested it, in violation of NPDES Permit No. ILR10E858.

2. Though the Respondents corrected some problems at the Construction Site after the Illinois EPA identified them, the Illinois EPA identified violations during every inspection of the Construction Site it conducted while construction activities were ongoing.

3. The Illinois EPA has calculated that the civil penalty agreed to in Section V.A, below, exceeds the economic benefit to Respondents due to their noncompliance with applicable statutory, regulatory, and permit requirements.

4. The Complainant has determined, based upon the specific facts of this matter, that a penalty of Twelve Thousand Dollars (\$12,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board Regulations.

5. To the Complainant's knowledge, the 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 Twelve Thousand Dollars (\$12,000.00) within thirty (30) calendar days from the date the Board adopts and accepts this Stipulation.

**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 Respondents' federal tax identification numbers 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:

Andrew Armstrong  
Assistant Attorney General  
Environmental Bureau  
69 West Washington Street, 18th Floor  
Chicago, Illinois 60602

**D. Future Compliance**

1. Effective immediately, the Respondents shall conduct all construction activities in accordance with the Act, Board Regulations, and all applicable permits issued by the Illinois EPA.

2. 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 Board Regulations.

**E. Release from Liability**

In consideration of the Respondents' payment of the \$12,000.00 penalty, 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 and applicable 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 the Complainant's

Complaint filed on July 14, 2008. 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.

**F. Enforcement 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 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.

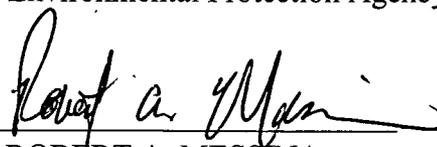
WHEREFORE, the parties to this Stipulation request that the Board adopt and accept the foregoing Stipulation and Proposal for Settlement as written.

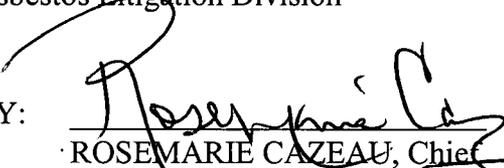
PEOPLE OF THE STATE OF ILLINOIS, FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

LISA MADIGAN  
Attorney General  
State of Illinois

DOUGLAS P. SCOTT, Director  
Illinois Environmental Protection Agency

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

BY:   
ROBERT A. MESSINA  
Chief Legal Counsel

BY:   
ROSEMARIE CAZEAU, Chief  
Environmental Bureau  
Assistant Attorney General

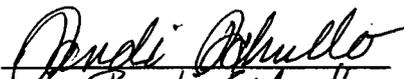
DATE: 9/8/08

DATE: 9/10/08

ALDEN BENNETT CONSTRUCTION  
CO, INC.

BLOOMINGDALE HORIZON I LIMITED  
PARTNERSHIP

BY:   
Name: RICHELIE D SCHULLIO  
Title: PRESIDENT

BY:   
Name: Randi Schullio  
Title: Vice President

DATE: 10-18-08

DATE: 10-22-08

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Illinois limited partnership, )  
)  
Respondents. )

**MOTION TO REQUEST 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 requests relief from the hearing requirement in the above-captioned matter. In support thereof, the Complainant states as follows:

1. On July 21, 2008, the Complaint was accepted for hearing by the Pollution Control Board ("Board") in this matter. On October 29, 2008, a Stipulation and Proposal for Settlement was filed with the Board. If accepted, the Stipulation and Proposal for Settlement will dispose of the case.

2. Section 31(c)(2) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(c)(2) (2008), allows the parties in certain enforcement cases to request relief from the mandatory hearing requirement where the parties have submitted to the Board a stipulation and proposal for settlement. Section 31(c)(2) provides:

CERTIFICATE OF SERVICE

I, ANDREW ARMSTRONG, an Assistant Attorney General, do certify that I caused to be mailed this 29th day of October, 2008, the foregoing Motion to Request Relief from Hearing, Stipulation and Proposal for Settlement, and Notice of Filing, upon the persons listed on said notice, by U.S. first-class mail.

A handwritten signature in black ink, appearing to read "Andrew Armstrong", written over a horizontal line.

ANDREW ARMSTRONG  
Assistant Attorney General  
Environmental Bureau  
69 West Washington, 18th Floor  
Chicago, IL 60602  
(312) 814-0660