

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 11-06
)	(Enforcement – Water)
AMERICAN CONSTRUCTION, LLC, an)	
Illinois limited liability company, and)	
REAL ESTATE ELMHURST, LLC, an)	
Illinois limited liability company,)	
)	
Respondents.)	

NOTICE OF FILING

(VIA ELECTRONIC FILING)

TO: Kimberly Carten
Registered Agent
Real Estate Elmhurst, LLC
1422 N. Kingsbury, Suite 3G
Chicago, Illinois 60642

Lee Fry
Registered Agent
American Construction, LLC
825 N. Cass Avenue, Suite 209
Westmont, Illinois 60559

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 is attached and hereby served upon you.

Respectfully submitted,

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

By: Vanessa C. Horton
VANESSA C. HORTON
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-0608

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**STIPULATION AND PROPOSAL FOR SETTLEMENT WITH REAL ESTATE
ELMHURST, LLC**

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 REAL ESTATE ELMHURST, LLC (“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 August 9, 2010, 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 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 (2008).

3. At all times relevant to the Complaint, Respondent, AMERICAN CONSTRUCTION, LLC ("Respondent ACL"), was an Illinois limited liability company duly organized and existing under the laws of the State of Illinois.

4. At all times relevant to the Complaint, Respondent, REAL ESTATE ELMHURST, LLC ("Respondent REEL"), was an Illinois limited liability company duly organized and existing under the laws of the State of Illinois.

5. At all times relevant to the Complaint, Respondent REEL was the owner of property located at the northeast corner of Route 83 and North Avenue, in Elmhurst, DuPage County, Illinois ("Site"). The Site consists of approximately 1.75 acres.

6. At all times relevant to the Complaint, Respondent REEL was engaged in the development of a commercial business complex known as "Stone Cottage Shoppes" at the Site. Stone Cottage Shoppes consists of approximately 26,857 square feet of retail space.

7. Respondent REEL hired Respondent ACL to construct Stone Cottage Shoppes at the Site. At all times relevant to the Complaint, Respondent ACL was the construction

contractor responsible for constructing Stone Cottage Shoppes, which comprises two commercial buildings, related parking and an underground storm water detention facility. Respondent ACL was also responsible for constructing a sanitary sewer that connects the two commercial buildings to the City of Elmhurst's Sewage Treatment Plant ("Sanitary Sewer").

B. Allegations of Non-Compliance

Complainant contends that the Respondent REEL has 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) (2008).
- Count II:** Offensive Discharges
Violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2008); and Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203.
- Count III:** Failure to Obtain NPDES Permit
Violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008); and Section 309.102 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102.
- Count IV:** Failure to Obtain Sanitary Sewer Permit
Violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2008); and Section 309.202(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.202(a).

C. Admission of Violations

The Respondent REEL admits to the violations alleged in the Complaint filed in this matter and referenced within Section I.B herein.

D. Compliance Activities to Date

1. On March 12, 2008, Illinois EPA issued NPDES Storm Water Permit No. ILR10J506 for Storm Water Discharges from Construction Site Activities at the Site.
2. On April 9, 2008, Illinois EPA issued to Respondent ACL a Sanitary Sewer Permit for construction and/or operation of sanitary sewers at the Site.
3. In May 2008, the Site received proper erosion control blanketing and became permanently stabilized.

II. APPLICABILITY

This Stipulation shall apply to and be binding upon the Parties to the Stipulation. The Respondent REEL 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 REEL 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). This provision does not relieve the Respondent REEL from compliance with any regulatory requirement regarding notice and transfer of applicable facility permits.

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

Section 33(c) of the Act, 415 ILCS 5/33(c) (2008), 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. The environment was threatened by allowing conditions to exist that could have contaminated the waters of the State.
2. There is social and economic benefit to the Site.
3. Stone Cottage Shoppes was suitable for the area in which it is located.
4. Obtaining permits prior to construction at the Site and implementing adequate erosion control measures at the Site in compliance with the Act and Board regulations were both technically practicable and economically reasonable.
5. Construction activities at the Site were completed as of May, 2008. Respondent REEL has subsequently committed to comply with the Act and the Board Regulations, and all applicable permits issued by the Illinois EPA, with respect to the violations alleged in the Complaint filed in this matter. The Site is now in compliance with all applicable regulations.

IV. CONSIDERATION OF SECTION 42(h) FACTORS

Section 42(h) of the Act, 415 ILCS 5/42(h) (2008), 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 the Stipulation state as follows:

1. The Respondent REEL failed to obtain permits for construction site activities prior to beginning construction activities at the Site, and failed to install erosion control

measures. From at least February 8, 2008 to April 10, 2008, the precise dates best known by the Respondent, the Respondent REEL failed to implement 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.

2. Respondent REEL was diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified it of its noncompliance.

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

4. Complainant has determined, based upon the specific facts of this matter, that a penalty of One Thousand (\$1,000.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent REEL has 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 Respondent REEL shall pay a civil penalty in the sum of One Thousand Dollars (\$1,000.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Stipulated Penalties, Interest and Default

1. If the Respondent REEL fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent REEL 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 Respondent REEL 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.

3. The stipulated penalties shall be enforceable by the Complainant and shall be in addition to, and shall not preclude the use of, any other remedies or sanctions arising from the failure to comply with this Stipulation.

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 REEL's 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:

Vanessa Horton
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, 18th Floor
Chicago, Illinois 60602

D. 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 Site 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 REEL 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 Respondent REEL shall cease and desist from future violations of the Act and Board Regulations that were the subject matter of the Complaint.

E. Release from Liability

In consideration of the Respondent REEL's payment of the \$1,000.00 penalty and any specified costs and accrued interest, its commitment to cease and desist as contained in Section V.D. above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent REEL 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 August 9, 2010, nor any person other than Respondent REEL. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent REEL 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 REEL'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 REEL.

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.

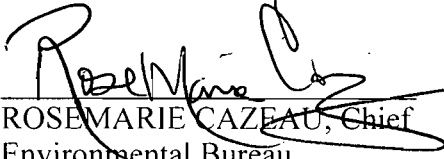
PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

LISA BONNET, Interim Director
Illinois Environmental Protection Agency

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 3/28/11

DATE: 3/28/11

REAL ESTATE ELMHURST, LLC

BY: _____

Name: _____

Title: _____

DATE: _____

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

THE ILLINOIS ENVIRONMENTAL
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MATTHEW J. DUNN, Chief
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DOUGLAS P. SCOTT, Director
Illinois Environmental Protection Agency

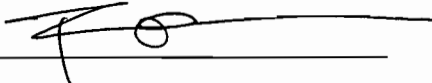
BY: _____
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

REAL ESTATE ELMHURST, LLC

BY: _____


Name: Thomas Melk

Title: manager

DATE: 2/20/2011

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
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Complainant,)
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v.) PCB No. 11-06
) (Enforcement – Water)
AMERICAN CONSTRUCTION, LLC, an)
Illinois limited liability company, and)
REAL ESTATE ELMHURST, LLC, an)
Illinois limited liability company,)
)
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 August 19, 2010, the Complaint was accepted for hearing by the Pollution Control Board (“Board”) in this matter. On March 29, 2011, 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) (2010), 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:

Notwithstanding the provisions of subdivision (1) of this subsection (c), whenever a complaint has been filed on behalf of the Agency or by the People of the State of Illinois, the parties may file with the Board a stipulation and proposal for settlement accompanied by a request for relief from the requirement of a hearing

pursuant to subdivision (1). Unless the Board, in its discretion, concludes that a hearing will be held, the Board shall cause notice of the stipulation, proposal and request for relief to be published and sent in the same manner as is required for hearing pursuant to subdivision (1) of this subsection. The notice shall include a statement that any person may file a written demand for hearing within 21 days after receiving the notice. If any person files a timely written demand for hearing, the Board shall deny the request for relief from a hearing and shall hold a hearing in accordance with the provisions of subdivision (1).

3. No hearing is currently scheduled in the instant case.
4. The Complainant requests the relief conferred by Section 31(c)(2) of the

Act.

WHEREFORE, the Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, requests relief from the requirement of a hearing pursuant to 415 ILCS 5/31(c)(2) (2010).

Respectfully submitted,

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

By: Vanessa C. Horton

VANESSA C. HORTON
Assistant Attorney General
Environmental Bureau
69 W. Washington St., 18th Floor
Chicago, Illinois 60602
(312) 814-0608

CERTIFICATE OF SERVICE

I, VANESSA C. HORTON, an Assistant Attorney General, do certify that I caused to be mailed this 30th day of March, 2011, 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 that reads "Vanessa C. Horton". The signature is written in a cursive style and is positioned above a horizontal line.

VANESSA C. HORTON
Assistant Attorney General
Environmental Bureau
69 West Washington, 18th Floor
Chicago, IL 60602
312-814-0608