

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

To: See attached service list
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Stipulation and Proposal for Settlement and Motion for Relief from Hearing Requirement, copies of which are attached and hereby served upon you.

LISA MADIGAN
Attorney General
State of Illinois


JENNIFER A. VAN WIE

Dated: July 8, 2011

Jennifer A. Van Wie
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609

THIS FILING IS SUBMITTED ON RECYCLED PAPER

Service List

Respondent American Construction, LLC

American Construction, LLC

ATTN: Lee Fry

Lee Fry Companies, Inc.

825 N. Cass Avenue, Suite 209

Westmont, Illinois 60559

Illinois Environmental Protection Agency

Joey Logan-Wilkey

Assistant Counsel

Division of Legal Counsel

Illinois Environmental Protection Agency

1021 North Grand Avenue East

P.O. Box 19276

Springfield, Illinois 62794-9276

4. This agreement is presented to the Board in a Stipulation and Proposal for Settlement filed this same date.

5. Complainant and American Construction, LLC 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
State of Illinois

BY:


JENNIFER A. VAN WIE
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
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DATE: July 8, 2011

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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 AMERICAN CONSTRUCTION, LLC (“Respondent ACL”) (“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 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 (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, 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 (“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 ACL 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(a) of the Board Water Pollution Regulations, 35 Ill. Adm.
Code 309.102(a).
- 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 ACL 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 ACL 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 Respondent ACL 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). This provision does not relieve the Respondent ACL 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) (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. 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 ACL 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.

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.

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

1. The Respondent ACL 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 ACL 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 ACL was diligent in attempting to come back into compliance with the Act and Board regulations, once the Illinois EPA notified them of their noncompliance.

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

4. Complainant has determined, based upon the specific facts of this matter and the signed affidavit of ACL as to its financial condition, that a penalty of Two Thousand Five Hundred Dollars (\$2,500.00) will serve to deter further violations and aid in future voluntary compliance with the Act and Board regulations.

5. To Complainant's knowledge, Respondent ACL 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 ACL shall pay a civil penalty in the sum of Two Thousand Five Hundred Dollars (\$2,500.00) within thirty (30) days from the date the Board adopts and accepts this Stipulation.

B. Interest and Default

1. If the Respondent ACL fails to make any payment required by this Stipulation on or before the date upon which the payment is due, the Respondent ACL 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 ACL 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 case name, case number and the Respondent ACL'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:

Jennifer A. Van Wie
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 ACL 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 ACL 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 ACL's payment of the \$2,500.00 penalty and any accrued interest, its commitment to cease and desist as contained in Section V.D.3 above, and upon the Board's approval of this Stipulation, the Complainant releases, waives and discharges the Respondent ACL 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. The Complainant reserves, and this Stipulation is without prejudice to, all rights of the State of Illinois against the Respondent ACL 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 ACL'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 ACL.

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.

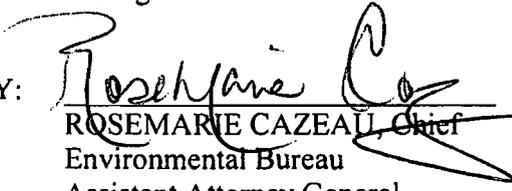
PEOPLE OF THE STATE OF ILLINOIS,

LISA MADIGAN
Attorney General
State of Illinois

THE ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

LISA BONNETT, Interim Director

BY: 
ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY: 
JOHN J. KIM
Chief Legal Counsel

DATE: 7/1/11

DATE: 6/27/11

AMERICAN CONSTRUCTION, LLC

BY: _____

Its: _____

DATE: _____

Electronic Filing - Received, Clerk's Office, 07/08/2011

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
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Asbestos Litigation Division

LISA BONNETT, Interim Director

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

BY: _____
JOHN J. KIM
Chief Legal Counsel

DATE: _____

DATE: _____

AMERICAN CONSTRUCTION, LLC

BY: _____
Its: _____

DATE: 6-17-11

CERTIFICATE OF SERVICE

I, JENNIFER A. VAN WIE, an Assistant Attorney General, certify that on the 8th day of July 2011, I caused to be served by U.S. Certified Mail (return receipt requested), the foregoing Stipulation and Proposal for Settlement, Motion for Relief from Hearing Requirement and Notice of Filing 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.



JENNIFER A. VAN WIE
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-0609