

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
by KWAME RAOUL, Attorney)
General of the State of Illinois,)
))
Complainant,)
))
v.)
))
DENIS MUNIE, an individual,)
d/b/a MUNIE TRUCKING AND GRAVEL,)
))
Respondent.)

PCB No. 21

NOTICE OF FILING

TO: See attached service list.

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 Notice of Filing, Complaint and Certificate of Service, a copy of which is attached and hereby served upon you. **You may be required to answer the charges of the Complaint at a hearing before the Board, at a date set by the Board.**

Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the clerk's office, or an attorney.

NOTIFICATION - YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act [20 ILCS 3515/1, et seq.] to correct the alleged violations.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
KWAME RAOUL, Attorney General of the State of Illinois

By: s/Andrew Armstrong
Andrew Armstrong, Chief
Office of the Illinois Attorney General
500 S. Second Street
Springfield, IL 62701
(217)782-9031
aarmstrong@atg.state.il.us
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Service List

For the Respondent

Denis Munie
d/b/a Munie Trucking & Gravel Co.
3000 Cally Lane
Highland, Illinois 62249

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COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondent, DENIS MUNIE, an individual, d/b/a MUNIE TRUCKING AND GRAVEL, as follows:

COUNT I
UNPERMITTED DISCHARGE

1. This Count is brought on behalf of the People of the State of Illinois, by Kwame Raoul, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”).

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 (2018), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to abate violations of the National Pollutant Discharge Elimination System (“NPDES”) permit program under Section 402(b)(7) of the Federal Clean Water Act (“CWA”), 33 U.S.C. § 1342(b)(7).

3. The Illinois Pollution Control Board (“Board”) is an independent board created by the Illinois General Assembly in Section 5 of the Act, 415 ILCS 5/5 (2018), and charged, *inter alia*, with the duty of promulgating standards and regulations under the Act.

4. Respondent, DENIS MUNIE (“Respondent”), is an individual, d/b/a MUNIE TRUCKING AND GRAVEL, an unincorporated entity.

5. Respondent operates an excavation trucking business located at 3000 Cally Lane, Highland, IL 62249 (“Facility”).

6. The Facility is an inactive quarry.

7. Respondent stores trucks and excavating equipment at the Facility.

8. Respondent stockpiles bulk sand and gravel at the Facility.

9. Respondent transports bulk sand and gravel to and from the Facility.

10. Respondent fuels vehicles at the Facility.

11. Respondent’s Facility discharges storm water into Bargetzi’s Lake.

12. The CWA regulates storm water discharges associated with industrial activity and prohibits such storm water discharges without an NPDES permit. The United States Environmental Protection Agency (“USEPA”) administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations, including storm water discharges regulated by 40 Code of Federal Regulations (“C.F.R.”) Sections 122.26 and 122.32, which require operators to obtain a NPDES permit to lawfully discharge storm water.

13. Respondent’s operation of its industrial activity is subject to the Act and the rules and regulations promulgated by the Board. The Board’s regulations for water pollution are found in Title 35, Subtitle C, Chapter I of the Illinois Administrative Code (“Board Water Pollution Regulations”).

14. Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), provides as follows:

No person shall:

- (f) Cause, threaten or allow the discharge of any contaminant into the waters of the State, as defined herein, including but not limited to, waters to any sewage works, or into any well or from any point source within the State, without an NPDES permit for point source discharges issued by the Agency under Section 39(b) of this Act, or in violation of any term or condition imposed by such permit, or in violation of any NPDES permit filing requirement established under Section 39(b), or in violation of any regulations adopted by the Board or of any order adopted by the Board with respect to the NPDES program.

15. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

- (a) Except as in compliance with the provisions of the Act, Board regulations, and the CWA, and the provisions and conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well shall be unlawful.

16. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), provides the following definition:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agency or assigns.

17. Respondent, an individual, is a “person” as that term is defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2018).

18. Section 3.550 of the Act, 415 ILCS 5/3.550 (2018), provides as follows:

“Waters” means all accumulations of water, surface and underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or border upon this State.

19. Bargetzi’s Lake is “waters” as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2018).

20. Section 3.165 of the Act, 415 ILCS 5/3.165 (2018), provides the following definition:

“Contaminant” is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

21. The materials picked up by the storm water from the Facility, which is discharged into the Bargetzi’s Lake, are “contaminants” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2018).

22. Section 301.240 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 301.240, provides the following definition:

“CWA” means the Federal Water Pollution Control Act, as amended, (33 U.S.C. 1251 et seq., Public Law 92-500 enacted by Congress October 18, 1972 as amended by the “Clean Water Act”, Public Law 95-217, enacted December 12, 1977, as amended).

23. Section 502(14) of the C.W.A., 33 U.S.C. § 1362(14), provides the following definition:

The term “point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

24. The Facility is a “point source” as that term is defined by Section 502(14) of the C.W.A., 33 U.S.C. § 1362(14).

25. Storm water discharges are regulated by 40 C.F.R. § 122.26, which requires a person to obtain an NPDES permit and to implement a storm water pollution prevention plan for industrial activity, including related to manufacturing, processing or raw materials storage areas at an industrial plant.

26. 40 C.F.R. § 122.26(a)(1)(ii) provides as follows:

(a) Permit requirement.

(1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

(ii) A discharge associated with industrial activity (see § 122.26(a)(4));

27. 40 C.F.R. § 122.26(b)(14) provides, in pertinent part, as follows:

(b) Definitions.

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant...The following categories of facilities are considered to be engaging in “industrial activity” for purposes of paragraph (b)(14):

* * *

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by products or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities

are undertaken for the sole purpose of maintaining a mining claim);

28. Respondent submitted a Stormwater Pollution Prevention Plan to Illinois EPA indicating that activities associated with Standard Industrial Classification 14 are conducted at the Facility.

29. The Facility discharges storm water contaminated by contact with raw material, as identified in 40 C.F.R. § 122.26(b)(14)(iii), and storm water discharges from the Facility are therefore discharges associated with industrial activity requiring an NPDES permit.

30. On May 24, 1994, Illinois EPA issued NPDES Permit No. ILR002441 (“NPDES Permit”) to Respondent, authorizing Respondent to discharge storm water associated with industrial activity into Bargetzi’s Lake from the Facility.

31. Respondent’s NPDES Permit expired on April 5, 2017.

32. On October 7, 2019, Illinois EPA received from Respondent a Notice of Intent for General Permit to Discharge Storm Water Associated with Industrial Activity.

33. On May 7, 2020, Respondent’s NPDES PERMIT renewal was complete.

34. Beginning prior to April 5, 2017, and until May 7, 2020, the Facility discharged storm water into Bargetzi’s Lake without an NPDES Permit.

35. By discharging storm water associated with an industrial activity into Bargetzi’s Lake from the Facility without an NPDES Permit, Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), and Section 309.102(a) of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENIS MUNIE, an individual, d/b/a MUNIE TRUCKING AND GRAVEL:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and Board regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and Board regulations;

D. Pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2018), assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a); and

E. Granting such other relief as the Board may deem appropriate.

COUNT II
WATER POLLUTION

1-34. Respondent realleges and incorporates herein by reference paragraphs 1 through 34 of Count I as paragraphs 1 through 33 of this Count II.

35. Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

36. Respondent caused, threatened or allowed the discharge of contaminants into the Highland Silver Lake Watershed in violation of Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

37. By causing and allowing the discharge of contaminants in violation of the Board's Water Pollution Regulations, Respondent thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, DENIS MUNIE, an individual, d/b/a MUNIE TRUCKING AND GRAVEL:

A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;

B. Finding that Respondent has violated the Act and Board regulations as alleged herein;

C. Ordering Respondent to cease and desist from any further violations of the Act and Board regulations;

D. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), assessing against the Respondent a civil penalty of \$50,000.00 for each and every violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), and an additional civil penalty of \$10,000.00 for each day such violation has continued;

E. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
by KWAME RAOUL, Attorney General
of the State of Illinois

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

BY: /s/ Andrew Armstrong
ANDREW B. ARMSTRONG, Chief
Environmental Bureau/Springfield
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CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2020, I served by certified mail, return receipt requested a true and correct copy of the document entitled Notice of Filing, Complaint and Certificate of Service to:

Denis Munie
d/b/a Munie Trucking & Gravel Co.
3000 Cally Lane
Highland, Illinois 62249

s/Lilia Brown
Lilia Brown
Administrative Clerk

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Affidavit of Service are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

s/Lilia Brown
Lilia Brown
Administrative Clerk