

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB NO.</b>
	)	<b>(Enforcement)</b>
	)	
<b>ALPENA VISION RESOURCES, LLC,</b>	)	
<b>a Michigan limited liability company,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF ELECTRONIC FILING**

To: See Attached Service List

PLEASE TAKE NOTICE that on October 4, 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 COMPLAINT and ENTRY OF APPEARANCE, copies of which are attached hereto and herewith served upon you. Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in this 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.

FURTHER, please take notice that financing may be available, through the Illinois Environmental Facilities Financing Act, 20 ILCS 3515/1 (2010), to correct the pollution alleged in the Complaint filed in this case.

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:   
MICHAEL D. MANKOWSKI  
Assistant Attorney General  
Environmental Bureau

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: October 4, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that I did on October 4, 2012, cause to be served by Certified Mail, Return Receipt Requested, 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, COMPLAINT and ENTRY OF APPEARANCE upon the persons listed on the Service List.

  
MICHAEL D. MANKOWSKI  
Assistant Attorney General

This filing is submitted on recycled paper.

**SERVICE LIST**

Alpena Vision Resources, LLC  
c/o Gerald Lee Nudo, R.A.  
636 Wellington  
Chicago, IL 60657

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
vs.	)	PCB No.
	)	(Enforcement)
ALPENA VISION RESOURCES, LLC,	)	
a Michigan limited liability company,	)	
	)	
Respondent.	)	

**ENTRY OF APPEARANCE**

On behalf of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, MICHAEL J. MANKOWSKI, Assistant Attorney General of the State of Illinois, hereby enters his appearance as attorney of record.

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:   
MICHAEL D. MANKOWSKI  
Environmental Bureau  
Assistant Attorney General

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031  
Dated: October 4, 2012

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

**PEOPLE OF THE STATE OF ILLINOIS, )**

**Complainant, )**

**v. )**

**ALPENA VISION RESOURCES, LLC, )**

**a Michigan limited liability company, )**

**Respondent. )**

**PCB No. 13-  
(Enforcement)**

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, ALPENA VISION RESOURCES, LLC, as follows:

**GENERAL ALLEGATIONS**

1. This Complaint is brought by the Attorney General on her own motion pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31 (2010).

2. ALPENA VISION RESOURCES, LLC ("Alpena"), is a Michigan limited liability company authorized to do business in Illinois and is conducting waste disposal and mining activities at the Murdock Mine site located near Murdock in Douglas County, Illinois.

3. The Murdock Mine site is subject to the provisions of the Surface Coal Mining Land Conservation and Reclamation Act, 225 ILCS 720/1.01 *et seq.*, and mining permits issued by the Illinois Department of Natural Resources, Office of Mines and Minerals. The Murdock Mine site is also subject to the provisions of the Illinois Environmental Protection Act and the Board's regulations, including the Subtitle D regulations for Mine Related Water Pollution.

Unless otherwise noted, all terms utilized within this Complaint shall have the meanings provided by the Act and the Subtitle D regulations.

4. On September 9, 2010, the Illinois Environmental Protection Agency (“Illinois EPA”) issued to the Respondent National Pollutant Discharge Elimination System (“NPDES”) Permit Number IL0061735 (“Permit No. IL0061735”) authorizing discharges of acid mine drainage from the Murdock Mine site into waters of the State, including the unnamed tributary to Brushy Fork. Permit No. IL0061735 imposes effluent limitations for iron, manganese, sulfates, pH, and total suspended solids (“TSS”), and monitoring and reporting requirements, applicable to point source discharges from the Murdock Mine site. Permit No. IL0061735 is attached as Exhibit 1 and the terms and conditions are incorporated herein by reference.

5. Permit No. IL0061735 incorporates Construction Authorization No. 7266-01, thereby allowing construction and operation as follows: “Only carbon recovery and reclamation activities are approved for this facility under this permit.” Permit No. IL0061735 also provides: “This Construction Authorization supercedes and replaces Construction Authorization No. 5091-93 and Subtitle D Permit Nos. 2005-MD-3474, 2007-MD-2537, 2006-MD-2105, 2006-MW-2403 and 2007-MO-1056 previously issued for the herein permitted facilities.” The incorporated permits authorize Alpena to accept the following waste materials at the Murdock Mine site:

- A) Permit 2005-MD-3474, issued on December 21, 2005, allows a maximum of 15,000 total tons of lime sludge from the Decatur water treatment facility to be utilized for the treatment of acid water within Slurry No. 5 fine refuse disposal area. It requires Respondent to submit to the Illinois EPA annual analyses of the lime sludge utilizing test method American Society for Testing and Materials

(“ASTM”) D3987-85 as well as a notification of the volume of lime sludge utilized during the year.

- B) Permit 2007-MD-2537, issued on May 1, 2007, allows a maximum of 10,000 tons per year of lime sludge from the Danville water treatment facility to be utilized for the neutralization of potentially acidic refuse within the Slurry Pond No. 5 area. It requires Respondent to submit to the Illinois EPA annual analyses of the lime sludge utilizing the toxicity characteristic leaching procedure (“TCLP”) as well as a notification of the volume of lime sludge utilized during the year. When Permit No. IL0061735 went into effect, it changed the testing procedure for the Danville lime sludge from TCLP to ASTM D3987-85
- C) Permit 2006-MD-2105, issued March 27, 2006, allows a maximum of 50,000 tons per year of a waste material described as “ADM-Decatur gypsum, a lactic acid by-product” to be utilized as an amendment to coal combustion by-products for treating potentially acidic refuse during reclamation of the Slurry Pond No. 5 area. This permit also allows a maximum of 10,000 tons per year of lime sand from Innophos, Inc. in Chicago Heights to be utilized for the neutralization of potentially acidic refuse in both Slurry Pond No. 5 and Collection Pond No. 3. It also requires the Respondent to submit to the Illinois EPA quarterly reports of the amount of ADM gypsum and lime sand utilized.
- D) Permit 2006-MW-2403, issued November 9, 2006, allows a maximum of 15,000 tons per year of a waste material described as “‘Humin’ residue from Tate & Lyle” in Decatur to be used in dust control and as a soil supplement. The permit

also required Respondent to submit to the Illinois EPA at least six (6) quarterly analyses of the humin utilizing TCLP.

- E) Permit 2007-MO-1056, issued February 7, 2007, allows a maximum of 12,000 total tons of “bio-solids” or sludge from the Urbana Champaign Sanitary District for usage of final cover on the refuse disposal areas. The permit requires the Respondent to submit to the Illinois EPA quarterly documentation of the quantity of bio-solids accepted at the Murdock Mine site.

Permit No. IL0061735 also provides approval of the Subtitle D permit application submitted by Alpena and identified as Log No. 0195-08, thereby allowing a maximum of 10,000 tons per year of “bio-solids” or sludge from the North-Shore Sanitary District – Gurnee to be utilized as final cover material on the refuse disposal areas.

6. The Illinois EPA previously authorized the disposal of waste materials at the Murdock Mine site pursuant to the following permits:

- A) Permit 1995-MW-3058-1 (expired August 30, 2000) allowed an unlimited number of tons per year of coal combustion waste from Archer Daniels Midland-Decatur, A. E. Staley, Danville Correctional Institution, Corn Products Corporation, Laughoff Grain Company and Quantum Industries.
- B) Permit 2000-MD-9616 (expired December 31, 2004) allowed a maximum of 7,500 total tons of lime sludge from the Decatur, Illinois Water Treatment Plant.
- C) Permit 2000-MD-9616-1 (expired December 31, 2004) allowed a maximum of 15,000 tons per year of lime sludge from Archer Daniels Midland Water Treatment Plant, formerly designated as the Decatur, Illinois Water Treatment Plant.

- D) Permit 2002-MW-6266 (expired June 30, 2007) allowed an unlimited number of tons per year of coal combustion waste from ADM in Decatur.
- E) Permit 2003-MD-5431 (expired November 30, 2008) allowed a maximum of four (4) feet of cover consisting of sludge from the Metropolitan Water Reclamation District in Chicago.
- F) Permit 2006-MW-2169 (expired June 30, 2006) allowed a maximum of 15,000 total tons of coal combustion waste from A. E. Staley in Decatur.

7. As set forth at Section 401.102 of the Board's Mine Related Water Pollution

Regulations, the legislative policy for the environmental regulation of coal mining is based upon the determinations that:

mining activities including the preparation, operation and abandonment of mines, mine refuse areas and mine related facilities without environmental planning and safeguards and the use of certain refuse materials can cause, threaten or allow the discharge of contaminants into the waters of Illinois so as to cause or threaten to cause a nuisance or to render such waters harmful or detrimental to public health, safety or welfare or to domestic, commercial, industrial, agricultural, recreational or other legitimate uses including use by livestock, wild animals, birds, fish or other aquatic life and riparian vegetation.

35 Ill. Adm. Code 401.102.

8. The purpose of the Board's Mine Related Water Pollution Regulations is stated at

Section 401.103:

The purpose of this Subtitle D is to prevent pollution of waters of Illinois caused by failure to plan proper environmental safeguards for the location, preparation, operation and abandonment of mining activities, mining and mine refuse operations. A permit system is established to control the multitude of contaminating point and non-point source discharges, visible and hidden, continuous and fluctuating, which are potentially present in mining activities, mining and mine refuse operations. In order to ensure that such activities meet environmental standards water quality and effluent standards are established to limit discharges from point sources as well as to protect waters for beneficial uses. In addition, procedural safeguards are established to ensure the

protection of waters. Furthermore, it is the purpose of this Subtitle D to meet the requirements of Section 402 of the Federal Water Pollution Control Act ("FWPCA").

35 Ill. Adm. Code 401.103.

9. "Mining Activities" is defined at Section 402.101 as "all activities on a facility which are directly in furtherance of mining, including activities before, during and after mining," including (but not limited to) the ownership or control of a mine related facility, production of a mine discharge or non-point source mine discharge, and surface drainage control.

10. Section 404.101(a)(2) of the Subtitle D regulations provides that, except as provided in Sections 404.102 and 404.103, no person shall carry out mining activities without an operating permit. Section 404.102(a) of the Subtitle D regulations provides: "A permittee who holds an NPDES permit for a facility need not have a state permit for that facility." Despite this exemption, Alpena has sought and obtained Subtitle D permits regarding the storage and disposal of coal combustion waste, sludge, pollution control waste, and other waste.

11. Section 404.110 of the Subtitle D regulations provides: "The possession of a state permit is not a defense to violation of the Act or Subtitle D, Chapter I except for a complaint alleging mining activity without a permit."

12. Section 405.102 of the Subtitle D regulations provides the standards for permit issuance:

- a) The Agency shall issue or certify a permit if and only if the operator submits adequate proof that the mine related facilities and mining activities will be constructed, prepared and operated so as not to cause a violation of the Act or Subtitle D, Chapter I.
- b) If an Agency guidance document is promulgated and if it contains criteria with regard to any condition of a permit, then for purposes of permit issuance proof of conformity with the Agency guidance document shall be prima facie evidence of no violation. However, nonconformity with the Agency guidance document shall

not be grounds for permit denial if the condition of subsection (a) of this Section is met.

35 Ill. Adm. Code 405.102.

13. Part 406 of the Subtitle D regulations applies to mine discharges and non-point source mine discharges as defined by Section 402.101. Section 406.109(a) of the Subtitle D regulations provides: "The effluent limitations contained in 35 Ill. Adm. Code [Part] 304 and Section 406.106 shall not apply to mine discharges from reclamation areas." "Reclamation Area" is defined at Section 402.101 as "the surface area of a coal mine which has been returned to the contour required by permit and on which revegetation work has commenced."

14. Upon information and belief, the Complainant alleges that the Murdock Mine site has not been returned to its permitted contour nor has revegetation work been commenced. Therefore, the exception provided by Section 406.109(a) is not applicable and Alpena must comply with the effluent limitations contained in Part 304 and Section 406.106, and imposed by its National Pollutant Discharge Elimination System ("NPDES") Permit.

15. Mine discharge effluent limitations are set forth in Section 406.106(b) of the Board's Mine Related Water Pollution Regulations:

Except as provided in Sections 406.109 and 406.110, a mine discharge effluent shall not exceed the following levels of contaminants:

<b>Constituent</b>	<b>Storet Number</b>	<b>Concentration</b>
<b>Acidity</b>	00435	(total acidity shall not exceed total alkalinity)
<b>Iron (total)</b>	01045	3.5mg/l
<b>Lead (total)</b>	01051	1 mg/l
<b>Ammonia Nitrogen (as N)</b>	00610	5 mg/l
<b>pH</b>	00400	(range 6 to 9)
<b>Zinc (total)</b>	01092	5 mg/l
<b>Fluoride (total)</b>	00951	15 mg/l
<b>Total suspended solids</b>	00530	35 mg/l
<b>Manganese</b>	01055	2.0 mg/l

35 Ill. Adm. Code 406.106(b).

16. In addition to these effluent limitations, the Subtitle D regulations impose additional discharge restrictions. Section 406.107 prohibits offensive discharges: "no mine discharge effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity shall be reduced to below obvious levels." 35 Ill. Adm. Code 406.107.

17. Section 406.202 of the Board's Mine Related Water Pollution Regulations provides as follows:

In addition to the other requirements of this Part, no mine discharge or non-point source mine discharge shall, alone or in combination with other sources, cause a violation of any

water quality standards of 35 Ill. Adm. Code 302 or 303. When the Agency finds that a discharge which would comply with effluent standards contained in this Part would cause or is causing a violation of water quality standards, the Agency shall take appropriate action under Section 31 or 39 of the Environmental Protection Act to require the discharge to meet whatever effluent limits are necessary to ensure compliance with the water quality standards. When such a violation is caused by the cumulative effect of more than one source, several sources may be joined in an enforcement or variance proceeding and measures for necessary effluent reductions will be determined on the basis of technical feasibility, economic reasonableness and fairness to all dischargers.

35 Ill. Adm. Code 406.202.

18. "Coal combustion waste" is defined at Section 3.140 of the Act, 415 ILCS

5/3.140 (2010), as follows:

"Coal combustion waste" means any fly ash, bottom ash, slag, or flue gas or fluid bed boiler desulfurization by-products generated as a result of the combustion of:

- (1) coal, or
- (2) coal in combination with: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel, or
- (3) coal (with or without: (i) fuel grade petroleum coke, (ii) other fossil fuel, or (iii) both fuel grade petroleum coke and other fossil fuel) in combination with no more than 20% of tire derived fuel or wood or other materials by weight of the materials combusted; provided that the coal is burned with other materials, the Agency has made a written determination that the storage or disposal of the resultant wastes in accordance with the provisions of item (r) of Section 21 would result in no environmental impact greater than that of wastes generated as a result of the combustion of coal alone, and the storage disposal of the resultant wastes would not violate applicable federal law.

19. "Coal combustion by-product" is defined at Section 3.135 of the Act, 415 ILCS

5/3.135 (2010), as follows:

- (a) "Coal combustion by-product" (CCB) means coal combustion waste when used beneficially in any of the following ways:
  - (1) The extraction or recovery of material compounds contained within CCB.
  - (2) The use of CCB as a raw ingredient or mineral filler in the manufacture of the following commercial products: cement; concrete and concrete mortars; cementitious products including block, pipe and

precast/prestressed components; asphalt or cementitious roofing products; plastic products including pipes and fittings; paints and metal alloys; kiln fired products including bricks, blocks, and tiles; abrasive media; gypsum wallboard; asphaltic concrete, or asphalt based paving material.

- (3) CCB used (A) in accordance with the Illinois Department of Transportation ("IDOT") standard specifications and subsection (a-5) of this Section or (B) under the approval of the Department of Transportation for IDOT projects.
  - (4) Bottom ash used as antiskid material, athletic tracks, or foot paths.
  - (5) Use in the stabilization or modification of soils providing the CCB meets the IDOT specifications for soil modifiers.
  - (6) CCB used as a functionally equivalent substitute for agricultural lime as a soil conditioner.
  - (7) Bottom ash used in non-IDOT pavement sub-base or base, pipe bedding, or foundation backfill.
  - (8) Structural fill, designed and constructed according to ASTM standard E2277-03 or Illinois Department of Transportation specifications, when used in an engineered application or combined with cement, sand, or water to produce a controlled strength fill material and covered with 12 inches of soil unless infiltration is prevented by the material itself or other cover material.
  - (9) Mine subsidence, mine fire control, mine sealing, and mine reclamation.
- (a-5) Except to the extent that the uses are otherwise authorized by law without such restrictions, the uses specified in items (a)(3)(A) and (a)(7) through (9) shall be subject to the following conditions:
- (A) CCB shall not have been mixed with hazardous waste prior to use.
  - (B) CCB shall not exceed Class I Groundwater Standards for metals when tested utilizing test method ASTM D3987-85. The sample or samples tested shall be representative of the CCB being considered for use.
  - (C) Unless otherwise exempted, users of CCB for the purposes described in items (a)(3)(A) and (a)(7) through (9) of this Section shall provide notification to the Agency for each project utilizing CCB documenting the quantity of CCB utilized and certification of compliance with conditions (A) and (B) of this subsection. Notification shall not be required for users of CCB for purposes described in items (a)(1), (a)(2), (a)(3)(B), (a)(4), (a)(5) and (a)(6) of this Section, or as required specifically under a beneficial use determination as provided under this Section, or pavement base, parking lot base, or building base projects utilizing less than 10,000 tons, flowable fill/grout projects utilizing less than 1,000 cubic yards or other applications utilizing less than 100 tons.

- (D) Fly ash shall be managed in a manner that minimizes the generation of airborne particles and dust using techniques such as moisture conditioning, granulating, inground application, or other demonstrated method.
  - (E) CCB is not to be accumulated speculatively. CCB is not accumulated speculatively if during the calendar year, the CCB used is equal to 75% of the CCB by weight or volume accumulated at the beginning of the period.
  - (F) CCB shall include any prescribed mixture of fly ash, bottom ash, boiler slag, flue gas desulfurization scrubber sludge, fluidized bed combustion ash, and stoker boiler ash and shall be tested as intended for use.
- (b) To encourage and promote the utilization of CCB in productive and beneficial applications, upon request by the applicant, the Agency shall make a written beneficial use determination that coal-combustion waste is CCB when used in a manner other than those uses specified in subsection (a) of this Section if the applicant demonstrates that use of the coal-combustion waste satisfies all of the following criteria: the use will not cause, threaten, or allow the discharge of any contaminant into the environment; the use will otherwise protect human health and safety and the environment; and the use constitutes a legitimate use of the coal-combustion waste as an ingredient or raw material that is an effective substitute for an analogous ingredient or raw material.

The Agency's beneficial use determinations may allow the uses set forth in items (a)(3)(A) and (a)(7) through (9) of this Section without the CCB being subject to the restrictions set forth in subdivisions (a-5)(B) and (a-5)(E) of this Section.

Within 90 days after the receipt of an application for a beneficial use determination under this subsection (b), the Agency shall, in writing, approve, disapprove, or approve with conditions the beneficial use. Any disapproval or approval with conditions shall include the Agency's reasons for the disapproval or conditions. Failure of the Agency to issue a decision within 90 days shall constitute disapproval of the beneficial use request. These beneficial use determinations are subject to review under Section 40 of this Act.

Any approval of a beneficial use under this subsection (b) shall become effective upon the date of the Agency's written decision and remain in effect for a period of 5 years. If an applicant desires to continue a beneficial use after the expiration of the 5-year period, the applicant must submit an application for renewal no later than 90 days prior to the expiration. The beneficial use approval shall be automatically extended unless denied by the Agency in writing with the Agency's reasons for disapproval, or unless the Agency has requested an extension for review, in which case the use will continue to be allowed until an Agency determination is made.

Coal-combustion waste for which a beneficial use is approved pursuant to this subsection (b) shall be considered CCB during the effective period of the approval, as long as it is used in accordance with the approval and any conditions.

Notwithstanding the other provisions of this subsection (b), written beneficial use determination applications for the use of CCB at sites governed by the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder, or by any law or rule or regulation adopted by the State of Illinois pursuant thereto, shall be reviewed and approved by the Office of Mines and Minerals within the Department of Natural Resources pursuant to 62 Ill. Adm. Code §§ 1700-1850. Further, appeals of those determinations shall be made pursuant to the Illinois Administrative Review Law.

The Board shall adopt rules establishing standards and procedures for the Agency's issuance of beneficial use determinations under this subsection (b). The Board rules may also, but are not required to, include standards and procedures for the revocation of the beneficial use determinations. Prior to the effective date of Board rules adopted under this subsection (b), the Agency is authorized to make beneficial use determinations in accordance with this subsection (b).

The Agency is authorized to prepare and distribute guidance documents relating to its administration of this Section. Guidance documents prepared under this subsection are not rules for the purposes of the Illinois Administrative Procedure Act.

20. "Industrial process waste" is defined at Section 3.235 of the Act, 415 ILCS

5/3.235 (2010), as follows:

"Industrial process waste" means any liquid, solid, semi-solid, or gaseous waste generated as a direct or indirect result of the manufacture of a product or the performance of a service. Any such waste which would pose a present or potential threat to human health or to the environment or with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means is an industrial process waste. "Industrial Process Waste" includes but is not limited to spent pickling liquors, cutting oils, chemical catalysts, distillation bottoms, etching acids, equipment cleanings, paint sludges, incinerator ashes (including but not limited to ash resulting from the incineration of potentially infectious medical waste), core sands, metallic dust sweepings, asbestos dust, and off-specification, contaminated or recalled wholesale or retail products. Specifically excluded are uncontaminated packaging materials, uncontaminated machinery components, general household waste, landscape waste and construction or demolition debris.

21. "Pollution control waste" is defined at Section 3.335 of the Act, 415 ILCS 5/3.335

(2010), as follows:

"Pollution control waste" means any liquid, solid, semi-solid or gaseous waste generated as a direct or indirect result of the removal of contaminants from the air, water or land, and which pose a present or potential threat to human health or to the environment or

with inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means. "Pollution control waste" includes but is not limited to water and wastewater treatment plant sludges, baghouse dusts, landfill waste, scrubber sludges and chemical spill cleanings.

22. "Sludge" is defined at Section 3.465 of the Act, 415 ILCS 5/3.465 (2010), as

follows:

"Sludge" means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects

23. "Waste" is defined at Section 3.535 of the Act, 415 ILCS 5/3.535 (2010), as

follows:

"Waste" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows, or coal combustion by-products as defined in Section 3.135, or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as now or hereafter amended, [footnote omitted] or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended [footnote and citation omitted] or any solid or dissolved material from any facility subject to the Federal Surface Mining Control and Reclamation Act of 1977 [footnote and citation omitted] or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

24. The waste material described as lime sludge from the Decatur and Danville water treatment facilities, and subject to Permits IL0061735, 2005-MD-3474 and 2007-MD-2537, is a "pollution control waste" as defined at Section 3.335 of the Act, 415 ILCS 5/3.335 (2010), because such sludge was generated from water treatment operations and apparently possesses inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means.

25. The waste material described as “ADM-Decatur gypsum, a lactic acid by-product” and subject to Permits IL0061735 and 2006-MD-2105 is an “industrial process waste” as defined at Section 3.235 of the Act, 415 ILCS 5/3.235 (2010), because it resulted from the manufacture of products and apparently possesses inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means.

26. The waste material described as lime sand from Innophos, Inc. in Chicago Heights and subject to Permits IL0061735 and 2006-MD-2105 is an “industrial process waste” as defined at Section 3.235 of the Act, 415 ILCS 5/3.235 (2010), because it resulted from the manufacture of products and apparently possesses inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means.

27. The waste material described as “‘Humin’ residue from Tate & Lyle” in Decatur and subject to Permits and 2006-MW-2403 is an “industrial process waste” as defined at Section 3.235 of the Act, 415 ILCS 5/3.235 (2010), because it resulted from the manufacture of products and apparently possesses inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means.

28. The waste material described as “bio-solids” or sludge from the Urbana Champaign Sanitary District subject to Permits IL0061735 and 2007-MO-1056 is a “pollution control wastes” as defined at Section 3.335 of the Act, 415 ILCS 5/3.335 (2010), and “sludge” as defined at Section 3.465 of the Act, 415 ILCS 5/3.465 (2010) because such sludge is a solid, semi-solid or liquid waste which was generated from a municipal wastewater treatment operation and apparently possesses inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means.

29. The waste material described as “bio-solids” or sludge from the North-Shore Sanitary District – Gurnee and subject to Permit IL0061735 and Log No. 0195-08 is a “pollution control wastes” as defined at Section 3.335 of the Act, 415 ILCS 5/3.335 (2010), and “sludge” as defined at Section 3.465 of the Act, 415 ILCS 5/3.465 (2010) because such sludge is a solid, semi-solid or liquid waste which was generated from a municipal wastewater treatment operation and apparently possesses inherent properties which make the disposal of such waste in a landfill difficult to manage by normal means.

30. Alpena has caused or allowed waste materials including coal combustion waste, sludge, pollution control waste and industrial process waste to be transported to the Murdock Mines site, and has stockpiled and stored such waste materials prior to any utilization or disposal for the purposes of reclamation.

**COUNT I**  
**WATER POLLUTION VIOLATIONS**

1-30. Complainant realleges and incorporates by reference the allegations of Paragraphs 1 through 30 set forth above.

31. Section 12 of the Act, 415 ILCS 5/12 (2010), provides, in pertinent part, 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.

\* \* \*

(d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

\*\*\*

- (f) Cause or threaten or allow the discharge of any contaminants into the waters of the State . . . without an NPDES permit for point source discharges . . . or in violation of any term or condition imposed by such permit. . . .

32. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), provides this definition:

“Water pollution” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

33. Section 3.165 of the Act, 415 ILCS 5/3.165 (2010), provides this definition:

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

34. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), provides this definition:

“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.

35. Section 309.102(a) of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code

309.102(a), states, in pertinent part:

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.

36. Section 302.203 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code

302.203, prohibits offensive conditions in waters of the State:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal, color or turbidity of other than natural origin. . . .

37. Section 304.105 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code

304.105, prohibits the violation of water quality standards:

In addition to the other requirements of this Part, no effluent shall, alone or in combination with other sources, cause a violation of any applicable water quality standard. When the Agency finds that a discharge which would comply with effluent standards contained in this Part would cause or is causing a violation of water quality standards, the Agency shall take appropriate action under Section 31 or Section 39 of the Act to require the discharge to meet whatever effluent limits are necessary to ensure compliance with the water quality standards. When such a violation is caused by the cumulative effect of more than one source, several sources may be joined in an enforcement or variance proceeding, and measures for necessary effluent reductions will be determined on the basis of technical feasibility, economic reasonableness and fairness to all dischargers.

38. Section 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 304.106, prohibits offensive discharges to waters of the State:

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

39. Since at least February of 2007, or a date better known to Respondent, Alpena has caused or allowed discharge of contaminants from the Murdock Mine site to the unnamed tributary to Brushy Fork so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources. These repeated discharges from the Murdock Mine site have likely created a nuisance or rendered such waters harmful or detrimental or injurious to agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life. By so causing or tending to cause water pollution, Alpena has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

40. Since at least February of 2007, or a date better known to Respondent, Alpena has caused or allowed discharge of effluent containing settleable solids, floating debris, visible scum or sludge solids, and obvious turbidity from the Murdock Mine site to the unnamed tributary to Brushy Fork so as cause offensive conditions including sludge or bottom deposits, floating debris, visible plant or algal conditions, and turbidity, of other than natural origin, in the

tributary. By discharging contaminants from the Murdock Mine site into waters of the State so as to violate effluent and water quality regulations or standards adopted by the Board under this Act, including Sections 406.106(b), 406.107 and 406.202 of the Board's Mine Related Water Pollution Regulations, 35 Ill. Adm. Code 406.106(b), 406.107 and 406.202, and Sections 302.203, 304.105 and 304.106 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.105 and 304.106, Alpena has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

41. Since at least February of 2007, or a date better known to Respondent, Alpena has caused or allowed waste materials transported to the Murdock Mines site to be stockpiled and stored in such place and manner so as to create a water pollution hazard, and has thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

42. Since at least October of 2004, or a date better known to Respondent, Alpena has caused or allowed contaminated water from the Murdock Mine site's collection system to pond or pool near the border of the site in such a place and manner so as to create a water pollution hazard, and has thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

43. Upon information and belief, the Complainant alleges that Respondent has accepted more than 12,000 tons of bio-solids material from the Urbana Champaign Sanitary District in violation of Permits IL0061735 and 2007-MO-1056, and has thereby violated Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

44. Upon information and belief, the Complainant alleges that the Respondent has failed to submit annual and quarterly reports required by Permit No. IL0061735 and Subtitle D Permit Nos. 2005-MD-3474, 2007-MD-2537, 2006-MD-2105, 2006-MW-2403 and 2007-MO-

1056, and has thereby violated Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

45. Since at least February of 2007, or a date better known to Respondent, Alpena has caused or allowed discharge of contaminants from the Murdock Mine site to the unnamed tributary to Brushy Fork without strict compliance with the provisions and conditions of NPDES Permit No. IL0061735, including the additional permits and authorizations incorporated therein, and has thereby violated Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), and Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against Respondent, ALPENA VISION RESOURCES, LLC:

- A. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
- B. Finding that the Respondent has violated Section 12 of the Act, 415 ILCS 5/12(a), (d) and (f) (2010), and the regulations as alleged herein;
- C. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), impose upon the Respondent a monetary penalty of not more than the statutory maximum; and
- D. Grant such other and further relief as the Board deems appropriate .

**COUNT II**  
**AIR POLLUTION VIOLATIONS**

1-30. Complainant realleges and incorporates herein by reference paragraphs 1 through 30 of Count I as paragraphs 1 through 30 of this Count II.

31. Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), provides as follows:  
No person shall

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

32. "Air pollution" is defined as follows in Section 3.115 of the Act., 415 ILCS 5/3.115 (2010):

"Air pollution" is the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

33. Since assuming responsibility for the reclamation of the Murdock Mine site, Alpena has caused or allowed various waste materials to be deposited upon the site, and has caused or allowed the emissions of dust and malodors through its storage, handling, disposal and usage of such wastes. These emissions have occurred frequently during 2011 and 2012, and in sufficient quantities and of such characteristics and duration as to be injurious to health, or to unreasonably interfere with the enjoyment of life or property by neighboring residents, and have thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010).

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against Respondent, ALPENA VISION RESOURCES, LLC:

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

B. Finding that the Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2010), as alleged herein;

C. Pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2010), impose upon the Respondent a monetary penalty of not more than the statutory maximum; and

D. Grant such other and further relief as the Board deems appropriate.

**COUNT III**  
**PERMIT REVOCATION**

1-46. Complainant realleges and incorporates herein by reference paragraphs 1 through 46 of Count I and paragraph 33 of Count II as paragraphs 1 through 46 of this Count III.

47. Section 404.108 of the Subtitle D regulations, 35 Ill. Adm. Code 404.108, provides:

- a) No permittee shall violate the conditions and standards contained in its state permit.
- b) In addition to the other sanctions provided by the act and this Subtitle D, Chapter I, the Board may revoke a state permit in appropriate circumstances, including but not limited to the following:
  - 1) Because of existing geological conditions an operator cannot carry out mining activities so as not to cause a violation of the Act or this Subtitle D, Chapter I; or
  - 2) A history of chronic disregard by the permittee for the Act or Board regulations; or
  - 3) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or
  - 4) Other circumstances where it is affirmatively shown that the general standard for permit issuance contained in Section 405.102 would not be met if a new application for permit were made.

48. The Complainant seeks the revocation of the Subtitle D permits identified within this Complaint under Section 404.108(b)(2) because of Alpena's history of chronic disregard for the Act and the Board's regulations.

49. The Complainant seeks the revocation of the Subtitle D permits identified within this Complaint under Section 404.108(b)(3) because of Alpena's failure to disclose fully all relevant facts.

50. The Complainant seeks the revocation of the Subtitle D permits identified within this Complaint under Section 404.108(b)(4) due to other circumstances which may affirmatively show that the general standard for permit issuance contained in Section 405.102 would not be met if a new application for permit were made.

**PRAYER FOR RELIEF**

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an Order against Respondent, ALPENA VISION RESOURCES, LLC:

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

B. Revoking Respondent's Subtitle D permits pursuant to Section 404.108 of the Board's Subtitle D Regulations, 35 Ill. Adm. Code 404.108;

C. Grant such other and further relief as the Board deems appropriate.

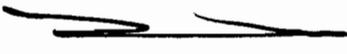
Respectfully submitted,

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: \_\_\_\_\_

  
THOMAS DAVIS, Chief  
Environmental Bureau  
Assistant Attorney General

MICHAEL MANKOWSKI  
Attorney Reg. No. 6287767  
500 South Second Street  
Springfield, Illinois 62706  
217/782-9031

Dated: 10/04/12