

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
)	
Complainant,)	
)	
v.)	PCB No. 13-16
)	(Enforcement – Air and Water)
ALPENA VISION RESOURCES, LLC,)	
a Michigan limited liability company,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Persons on Attached Service List

PLEASE TAKE NOTICE that I have today filed with the Clerk of the Illinois Pollution Control Board via the “COOL” System **PLAINTIFF’S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT**, a true and correct copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

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

BY: *Nancy J. Tikalsky*
NANCY J. TIKALSKY
Senior Assistant Attorney General
Environmental Bureau
69 West Washington, Suite 1800
Chicago, Illinois 60602
ARDC No. 6273159
(872) 272-0776
nancy.tikalsky@ilag.gov

DATE: May 30, 2023

SERVICE LIST

CAROL WEBB
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Ave East
Springfield, IL 62794
(217) 524-8509
Carol.Webb@Illinois.Gov

Ariel Weissberg
Weissberg and Associates
Respondent
564 W. Randolph Street, Second Floor
Chicago, IL 60661
312-663-0004
ariel@weissberglaw.com
hava@weissberglaw.com

Don Brown - Clerk of the Board
Illinois Pollution Control Board
60 E. Van Buren St., Suite 630
Chicago, IL 60601
312/814-3620
312/814-3669
don.brown@illinois.gov

CERTIFICATE OF SERVICE

I, Nancy J. Tikalsky, a Senior Assistant Attorney General, do certify that on this 30th day of May 2023, I caused to be served a copy of the foregoing Notice of Motion and Motion for Leave to File First Amended Complaint, upon the persons listed on the attached Service List via electronic mail.

By: *Nancy J. Tikalsky*
NANCY J. TIKALSKY
Senior Assistant Attorney General
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MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

NOW Comes Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney General of the State of Illinois, and hereby moves this court, pursuant to Section 2-616 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-616 (2020), for an order granting it leave to file an amended complaint. In support of its motion, Plaintiff states as follows:

1. On October 4, 2012, Plaintiff filed its initial complaint against Defendant Alpena Vision Resources, LLC (“Alpena”)(“Complaint”) on its own motion. The Complaint alleges three counts for violating the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.*, (“Act”) and associated regulations at a 178-acre former coal mine located 1.5 miles east of Murdock, Douglas County, Illinois, bordered on the east by County Road 2250E and the south by US Route 36 as Parcel Number 06-04-34-400-009 (“Site”) as follows:

Count I: Water Pollution Violations alleges that Alpena caused or allowed discharge of contaminants from the Site to the unnamed tributary to Brushy Fork in violation of effluent and water quality regulations or standards adopted by the Board under this Act, without strict compliance with the provisions and conditions of NPDES Permit No. IL0061735, including the additional permits and authorizations incorporated therein, in violation of Sections 12(a)(d) and (f) of the Act, 415 ILCS 5/12(a)(d) and (f) (2010), 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, 304.106 and 309.102(a) of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 302.203, 304.105, 304.106 and 309.102(a).

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Count II: Air Pollution Violations allege that Alpena caused and threatened the discharge of contaminants that caused or tended to cause air pollution in Illinois in violation of Section 9(a) of the Act, 415 ILCS 5/9(a) (2020) and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code Section 201.141.

Count III: Permit Revocation alleges that Alpena sought 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.

2. On August 2, 2018, Alpena declared bankruptcy. On July 10, 2019, bankruptcy was concluded and the bankruptcy trustee abandoned the Site, which reverted back to Alpena as the owner.

3. Since 2011, Illinois EPA has conducted several Site inspections, including obtaining water samples for analysis and documenting non-compliant water discharges from the Site pursuant to Alpena's NPDES permit. In both 2020 and 2021, Illinois EPA and IDNR conducted Site inspections together in an effort to continue managing the Site's water discharge compliance.

4. In 2012, Illinois EPA proceeded with Section 31 violation notices to Alpena, wherein it referred the matter to the Attorney General to obtain injunctive relief and a civil penalty for air pollution nuisance.

5. In 2021, Illinois EPA updated its referral to the Attorney General adding several water pollution violations.

6. The Plaintiff seeks to drop Complaint Count III as irrelevant and revise the Complaint Counts I and II reflecting the Illinois EPA referred violations pursuant to Section 31 of the Act, 415 ILCS 5/31, as Counts I through VIII in the First Amended Complaint as follows:

Count I:	Air Pollution
Count II:	Water Pollution
Count III:	Creating a Water Pollution Hazard
Count IV:	Effluent Limitation Exceedances
Count V:	NPDES Permit Violations: General Water Quality Standards:

- Count VI: Offensive Conditions And Discharges
 NPDES Permit Violations: Discharge Monitoring and Reporting
- Count VII: NPDES Permit Violations: Groundwater Monitoring and Reporting
- Count VIII: NPDES Permit Violations: Periodic Monitoring and Reporting

7. A proposed First Amended Complaint is attached to and incorporated by reference into this motion as Exhibit A.

8. Section 2-616(a) of the Code of Civil Procedure provides the following:

At any time before final judgment amendments may be allowed on just and reasonable terms...changing the cause of action or defense or adding new causes of action or defenses, and in any matter, either of form or substance, in any process, pleading, bill of particulars or proceedings, which may enable the plaintiff to sustain the claim for which it was intended to be brought or the defendant to make a defense or assert a cross claim.

9. Dropping Count III and amending Counts I and II of the Complaint and repleading them as Counts I through VIII to incorporate the Illinois EPA referred violations is just and reasonable. Neither the original complaint nor the amendment is time-barred, because the Illinois Environmental Protection Act does not have a statute of limitations applicable to civil environmental enforcement actions. *Pielet Bros. Trading Inc. v. Pollution Control Board*, 110 Ill. App. 3d 752, 758 (5th Dist. 1982).

10. Thus, the requirements of Section 2-616 are satisfied, and the amendment should be allowed.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, moves for an order granting it leave to file its Amended Complaint, *instante*.

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

By: *Nancy J. Tikalsky*
NANCY J. TIKALSKY
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MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT

EXHIBIT A

FIRST AMENDED COMPLAINT

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FIRST AMENDED COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of Respondent, ALPENA VISION RESOURCES, LLC, a Michigan limited liability company, as follows:

FACT ALLEGATIONS COMMON TO ALL COUNTS

Nature of the Action

1. This action is brought on behalf of Complainant, 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”), against ALPENA VISION RESOURCES, LLC, a Michigan limited liability company (“Alpena”), pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2020).

The Parties

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 (2020), and charged, *inter alia*, with the duty of enforcing the Act.

3. At all times relevant to this First Amended Complaint (“Amended Complaint”), Alpena was and is a Michigan limited liability company and is duly authorized to conduct business in Illinois.

The Site Activities and Permits

4. From 2004 through the filing of this Amended Complaint, Respondent has owned and continues to own a 178-acre former coal mine located 1.5 miles east of Murdock, Douglas County, Illinois, Parcel Number 06-04-34-400-009 (“Site”). The Site is bordered on the east by County Road 2250E and the south by US Route 36, of which each has drainage ditches that ultimately flow into an unnamed tributary to Brushy Fork (“Brushy Fork tributary”).

5. The Site, a former coal mine, discharges mine drainage, which is the outflow of acidic water containing high concentrations of coal mine solutes (“Mine Drainage”). Mine Drainage from the Site contains iron, sulfate, chloride, manganese, mercury, suspended solids, and settleable solids. In addition, the Mine Drainage from the Site has identifiable characteristics of hardness, pH¹ levels, and flow.

6. From 2004 through August 2, 2018, or on dates better known to Respondent, Respondent operated mine reclamation activities at the Site.

7. As part of the permitted mine reclamation activities, Respondent accepted various materials for incorporation at the Site, including coal combustion by-products, bio-solids, gypsum (from ADM Decatur), and lime sludge (“Reclamation Materials”).

8. Surface Mine Drainage collects in a system of sedimentation ponds on the Site, which ultimately discharges offsite from one of the sedimentation ponds through an outfall (“Outfall 001”)² into the Brushy Fork Tributary that discharges into the Brushy Fork and ultimately discharges into the Embarrass River.

¹ pH (potential or power of hydrogen) is a measure of the relative amount of free hydrogen and hydroxyl ions in the water expressed in a scale used to specify the acidity or basicity of an aqueous solution. <https://www.usgs.gov/media/images/ph-scale-0#>

² In 2019, Illinois Department of Natural Resources (“IDNR”) improved water holding capacity of the drainage ditch that collects discharge from Outfall 001 at the Site by cleaning out the ditch and creating a catch basin around the existing inlet to the subsurface drainage tile located along the railroad right-of-way. The original and improved drainage ditch from the outfall from sedimentation pond are referenced as Outfall 001 for purposes of this amended complaint.”

9. On September 9, 2010, Illinois EPA issued to the Respondent a National Pollution Discharge and Elimination System (“NPDES”) Permit No. IL0061735 (“Alpena NPDES Permit 2010”). The Alpena NPDES Permit 2010 incorporated Construction Authorization No. 7266-01 that expired on August 31, 2015. The April 1, 2017 renewal of the Alpena NPDES Permit 2010 issued by the Illinois EPA incorporated Construction Authorization No. 3137-51, which superseded Construction Authorization No. 7266-01 (“Alpena NPDES Permit 2017”). Alpena NPDES Permit 2017 expired on March 31, 2022. In September 2021, Respondent timely submitted its NPDES renewal application to Illinois EPA and is awaiting final approval while operating under the administratively continued Alpena NPDES Permit 2017.

Site Inspections and Record Reviews

10. From March 2007 through March 2012, or a date or dates better known to Respondent, Respondent accepted sludge from Urbana Champaign Sanitary District (“bio-solids”) at the Site.

11. During the years of 2007 through 2012, neighbors near the Site complained to Illinois EPA that odors coming from the Site interfered with the enjoyment and use of their property.

12. From October 2010 through November 2015, or a date or dates better known to Respondent, Respondent failed to provide quarterly reporting of the volume of ADM-Decatur gypsum received at the Site for the period September 2010 through August 2015.

13. On August 8, 2011, Illinois EPA conducted an inspection of the Site (“August 2011 Inspection”).

14. During the August 2011 Inspection, there was a stockpile of bio-solids at the Site.

15. On August 19, 2011, during an Illinois EPA Site visit, there were foul odors coming from a sedimentation pond at the Site.

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16. On September 6, 13, 15, and 29, 2011, during Illinois EPA Site investigations, there was a foul sewage odor of medium to strong intensity coming from the bio-solids storage area.
17. From November 2010 through May 2012, or a date or dates better known to Respondent, Respondent failed to provide to Illinois EPA quarterly reporting of the volume of bio-solids received at the Site for the period September 2010 through March 2012.
18. From 2007 through the filing of this Amended Complaint, or a date or dates better known to Respondent, the bio-solids continue to be stockpiled at the Site and have not been incorporated as final cover at the Site or disposed of at an acceptable facility.
19. In March 2012, Respondent determined that the bio-solids were not suitable for use as final cover and ceased receiving bio-solids at the Site.
20. During the third quarters of both 2011 and 2012, Illinois EPA determined that Respondent failed to submit reports of mercury monitoring from Outfall 001.
21. From 2011 through the filing of this Amended Complaint, or a date or dates better known to Respondent, Alpena failed to submit any records of sampling or monitoring of the Discharge Rate, Chloride, Sulfate and Hardness downstream in the Brushy Fork.
22. On August 2, 2018, or on dates better known to Respondent, Respondent Alpena ceased operations at the Site.
23. On November 5, 2020, Illinois EPA conducted an inspection of the Site (“November 2020 Inspection”). Illinois Department of Natural Resources (“IDNR”) personnel were also present during the November 2020 Inspection. During this inspection, the surface areas had not been returned to the original contour of the land and that revegetation work had not commenced.
24. During the November 2020 Inspection, there was damage from Mine Drainage impacted stormwater runoff that had flowed from the southeast side of the Site and discharged

offsite (“SE Offsite Discharge”) into the west drainage ditch of County Road 2250E, where it flowed over County Road 2250E into the east side drainage ditch (“County Road 2250E Drainage Ditch System”) and onto an adjacent third party property. There was dead vegetation on third party property and orange staining on County Road 2250E and on vegetation of the County Road 2250E Drainage Ditch System.

25. On February 25, 2021, Illinois EPA collected water samples from Outfall 001 and submitted them for analysis. Laboratory analysis of the water samples collected revealed the following exceedances for acidity, iron, pH, and manganese:

Constituent	Allowable effluent limits	Outfall 001 Concentration
Acidity	(total acidity shall not exceed total alkalinity)	152 mg/L³ acidity > 27.8 mg/L alkalinity
Iron (total)	7.0 mg/L	47.8 mg/L
pH	6.5 – 9.0 s.u.	3.4 s.u.
Manganese	1.0 mg/L	1.8 mg/L

26. On April 5, 2021, Illinois EPA conducted an inspection at the Site (“April 5, 2021 Inspection”). During this inspection, there was an active flow of water discharging from the SE Offsite Discharge into the west side of County Road 2250E Drainage Ditch System and continuing south along the County Road 2250E Drainage Ditch System. The water discharge then flowed from County Road 2250E Drainage Ditch System east through a culvert under County Road 2250E and along the north side drainage ditch of US Route 36. Then the water discharge continued to flow south through a box culvert under US Route 36 and finally flowed back west along the south drainage ditch of US Route 36 (“US Route 36 Drainage Ditch

³ mg/L = milligrams per liter.

System”). This water discharged through the SE Offsite Discharge effected approximately 2,260 feet of the US Route 36 Drainage Ditch System.

27. During the April 5, 2021 Inspection, there was orange staining on the vegetation on the west side of the County Road 2250 Drainage Ditch System, the vegetation and water on the north and south side US Route 36 Drainage Ditch System, and on the concrete box culvert under US Route 36.

28. During the April 5, 2021 Inspection, Illinois EPA collected water samples from Outfall 001 and the SE Offsite Discharge and submitted them for analysis. Laboratory analysis of the water samples collected revealed the following exceedances for acidity, iron, pH, and manganese:

Constituent	Allowable effluent limits	Outfall 001 Concentration	SE Offsite Discharge Concentration
Acidity	(total acidity shall not exceed total alkalinity)	94 mg/L acidity > ND⁴ mg/L alkalinity	280 mg/L acidity > 86.6 mg/L alkalinity
Iron (total)	7.0 mg/L	25.5 mg/L	81.2 mg/L
pH	6.5 – 9.0 s.u.	3.8 s.u.	3.1 s.u.
Manganese	1.0 mg/L	—	2.65 mg/L

29. On April 15, 2021, Illinois EPA conducted a joint inspection with IDNR at the Site (“April 15, 2021 Inspection”). During this inspection, there was an active flow of water discharging from the SE Offsite Discharge into the west side of County Road 2250E Drainage Ditch System and flowing into the US Route 36 Drainage Ditch System. Also, there was orange bottom deposits in the ditches of the County Road 2250E Drainage Ditch System and the US Route 36 Drainage Ditch System.

⁴ ND means analyte Not Detected at or above the reporting limit.

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30. On May 3, 2021, Illinois EPA conducted an inspection at the Site (“May 3, 2021 Inspection”). During this inspection, there was an active flow of water discharging from the SE Offsite Discharge into the west side of County Road 2250E Drainage Ditch System and flowing into the US Route 36 Drainage Ditch System.

31. During the May 3, 2021 Inspection, the Illinois EPA collected water samples from Outfall 001 and the SE Offsite Discharge and submitted them for analysis. Laboratory analysis of the water samples collected revealed the following exceedances for acidity, iron, sulfate, pH, and total suspended solids (“TSS”):

Constituent	Allowable effluent limits	Outfall 001 Concentration	SE Offsite Discharge Concentration
Acidity	(total acidity shall not exceed total alkalinity)	232 mg/L acidity > 62.8 mg/L alkalinity	120 acidity > 22 alkalinity
Iron (total)	7.0 mg/L	28.0 mg/L	94.4 mg/L
Sulfate	2017 mg/L	2410 mg/L	---
pH	6.5 – 9.0 s.u.	3.0 s.u.	6.0 s.u.
TSS	70 mg/L	—	80 mg/L

32. From April 2018 through the filing of this Amended Complaint, or a date or dates better known to Respondent, Alpena has failed to submit any discharge monitoring reports (“DMR”) to the Illinois EPA, and, upon information and belief, failed to monitor surface and groundwater at the Site.

COUNT I

AIR POLLUTION

1-32. Complainant re-alleges and incorporates herein paragraphs 1 through 32 of its fact allegations common to all counts, as paragraphs 1 through 32 of this Count I.

33. Section 9(a) of the Act, 415 ILCS 5/9(a), provides as follows:

No person shall:

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.

34. Section 201.141 of the Illinois Pollution Control Board (“Board”) Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides as follows:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either alone or in combination with contaminants from other sources, to cause or tend to cause air pollution in Illinois, or so as to violate the provisions of this Chapter, or so as to prevent the attainment or maintenance of any applicable ambient air quality standard.

35. Section 3.315 of the Act, 415 ILCS 5/3.315 (2020), 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, agent or assigns.

36. Section 3.165 of the Act, 415 ILCS 5/3.165 (2020), provides the following definition:

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

37. Section 3.115 of the Act, 415 ILCS 5/3.115 (2020), provides the following definition:

“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.

38. Alpena, a limited liability company, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2020).

39. The odors at and near the Site, Mine Drainage and Reclamation Materials are each a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2020).

40. Reclamation Materials, including the stockpile of bio-solids, and Mine Drainage at the Site emit, or are capable of emitting, odors into the atmosphere, so as to unreasonably interfere with the enjoyment of life or property and are therefore constitute “air pollution” as that term is defined by Section 3.115 of the Act, 415 ILCS 5/3.115 (2020).

41. At all times relevant to this Amended Complaint, by failing to manage Mine Drainage and Reclamation Materials at the Site, so as to cause, threaten or allow air pollution, Respondent Alpena violated Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141, and thereby, Section 9(a) of the Act, 415 ILCS 5/9(a) (2020).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent, ALPENA VISION RESOURCES, LLC, with respect to Count I:

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

2. Finding that Respondent has violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141;

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3. Ordering Respondent to cease and desist from any future violations of Section 9(a) of the Act, 415 ILCS 5/9(a) (2020), and Section 201.141 of the Board Air Pollution Regulations, 35 Ill. Adm. Code 201.141;

4. Assessing a civil penalty against Respondent of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2020); and

6. Granting such other relief as the Board deems appropriate and just.

COUNT II

WATER POLLUTION

1. This Count is brought on behalf of Complainant, the PEOPLE OF THE STATE OF ILLINOIS, by Kwame Raoul, Attorney General of the State of Illinois, on his own motion, against ALPENA VISION RESOURCES, LLC, a Michigan limited liability company, Section 31 of the Act, 415 ILCS 5/31 (2020).

2-36. Complainant re-alleges and incorporates herein paragraphs 2 through 32 of its fact allegations common to all counts, paragraphs 35, 36, 38 and 39 of Count I as paragraphs 2 through 36 of this Count II.

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37. Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), provides as follows:

No person shall:

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.

38. Section 620.405 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 620.405, provides as follows:

General Prohibitions Against Violations of Groundwater Quality Standards

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this Subpart to be exceeded.

39. Section 403.102 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 403.102, provides as follows:

The discharge of contaminants or pollutants by any person into the waters of the State from a point source or into a well is unlawful, except when complying with provisions of the Act, Board regulations, the FWPCA (32 USC 1251 et seq.), and the provisions and conditions of the discharger's NPDES permit.

40. Section 3.550 of the Act, 415 ILCS 5/3.550 (2020), provides the following 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 throughout, or border upon this State.

41. Section 3.545 of the Act, 415 ILCS 5/3.545 (2020), provides the following 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.

42. Section 502(14) of the CWA, 33 U.S.C.S. § 1362(14), provides the following definition:

(14) 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 stormwater discharges and return flows from irrigated agriculture.

43. Section 406.108 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.108, provides the following definition:

Non-Point Source Mine Discharges

Surface drainage from the affected land of a coal mine, including disturbed areas that have been graded, seeded, or planted, must pass through a sedimentation pond or a series of sedimentation ponds before leaving the facility.

44. Section 402.101 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 402.101, provides the following definition:

“Affected Land”: any land owned, controlled, or otherwise used by the operator in connection with mining activities, except the surface area above underground mine workings that is not otherwise used for mining activities. The term does not include offsite office buildings and farming operations or recreational activities on undisturbed land.

45. The Brushy Fork Tributary, the County Road 2250E Drainage Ditch System and the US Route 36 Drainage Ditch System are all “waters” as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2020).

46. The exceedances of allowable limits, and offsite discharge of Mine Drainage, including iron, sulfate, manganese, TSS, acidity, Reclamation Materials and water with turbidity and unnatural color, constitutes the discharge of contaminants that alter the physical, chemical, and/or biological property of waters of the State, and is therefore “water pollution” as that term is

defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2020).

47. The Site is “affected land” as that term is defined by Section 402.101 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 402.101.

48. Outfall 001, County Road 2250E Drainage Ditch System, and the US Route 36 Drainage Ditch System are each a “point source” as that term is defined by Section 502(14) of the CWA, 33 U.S.C.S. § 1362(14).

49. At all times relevant to this Amended Complaint, by allowing the offsite discharge of contaminants onto the land and flowing through Outfall 001, County Road 2250E Drainage Ditch System and the US Route 36 Drainage Ditch System, point sources, into the Brushy Fork Tributary, that exceeded allowable limits, Respondent violated Section 403.102 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 403.102, and thereby, violated Section 620.405 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 620.405.

50. At all times relevant to this Amended Complaint, by allowing the offsite discharge of Mine Drainage and Reclamation Materials, which failed to pass through a sedimentation pond or a series of sedimentation ponds at the Site, to deposit offsite into the Brushy Fork Tributary, and onto the land through the County Road 2250E Drainage Ditch System and US Route 36 Drainage Ditch System, Respondent violated Sections 406.108 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.108, and thereby, violated Section 620.405 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 620.405.

51. At all times relevant to this Amended Complaint, by Respondent’s actions and omissions that cause or tend to cause water pollution and that violate regulations or standards adopted by the Pollution Control Board, Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2020).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent, ALPENA

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VISION RESOURCES, LLC, with respect to Count II:

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

2. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a), and Sections 403.102, 406.108 and 620.405 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 403.102, 406.108 and 620.405;

3. Ordering Respondent to cease and desist from any future violations of Section 12(a) of the Act, 415 ILCS 5/12(a), and Sections 403.102, 406.108 and 620.405 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 403.102, 406.108 and 620.405;

4. Assessing a civil penalty against Respondent of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2020); and

6. Granting such other relief as the Board deems appropriate and just.

COUNT III

CREATING A WATER POLLUTION HAZARD

1-45. Complainant re-alleges and incorporates herein paragraphs 2 through 32 of its fact allegations common to all counts, paragraphs, 35, 36, 38 and 39 of Count I, and paragraphs 1, 37, 39, 40, 42 through 46 and 49 of Count II, as paragraphs 1 through 45 of this Count III.

46. Section 12(d) of the Act, 415 ILCS 5/12(d), provides, in relevant part, as follows:

No person shall:

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

47. By allowing the discharge of Mine Drainage and Reclamation Materials, which failed to pass through a sedimentation pond or a series of sedimentation ponds at the Site, to deposit contaminants on the land, Respondent created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2020).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent, ALPENA VISION RESOURCES, LLC, with respect to Count III:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 12(d) of the Act, 415 ILCS 5/12(d);
3. Ordering Respondent to cease and desist from any future violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2020);
4. Assessing a civil penalty against Respondent of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2020);
6. Granting such other relief as the Board deems appropriate and just.

COUNT IV

EXCEEDANCING EFFLUENT LIMITATIONS

1-44. Complainant re-alleges and incorporates herein paragraphs 2 through 32 of its fact allegations common to all counts, paragraphs 35, 36, 38 and 39 of Count I, and paragraphs 1, 36, 38 through 41, 44, 45 and 47 of Count II, as paragraphs 1 through 44 of this Count IV.

45. Section 406.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.106, provides the following:

Effluent Standards for Mine Discharges

- a) The effluent limitations in 35 Ill. Adm. Code 304 do not apply to mine discharges or non-point source mine discharges.

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- b) Except as provided in Sections 406.109 and 406.110, a mine discharge effluent must not exceed the following levels:

Constituent	Concentration
Acidity	(total acidity must not exceed total alkalinity)
Iron (total)	3.5mg/L
Lead (total)	1 mg/L
Ammonia Nitrogen (as N)	5 mg/L
pH (range)	6-9
Zinc (total)	5 mg/L
Fluoride (total)	15 mg/L
Total suspended solids	35 mg/L
Manganese	2.0 mg/L

- 1) The ammonia nitrogen standard applies only to discharges from facilities using ammonia in wastewater treatment.
- 2) The manganese effluent limitation applies only to discharges from facilities where chemical addition is required to meet the iron or pH effluent limitations. The upper limit of pH must be 10 for any facility unable to comply with the manganese limit at pH 9. The manganese standard is not applicable to mine discharges associated with areas where no active mining, processing, or refuse disposal has taken place since May 13, 1976.

- c) New source coal mines are subject to a total iron limitation of 3.0 mg/L in addition to the requirements of subsection (b).

46. Section 402.101 of the Board Water Pollution Regulations, 35 Ill. Adm. Code

402.101, provides, in pertinent part, the following definitions:

“Mine Discharge”: any point source discharge, whether natural or man-made, from a mine related facility. Such discharges include mechanical pumpages, pit overflows, spillways, drainage ditches, seepage from mine or mine refuse areas, and effluent from processing and milling or mineral preparation plants. Other discharges including sanitary sewers and sewage treatment works are not mine discharges. The term mine discharge includes surface runoff discharged from a sedimentation pond but does not include non-point source mine discharges.

“Mine Related Facility”: a portion of a facility that is related to mining activities. The term includes the following:

- Affected land;
- Coal storage yard or transfer facility;
- Mine;

Mine drainage treatment facility;
Mine refuse area; and
Processing or mineral preparation plant.

“Mine Refuse Area”: any land used for dumping, storing or disposing of mine refuse.

47. Discharges from Outfall 001, County Road 2250E Drainage Ditch System, and the US Route 36 Drainage Ditch System are each a “Mine Discharge” as that term is defined by Section 402.101 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 402.101.

48. The Site is a “Mine Related Facility” and “Mine Refuse Area” as those terms are defined by Section 402.101 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 402.101.

49. At all times relevant to this Amended Complaint, by allowing offsite discharge of iron, manganese, TSS, acidity and pH levels in exceedance of allowable limits from Outfall 001 into the waters of the state, Respondent violated Section 406.106 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.106, and thereby, violated Section 403.102 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 403.102 and Section 12(a) of the Act, 415 ILCS 5/12(a) (2020).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent, ALPENA VISION RESOURCES, LLC, with respect to Count IV:

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

2. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) and Sections 406.106 and 403.102 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.106 and 403.102;

3. Ordering Respondent to cease and desist from any future violations of Section

12(a) of the Act, 415 ILCS 5/12(a) and Section 406.106 and 403.102 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.106 and 403.102;

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and pertinent regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2020); and

6. Granting such other relief as the Board deems appropriate and just.

COUNT V

NPDES PERMIT VIOLATIONS:

**GENERAL WATER QUALITY STANDARDS:
OFFENSIVE CONDITIONS AND DISCHARGES**

1-51. Complainant re-alleges and incorporates herein paragraphs 2 through 32 of its fact allegations common to all counts, paragraphs 35, 36, 38 and 39 of Count I, paragraphs 1, 37 through 39, 41 through 44, and 46 through 49 of Count II, and paragraphs 45 through 48 of Count IV, as paragraphs 1 through 51 of this Count V.

52. Section 12(f) of the Act, 415 ILCS 5/12(f), provides, in relevant part, as follows:

No person shall:

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.

53. Special Conditions No. 1 of the Alpena NPDES Permit 2010 and Alpena NPDES Permit 2017, provides as follows:

No effluent from any mine related facility area under this permit shall, alone or in combination with other sources, cause a violation of any applicable water quality standard as set out in the Illinois Pollution Control Board Rules and Regulations, Subtitle C: Water Pollution.

54. Section 406.202 of Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202, provides as follows:

In addition to the other requirements of this Part, mine discharges and non-point source mine discharges, alone or in combination with other sources, must not cause a violation of any water quality standards under 35 Ill. Adm. Code 302 or 303.

55. Section 302.203 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides as follows:

Offensive Conditions

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

56. Section 406.107 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.107, provides as follows:

Offensive Discharges

In addition to the other requirements of Subtitle D, mine discharge effluent must not contain settleable solids, floating debris, visible oil, grease, scum, or sludge solids. Color, odor, and turbidity must be reduced below obvious levels.

57. At all times relevant to this Amended Complaint, by causing and allowing Mine Discharge and Reclamation Materials to discharge in effluent offsite into waters of the State that caused odors, unnatural color and turbidity resulting in offensive discharges and conditions in the waters of the State, Alpena violated Special Conditions No. 1 of the Alpena NPDES Permit 2010 and Alpena NPDES Permit 2017, Sections 406.202, 302.203, and 406.107, of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202, 302.203, and 406.107, and thereby, violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2020).

58. At all times relevant to this Amended Complaint, by violating Special Condition No. 1 of both the Alpena NPDES Permit 2010 and Alpena NPDES Permit 2017, and Section 406.202, of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202, Alpena violated Section 403.102, of the Board Water Pollution Regulations, 35 Ill. Adm. Code 403.102 and thereby Section 12(f) of the Act.

59. At all times relevant to this Amended Complaint, by causing and allowing Non-Point Source Mine Discharge to discharge offsite into waters of the State without passing through a sedimentation pond or a series of sedimentation ponds before leaving the Site, Respondent caused unnatural color and turbidity resulting in offensive discharges and conditions in the waters of the State in violation of Special Condition No. 1 of both the Alpena NPDES Permit 2010 and Alpena NPDES Permit 2017, and Section 406.202, of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202, Respondent violated Section 406.108, of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.108, and thereby, Section 12(f) of the Act, 415 ILCS 5/12(f) (2020).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully

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requests the Board to enter an order in favor of Complainant and against Respondent, ALPENA VISION RESOURCES, LLC, with respect to Count V:

1. Authorizing a hearing in this matter at which time Respondent Alpena will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Special Condition No. 1 of both the Alpena NPDES Permit 2010 and Alpena NPDES Permit 2017, and Sections 406.202, 302.203, 406.107, 406.108 and 403.102 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202, 302.203, 406.107, 406.108 and 403.102;
3. Ordering Respondent to cease and desist from any future violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Special Condition 1 of both the Alpena NPDES Permit 2010 and Alpena NPDES Permit 2017, and Sections 406.202, 302.203, 406.107 and 403.102 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202, 302.203, 406.107 and 403.102;
4. Requiring Respondent to continue to allow IDNR to operate the reclamation activities at the Site under the administratively continued Alpena NPDES Permit 2017 and any subsequent renewals of Alpena's NPDES Permit;
5. Assessing a civil penalty against Respondent of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Special Conditions No. 1 of the Alpena NPDES Permit 2010 and Alpena NPDES Permit 2017, and Sections 406.202, 302.203, 406.107 and 403.102 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 406.202, 302.203, 406.107 and 403.102;
6. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2020); and

7. Granting such other relief as the Board deems appropriate and just.

COUNT VI

**NPDES PERMIT VIOLATIONS:
DISCHARGE MONITORING AND REPORTING**

1-45. Complainant re-alleges and incorporates herein paragraphs 2 through 32 of its fact allegations common to all counts, paragraphs 35, 36, 38 and 39 of Count I, paragraphs 1, 39, 41, and 44 of Count II, and paragraphs 52 through 57 of Count V, as paragraphs 1 through 45 of this Count VI.

46. Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 305.102(b), provides as follows:

Every holder of an NPDES (National Pollutant Discharge Elimination System) permit is required to comply with the monitoring, sampling, recording and reporting requirements set forth in the permit and this Chapter.

47. Section 406.102 of the Board Water Pollution Regulations, 35 Ill. Admin. Code

406.102, provides as follows:

- a) When treatment is provided for a discharge, effluent samples must be taken after the final treatment process and before entry into or mixture with any waters of the State.
- b) The permittee must design or modify structures that allow effluent samples at the required point. When treatment is not provided for a discharge, effluent samples must be taken at the nearest point of access to the discharge source at a point where the discharge leaves the mine, mine area, or other portions of the affected land. All effluent samples must be taken before entry into or mixture with waters of the State.
- c) The Agency will determine a reasonable frequency at which the permittee must report the actual concentration or level of any parameter identified in the State or NPDES permit.
 - 1) Each report submitted under this subsection (c) must include at least three samples taken from each pond discharge during three separate periods occurring during that reporting period in which the alternate limitations for precipitation events under Sections 406.109 and 406.110 were in effect.
 - 2) If alternate limitations under Sections 406.109 and 406.110 are in effect on fewer than three separate occasions during a reporting period, one sample must be taken from each pond discharge on each occasion during that period when the alternate limitations are in effect. The operator has the burden of proof that the applicable precipitation event caused the discharge or increase in discharge.
- d) The Agency may require monitoring and reporting based on 24-hour composite samples averaged over calendar months as a permit condition. The Agency may permit grab samples or composite samples of shorter duration after the permittee demonstrates that the samples reflect discharge levels over standard operating conditions.
- e) Despite subsection (d), if a permittee requests, the Agency may require monitoring and reporting based on grab samples as a permit condition, in which case Section 406.101(b) will apply.
- f) Monitoring must continue after abandonment until the permittee has reasonably established that drainage complies with and will continue to comply with the requirements of the Act and this Subtitle D.
- g) All methods of sample collection, preservation and analysis used in applying the requirements of Subtitle D must be in accord with

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USEPA's current practice manual or other procedures acceptable to USEPA and the Agency.

48. Special Condition No. 3 of both Alpena NPDES Permit 2010 and Alpena NPDES Permit 2017, provide as follows:

All periodic monitoring and reporting forms, including Discharge Monitoring Report (DMR) forms, shall be submitted to the Agency according to the schedule outlined in Special Condition No. 4 or 5 below. .

..

* * *

49. Special Conditions No. 4 of Alpena NPDES Permit 2010 and Alpena NPDES Permit 2017, provide as follows:

Completed Discharge Monitoring Report (DMR) forms and as well as upstream and downstream monitoring results, shall be retained by the Permittee for a period of three (3) months and shall be [“mailed” for the Alpena NPDES Permit 2010] [“submitted electronically (or mailed if waiver is approved by the Agency)” for the Alpena NPDES Permit 2017] and received by the IEPA at the addresses indicated in Special Condition No. 3 above in accordance with the following schedule, unless otherwise specified by the permitting authority.

<u>Period</u>	<u>Received by IEPA</u>
January, February, March	April 15
April, May, June	July 16
July, August, September	October 15
October, November, December	January 15

50. From April 2018 through the date of filing of this Amended Complaint, or dates better known to Respondent, Respondent failed to conduct monitoring and reporting of Outfall 001 at the Site in violation of the Effluent Limitations and Monitoring requirements on Pages 2 through 4 of the Alpena NPDES Permit 2017, and Special Conditions No. 3 and No. 4 of the Alpena NPDES Permit 2017.

51. By failing to monitor discharges from the Site and submit DMRs in violation of Effluent Limitations and Monitoring requirements of Special Conditions No. 3 and No. 4 of the Alpena NPDES Permit 2017, Alpena violated Sections 406.102 and 305.102(b) of the Board

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Water Pollution Regulations, 35 Ill. Admin. Code 406.102 and 305.102(b), and thereby, Section 12(f) of the Act, 415 ILCS 5/12(f) (2020).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent, ALPENA VISION RESOURCES, LLC, with respect to Count VI:

1. Authorizing a hearing in this matter at which time Respondent Alpena will be required to answer the allegations herein;
2. Finding that Respondent Alpena has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Sections 406.102 and 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Admin. Code 406.102 and 305.102(b), Effluent Limitations and Monitoring requirements of the Alpena NPDES Permit 2017 and Special Conditions No. 3 and No. 4 of the Alpena NPDES Permit 2017;
3. Ordering Respondent Alpena to cease and desist from any future violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Sections 406.102 and 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Admin. Code 406.102 and 305.102(b) and Effluent Limitations and Monitoring requirements of the Alpena NPDES Permit 2017 and Special Conditions No. 3 and No. 4 of the Alpena NPDES Permit 2017;
4. Requiring Respondent to continue to allow IDNR to operate reclamation activities at the Site under the administratively continued Alpena NPDES Permit 2017 and any subsequent renewals of Alpena's NPDES Permit;
5. Assessing a civil penalty against Respondent of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Sections 406.102 and 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Admin. Code 406.102 and 305.102(b) and Effluent Limitations and Monitoring requirements of the Alpena

NPDES Permit 2017 and Special Conditions No. 3 and No. 4 of the Alpena NPDES Permit 2017;

6. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2020); and
7. Granting such other relief as the Board deems appropriate and just.

COUNT VII

**NPDES PERMIT VIOLATIONS:
GROUNDWATER MONITORING AND REPORTING**

1-53. Complainant re-alleges and incorporates herein paragraphs 2 through 32 of its fact allegations common to all counts, paragraphs 35, 36, 38 and 39 of Count I, paragraphs 1, 37, 39, 41 through 47 of Count II, paragraphs 52 through 57 of Count V, and paragraphs 46 and 48 of Count VI, as paragraphs 1 through 53 of this Count VII.

54. General Condition No. 13 of Alpena NPDES Permit 2017, provide as follows:

Groundwater monitoring requirements for Well No. GW-1 are as follows:

Monitoring Well GW-1 shall be monitored six (6) times during a 12-month period (approximately bi-monthly) following completion of reclamation activities to determine post mining constituent concentrations. Such post-mining monitoring shall include the following list of contaminants.

* * *

Results of this post-mining monitoring shall be submitted to the Agency in accordance with Special Condition Nos. 3 and 4 of this NPDES permit.

55. Special Condition No. 5 of both Alpena NPDES Permit 2010 and Alpena NPDES Permit 2017, provide as follows:

Completed periodic monitoring and reporting, other than DMR's and stream monitoring (i.e., groundwater monitoring, coal combustion waste analysis reports, etc.), shall be retained by the Permittee for a period of three (3) months and shall be mailed and received by the IEPA at the addresses indicated in Special Condition No. 3 above in accordance

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with the following schedule, unless otherwise specified by the permitting authority.

<u>Period</u>	<u>Received by IEPA</u>
January, February, March	May 1
April, May, June	August 1
July, August, September	November 1
October, November, December	February 1

56. At all times relevant to this Amended Complaint, Respondent failed to submit groundwater monitoring reports and, upon information and belief, conduct groundwater monitoring at the Site, in violation of General Condition No. 13 and Special Conditions No. 3 and No. 5 of the Alpena NPDES Permit 2017.

57. By violating General Condition No. 13 and Special Conditions No. 3 and No. 5 of the Alpena NPDES Permit 2017, Alpena violated Section 305.102(b) and 620.405 of the Board Water Pollution Regulations, 35 Ill. Admin. 305.102(b) and 620.405, and thereby, Section 12(f) of the Act, 415 ILCS 5/12(f) (2020).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent, ALPENA VISION RESOURCES, LLC, with respect to Count VII:

1. Authorizing a hearing in this matter at which time Respondent Alpena will be required to answer the allegations herein;
2. Finding that Respondent Alpena has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Section 305.102(b) and 620.405 of the Board Water Pollution Regulations, 35 Ill. Admin. 305.102(b) and 620.405, General Condition No. 13 and Special Conditions No. 3 and No. 5 of the Alpena NPDES Permit 2017;
3. Ordering Respondent Alpena to cease and desist from any future violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Section 305.102(b) and 620.405 of the Board

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Water Pollution Regulations, 35 Ill. Admin. 305.102(b) and 620.405, and General Condition No. 13 and Special Conditions No. 3 and No. 5 of the Alpena NPDES Permit 2017;

4. Requiring Respondent to continue to allow IDNR to operate reclamation activities at the Site under the administratively continued Alpena NPDES Permit 2017 and any subsequent renewals of Alpena's NPDES Permit;

5. Assessing a civil penalty against Respondent of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Section 305.102(b) and 620.405 of the Board Water Pollution Regulations, 35 Ill. Admin. 305.102(b) and 620.405, and General Condition No. 13 and Special Conditions No. 3 and No. 5 of the Alpena NPDES Permit 2017;

6. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2020); and

7. Granting such other relief as the Board deems appropriate and just.

COUNT VIII

**NPDES PERMIT VIOLATIONS:
PERIODIC MONITORING AND REPORTING**

1-54. Complainant re-alleges and incorporates herein paragraphs 2 through 32 of its fact allegations common to all counts, paragraphs 35, 36, 38 and 39 of Count I, paragraphs 1, 37, 39, 41 through 47 of Count II, paragraphs 52 through 57 of Count V, paragraphs 46 and 48 of Count VI, and paragraph 55 of Count VII, as paragraphs 1 through 54 of this Count VIII.

55. Page 6, Paragraph 3 of the Alpena NPDES Permit 2010, provides as follows:

The following previous approvals are hereby incorporated with this NPDES permit:

As described in IEPA Log No. 0156-07, bio-solids from Urbana Champaign Sanitary District may be utilized as previously approved in Subtitle D Permit No. 2007-MO-1056 as final cover

material on the refuse areas described and depicted in IEPA Log Nos. 5431-03 and 5431-03-B. Utilization of bio-solids from the source shall not exceed 12,000 tons. The pH of this material shall be monitored and maintained at or above 6.5 s.u. Quarterly documentation of the quantity of bio-solids utilized shall be submitted to the Agency in accordance with Special Condition 3 of this NPDES Permit.

56. Special Condition No. 14 of the Alpena NPDES Permit 2010, provides as follows:

Mercury shall be monitored quarterly until a minimum of ten (10) samples have been collected. ... The results of such testing must be submitted with the quarterly Discharge Monitoring Reports (DMR's). The permittee may submit a written request to the Agency to discontinue quarterly Mercury monitoring if the sampling results show no reasonable potential to exceed the Mercury water quality standard.

57. General Condition No. 13(b) of the Alpena NPDES Permit 2010, provides as follows:

Utilization of ADM-Decatur gypsum and Innophos-Chicago Heights lime sand is subject to the following:

- b. a quarterly report of the volume of ADM-Decatur gypsum and Innophos-Chicago Heights lime sand utilized shall submitted to the Agency in accordance of Special Condition Nos. 3 and 5 of this NPDES permit.

58. Special Condition No. 12 of the Alpena NPDES Permit 2010, provides, in pertinent part, as follows:

Sediment Pond Operation and Maintenance (Outfall 001):

- a. For discharges resulting from precipitation events, in addition to the alternate effluent monitoring requirements, discharges from Outfalls 001 shall be monitored and reported for Discharge Rate, Sulfate, Chloride and Hardness.
- b. The following sampling and monitoring requirements are applicable to flow in the unnamed tributary to Brushy Fork which receive discharges from Outfall 001.
- i. All sampling and monitoring required in

accordance with 12(b)(ii) and (iii)⁵ below shall be performed during a discharge and monitoring event from the associated outfall.

- ii. Unnamed tributary to Brushy Fork shall be monitored and reported quarterly for Discharge Rate, Chloride, Sulfate and Hardness downstream of the associated outfall, if applicable. This downstream monitoring shall be performed a sufficient distance downstream of the associated outfall to ensure that complete mixing has occurred. At such time that sufficient information has been collected regarding receiving stream flow characteristics and in-stream contaminant concentrations, the permittee may request a re-evaluation of the monitoring frequency required herein for possible reduction or elimination. For the purpose of re-evaluating the downstream monitoring frequency of the receiving stream, "sufficient information" is defined as a minimum of ten (10) quarterly sampling events.

In the event that upstream monitoring of the receiving waters is eliminated during the term of this permit based on an evaluation of the quarterly data, a minimum of three (3) additional samples analyzed for the parameters identified above must be submitted with the permit renewal application a minimum of 180 days prior to expiration of this permit.

- iii. Unnamed tributary to Brushy Fork shall be monitored and reported annually for Discharge Rate, Chloride, Sulfate and Hardness upstream of the associated outfall.
- c. All results of sampling and monitoring performed in accordance with Special Condition 12(a) and (b) shall be submitted to the Agency in accordance with Special Condition Nos. 3 and 4 above.

59. Special Condition No. 13 of the Alpena NPDES Permit 2017, provides, in pertinent part, as follows:

⁵ Scrivener's error in Alpena NPDES Permit 2010 states 11(b)(ii) and (iii); it should read 12(b)(ii) and (iii).

Sediment Pond Operation and Maintenance (Outfall 001):

- a. For discharges resulting from precipitation events, in addition to the alternate effluent (Discharge Condition Nos. II and III) monitoring requirements, as indicated on the applicable effluent pages of this Permit, discharges from Outfalls 001 shall be monitored and reported for Discharge Rate, Sulfate, Chloride and Hardness.
- b. The following sampling and monitoring requirements are applicable to flow in the unnamed tributary to Brushy Fork which receive discharges from Outfall 001.
 - i. All sampling and monitoring required under 13(b)(ii) and (iii) below shall be performed during a discharge and monitoring event from the associated outfall.
 - ii. Unnamed tributary to Brushy Fork shall be monitored and reported quarterly for Discharge Rate, Chloride, Sulfate and Hardness downstream of the associated outfall. This downstream monitoring shall be performed a sufficient distance downstream of the associated outfall to ensure that complete mixing has occurred. At such time that sufficient information has been collected regarding receiving stream flow characteristics and in-stream contaminant concentrations the permittee may request a re-evaluation of the monitoring frequency required herein for possible reduction or elimination. For the purpose of re-evaluating the downstream monitoring frequency of the receiving stream, "sufficient information" is defined as a minimum of ten (10) quarterly sampling events.

In the event that downstream monitoring of the receiving waters is eliminated during the term of this permit based on an evaluation of the quarterly data, a minimum of three (3) additional samples analyzed for the parameters identified above must be submitted with the permit renewal application a minimum of 180 days prior to expiration of this permit.

- iii. Unnamed tributary to Brushy Fork shall be monitored and reported annually for Discharge Rate, Chloride, Sulfate and Hardness upstream

of the associated outfall.

- c. All results of sampling and monitoring performed in accordance with Special Condition 13(a) and (b) shall be submitted to the Agency in accordance with Special Condition Nos. 3 and 4 above.

60. Special Condition No. 11 of the Alpena NPDES Permit 2010 and Special Condition No. 12 of the Alpena NPDES Permit 2017, provide as follows:

Annual stormwater monitoring is required for all discharges not tributary to a sediment basin until Final SMCRA Bond is released and approval to cease such monitoring is obtained from the Agency.

- a. Each discharge must be monitored for pH and settleable solids annually.
- b. Analysis of samples must be submitted with second quarter Discharge Monitoring Reports. A map with discharge locations must be included in this submittal.
- c. If discharges can be shown to be similar, a plan may be submitted by November 1 of each year preceding sampling to propose grouping of similar discharges and/or update previously submitted groupings. If updating of a previously submitted plan is not necessary, a written notification to the Agency indicating such is required. Upon approval from the Agency, one representative sample for each group may be submitted.

61. Special Condition No. 15 of Alpena NPDES Permit 2017, provides as follows:

Discharges from Outfall No. 001 shall be monitored twice annually with such monitoring spaced at approximately 6-month intervals during the entire 5 year term of this NPDES Permit. Sampling of the discharges shall be performed utilizing the grab sampling method and analyzed for total (unfiltered) concentrations. The results of the sampling required under this Special Condition shall be submitted twice annually to the Agency in January and July of each calendar year to the addresses indicated in the Special Condition No. 3 above. ...

62. From March 2007 through March 2012, or a date or dates better known to Respondent, Respondent failed to submit quarterly reports for the receipt of bio-solids at the Site in violation of Page 6, Paragraph 3, and Special Conditions No. 3 and No. 5 of Alpena NPDES Permit 2010.

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63. By November 1, 2012 and November 1, 2013, Respondent failed to submit quarterly reports of mercury monitoring of effluent discharges from Outfall 001 for the third quarters of both 2012 and 2013, respectively, in violation of Special Conditions No. 14, No. 3 and No. 5 of Alpena NPDES Permit 2010.

64. From October 2010 through November 2015, or a date or dates better known to Respondent, Respondent failed to provide quarterly reporting of the volume of ADM-Decatur gypsum received at the Site for the period September 2010 through August 2015 in violation of General Condition No. 13(b), and Special Conditions No. 3 and No. 5 of Alpena NPDES Permit 2010.

65. At all times relevant to this Amended Complaint, Respondent failed to conduct monitoring and reporting of the discharges from Outfall 001 during precipitation events for Discharge Rate, Chloride, Sulfate and Hardness and to conduct quarterly monitoring and reporting of water in Brushy Fork Tributary downstream of the Outfall 001 in violation of Special Conditions No. 12, No. 3, and No. 5 of the Alpena NPDES Permit 2010 and Special Conditions No. 13, No. 3, and No. 5 of the Alpena NPDES Permit 2017.

66. At all times relevant to this Amended Complaint, Respondent failed to conduct annual stormwater monitoring and reporting of discharges in violation of Special Conditions No. 11, No. 3, and No. 5 of the Alpena NPDES Permit 2010 and Special Conditions No. 12, No. 3, and No. 5 of the Alpena NPDES Permit 2017.

67. At all times relevant to this Amended Complaint, Respondent failed to conduct biannual monitoring and submit reports for the discharges from Outfall 001 in violation of Special Condition No. 15, No. 3 and No. 5 of the Alpena NPDES Permit 2017.

68. By violating Page 6, Paragraph 3 of Alpena NPDES Permit 2010, General Condition No. 13(b) and Special Conditions No. 3, No. 5, No. 11 and No. 14 of Alpena NPDES Permit 2010, and Special Conditions No. 3, No. 5, No. 12, and No. 13 of the Alpena NPDES

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Permit 2017, Alpena violated Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Admin. 305.102(b), and thereby, Section 12(f) of the Act, 415 ILCS 5/12(f) (2020).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent, ALPENA VISION RESOURCES, LLC, with respect to Count VIII:

1. Authorizing a hearing in this matter at which time Respondent Alpena will be required to answer the allegations herein;
2. Finding that Respondent Alpena has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Admin. Code 305.102(b), Page 6, Paragraph 3 of Alpena NPDES Permit 2010, General Condition No. 13(b) and Special Conditions No. 3, No. 5, No. 11, and No. 14 of Alpena NPDES Permit 2010, and Special Conditions No. 3, No. 5, No. 12, and No. 13 of the Alpena NPDES Permit 2017, Alpena;
3. Ordering Respondent Alpena to cease and desist from any future violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Admin. Code 305.102(b), Page 6, Paragraph 3 of Alpena NPDES Permit 2010, General Condition No. 13(b) and Special Conditions No. 3, No. 5, No. 11 and No. 14 of Alpena NPDES Permit 2010, and Special Conditions No. 3, No. 5, No. 12, and No. 13 of the Alpena NPDES Permit 2017, Alpena;
4. Requiring Respondent to continue to allow IDNR to operate reclamation activities at the Site under the administratively continued Alpena NPDES Permit 2017 and any subsequent renewals of Alpena's NPDES Permit;
5. Assessing a civil penalty against Respondent of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), Section 305.102(b) of the Board Water Pollution Regulations, 35 Ill. Admin. Code 305.102(b)

Page 6, Paragraph 3 of Alpena NPDES Permit 2010, General Condition No. 13(b) and Special Conditions No. 3, No. 5, No. 11 and No. 14 of Alpena NPDES Permit 2010, and Special Conditions No. 3, No. 5, No. 12, and No. 13 of the Alpena NPDES Permit 2017;

6. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2020); and

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7. Granting such other relief as the Board deems appropriate and just.

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: _____
STEPHEN J. SYLVESTER, Chief
Environmental Bureau
Assistant Attorney General

OF COUNSEL:
NANCY J. TIKALSKY
Senior Assistant Attorney General
Environmental Bureau
Office of the Illinois Attorney General
69 West Washington Street, Suite 1800
Chicago, Illinois 60602
(872) 272-0776
ARDC 6273159
nancy.tikalsky@ilag.gov
maria.cacaccio@ilag.gov