

Service List

For the Respondent

Stephen Hedinger

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via certified mail

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL,)	
Attorney General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB 24-
)	(Enforcement – Water (NPDES))
ALL AMERICAN READY MIX, INC.,)	
an Illinois corporation,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency, complains of Respondent, ALL AMERICAN READY MIX, INC., an Illinois corporation, as follows:

COUNT I

FAILURE TO OBTAIN COVERAGE UNDER THE GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR STORM WATER DISCHARGES FROM INDUSTRIAL ACTIVITIES

1. This Count is brought by the Attorney General on his own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA” or “the Agency”), pursuant to the terms and provisions of Section 31 of the Illinois Environmental Protection Act (the “Act”), 415 ILCS 5/31 (2022).

2. Illinois EPA is an administrative agency of the State of Illinois, created by the Illinois General Assembly pursuant to Section 4 of the Act, 415 ILCS 5/4 (2022), and is charged, *inter alia*, with the duty of enforcing the Act. Illinois EPA is further charged with the duty to abate violations of the National Pollutant Discharge Elimination System (“NPDES”) Permit Program

under the Federal Clean Water Act (“CWA”), 33 U.S.C. §1342(b)(7).

3. Respondent, ALL AMERICAN READY MIX, INC., (“All American” or “the Respondent”) was and is an Illinois corporation in good standing with the State of Illinois.

4. At all times relevant to this Complaint, All American operated a ready mixed concrete facility at 4599 Conover Road, Virginia, Cass County, Illinois (“the Facility”).

5. The Cass County Parcel ID number associated with the address is 11-012-009-00.

6. Contaminated storm water from the Facility runs off into the watershed for Clear Creek. Clear Creek discharges to Indian Creek, which ultimately flows to the Illinois River.

7. The Facility is classified as a “Ready-Mixed Concrete facility” under SIC code 3273. As such, All American is required to have coverage under the General National Pollutant Discharge Elimination System (“NPDES”) Permit for Storm Water Discharges from Industrial Activities for discharge of stormwater to waters of the State of Illinois (“the General NPDES Stormwater Permit”).

8. An applicant who seeks coverage under the General NPDES Stormwater Permit must submit a Notice of Intent (“NOI”), an application fee, and a Storm Water Pollution Prevention Plan (“SWPPP”) to Illinois EPA.

9. On May 5, 2021, Illinois EPA inspected the Facility (“May 2021 Inspection”).

10. During the May 2021 Inspection, inspectors observed concrete residue and solids from the washout in the ditch along the southern and western border of the Facility.

11. During the May 2021 Inspection, the inspectors also observed concrete residue, solids, and poured concrete throughout the flow path of the Conover Road ditch and out of the culvert into a ditch along Beardstown Road.

12. On April 17, 2023, Illinois EPA received an NOI and a SWPPP from the Respondent.

13. On April 20, 2023, Illinois EPA received an application fee from the Respondent to obtain coverage under the NPDES General Stormwater Permit for Industrial Activities.

14. On July 21, 2023, Illinois EPA issued Defendant coverage under the General NPDES Permit for Stormwater Discharges From Industrial Activities.

15. Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), provides as follows:

No person shall:

* * *

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

16. Section 3.315 of the Act, 415 ILCS 5/3.315 (2022), provides as follows:

“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.

17. All American, a corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2022).

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2022), provides the following definition:

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

19. Stormwater containing concrete residue, solids, and poured concrete washout from

the Facility is a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2022).

20. Section 3.550 of the Act, 415 ILCS 5/3.550 (2022), 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 through, or border upon this State.

21. The ditches and culverts along Conover and Beardstown Roads, the Unnamed Tributary, Clear Creek, Indian Creek, and the Illinois River each are “waters” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2022).

22. Section 309.102(a) of the Illinois Pollution Control Board (“Board”) Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

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

23. The United States Environmental Protection Agency has authorized the State of Illinois to issue NPDES permits through Illinois EPA in compliance with federal regulations, including stormwater discharges regulated by 40 CFR § 122.26, which requires a person to obtain an NPDES permit to implement a stormwater pollution prevention plan for stormwater discharges associated with industrial activity.

24. Section 122.26 of the Code of Federal Regulations, 40 CFR §122.26, provides, in pertinent part, as follows:

(a) Permit Requirement

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

except:

(ii) a discharge associated with industrial activity...

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

(ii) Facilities classified within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 CFR 122.27(b)(2)-(3) and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities).

25. The Facility is a facility considered to be engaging in "industrial activity" within the meaning of Section 122.26 of the Code of Federal Regulations, 40 CFR § 122.26.

26. Stormwater discharges from the Facility are associated with industrial activity and therefore require an NPDES permit.

27. From at least the time of the May 2021 Inspection, and on dates better known to All American, until July 21, 2023, All American operated a Ready-Mixed Concrete facility without having obtained coverage under the General NPDES Stormwater Permit.

28. By operating a Ready-Mixed Concrete facility without having obtained coverage under the General NPDES Stormwater Permit, All American caused, threatened, or allowed the

discharge of stormwater associated with industrial activity into waters of the State without an NPDES permit, and thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022).

29. At times better known to All American, All American discharged stormwater associated with industrial activity from the Facility into waters of the State without having obtained coverage under the General NPDES Stormwater Permit.

30. By discharging stormwater associated with industrial activity from the Facility into waters of the State without having obtained coverage under the General NPDES Stormwater Permit, All American discharged contaminants into waters of the State in violation of the Act, and thereby violated Section 309.102(a) of the Board Regulations, 35 Ill. Adm. Code 309.102(a).

31. By causing, threatening, or allowing the discharge of stormwater associated with industrial activity into waters of the State in violation of the Board Regulations, All American violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2022).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board enter an Order against the Respondent, ALL AMERICAN READY MIX, INC., on this Count I, as follows:

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(f) of the Act, 415 ILCS 5/12(f) (2022), and Section 309.102(a) of the Board Regulations, 35 Ill. Adm. Code 309.102(a);

C. Ordering the Respondent to cease and desist from any future violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2022), and Section 309.102(a) of the Board Regulations, 35 Ill. Adm. Code 309.102(a).

D. Assessing against the Respondent a civil penalty no greater than the maximum penalties set forth in Sections 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2022);

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

F. Ordering such other and further relief as this Board deems appropriate and just.

COUNT II
WATER POLLUTION

1-28. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 14, 16 through 27, 29, and 30 of Count I as paragraphs 1 through 28 of this Count II.

29. Section 12(a) of the Act, 415 ILCS 5/12(a) (2022), provides as follows:

No person shall:

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

30. Section 3.545 of the Act, 415 ILCS 5/3.545 (2022), 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.

31. The discharge of stormwater associated with industrial activities from the Facility into receiving waters, including, but not limited to, the ditches and culverts along Conover and Beardstown Roads, the Unnamed Tributary, Clear Creek, Indian Creek, and the Illinois River, is

“water pollution” as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2022).

32. From at least the time of the May 2021 inspection, and at times better known to All American, All American caused, threatened, or allowed the discharge of stormwater associated with industrial activity from the Facility into waters of the State.

33. By causing, threatening, or allowing the discharge of stormwater associated with industrial activities from the Facility, All American caused, threatened, or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2022).

34. By causing, threatening, or allowing the discharge of stormwater associated with industrial activities so as to violate Section 309.102(a) of the Board Regulations, 35 Ill. Adm. Code 309.102(a), All American violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2022).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board enter an Order against the Respondent, ALL AMERICAN READY MIX, INC., on this Count II, as follows:

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 violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2022);

C. Ordering the Respondent to cease and desist from any future violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2022);

D. Assessing against the Respondent a civil penalty no greater than the maximum penalties set forth in Sections 42(a) and 42(b)(1) of the Act, 415 ILCS 5/42(a) and 42(b)(1);

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

F. Ordering such other and further relief as the Board deems appropriate and just.

COUNT III
WATER POLLUTION HAZARD

1-18. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 6, 9 through 11, and 16 through 21 of Count I, and paragraphs 30 through 32 of Count II, as paragraphs 1 through 18 of this Count III.

19. Section 12(d) of the Act, 415 ILCS 5/12(d) (2022), provides as follows:

No person shall:

* * *

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

20. From at least the May 2021 inspection, and on dates better known to All American, All American deposited washout from ready-mix concrete activities upon land at the Facility so that said ready-mix concrete flowed through roadside ditches and culverts, causing or threatening discharge into the Unnamed Tributary.

21. By depositing washout from ready-mix concrete activities upon land at the Facility, All American deposited contaminants upon land in such a place and manner so as to create a water pollution hazard, and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2022).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Board enter an Order against the Respondent, ALL AMERICAN READY MIX,

INC., on this Count III, as follows:

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(d) of the Act, 415 ILCS 5/12(d) (2022);

C. Ordering the Respondent to cease and desist from any future violations of Section 12(d) of the Act, 415 ILCS 5/12(d);

D. Assessing against the Respondent a civil penalty no greater than the maximum penalties set forth in Sections 42(a) of the Act, 415 ILCS 5/42(a) (2022);

E. Ordering the Respondent to pay all costs expended by the State in pursuit of this action, including attorney, expert witness, and consultant fees, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2022); and,

F. Ordering such other and further 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: /s/ Andrew Armstrong
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CERTIFICATE OF SERVICE

I, Bridget I. Flynn, an Assistant Attorney General, certify that on the 7th day of February, 2024, I caused to be served by U.S. Certified Mail, the foregoing Notice of Filing and Complaint to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 500 South Second Street, Springfield, Illinois 62701.

By: /s/Bridget I. Flynn
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