

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE, AUGUST 7,2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	PCB No. 06-181
v.)	(Enforcement)
)	
QUAD-COUNTY READY MIX CORPORATION,)	
an Illinois corporation,)	
)	
Respondent.)	

ANSWER TO COMPLAINT

NOW COMES the Respondent, QUAD-COUNTY READY MIX CORPORATION, an Illinois corporation, by and through its attorneys. Brown, Hay & Stephens, LLP, and as and for its Answer to the Complaint of the Complainant, PEOPLE OF THE STATE OF ILLINOIS, states as follows:

COUNT I

NOTIFICATION AND FEE PAYMENT VIOLATIONS

1. This count is brought on behalf of the People of the State of Illinois, by Lisa Madigan, the Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Section 31 of the Illinois Environmental Protection Act ("the Act"), 415 ILCS 5131 (2004)

ANSWER: Respondent has no knowledge of whether this case is brought on the Attorney General's own motion or pursuant to Section 31 of the Act and demands strict proof that Section 31 has been followed prior to the initiation of this Complaint.

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 514 (2004), and charged, *in alia*, with the duty of enforcing the Act.

ANSWER: Respondent admits that the statements **contained** in Paragraph 2 are accurate.

3. The Respondent, Quad-County Ready Mix Corporation ("Quad Co."), is an Illinois corporation in good standing. Quad Co. has at all times relevant to this Complaint owned and operated a concrete ready mix plant located at 300 Old Fullerton, Swansea, St. Clair County, Illinois ("Site"). The registered agent for Quad Co. is Herbert J. Hustedde, P.O. Box 158, 300 West 12th Avenue, Okawville, 62271-0158.

ANSWER: Respondent admits the statements contained in Paragraph 3.

4. Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d)(1) (2004), provides as follows:

No person shall:

(1) violate any provisions of Sections 111, 112, 165 or 173 of the Clean Air Act, as now or hereafter amended, or federal regulations adopted pursuant thereto;

ANSWER: Respondent admits that 415 ILCS **5/9.1(d)(1)** is set out at Paragraph 4.

5. The regulations on National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR Part 61, Subpart M, were adopted pursuant to Section 112 of the Clean Air Act, 42 USC §7412. Asbestos is regulated as a hazardous air pollutant because it is a carcinogen. Regulated asbestos-containing materials ("RACM) contain more than one percent asbestos and are generally "friable," which means such materials, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure.

ANSWER: The allegations contained in Paragraph 5 are legal conclusions of the pleader to which no answer is required. To the extent that the **allegations** in Paragraph 5 may be considered allegations of fact, Respondent has no **knowledge** of the facts alleged in Paragraph 5 therein sufficient to form a belief as to the truth or falsity of the **allegations** contained therein, but Respondent demands strict proof thereof.

6. 40 CFR §61.145 provides in pertinent part as follows:

Standard for demolition and renovation

(a) *Applicability.* To determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The

requirements of paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

- (1) In a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is
 - (i) At least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or
 - (ii) At least 1 cubic meter (35 cubic feet) of facility components where the length or area could not be measured previously.

- (2) In a facility being demolished, only the notification requirements of paragraphs (b)(1), (2), (3)(i) and (v), and (4)(i) through (vii) and (4)(ix) and (xvi) of this section apply, if the combined amount of RACM is
 - (i) Less than 80 linear meters (260 linear feet) on pipes and less than 15 square meters (160 square feet) on other facility components, and
 - (ii) Less than one cubic meter (35 cubic feet) of facility components where the length or area could not be measured previously or there is no asbestos.

* * *

(b) *Notification requirements.* Each owner or operator of a demolition or renovation activity to which this section applies shall:

- (1) Provide the Administrator with written notice of intention to demolish or renovate. Delivery of the notice by U.S. Postal Service, commercial delivery service or hand delivery is acceptable.

* * *

ANSWER: Respondent admits that a portion of 40 CFR 561.145 is set out at Paragraph 6, and that the Illinois Environmental Protection Act attempts to adopt these federal provisions into Illinois state law by statute.

7. 40 CFR §145(c) provides in pertinent part as follows:

(c) Procedures for asbestos emission control Each owner or operator of a demolition or renovation activity to whom this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

- (1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if:
 - (i) It is Category I nonfriable ACM that is not in poor condition and is not friable.
 - (ii) It is on a facility component that is encased in concrete or other similarly hard material and is adequately wet whenever exposed during demolition: or
 - (iii) It was not accessible for testing and was, therefore, not discovered until after demolition began and, as a result of the demolition, the material cannot be safely removed. If not removed for safety reasons, the exposed RACM and any asbestos-contaminated debris must be treated as asbestos-containing waste material and adequately wet at all times until disposed of.
 - (iv) They are Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized, or reduced to powder during demolition.

* * *

- (6) For all RACM, including material that has been removed or stripped:
 - (i) Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with §61.150; and
 - (ii) Carefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.
 - (iii) Transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections.
 - (iv) RACM contained in leak-tight wrapping that has been removed in accordance with paragraphs (c)(4) and (c)(3)(i)(B)(3) of this section need not be wetted.

* * *

ANSWER: Respondent admits that a portion of 40 CFR §145(c) is set out at Paragraph 7, and that the Illinois Environmental Protection Act attempts to adopt these federal provisions into Illinois state law by virtue of Section 9.1 of the Act.

- 8. 40 CFR §61.150 provides in pertinent part as follows:

561.150 Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations.

Each owner or operator of any source covered under the provisions of §§61.144, 61.145, 61.146, and 61.147 shall comply with the following provisions:

* * *

- (b) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:
 - (1) A waste disposal site operated in accordance with the provisions of 561.154, or
 - (2) An EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of 561.155.
 - (3) The requirements of paragraph (b) of this section do not apply to Category I nonfriable ACM that is not RACM.

* * *

ANSWER: Respondent admits that a portion of **40 CFR §61.150** is set out at Paragraph **8**, but denies the applicability and relevance of **such** federal rule to this proceeding. Respondent states that no such corresponding **state** rule exists.

- 9. Section 9.13(b) of the Act, 415 ILCS 5/9.13(b) (2004), provides as follows:
Sec. 9.13. Asbestos fees.

* * *

- (b) If demolition or renovation of a site has commenced without prior filing of the 10-day Notice, the fee is double the amount otherwise due. This doubling of the fee is in addition to any other penalties under this Act, the federal NESHAP, or otherwise, and does not preclude Agency, the Attorney General, or other authorized persons from pursuing an enforcement action against the owner or operator for failure to file a 10-day Notice prior to commencing demolition or renovation activities.

* * *

ANSWER: Respondent admits that 415 ILCS **5/9.13(b)** is set out at Paragraph 9.

10. On a date prior to September 28, 2004 and better known to the Respondent, the Respondent commenced demolition activities at the Site, including knocking down a batch house covered with transite panels. The Respondent was simultaneously constructing a new batch house in the demolition area. The demolition activities disturbed the transite panels which contained more than one (1) percent asbestos. The Site is a "facility" and the Respondent is an "owner" and "operator" of a "demolition" as these terms are defined at 40 CFR §61.141.

ANSWER: Respondent admits the allegations that it **commenced** demolition activities at the Site on a date prior to September **28,2004** and that it was simultaneously constructing a new batch house in the demolition area. Respondent has no knowledge of the allegation that the demolition activities disturbed the transit panels or that the transit panels contained **more** than one (1) percent asbestos therein **sufficient** to form a belief as to the truth or falsity of the allegations contained therein, and **Respondent** demands strict proof thereof. The remaining allegations contained in Paragraph 11 are legal conclusions of the pleader to which no answer is required, and asserts that **no** corresponding state rule exists or has been adopted identical to the federal rule alleged **herein, 40 CFR §61.141.**

11. On September 28, 2004, the Illinois EPA inspected the facility in response to a citizen complaint alleging improper asbestos removal, and observed a substantial amount of suspect transite panel debris within and on the ground adjacent to the batch house demolition/construction area. The debris was crushed, dry, and friable waste material suspected to contain asbestos. In some cases, the removed transite panels were deposited on the ground and pulverized by passing trucks.

ANSWER: Respondent admits the allegation that the Illinois EPA inspected the facility on September 28, 2004. Respondent has no knowledge of the remaining facts alleged in Paragraph 11 therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent **demands** strict **proof** thereof.

12. Approximately ten (10) percent of the demolition/construction area was covered in poured concrete, from which inspectors observed pieces of transite protruding.

ANSWER: Respondent has no **knowledge** of the facts alleged in Paragraph 11 therein sufficient to form a belief as to the truth or falsity of **the** allegations contained **therein**, and Respondent demands strict proof thereof.

13. In total, the inspectors estimated that approximately fifteen hundred (1 500) square feet of transite material had been improperly removed and deposited on the ground.

ANSWER: The allegations contained in Paragraph 1³ are legal conclusions of the pleader to which no answer is required. To the extent that the allegations in Paragraph 13 may be considered allegations of fact, Respondent has no **know**ledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of **the** allegations contained therein, and Respondent demands strict proof thereof.

14. The inspectors obtained three (3) samples of dry, friable transite from the Site.

ANSWER: Respondent has no knowledge of the facts alleged in Paragraph 14 therein sufficient to form a belief as to the truth or falsity of **the** allegations contained therein, and Respondent demands strict proof thereof.

15. Analytical testing of these materials revealed the presence of more than one percent asbestos. The renovation activity is subject to NESHAP requirements and work practices as the quantity of RACM was greater than fifteen (15) square meters (160 square feet).

ANSWER. The allegations contained in Paragraph 1⁵ are legal conclusions of the pleader to which no answer is required. **Respondent** has no knowledge of the remaining facts alleged in Paragraph 15 therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent demands strict proof thereof.

16. The Respondent did not submit any written notification of the demolition activity to the Illinois EPA.

ANSWER: Respondent admits that it did not submit written notification to the Illinois **EPA** prior to the demolition as it was unaware of the **applicability** of any such requirement.

17. The Respondent did not conduct a thorough inspection of the facility to determine the presence of asbestos-containing materials (including Category I and II nonfriable ACM) prior to commencing renovation activities that would break, dislodge or similarly disturb the material, thereby violating Section 9.1(d)(1) of the Act, 415 ILCS 5/9.1(d) (2004), and 40 CFR §61.145(a).

ANSWER: The allegations contained in Paragraph 17 are legal conclusions of the pleader to which no answer is required, and denies the **applicability** and relevance of such federal rule, 40 **CFR §61.145(a)**, to this proceeding. **Respondent** states that no such corresponding state **rule** exists. To the extent that the allegations in **Paragraph 17** may be considered allegations of fact, Respondent denies the allegations contained in Paragraph 17, and demands strict proof thereof.

18. The owner and operator of a demolition activity subject to the NESHAP for asbestos is required by 40 CFR §61.145(b)(1) to provide to the Illinois EPA notification of renovation activity at least 10 working days prior to commencing such activity. The Respondent did not provide written notification to the Illinois EPA prior to the commencement of demolition activities at the facility, thereby violating 40 CFR §61.145(b)(1) and Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004).

ANSWER: The allegations contained in Paragraph **13** are legal conclusions of the pleader to which no answer is required, and denies the **applicability** and relevance of such federal rule, 40 CFR **§61.145(b)(1)**, to this proceeding. Respondent states that no **such** corresponding state rule exists. To the extent that the allegations in Paragraph **18** may **be** considered allegations of fact, Respondent has no knowledge **of** the alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent demands strict proof thereof.

19. The Defendant has not paid the doubled statutory fee of three hundred dollars (\$300.00) required by Section 9.13(b) of the Act, 415 ILCS 5/9.13(b) (2004).

ANSWER: Respondent admits that it has not paid three hundred dollars (\$300) to the Illinois EPA. The remaining allegations contained in **Paragraph** 19 are legal conclusions of **the** pleader to which no answer is required.

COUNT II

FAILURE TO FOLLOW PROPER EMISSION CONTROL PROCEDURES

1-14 Complainant realleges and incorporates hereby by reference paragraphs 1 through 8 and 10 through 15 of Count I as paragraphs 1 through 14 of this Count II.

ANSWER: Respondent incorporates hereby by reference its Answers to paragraphs 1 through 8 and 10 through 15 of Complainant's Count I as its Answers to paragraphs 1 through 14 of this Count II.

15. The Respondent did not remove all RACM from the facility before any activity began that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal in violation of Section 9.1(d) of the Act, 415 ILCS 5/9.1(d) (2004), and 40 CFR §61.145(c)(1).

ANSWER: The allegations contained in Paragraph 15 are legal conclusions of the pleader to which no answer is required, and **denies** the **applicability** and relevance of such federal rule, 40 CFR §61.145(c)(1), to this proceeding. **Respondent** states that no such corresponding state rule exists. To the extent that the **allegations** in Paragraph 15 may be considered allegations of fact, Respondent has no **knowledge** of the alleged facts therein sufficient to form a belief as to the truth or falsity of the **allegations** contained therein, and Respondent demands strict proof thereof.

16. The Respondent failed to adequately wet and keep wet all RACM removed during renovation activities until collected and contained in leak-tight wrapping in preparation for disposal, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d) (2004), and 40 CFR §61.145(c)(6).

ANSWER: The allegations contained in Paragraph **16** are legal conclusions of the pleader to which no answer is required, and denies the **applicability** and relevance of such federal rule, 40 CFR **§61.145(c)(6)**, to this proceeding. **Respondent** states that no such corresponding state rule exists. To the extent that the **allegations** in Paragraph 16 may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of the **allegations** contained therein, and Respondent demands strict proof thereof.

COUNT III

IMPROPER DISPOSAL OF REGULATED ASBESTOS CONTAINING MATERIALS

1-14. Complainant realleges and incorporates hereby by reference paragraphs 1 through 8 and 10 through 15 of Count I as paragraphs 1 through 14 of this Count III.

ANSWER: Respondent incorporates hereby by reference its Answers to paragraphs 1 through 8 and 10 through 15 of Complainant's Count I as its Answers to paragraphs 1 through 14 of this Count III.

15. The Respondent failed to deposit as soon as practicable all regulated asbestos-containing waste material at a site permitted to accept such waste. in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d) (2004), and 40 CFR §61.150(b)(1).

ANSWER: The allegations contained in Paragraph 15 are legal conclusions of the pleader to which no answer is required, and denies the **applicability** and relevance of such federal rule, 40 CFR **§61.150(b)(1)**, to this proceeding. **Respondent** states that no such corresponding state **rule** exists. To the extent that the **allegations** in Paragraph 15 may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of the **allegations** contained therein, and Respondent demands strict proof thereof.

16. The Respondent failed to adequately wet all regulated asbestos-containing waste material during handling and collection, failed to seal all RACM waste in leak tight containers, and failed to label the containers using warning labels as prescribed by the NESHAP for asbestos, in violation of Section 9.1(d) of the Act, 415 ILCS 9.1(d) (2004), and 40 CFR §61.150(a)(1).

ANSWER: The allegations contained in Paragraph 16 are legal conclusions of the pleader to which no answer is required, and denies **the applicability** and relevance of such federal rule, 40 CFR **§61.150(a)(1)**, to this **proceeding**. **Respondent** states that no such corresponding state rule exists. To the **extent** that the **allegations** in Paragraph 16 may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent demands **strict proof thereof**.

COUNT IV

AIR POLLUTION VIOLATIONS

1-21. Complainant realleges and incorporates herein by reference paragraphs 1 through 8 and 10 through 18 of Count I, paragraphs 15 and 16 of Count II and paragraphs 15 and 16 of Count III as paragraphs 1 through 21 of this Count IV.

ANSWER: Respondent incorporates hereby by reference its Answers to paragraphs 1 through 8 and 10 through 15 of Complainant's Count I, paragraphs 15 and 16 of Count II and paragraphs 15 and 16 of Count III as its Answers to Paragraphs 1 through 21 of this Count IV.

22. Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), provides:

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 along or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

* * *

ANSWER: Respondent admits that 415 ILCS 5/9(a) is set out at Paragraph 22.

23. Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141, provides:

No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as, either along 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.

ANSWER: Respondent admits that 35 Ill. Adm. Code 201.141 is set out at Paragraph 23.

24. Section 3.115 of the Act, 415 ILCS 513.115 (2004), 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

ANSWER: Respondent admits that 415 ILCS 513.115 is set out at Paragraph 24.

25. By failing to adequately wet and keep wet all RACM removed during the demolition activities until collected and contained in leak-tight wrapping in preparation for disposal, to utilize equipment or methods to properly control the emission of asbestos, and to deposit as soon as practicable all regulated asbestos-containing waste material at a site permitted to accept such waste, the Respondent has threatened the emission of contaminants into the environment so as to tend to cause air pollution and thereby violated Section 9(a) of the Act, 415 ILCS 5/9(a) (2004), and Section 201.141 of the Board's Air Pollution Regulations, 35 Ill. Adm. Code 201.141.

ANSWER: The allegations contained in Paragraph 25 are legal conclusions of the pleader to which no answer is required. To the extent that the allegations in Paragraph 25 may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent demands strict proof thereof.

COUNT V

OPEN DUMPING

1-3. Coinplainant realleges and incorporates herein by reference paragraphs 1 through 3 of Count I as paragraphs 1 through 3 of this Count V.

ANSWER: Respondent incorporates hereby by reference its Answers to Complainant's paragraphs 1 through 3 of Count 1 as its Answers to paragraphs 1 through 3 of this Count V.

4. Section 21 of the Act, 415 ILCS 5121 (2004), provides, in pertinent part, as follows:

No person shall:

a. Cause or allow the open dumping of waste.

* * *

e. Dispose, treat, store, or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

p. In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrence at the dump site:

1. Litter:

* * *

4. Deposition of waste in standing or flowing waters;

* * *

7. Deposition of:

(i) general construction or demolition debris as defined in Section 3.160(a) of this Act; or

(ii) clean construction or demolition debris as defined in Section 3.16-(b) of this Act.

* * *

ANSWER: Respondent admits that 415 ILCS 5/21 is set out at Paragraph 4.

Respondent denies the relevance of 415 ILCS 5/21 to this case.

5. Section 3.305 of the Act, 415 ILCS 5/3.305 (2004). provides the following definition:

"OPEN DUMPING" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

ANSWER: Respondent admits that 415 ILCS 5/3.305 is set out at Paragraph 5.

Respondent denies the relevance of 415 ILCS 513.305 to this case.

6. Section 3.445 of the Act, 415 ILCS 513.445 (2004), provides the following definition:

"SANITARY LANDFILL" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances of hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operations, or by such other methods and intervals as the Board may provide by regulation.

* * *

ANSWER: Respondent admits that 415 ILCS 513.445 is set out at Paragraph 6. Respondent denies the relevance of 415 ILCS 513.445 to this case.

7. Section 3.535 of the Act, 415 ILCS 5/3.535 (2004), provides, in pertinent part, the following:

"WASTE" means any garbage, sludge from 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, or source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 921) or any solid or dissolved material from any facility subject to the Federal Surface Mining Coal and Reclamation Act of 1977 (P.L. 95-87) or the rules and regulations thereunder or any law or rule or regulation adopted by the State of Illinois pursuant thereto.

ANSWER: Respondent admits that 415 ILCS 5/3.535 is set out at Paragraph 7. Respondent denies the relevance of 415 ILCS 513.535 to this case.

8. Section 3.160 of the Act, 415 ILCS 5/3.160 (2004), provides, in pertinent part, the following:

- (a) "GENERAL CONSTRUCTION OR DEMOLITION DEBRIS" means non-hazardous, uncontaminated materials resulting from the construction, remodeling, repair, and demolition of utilities, structures, and roads, limited to the following: bricks, concrete, and other masonry materials; soil; rock; wood, including non-hazardous painted, treated, and coated wood and wood products; wall coverings; plaster; drywall, plumbing fixtures; non-asbestos insulation; roofing shingles and other roofing coverings; reclaimed asphalt pavement; glass; plastics that are not sealed in a manner that conceals waste; electrical wiring and components containing no hazardous substances; and piping or metals incidental to any of those material::

General construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any general construction or demolition debris or other waste.

- (b) "CLEAN CONSTRUCTION OR DEMOLITION DEBRIS" means uncontaminated broken concrete without protruding metal bars, bricks, rock, stone, reclaimed asphalt pavement, or soil generated from construction or demolition activities.

Clean construction or demolition debris does not include uncontaminated soil generated during construction, remodeling, repair, and demolition of utilities, structures, and roads provided the uncontaminated soil is not commingled with any clean construction or demolition debris or other waste.

ANSWER: Respondent admits that a portion of 415 ILCS 513.160 is set out at Paragraph 8. Respondent denies the relevance of 415 ILCS 513.160 to this case.

9. On a date prior to September 28, 2004, and better known to the Respondent, the Respondent stacked approximately forty (40) tires next to a storage shed located at the Site, some of which contained water.

ANSWER: Respondent neither admits nor denies the allegations contained in Paragraph 9, but demands strict proof thereof.

10. On a date prior to September 28, 2004, and better known to the Respondent, Respondent caused or allowed the accumulation of one-half acre of spent concrete, water, and fill material in the area behind the storage shed.

ANSWER: Respondent neither admits nor denies the allegations contained in Paragraph 10, but demands strict proof thereof.

11. On or before September 28, 2004, and continuing through at least June 6, 2005, the Respondent has caused or allowed the open dumping of waste at a disposal site upon its property through the consolidation of refuse.

ANSWER: The allegations contained in Paragraph 11 are legal conclusions of the pleader to which no **answer** is required. To the extent that the **allegations** in Paragraph 11 may be considered allegations of fact, Respondent has no knowledge of the **alleged** facts therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent demands strict proof thereof.

12. By causing or allowing the open dumping of waste, the Respondent has violated Section 21(a) of the Act, 415 ILCS 5/21(a) (2004).

ANSWER: The allegations contained in Paragraph 12 are legal conclusions of the pleader to which no answer is required. Respondent denies the relevance of 415 ILCS 5/21(a) to this case. To the extent that the allegations in Paragraph 12 may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent demands strict proof thereof.

13. On or before September 28, 2004, and continuing through at least June 6, 2005, the Respondent has disposed, abandoned or stored waste at a site upon its property, or transported waste for disposal or storage to a site upon its property, and such site does not meet the requirements of the Act and of the standards and regulations promulgated thereunder.

ANSWER: The allegations contained in Paragraph 13 are legal conclusions of the pleader to which no answer is required. To the extent that the allegations in Paragraph 13 may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent demands strict proof thereof.

14. By disposing, abandoning, or storing or transporting waste at or to a site which does not meet the requirements of the Act and of the standards and regulations promulgated thereunder, the Respondent has violated Section 21(e) of the Act, 415 ILCS 5/21(e)(2004).

ANSWER: The allegations contained in Paragraph ~~14~~ are legal conclusions of the pleader to **which** no answer is required. Respondent denies ~~the~~ relevance of **415 ILCS 5/21(e)** to this case. To the extent that the allegations in Paragraph **14** may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations **contained** therein, and Respondent demands strict proof thereof.

15. On or before September 28, 2004, and continuing through at least June 6, 2005, the Respondent has caused or allowed the open dumping of waste in a manner which has resulted in litter.

ANSWER: The allegations contained in Paragraph ~~15~~ are **legal** conclusions of the pleader to which no answer is required. To the extent that the allegations in Paragraph **15** may be considered allegations of **fact**, **Respondent** has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of ~~the~~ allegations contained therein, and Respondent demands strict proof thereof.

16. By causing or allowing the open dumping of waste in a manner which has resulted in litter at or from the dump site, the Respondent has violated Section 21(p)(1) of the Act, 415 ILCS 5/21(p)(1) (2004).

ANSWER. The allegations contained in Paragraph 16 are legal conclusions of the pleader to which no answer is required. Respondent denies ~~the~~ relevance of 415 ILCS 5/21(p)(1) to this case. To the extent that the allegations in Paragraph 16 may be considered allegations of fact, Respondent has no knowledge of ~~the~~ alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent demands strict proof thereof.

17. On or before September 28, 2004, and continuing through at least June 6, 2005, the Respondent has caused or allowed the open dumping of waste in a manner which has resulted in the deposition of waste in standing or flowing waters.

ANSWER: The allegations contained in Paragraph 17 are legal conclusions of the pleader to which no answer is required. To the extent that the allegations in Paragraph 17 may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of ~~the~~ allegations contained therein, and Respondent demands strict proof thereof.

18. By causing or allowing the open dumping of waste in a manner which has resulted in the deposition of waste in standing or flowing waters, the Respondent has violated Section 21(p)(4) of the Act, 415 ILCS 5/21(p)(4) (2004).

ANSWER: The allegations contained in Paragraph ~~18~~ are legal conclusions of the pleader to which no answer is required. Respondent denies ~~the~~ relevance of 415 ILCS ~~5/21(p)(4)~~ to this case. To the extent that the allegations in Paragraph 18 may be considered allegations of fact, Respondent has no **knowledge** of the alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent demands strict proof thereof.

19. On or before September 28, 2004, and continuing through at least June 6, 2005, the Respondent has caused or allowed the open dumping of waste in a manner which has resulted in the deposition of both general and clean construction or demolition debris.

ANSWER: The allegations contained in Paragraph ~~19~~ are legal conclusions of the pleader to which no answer is required. To the extent that the allegations in Paragraph 19 may be considered allegations of fact, Respondent has no **knowledge** of the alleged facts therein sufficient to form a belief as to ~~the~~ truth or falsity of ~~the~~ allegations contained therein, and Respondent demands strict proof thereof.

20. By causing or allowing the open dumping of waste in a manner which has resulted in the deposition of both general and clean construction or demolition debris, the Respondent has violated Section 21(p)(7) of the Act, 415 ILCS 5/21(p)(7) (2004).

ANSWER: The allegations contained in Paragraph ~~20~~ are **legal** conclusions of the pleader to which no answer is required. Respondent denies the relevance of 415 ILCS

5/21(p)(7) to this case. To the extent that the allegations in Paragraph 20 may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, and Respondent demands strict proof thereof.

COUNT VI

OPEN BURNING

1-5 Complainant realleges and incorporates herein by reference paragraphs 1 through 3 of Count 1 and paragraphs 5 and 7 of Count V as paragraphs 1 through 5 of this Count VI.

ANSWER: Respondent incorporates **hereby** by reference its Answers to **Complainant's** paragraphs 1 through 3 of Count I and paragraphs 5 and 7 of Count V as its Answers to paragraphs 1 through 5 of this Count **VI**.

6. Section 9(c) of the Act, 415 ILCS 5/9(c) (2004). provides, in pertinent part, as follows:

No person shall:

(c) Cause or allow the open burning of refuse, conduct any salvage operation by open burning, or cause or allow the burning of any refuse in any chamber not specifically designed for the purpose and approved by the Agency pursuant to regulations adopted by the Board under this Act; except that the Board may adopt regulations permitting open burning of refuse in certain cases upon a finding that no harm will result from such burning, or that any alternative method of disposing of such refuse would create a safety hazard so extreme as to justify the pollution that would result from such burning;

ANSWER: Respondent admits that 415 ILCS 5/9(c) is set out at Paragraph 6.
Respondent denies the relevance of 415 ILCS 5/9(c) to this case.

7. Section 21 of the Act, 415 ILCS 5/21 (2004), provides, in pertinent part, as follows:

No person shall:

p. In violation of subdivision (a) of this Section, cause or allow the open dumping of any waste in a manner which results in any of the following occurrences at the dump site:

* * *

3. Open burning:

* * *

ANSWER: Respondent admits that a portion of 415 ILCS 5/21 is set out at Paragraph 7. Respondent denies the relevance of 415 ILCS 5/21 to this case.

8. Section 3.300 of the Act, 415 ILCS 513.300 (2004), provides the following definition:

"OPEN BURNING is the combustion of any matter in the open or in an open dump.

ANSWER: **Respondent** admits that a portion of 415 ILCS 513.300 is set out at Paragraph 8. Respondent denies the relevance of 415 ILCS 513.300 to this case.

9. On a date prior to September 28, 2004, and better known to the Respondent. Respondent burned residential waste, cans, insulation, glass bottles, cardboard, wood and landscape waste in a burn pile approximately thirty (30) feet by twenty (20) feet surrounded by standing water located behind a storage located on the Site. In doing so, the Respondent has caused or allowed the open burning of refuse upon its property in violation of Section 9(c) of the Act, 415 ILCS 5/9 (c) (2004).

ANSWER: The allegations contained in Paragraph 9 are legal conclusions of the pleader to which no answer is required. **Respondent** denies the relevance of 415 ILCS **5/9** to this case. To the extent that the allegations in Paragraph 9 **may** be considered allegations of fact, Respondent has no **knowledge** of the alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations **contained** therein, and Respondent demands strict proof thereof.

10. On or before September 28, 2004, and continuing through at least June 6, 2005, the Respondent has caused or allowed the open dumping of waste in a manner which has resulted in open burning in violation of Section 21(p)(3) of the Act, 415 ILCS 5/21(p)(3) (2004).

ANSWER: The allegations contained in Paragraph **10** are legal conclusions of the pleader to which no answer is required. Respondent denies the relevance of 415 ILCS **5/21(p)(3)** to this case. To the extent that the allegations in **Paragraph 10** may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein

sufficient to form a belief as to the truth or falsity of the **allegations** contained therein, and Respondent demands strict proof thereof.

COUNT VII

WATER POLLUTION

1-3 Complainant realleges and incorporates herein by reference paragraphs 1 through 3 of Count 1 as paragraphs 1 through 3 of this Count VII.

ANSWER: Respondent incorporates hereby by reference its Answers to Complainant's paragraphs **1** through 3 of Count **1** as its **Answers** to paragraphs **1** through 3 of this Count VII.

4. Section 12 of the Act, 415 ILCS 5/12 (2004), 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;

ANSWER: Respondent admits that a portion of **415 ILCS 5/12** is set out at Paragraph 8. Respondent denies the relevance of **415 ILCS 5/12** to this case.

5. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), defines "contaminant as follows:

"CONTAMINANT" is any solid, liquid or gaseous matter, any odor, or any form of energy, from whatever source.

ANSWER: Respondent admits that 415 ILCS 5/3.165 is set out at Paragraph 5.

Respondent denies the relevance of 415 ILCS 5/3.165 to this case.

6. Section 3.545 of the Act, 415 ILCS 513.545 (2004), defines "water pollution" as follows:

"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.

ANSWER: Respondent admits that 415 ILCS 513.545 is set out at Paragraph 6.

Respondent denies the relevance of 415 ILCS 513.545 to this case.

7. Section 3.550 of the Act, 415 ILCS 513.550 (2004), defines "waters" as follows:

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

ANSWER: Respondent admits that 415 ILCS 513.550 is set out at Paragraph 7.

Respondent denies the relevance of 415 ILCS 513.550 to this care.

8. Illinois EPA inspectors returned to the Site on September 29, 2004. At this time, Quad Co. was unable to produce the required storm water permit, storm water pollution prevention plan ("SWPPP"), and inspection records.

ANSWER: Respondent admits that the Illinois EPA inspectors returned to the Site on September **29, 2004**, and that Respondent could not, at that time, produce a storm **water permit**. Respondent has no knowledge of the remaining alleged facts therein sufficient to form a **belief** as to the truth or falsity of the allegations contained therein, and Respondent demands strict proof thereof.

9. Subsequently, the Illinois EPA determined that permit ILR003761 was issued to the previous owner, but had not been transferred into Quad Co.'s name.

ANSWER: **Respondent** has no **knowledge** of the facts alleged in Paragraph 9 therein sufficient to form a belief as to the truth or falsity of **the** allegations contained therein, but Respondent demands strict proof thereof.

10. On January 24, 2006, the Illinois EPA re-inspected the facility to determine whether Quad Co. was complying with its storm water permit (i.e., a current and complete SWPPP with the necessary inspection, maintenance, and training records).

ANSWER: Respondent admits that the Illinois EPA **inspectors** returned to the facility on January **24,2006**. Respondent has no knowledge of the remaining alleged facts therein sufficient to form a belief as to the truth or falsity of **the** allegations contained therein, **but** Respondent demands strict proof thereof.

II. Quad Co. was unable to produce a SWPPP

ANSWER: Respondent has no knowledge of the facts alleged in Paragraph 11 therein sufficient to form a belief as to the truth or falsity of **the** allegations contained therein, but Respondent demands strict proof thereof.

12. An Illinois EPA inspector returned on January 26, 2006, at which time Quad Co. produced the SWPPP. The plan was last revised on July 1, 1999, and lacked much of the required information. Specifically, the plan was lacking employee training records, a copy of the general storm water permit, a complete and accurate site map, and completed annual inspection forms.

ANSWER: Respondent admits an **Illinois** EPA inspector returned on January **26, 2006** and that Respondent produced a SWPPP on that date. **Respondent** has no **knowledge** of the remaining alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations contained therein, but Respondent demands **strict** proof thereof.

13. From at least September of 2004, and continuing to the date this Coinplaint is filed, the Respondent caused or allowed the discharge of contaminants into the environment by allowing wash water to enter a wooded area containing a creek. In so doing, the Respondent has caused water pollution and thereby has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

ANSWER: The allegations contained in Paragraph 13 are **legal** conclusions of the pleader to which no answer is required. Respondent denies the **relevance** of 415 ILCS 5/12(a) to this case. To the extent that the allegations in Paragraph 13 may be considered allegations of fact, Respondent has no knowledge of the alleged facts therein sufficient to form a belief as to the truth or falsity of the allegations **contained** therein, but Respondent demands strict proof thereof.

COUNT VIII

NPDES PERMIT VIOLATIONS: UNLAWFUL DISCHARGES

1-12 Complainant realleges and incorporates by reference paragraphs 1 through 12 of Count VII as paragraphs I through 12 of this Count VIII.

ANSWER: Respondent incorporates hereby by reference its Answers to Complainant's paragraphs I through 12 of Count VII as its Answers to paragraphs 1 through 12 of this Count VIII.

13. Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), provides, in pertinent part, 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.

ANSWER: Respondent admits that 415 ILCS 5/12(f) is set out at Paragraph 13.

Respondent denies the relevance of 415 ILCS 5/12(f) to this case.

14. Illinois is a state with delegated responsibility to enforce the Clean Water Act (33 U.S.C. 1251 et. seq. (1993)) and its regulations. The Illinois EPA, pursuant to Section 39(b) of the Act, 415 ILCS 5/39(b) (2004), may issue National Pollutant Discharge Elimination System ("NPDES") permits containing effluent limitations for the discharge of contaminants into navigable waters on behalf of the State of Illinois. The Illinois EPA is also charged with the duty to enforce and abate violations of the NPDES permit program.

ANSWER: The allegations contained in Paragraph 14 are legal conclusions of the pleader to which no answer is required. Respondent denies the relevance of 415 ILCS 5/39(b) to this case.

15. By failing to maintain a SWPPP required by the NPDES permit at the facility, the Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), NPDES Permit No. ILR003761.

ANSWER: The allegations contained in Paragraph 13 are legal conclusions of the pleader to which no answer is required. Respondent denies the relevance of **415 ILCS 5/12(f)** to this case. To the extent that the allegations in **Paragraph 15** may be considered allegations of fact, Respondent has no knowledge of the **alleged** facts therein sufficient to form a belief as to the truth or falsity of the allegations **contained** therein, but Respondent demands strict proof thereof.

WHEREFORE, Respondent, QUAD-COUNTY READY MIX CORPORATION, respectfully requests this Court to dismiss the Complainant's Complaint, award them costs and attorneys' fees in defending this action and all other just and appropriate relief.

Respectfully submitted,

QUAD-COUNTY READY MIX CORPORATION,
an Illinois corporation,

By: Charles Y. Davis
One of Its Attorneys

BROWN, HAY & STEPHENS, LLP
Claire A. Manning
Reg. No. 3124724
Charles Y. Davis
Reg. No. 6286010
205 S. Fifth Street, Suite 700
P.O. Box 2459
Springfield, IL 62705-2459
(217)544-8491

ELECTRONIC FILING, RECEIVED, CLERK'S OFFICE',AUGUST 7,2006

PROOF OF SERVICE

The undersigned hereby certifies that an original and ten (10) copies of the foregoing document were served by U.S. mail to:

Ms. Dorothy Gunn, Clerk
Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601

and one copy to:

Ms. Carole Webb
Hearing Office
Illinois Pollution Control Board
1021 North Grand Avenue, East
Post Office Box 19276
Springfield, IL 62794-9274

Mr. Thomas Davis
Illinois Attorney General's Office
Environmental Bureau
500 South Second Street
Springfield. IL 62706

Mr. Michael D. Mankowski
Illinois Attorney General's Office
Environmental Bureau
500 South Second Street
Springfield, IL 62706

and by depositing same in the United States mail in Springfield, Illinois, on the 7th day of August, 2006, with postage fully prepaid.

Charles J. Davis