

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
v.)	PCB No. 10-107
)	
ROCKFORD SAND AND GRAVEL, a division)	
of Rockford Blacktop Construction Co., an)	
Illinois corporation,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Jennifer A. Van Wie - Asst. Attorney General
Environmental Bureau
69 West Washington Street, Suite 1800
Chicago, IL 60602

Chad Kruse
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East, P.O. Box 19276
Springfield, Illinois 62794-9276

Please take notice that on August 20, 2010, the undersigned electronically filed the

Respondent's:

ANSWER AND AFFIRMATIVE DEFENSES

with the Illinois Pollution Control Board, 100 West Randolph Street, Chicago, Illinois 60601.

Dated: August 20, 2010

Respectfully submitted,

On behalf of Rockford Sand & Gravel

/s/ Charles F. Helsten
One of Its Attorneys

Charles F. Helsten
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ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES Respondent ROCKFORD SAND AND GRAVEL, INC, and for its Answer and Affirmative Defenses to the Complaint filed by the State of Illinois, states as follows:

ANSWER

COUNT I - WATER POLLUTION

1. This complaint is brought on behalf of the People of the State of Illinois by Lisa Madigan, 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 the terms and provisions of Section 31 of the Illinois Environmental Protection Act, 415 ILCS 5/31 (2008).

ANSWER: Respondent admits that this Complaint was filed by the Attorney General and alleges violations of the Illinois Environmental Protection Act. Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations of Paragraph 1.

2. The Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4 (2008), and charged, inter alia, with the duty of enforcing the Act.

ANSWER: Respondent admits the allegations of Paragraph 2.

3. On March 29, 1991, ROCKFORD SAND AND GRAVEL, INC. ("RS&G" or "Respondent"), an Illinois corporation, merged with Rockford Blacktop Construction Co., an Illinois corporation.

ANSWER: Respondent admits the allegations of Paragraph 3.

4. At all times relevant to this complaint, RS&G was and is a division of Rockford Blacktop Construction Co. Rockford Blacktop Construction Co. is in good standing with the Illinois Secretary of State.

ANSWER: Respondent admits the allegations of Paragraph 4.

5. RS&G operates an approximately 100 acre limestone quarry known as Nimtz Quarry located at 5300 Nimtz Road, Loves Park, Winnebago County, Illinois ("Facility").

ANSWER: Respondent denies the allegations of Paragraph 5. Answering further, Respondent avers that RS&G does not operate the Facility.

6. RS&G operations at the Facility include blasting, excavating, crushing, washing and stockpiling of limestone aggregate.

ANSWER: Respondent admits that operations at the Facility include those described in Paragraph 6. Respondent denies the remaining allegations of Paragraph 6.

7. Pursuant to Section 402(b) of the Federal Clean Water Act ("CWA"), 33 U.S.C. § 1342(b), the Illinois EPA administers and enforces the CWA's National Pollutant Discharge Elimination System ("NPDES") permit program within the State of Illinois.

ANSWER: Respondent admits the allegations of Paragraph 7.

8. RS&G operates the Facility pursuant to NPDES Permit No. IL0060399 ("NPDES Permit"). The NPDES Permit is effective at the Facility until October 31, 2012.

ANSWER: Respondent admits the allegations of Paragraph 8.

9. The NPDES Permit sets forth the terms and conditions for discharges containing total suspended solids ("TSS") from the Facility into an unnamed tributary to the Rock River.

ANSWER: Respondent affirmatively states that the terms and conditions of the NPDES Permit speak for themselves, and do not require a narrative description.

10. The NPDES Permit sets the TSS daily maximum effluent limit for the Facility at 70 milligrams per liter ("mg/l") and the 30-day average at 35 mg/l.

ANSWER: Respondent affirmatively states that the terms and conditions of the NPDES Permit speak for themselves, and do not require a narrative description.

11. On January 15, 2008, an Illinois EPA inspector inspected the discharge outlet pipe of the Facility in response to a citizen complaint.

ANSWER: Respondent admits that an Illinois EPA inspector inspected the facility on January 15, 2008. Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations of Paragraph 11, and demands strict proof thereof.

12. The citizen complainant reported a milky, brown discharge containing solids discharging from an outlet pipe behind citizen complainant's residence and into an unnamed tributary to the Rock River.

ANSWER: Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of Paragraph 12, and demands strict proof thereof.

13. On January 15, 2008, the Illinois EPA inspector observed turbid discharge from the outlet pipe, collected an effluent sample from the unnamed tributary to the Rock River at the point where the outlet pipe discharges into the unnamed tributary for analysis, and took-pictures of the discharge.

ANSWER: Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of Paragraph 13, and demands strict proof thereof.

14. On January 15, 2008, the Illinois EPA inspector contacted Troy Kutz, Vice President of RS&G. He showed Mr. Kutz the effluent sample taken from the unnamed tributary and gave Mr. Kutz a split effluent sample from the unnamed tributary to analyze as well.

ANSWER: Respondent admits the allegations of Paragraph 14.

15. On February 7, 2008, the Illinois EPA received the effluent sample analysis results from the effluent sample taken by the Illinois EPA on January 15, 2008. The effluent sample analysis results showed a TSS concentration of 3,860 mg/l.

ANSWER: Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations of Paragraph 15, and demands strict proof thereof.

16. On February 15, 2005, Mr. Kutz sent a letter to the Illinois EPA in response to the January 15, 2008 inspection. The letter detailed the remedial steps taken immediately after the January 15, 2008 inspection so that additional turbid effluent was not allowed to discharge, including turning off the pump.

ANSWER: Respondent admits that Mr. Kutz sent a letter to Illinois EPA on February 15, 2005. Answering further, Respondent avers that the February 15, 2008 letter speaks for itself.

17. The February 15, 2008 RS&G letter also reported the effluent sample analysis results of the split effluent sample given to RS&G by the Illinois EPA on January 15, 2008. The effluent sample showed a TSS concentration of 4,110 mg/l.

ANSWER: Respondent answers that the February 15, 2008 letter speaks for itself.

18. On April 9, 2008, the Illinois EPA sent RS&G a violation notice ("VN") for failure to comply with the terms and conditions of its NPDES Permit.

ANSWER: Respondent admits the allegations of paragraph 18.

19. On April 28, 2008, Mr. Kutz responded to the VN and proposed a compliance commitment agreement ("CCA"). The proposed CCA consisted of turning the pump off immediately after the turbid discharge was discovered and changing activities such that additional material was not allowed to run into the sump. He noted that subsequent sampling results showed compliance with the TSS limit in the NPDES Permit.

ANSWER: Respondent answers that the April 28, 2009 proposed CCA speaks for itself.

20. On May 13, 2008, the Illinois EPA rejected RS&G's proposed CCA due to the nature and seriousness of the violations.

ANSWER: Respondent admits that Illinois EPA rejected the proposed CCA on May 13, 2008. Respondent lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations of Paragraph 20, and demands strict proof thereof.

21. On June 16, 2008, the Illinois EPA sent RS&G a Notice of Intent to Pursue Legal Action ("NIPLA") letter.

ANSWER: Respondent admits the allegations of Paragraph 21.

22. On July 30, 2008, RS&G responded to the NIPLA letter. The letter disagreed with the Illinois EPA's position that RS&G had not adequately responded to the VN letter and requested a meeting.

ANSWER: Respondent admits that it responded to the NIPLA letter on July 30, 2008. Answering further, Respondent avers that the response letter speaks for itself.

23. On May 5, 2009, a meeting was held between representatives of RS&G and the Illinois EPA pursuant to the June 16, 2008 NIPLA letter.

ANSWER: Respondent admits the allegations of Paragraph 23.

24. Section 12(a) of the Act, 415 ILSC 5/12 (2008), 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.

ANSWER: Respondent admits that paragraph 24 correctly quotes a portion of Section 12(a) of the Act.

25. Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), 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.

ANSWER: Respondent admits that paragraph 25 accurately quotes from Section 3.315 of the Act.

26. Respondent RS&G is a "person" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2008).

ANSWER: Respondent admits the allegation of Paragraph 26.

27. Section 3.165 of the Act, 415 ILCS 5/3.165 (2008), provides the following definition:

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

ANSWER: Respondent admits that Paragraph 27 accurately quotes Section 3.165 of the Act.

28. TSS is a "contaminant" as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2008).

ANSWER: Paragraph 28 sets forth a legal conclusion that requires no response.

29. Section 3.545 of the Act, 415 ILCS 5/3.545 (2008), 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.

ANSWER: Respondent admits that Paragraph 29 accurately quotes from Section 3.545 of the Act.

30. Section 3.550 of the Act, 415 ILCS 5/3.550 (2008), 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.

ANSWER: Respondent admits that Paragraph 30 accurately quotes from Section 3.550 of the Act.

31. The unnamed tributary of the Rock River is "waters" as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2008).

ANSWER: Paragraph 31 sets forth a legal conclusion that requires no response.

32. The Respondent caused and allowed the discharge of contaminants, such as TSS in excess of its NPDES Permit effluent limits, into waters of the State such that they will or are likely to create a nuisance or render such waters harmful or detrimental or injurious.

ANSWER: Paragraph 32 sets forth a legal conclusion that requires no response. To the extent that a response is required, Respondent denies the allegations of Paragraph 32.

33. By causing the discharge of TSS in excess of its NPDES Permit effluent limits from the Facility into the environment, Respondent caused and allowed "water pollution" as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2008).

ANSWER: Paragraph 33 sets forth a legal conclusion that requires no response. To the extent that a response is required, Respondent denies the allegations of Paragraph 33.

34. The Respondent, by causing and allowing the discharge of TSS in excess of its NPDES Permit effluent limits from the Facility into the unnamed tributary of the Rock River so as to cause water pollution, has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008).

ANSWER: Paragraph 34 sets forth a legal conclusion that requires no response. To the extent that a response is required, Respondent denies the allegations of Paragraph 34.

**COUNT II - VIOLATION OF NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM ("NPDES") PERMIT FOR DISCHARGES**

1-23. Complainant realleges and incorporates by reference herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count II.

ANSWER: Respondent realleges and incorporates by reference herein its answers to paragraphs 1 through 23 of Count I as its answers to paragraphs 1 through 23 of this Count II.

24. Section 12(f) of the Act, 415 ILCS 5112(f) (2008), 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.

* * *

ANSWER: Respondent admits that Paragraph 24 accurately quotes a portion of Section 12(f) of the Act, but lacks sufficient knowledge and information as to its relevance in the present matter, and demands strict proof thereof.

25. Section 309.102(a) of the Illinois Pollution Control Board ("Board") Water Pollution regulations, 35 Ill.Adm.Code 309.102(a), provides as follows:

NPDES Permit Required

(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.

ANSWER: Respondent admits that Paragraph 25 accurately quotes a portion of 35 Ill.Adm.Code 309.102(a) of the Act, but lacks sufficient knowledge and information as to its relevance in the present matter, and demands strict proof thereof.

26-32. Complainant realleges and incorporates by reference herein paragraphs 25 through 31 of Count I as paragraphs 26 through 32 of this Count II.

ANSWER: Respondent realleges and incorporates by reference herein its answers to paragraphs 25 through 31 of Count I as its answers to paragraphs 26 through 32 of this Count II

33. Section 1362 of the CWA, 33 U.S.C.A. § 1362 (2008), provides the following definition:

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

ANSWER: Respondent admits that Paragraph 33 accurately quotes from 33 U.S.C.A. § 1362, but lacks sufficient knowledge and information as to its relevance in the present matter, and demands strict proof thereof.

35. The discharge outlet pipe leading to the unnamed tributary of the Rock River is a discernible, confined and discrete conveyance, and therefore constitutes a "point source" as that term is defined in Section 1362 of the CWA, 33 U.S.C.A. § 1362 (2008).

ANSWER: Paragraph 35 sets forth a legal conclusion that requires no response.

36. Respondent caused and allowed the discharge of a contaminant into the waters of the State from a point source within the State in violation of a term or condition imposed by its NPDES Permit.

ANSWER: Paragraph 36 sets forth a legal conclusion that requires no response. To the extent that a response is required, Respondent denies the allegations of Paragraph 36.

37. By discharging a contaminant into waters of the State in violation of a term or condition imposed by its NPDES Permit, Respondent violated Section 12(f) of the Act, 415 ILCS 5112(f) (2008), and Section 309.1 02(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.1 02(a).

ANSWER: Paragraph 37 sets forth a legal conclusion that requires no response. To the extent that a response is required, Respondent denies the allegations of Paragraph 37.

AFFIRMATIVE DEFENSES

1. Rockford Sand and Gravel has, at all relevant times, been in substantial compliance with its NPDES permit.

2. There is no evidence that any alleged discharge at Respondent's property ever caused "water pollution" to any "waters of the State."

3. Any violation of the NPDES permit for Respondent's property was *de minimis* in its effect, and was immediately resolved.

Dated: August 20, 2010

Respectfully submitted,

On behalf of Rockford Sand and Gravel

BY: /s/ Charles F. Helsten

One of Its Attorneys

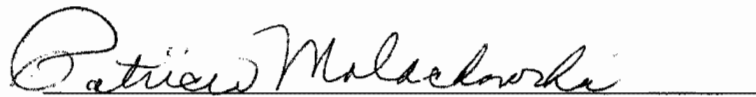
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AFFIDAVIT OF SERVICE

The undersigned, pursuant to the provisions of Section 1-109 of the Illinois Code of Civil Procedure, hereby under penalty of perjury certifies that on August 20, 2010, she caused to be served a copy of the foregoing upon:

Jennifer A. Van Wie Asst. Attorney General Environmental Bureau 69 West Washington Street, Suite 1800 Chicago, IL 60602	Chad Kruse Division of Legal Counsel Illinois Environmental Protection Agency 1021 North Grand Avenue East P.O. Box 19276 Springfield, Illinois 62794-9276
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by depositing a copy thereof, enclosed in an envelope in the United States Mail at Rockford, Illinois, proper postage prepaid, before the hour of 5:00 p.m., addressed as above.



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