

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB 12 -
)	(Enforcement – Water)
CORDRAY BROTHERS, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

NOTICE OF FILING
(VIA ELECTRONIC FILING)

TO: Nathan Noble, Registered Agent
Cordray Brothers, Inc.
215 State Street
Belvidere, Illinois 61008

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a Complaint, Notice of Filing, and a Certificate of Service on behalf of the People of the State of Illinois, a copy of which is attached and herewith served upon you.

Section 103.204(f) of the Pollution Control Board Procedural Rules, 35 Ill. Adm. Code 103.204(f) provides: "**Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney.**"

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General
of the State of Illinois

BY:



L. NICHOLE CUNNINGHAM

Assistant Attorney General

Environmental Bureau

Illinois Attorney General's Office

69 W. Washington St., 18th Flr.

Chicago, Illinois 60602

(312) 814-3532

DATE: November 23, 2011

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
<i>ex rel.</i> LISA MADIGAN, Attorney General)	
of the State of Illinois,)	
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CORDRAY BROTHERS, INC., an Illinois)	
corporation,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency, complains of the Respondent, CORDRAY BROTHERS, INC., an Illinois corporation, as follows:

COUNT I

CAUSING OR ALLOWING WATER POLLUTION

1. This Count 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 (“Act”), 415 ILCS 5/42 (2010).

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 (2010), and charged, *inter alia*, with the duty of enforcing the Act. The 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. At all times relevant to this Complaint, Respondent, CORDRAY BROTHERS, INC., ("Cordray Bros.") has been and is an Illinois corporation in good standing that operates a 42-acre limestone quarry located at 11085 Leaf River Road, Leaf River, Ogle County, Illinois 61047 ("Leaf River Quarry" or "facility"). Leaf River Quarry is situated adjacent to a tributary of Otter Creek.

4. On August 2, 2010, Illinois EPA issued to Cordray Bros. Permit No. 2010-MO-0872 for the construction and operation of Leaf River Quarry ("Mining Permit"). The Mining Permit prohibited Cordray Bros. from discharging any wastewater from Leaf River Quarry.

5. On August 18, 2010, an inspector from Illinois EPA, Division of Water Pollution, conducted an inspection of Leaf River Quarry. The inspector observed that a pump had been installed in a sump pit at the quarry and water was being pumped from the quarry to an area near the facility entrance via a hose. The water contained sediment and gravel from the quarry and traveled over ground to the unnamed tributary of Otter Creek. The inspector observed sediment and gravel from the quarry discharge in Otter Creek.

6. On November 5, 2010, Cordray Bros. submitted to Illinois EPA a Notice of Intent to obtain coverage under the General NPDES for non-coal mining facilities. On May 10, 2011, Illinois EPA granted coverage under the General NPDES permit for non-coal mining facilities, NPDES Permit No. ILG840191 ("NPDES Permit"), for Respondent's waste water discharges. As of the date of the filing of this Complaint, NPDES Permit No. ILG840191 remains in effect.

7. Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), 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.

8. Section 3.315 of the Act, 415 ILCS 5/3.315 (2010), 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.

9. Defendant Cordray Bros., a corporation, is a “person,” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

10. Section 3.550 of the Act, 415 ILCS 5/3.550 (2010), 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.

11. Otter Creek and its tributaries are “waters,” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).

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

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

13. Sediment and gravel are “contaminants,” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

14. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), 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.

15. The presence of sediment and gravel laden wastewater in Otter Creek or its tributaries causes an alteration of the water's properties and will, or is likely to, create a nuisance or render water harmful to human or animal life or health; it therefore constitutes water pollution in accordance with section 3.545 of the Act, 415 ILCS 5/3.545 (2010).

16. By pumping water containing sediment and gravel from its quarry so that the water with its contaminants could and did enter a tributary of Otter Creek, Respondent caused, threatened, or allowed water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Illinois Pollution Control Board ("Board") enter an order in favor of Complainant and against the Respondent, CORDRAY BROTHERS, INC., an Illinois corporation, for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);
3. Ordering Respondent to cease and desist from any further violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering the Respondent to pay all costs of this action, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and

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

COUNT II

CONSTRUCTING, INSTALLING AND OPERATING EQUIPMENT CAPABLE OF CAUSING OR CONTRIBUTING TO WATER POLLUTION

1-14. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 6 and 8 through 15 of Count I as paragraphs 1 through 14 of this Count II.

15. Section 12(b) of the Act, 415 ILCS 5/12(a) (2010), provides as follows:

No person shall:

(b) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

13. Special Condition 1 of Respondent's Mining Permit, Permit No. 2010-MO-0872, states as follows:

There shall be no discharge of wastewater from this mine to waters of the State.

14. On August 18, 2010, the Illinois EPA inspector observed Respondent pumping water from the quarry to waters of the State through equipment it had constructed and installed.

15. Cordray Bros. constructed, installed and operated a pump capable of causing or contributing to water pollution in violation of Special Condition 1 of Respondent's Mining Permit. By these activities, Respondent violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, CORDRAY BROTHERS, INC., an Illinois corporation, for the following relief:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2010);
3. Ordering Respondent to cease and desist from any further violation of Section 12(a) of the Act, 415 ILCS 5/12(b) (2010);
4. Assessing civil penalties pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2010), of Fifty Thousand Dollars (\$50,000.00) against Respondent for each violation and Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering the Respondent to pay all costs of this action, including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as this Board deems appropriate and just.

COUNT III

DISCHARGING WITHOUT AN NPDES PERMIT

1-14. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 6 and 8 through 15 of Count I as paragraphs 1 through 14 of this Count III.

12. Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), 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.

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

Except as in compliance with the provisions of the Act, Board regulations, and the [Clean Water Act], 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.

14. Section 1362 of the Clean Water Act, 33 U.S.C.A. § 1362, 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.

15. The pump and hose used by Respondents to move stormwater from a sump pit to an area near the entrance of the quarry constitutes a "point source," as defined in section 1362 of the Clean Water Act, 33 U.S.C.A. § 1362.

16. Cordray Bros. did not have an NPDES permit allowing for point source discharges from Leaf River Quarry into the waters of the State on August 18, 2010, when the Inspector observed Respondent pumping wastewater from the quarry's sump pit.

18. By causing, threatening, or allowing the discharge of contaminants from a point source into waters of the State without an NPDES permit, Respondent violated Section 12(f) of

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

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order in favor of Complainant and against the Respondent, CORDRAY BROTHERS, INC., an Illinois corporation, for the following relief:

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

2. Finding that the Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

3. Ordering the Respondent to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assessing a civil penalty against Respondent of Ten Thousand Dollars (\$10,000.00) for each day of each violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), pursuant to Section 42(b)(1) of the Act, 415 ILCS 5/42(b)(1) (2010);


5. Assessing all costs against Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including expert witness, consultant and attorney's fees; and

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

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney
General of the State of Illinois,

MATTHEW J. DUNN, Chief
Environmental Enforcement/Asbestos
Litigation Division

By:


ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

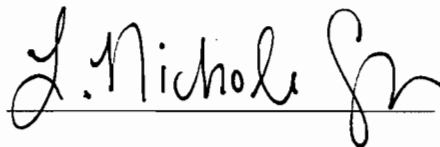
OF COUNSEL:

L. Nichole Cunningham
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington Street, Suite 1800
Chicago, Illinois 60602
(312) 814-3532

CERTIFICATE OF SERVICE

I, Lorren Nichole Cunningham, Assistant Attorney General, do certify that on the 23rd day of November, 2011, I caused to be served upon Respondent, CORDRAY BROTHERS, INC., the foregoing Notice of Filing, Complaint, and a Certificate of Service, by U.S. Certified Mail (return receipt requested), upon the following persons:

Nathan Noble, Registered Agent
Cordray Brothers, Inc.
215 State Street
Belvidere, Illinois 61008

A handwritten signature in cursive script, reading "L. Nichole Cunningham". The signature is written in black ink and is positioned above a horizontal line.

L. NICHOLE CUNNINGHAM
Assistant Attorney General
Environmental Bureau
Illinois Attorney General's Office
69 W. Washington St., 18th Flr.
Chicago, Illinois 60602
(312) 814-3532