

ORIGINAL

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE
DEC 31 1996
STATE OF ILLINOIS
POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.)
)
DIXON-MARQUETTE CEMENT, INC.,)
)
an Illinois corporation and)
)
a division of Prairie Material)
)
Sales, Inc.,)
)
Respondent.)

PCB 97- 116
(Enforcement-Water)

NOTICE OF FILING

TO: SEE ATTACHED SERVICE LIST

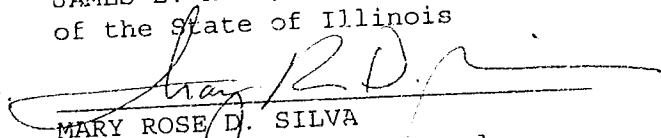
PLEASE TAKE NOTICE that we have today filed a Complaint and a Certificate of Service on behalf of the People of the State of Illinois, copies of which are attached herewith and served upon you.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental Facilities Financing Act (20 ILCS 3515/1 et seq. 1994) to correct the alleged pollution.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
JAMES E. RYAN, Attorney General
of the State of Illinois

BY: 
MARY ROSE D. SILVA
Assistant Attorney General
Environmental Bureau
100 W. Randolph St., 11th Flr.
Chicago, Illinois 60601
(312) 814-5282

DATED: December 31, 1996

THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Via Certified Mail

1. Dorothy A. Oremus
Registered Agent
Dixon-Marquette Cement, Inc.
7601 W. 79th Street
Bridgeview, Illinois 60455-1400

2. Neal H. Weinfield
Bell, Boyd & Lloyd
Three First National Plaza
70 West Madison Street, Suite 3300
Chicago, Illinois 60602-4207

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COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by JAMES E. RYAN,
Attorney General of the State of Illinois, complains of Respondent,
DIXON-MARQUETTE CEMENT, INC., as follows:

COUNT I

DISCHARGING WITHOUT A VALID NPDES PERMIT

1. This Complaint is brought by the Attorney General on his own motion and upon 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 5/31 (1994).

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 (1994), and charged, *inter alia*, with the duty of enforcing the Act. The Illinois EPA is further charged with the duty to administer and

abate violations of the National Pollutant Discharge Elimination System ("NPDES") permit program under the Federal Clean Water Act ("CWA"), 33 U.S.C. Section 1342(b)(7).

3. Respondent, Dixon-Marquette Cement, Inc. ("DMC"), has been and is now a corporation duly organized and existing under the laws of the State of Illinois. DMC is also a division of Prairie Material Sales, Inc.

4. At all times pertinent to this Complaint, DMC operates a wastewater treatment plant ("WWTP" or "facility") located at 1914 Oak Lane, Dixon, Lee County, Illinois. The WWTP is a package plant of 0.25 million gallons per day average flow, and it consists of a primary tank, aeration basin and chlorination facilities. DMC's WWTP discharges cooling water, storm water runoff and sewage treatment plant effluent into the Rock River, which is a "water" of the State of Illinois as that term is defined in Section 3.56 of the Act, 415 ILCS 5/3.56 (1994):

Section 3.56

"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.

5. Section 3.06 of the Act, 415 ILCS 5/3.06 (1994), defines a "contaminant" as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source."

6. The effluent from DMC's WWTP is a "contaminant" as that term is defined in 415 ILCS 5/3.06 (1994).

7. Section 12(f) of the Act, 415 ILCS 5/12(f) (1994), 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. . . .

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

Section 309.102 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.

9. Section 309.104(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.104(a), provides as follows:

Section 309.104 Renewal

- a) Any permittee who wishes to continue to discharge after the expiration date of his NPDES Permit shall apply for reissuance of the permit not less than 180 days prior to the expiration date of the permit.

10. On March 7, 1988, the Illinois EPA reissued to DMC its NPDES Permit No. IL0003514. The reissued permit had an effective date of April 7, 1988 and an expiration date of February 1, 1993.

11. DMC continued to discharge effluent into the Rock River after February 1, 1993, the date on which DMC's NPDES Permit No. IL0003514 expired.

12. On May 22, 1995, over two years after the expiration of NPDES Permit No. IL0003514, DMC submitted to the Illinois EPA an NPDES permit renewal application for NPDES Permit No. IL0003514.

13. On December 4, 1995, the Illinois EPA reissued DMC's NPDES Permit No. IL0003514. The permit has an effective date of December 4, 1995 and an expiration date of November 30, 2000.

14. DMC failed to apply for the reissuance of its NPDES Permit No. IL0003541 not less than 180 days prior to the expiration date of said permit, as required by Section 309.104 of 35 Ill. Adm. Code.

15. From February 1, 1993 and continuing to December 4, 1995, DMC discharged contaminants into the Rock River without a valid NPDES permit.

16. By its conduct alleged herein, DMC has violated Sections 309.102(a) and 309.104(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a) and 309.104(a), and thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (1994).

WHEREFORE, Complainant respectfully requests that this Board enter an order in favor of Complainant and against Respondent, DMC, and grant 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 has caused or allowed violations of Section 12(f) of the Act and Sections 309.102(a) and 309.104(a) of the Board's Water Pollution Regulations;
3. Ordering Respondent to cease and desist from any further violations of Section 12(f) of the Act and Sections 309.102(a) and 309.104(a) of the Board's Water Pollution Regulations;
4. Assessing a civil penalty of \$10,000.00 against Respondent for each and every day of violation of Section 12(f) of the Act and Board's regulations;
5. Assessing all costs in this action, pursuant to Section 42(f) of the Act, including expert witness, consultant and attorney's fees expended by Complainant in its pursuit of this action, against the Respondent; and

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

COUNT II

FAILURE TO COMPLY WITH REPORTING REQUIREMENTS

1-6. Complainant realleges and incorporates by reference herein paragraphs 1 through 6 of Count I as paragraphs 1 through 6 of this Count II.

7. On March 7, 1988, the Illinois EPA reissued to DMC NPDES Permit No. IL0003514. The reissued permit had an effective date of April 17, 1988 and an expiration date February 1, 1993.

8. On December 4, 1995, the Illinois EPA again reissued DMC's NPDES Permit No. IL0003514. The permit has an effective date of December 4, 1995 and an expiration date of November 30, 2000.

9. Section 12(f) of the Act, 415 ILCS 5/12(f) (1994), 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. . . .

10. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

Section 309.102 NPDES Permit Required

- a) Except as in compliance with the provision 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.

11. Section 305.102(a) and (b) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 305.102(a) and (b), provides as follows:

Section 305.102 Reporting Requirements

- a) Every person within this State operating a pretreatment works, treatment works, or wastewater source shall submit operating reports to the Agency at a frequency to be determined by the Agency. "Agency" means the Illinois Environmental Protection Agency. Such reports shall contain information regarding the quantity of influent and of effluent discharged, of wastes bypassed and of combined sewer overflows; the concentrations of those physical, chemical, bacteriological and radiological parameters which shall be specified by the Agency; information concerning the biological impact of the discharge as specified by the Agency, pursuant to Section 39 of the Act; and any additional information the Agency may reasonably require.
- b) Every holder of an NPDES (National Pollutant Discharge Elimination System) permit is required to comply with the monitoring, sampling, recording and reporting requirements set forth in the permit and this Chapter.

12. Special Condition 5 of NPDES Permit IL0003514 provides, in pertinent part, as follows:

SPECIAL CONDITION 5. The permittee shall record monitoring results on Discharge Monitoring Report forms using one such form for each discharge each month. The completed Discharge Monitoring Report form shall be submitted monthly to IEPA, no later than the 15th of the following month, unless otherwise specified by the Agency. . . .

13. Standard Condition 12(d)(1) of NPDES Permit No. IL0003514 provides as follows:

(12) Reporting requirements.

(d) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

14. From at least July 1992 and continuing to at least February 1, 1993, DMC failed to submit to the Illinois EPA DMR's for its WWTP.

15. By its conduct alleged herein, Respondent has violated Special Condition 5 and Standard Condition 12(d)(1) of its NPDES permit, Sections 309.102(a) and 305.102(a) and (b) of the Board's Water Pollution Regulations, and thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (1994).

WHEREFORE, Complainant respectfully requests that the Board enter an order in favor of Complainant and against Respondent, DMC, and grant 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 has caused or allowed violations of its NPDES permit, Section 12(f) of the Act, and Sections 309.102(a) and 305.102(a) and (b) of the Board's Water Pollution Regulations;
3. Ordering Respondent to cease and desist from any further violations of its NPDES permit, Section 12(f) of the Act, and Sections 309.102 and 305.102(a) and (b) of the Board's Water Pollution Regulations;
4. Assessing a civil penalty of \$10,000.00 against Respondent for each and every day of violation of Section 12(f) of the Act and Board's regulations;
5. Assessing all costs in this action, pursuant to Section 42(f) of the Act, including expert witness, consultant and attorney's fees expended by Complainant in its pursuit of this action, against the Respondent; and
6. Granting such other relief as the Board deems appropriate.

COUNT III

FAILURE TO RETAIN RECORDS

1-10. Complainant realleges and incorporates by reference herein paragraphs 1 through 10 of Count II as paragraphs 1 through 10 of this Count III.

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

Section 305.102 Reporting Requirements

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

12. Standard Condition 10(b) of NPDES Permit No. IL0003514 provides as follows:

(10) Monitoring and records.

(b) The permittee shall retain records of all monitoring information, including all calibration and maintenance records, and all original strip chart recordings for continuous monitoring instrumentation. Copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of this permit, measurement, report or application. This period may be extended by request of the Agency at any time.

13. On August 6, 1992, the Illinois EPA inspected DMC's WWTP and the WWTP's operations. During the inspection, the Illinois EPA

observed that DMC failed to keep maintenance and/or operating records for its facility.

14. From at least August 6, 1992 and continuing to a date better known to DMC, DMC failed to keep maintenance and/or operating records for its facility.

15. By its conduct alleged herein, Respondent has violated Standard Condition 10(b) of its NPDES permit, Sections 309.102(a) and 305.102(b) of the Board's Water Pollution Regulations, and thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (1994).

WHEREFORE, Complainant respectfully requests that the Board enter an order in favor of Complainant and against Respondent, DMC, and grant 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 has caused or allowed violations of its NPDES permit, Section 12(f) of the Act, and Sections 309.102(a) and 305.102(b) of the Board's Water Pollution Regulations;

3. Ordering Respondent to cease and desist from any further violations of its NPDES permit, Section 12(f), and Sections 309.102(a) and 305.102(b) of the Board's Water Pollution Regulations;

4. Assessing a civil penalty of \$10,000.00 against Respondent for each and every day of violation of Section 12(f) of the Act and Board's regulations;

5. Assessing all costs in this action, pursuant to Section 42(f) of the Act, including expert witness, consultant and attorney's fees expended by Complainant in its pursuit of this action, against the Respondent; and

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

COUNT IV

FAILURE TO HAVE A CERTIFIED CLASS K OPERATOR

1-10. Complainant realleges and incorporates by reference herein paragraphs 1 through 10 of Count II as paragraphs 1 through 10 of this Count IV.

11. Special Condition 7 of NPDES Permit No. IL0003514, effective April 17, 1988 and with an expiration date of February 1, 1993, provides as follows:

SPECIAL CONDITION 7. The use or operation of this facility shall be by or under the supervision of a Certified Class K operator.

12. On August 6, 1992, the Illinois EPA inspected DMC's facility. The inspection revealed that DMC failed to have the use or operation of its facility supervised by a Certified Class K operator.

13. From at least August 6, 1992 and continuing to a date better known to DMC, DMC failed to have the use or operation of its facility supervised by a Certified Class K operator.

14. By its conduct alleged herein, DMC violated Special Condition 7 of its NPDES permit, Section 309.102(a) of Board's Water Pollution Regulation, 35 Ill. Adm. Code 309.102(a), and thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (1994).

WHEREFORE, Complainant respectfully requests that this Board enter an order in favor of Complainant and against Respondent, DMC, and grant 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 has caused or allowed violations of its NPDES permit, Section 12(f) of the Act, and Section 309.102(a) of the Board's Water Pollution Regulations;
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attorney's fees expended by Complainant in its pursuit of this action, against the Respondent; and

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

PEOPLE OF THE STATE OF ILLINOIS

JAMES E. RYAN
Attorney General
State of Illinois

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

BY:

William D. Seith /jmc

WILLIAM D. SEITH, Chief
Environmental Bureau
Assistant Attorney General

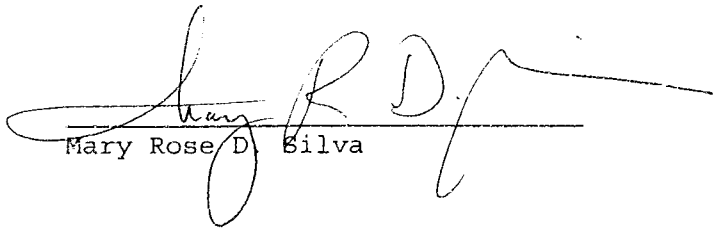
OF COUNSEL:

MARY ROSE D. SILVA
Assistant Attorney General
Environmental Bureau
100 W. Randolph St., 11th Flr.
Chicago, Illinois 60601
(312) 814-5282

c: \mrsco9h

CERTIFICATE OF SERVICE

I, MARY ROSE D. SILVA, an Assistant Attorney General in this case, do certify that on this 31st day of December 1996, I caused to be served by certified mail the foregoing Notice of Filing and Complaint upon the person(s) listed on the attached Service List by depositing same in the U.S. Mail depository located at 100 W. Randolph Street, Chicago, Illinois, in an envelope with sufficient postage prepaid.


Mary Rose D. Silva

c:\notice\dixon1.nt

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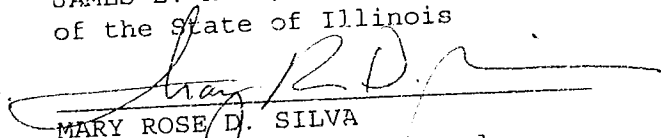
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of the State of Illinois

BY: 
MARY ROSE D. SILVA
Assistant Attorney General
Environmental Bureau
100 W. Randolph St., 11th Flr.
Chicago, Illinois 60601
(312) 814-5282

DATED: December 31, 1996

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Section 309.102 NPDES Permit Required

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11. DMC continued to discharge effluent into the Rock River after February 1, 1993, the date on which DMC's NPDES Permit No. IL0003514 expired.

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13. On December 4, 1995, the Illinois EPA reissued DMC's NPDES Permit No. IL0003514. The permit has an effective date of December 4, 1995 and an expiration date of November 30, 2000.

14. DMC failed to apply for the reissuance of its NPDES Permit No. IL0003541 not less than 180 days prior to the expiration date of said permit, as required by Section 309.104 of 35 Ill. Adm. Code.

15. From February 1, 1993 and continuing to December 4, 1995, DMC discharged contaminants into the Rock River without a valid NPDES permit.