

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 - vs -)
)
 BELVIDERE NATIONAL BANK and TRUST)
 COMPANY TRUST NUMBER 1600, a trust,)
 CORDRAY BROTERS, INC., an Illinois)
 corporation, and as sole beneficiary of)
 TRUST NO. 1600,)
)
 Respondents.)

PCB No.
 (Enforcement - Water)

NOTICE OF FILING

TO: See Attached Service List (VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby served upon you.

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.

NOTIFICATION

YOU ARE HEREBY NOTIFIED that financing may be available through the Illinois Environmental facilities financing act [20 ILCS 3515/1 *et seq.*] to correct the alleged pollution.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

LISA MADIGAN

Attorney General of the State of Illinois

BY:



PAULA BECKER WHEELER

Assistant Attorney General, EBN

188 W. Randolph St., 20th Floor

Chicago, Illinois 60601

312-814-1511

DATE: April 12, 2006


THIS FILING IS SUBMITTED ON RECYCLED PAPER

SERVICE LIST

Mr. Donald B. Larson, P.C.
Attorney at Law
Attorney for Respondents
215 South State Street
Belvidere, Illinois 61008

CERTIFICATE OF SERVICE

I, PAULA BECKER WHEELER, an attorney, do certify that I caused to be served this 12th day of April, 2006, the foregoing Complaint and Notice of Filing upon the person(s) listed on said Notice, by Certified Mail and U.S. MAIL.



PAULA BECKER WHEELER
Assistant Attorney General

Date: April 12, 2006

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
vs.)	
)	No. PCB
)	(Enforcement - Water)
BELVIDERE NATIONAL BANK and TRUST)	
COMPANY TRUST NUMBER 1600, a trust,)	
CORDRAY BROTHERS, INC., an)	
Illinois corporation, and as sole)	
beneficiary of TRUST NO. 1600)	
)	
Respondents.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, Belvidere National Bank and Trust Company Trust Number 1600, Cordray Brothers, Inc., an Illinois corporation, and as sole beneficiary of Trust No. 1600, as follows:

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 ("Act"), 415 ILCS 5/31 (2004).

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 (2004), 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)(2004).

3. At all times relevant to this Complaint, Respondent, Cordray Brothers, Inc., ("Cordray") was and is an Illinois corporation located in Belvidere, Boone County, Illinois. The corporate office is located at 454 North Appleton Road, Belvidere, Boone County, Illinois.

4. At all times relevant to this Complaint, Belvidere National Bank and Trust Company Trust Number 1600 ("Cordray Trust No. 1600") was and is a trust created pursuant to a Trust Agreement originally dated August 30, 1995.

5. At all times relevant to this Complaint, Cordray Trust Number 1600 was and is currently the record owner of approximately 25 vacant acres of land on Route 20, located in Bonus Township, the Northwest 1/4 of Section 33, Township 44 North, Range 4 East, east of the City of Belvidere and east of Coon Creek, on the north side of Route 20 and south of the Kishwaukee River, in Boone County, Illinois ("South Parcel").

6. At all times relevant to this Complaint, Cordray Brothers, Inc. is and was the sole beneficiary of Cordray Trust No. 1600.

7. At all times relevant to this Complaint, Respondent, Cordray Brothers, Inc., owned and operated and continues to own and operate a quarry for sand and gravel production. The site of the quarry encompasses approximately 45 acres of land and is located in Bonus Township, the Southwest 1/4 of Section 28, Township 44 North, Range 4 East, east of the City of Belvidere, west of Epworth Road, and immediately across the Kishwaukee River from the South Parcel, in Boone County, Illinois ("North Parcel").

8. Storm water from the South Parcel discharges to the Kishwaukee River and/or Coon Creek.

9. Section 3.550 of the Act, 415 ILCS 5/3.550 (2004), contains 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.

10. The Kishwaukee River and Coon Creek, are both "waters" of the State of Illinois as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2004).

11. On or about July 1, 2004 and continuing until November 20, 2004, Respondent Cordray deposited soil in large stockpiles from its adjacent quarry operations onto the South Parcel without utilizing any erosion controls to contain the soil.

12. Respondents' containment measures were not sufficient to prevent the threat of silt discharges from the South Parcel into the nearby Kishwaukee River and Coon Creek.

13. Respondents' placement of the soils from the adjacent quarry onto the South Parcel, was not covered under any general NPDES storm water permit for construction site activities. Further, Respondents' did not implement any storm water pollution prevention plan to establish erosion controls on the South Parcel.

14. Section 12(a) of the Act, 415 ILCS 5/12(a) (2004), provides as follows:

No person shall:

- a. Cause or threaten or allow the discharge of any contaminant 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.

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2004), 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.

16. Respondents, Cordray Trust Number No. 1600, and Cordray Brothers, Inc., a corporation, are "persons" as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2004).

17. Section 3.165 of the Act, 415 ILCS 5/3.165 (2004), provides the following definition:

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

18. Silt-laden storm water is a contaminant as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2004).

19. Section 3.545 of the Act, 415 ILCS 5/3.545 (2004), 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.

20. The silt-laden storm water which threatened to flow from the South Parcel into the Kishwaukee River and/or Coon Creek, would alter the physical, thermal, chemical, or radioactive properties of the River and Creek and would be likely to render it harmful, detrimental or injurious to wild animals, birds, fish, and other aquatic life, or would be likely to create a nuisance.

21. By threatening or allowing the discharge of silt-laden storm water from the South Parcel into the Kishwaukee River and Coon Creek so as to tend to cause water pollution, Respondents violated section 12(a) of the Act, 415 ILCS 5/12(a) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, BELVIDERE NATIONAL BANK and TRUST COMPANY TRUST NUMBER 1600, CORDRAY BROTHERS, INC., an Illinois corporation, and as sole beneficiary of Trust No. 1600, on this Count I:

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

2. Finding that Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);

3. Ordering the Respondents to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents for each violation of Section 12(a) of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation;

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

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

COUNT II
CREATING A WATER POLLUTION HAZARD

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 20 of Count I as paragraphs 1 through 20 of this Count II.

21. Section 12(d) of the Act, 415 ILCS 5/12(d) (2004), provides as follows:

No person shall:

* * * * *

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

22. Respondents placed large dirt stockpiles on the South Parcel. Dirt and silt from Respondents stockpiles threatened to run offsite and flow into the Kishwaukee River and/or Coon Creek.

23. By allowing large dirt stockpiles, a contaminant, to accumulate on the South Parcel adjacent to the Kishwaukee River and Coon Creek, Respondents created a water pollution hazard and thereby violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, BELVIDERE NATIONAL BANK and TRUST COMPANY TRUST NUMBER 1600, CORDRAY BROTHERS, INC., an Illinois corporation, and as sole beneficiary of Trust No. 1600, on this Count II:

1. Authorizing a hearing in this matter at which time the

Respondent will be required to answer the allegations herein;

2. Finding that the Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);

3. Ordering the Respondent to cease and desist from any further violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2004);

4. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents for each violation of Section 12(d) of the Act and pertinent regulations, and an additional penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation;

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

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

COUNT III

FAILURE TO OBTAIN A NPDES PERMIT

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 20 of Count I as paragraphs 1 through 20 of this Count III.

21. Section 12(f) of the Act, 415 ILCS 5/12(f) (2004), 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, any 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 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.

22. Section 309.102(a) of the 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.

23. From July 1, 2004, when Respondents first started accumulating dirt stockpiles on the South Parcel until December 27, 2004, Respondents did not have a general NPDES storm water permit.

24. By threatening to allow and/or allowing storm water discharges from the South Parcel without first obtaining coverage under the general NPDES storm water permit, Respondents violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004) and 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondents, BELVIDERE NATIONAL BANK and TRUST COMPANY TRUST NUMBER 1600, CORDRAY BROTHERS, INC., an Illinois corporation, and as sole beneficiary of Trust No. 1600, on this Count III:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations herein;
2. Finding that Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2004) and 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondents to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2004) and 35 Ill. Adm. Code 309.102(a);
4. Assessing against the Respondents a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation;
5. Ordering Respondents to pay all costs, pursuant to Section 42(f) of the Act, including attorney, expert witnesses and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

COUNT IV
FAILURE TO OBTAIN A MINING PERMIT

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 5/31 (2004), and against the Respondent, CORDRAY BROTHERS, INC., an Illinois corporation.

2-9. Complainant realleges and incorporates by reference herein paragraphs 2,3,7,9,10, and 14 through 16 of Count I as paragraphs 2 through 9 of this Count IV.

10. Section 404.101(a)(2) of the Board Water Pollution regulations, 35 Ill. Adm. Code 404.101(a)(2), provides, in pertinent part, as follows:

Construction and Operating Permits: State Permits

a) Except as provided in Sections 404.102 and 404.103, no person shall:

* * * *

2) Carry out mining activities without an operating permit.

11. From at least 1981, or on a date better known to the Respondent, Cordray Brothers, Inc., and continuing until the date of the filing this Complaint, Cordray has carried out mining activities on the North Parcel, without an operating permit.

12. By operating its quarry on the North Parcel without first obtaining an operating permit from the Illinois EPA, Cordray violated and 35 Ill. Adm. Code 404.101(a)(2), and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(A) (2004).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, CORDRAY BROTHERS, INC., on this Count IV:

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

2. Finding that Respondent has violated 35 Ill. Adm. Code 404.101(a)(2), and Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);

3. Ordering the Respondent to cease and desist from any further violations of Section 35 Ill. Adm. Code 404.101(a)(2), and Section 12(a) of the Act, 415 ILCS 5/12(a) (2004);

4. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) per day for each day of each violation;

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

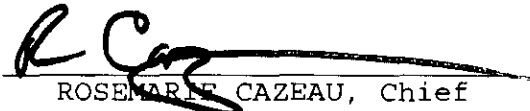
6. Granting such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS

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