

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

<b>PEOPLE OF THE STATE OF ILLINOIS,</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>PCB No.</b>
	)	<b>(Land – Enforcement)</b>
	)	
<b>WESTERN SAND &amp; GRAVEL</b>	)	
<b>COMPANY, LLC.,</b>	)	
<b>an Illinois Corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**NOTICE OF FILING**

TO: National Group Services Corp.  
131 S. Dearborn Street  
Suite 2400  
Chicago, Illinois 60603

Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Ste. 11-500  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on this date I 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 serve 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

LISA MADIGAN,  
Attorney General of the  
State of Illinois

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

BY: 

ANDREW J. NICHOLAS  
Assistant Attorney General  
Environmental Bureau  
69 W. Washington St., Suite 1800  
Chicago, Illinois 60602  
312/814-2069

DATE: September 30, 2009

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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<b>WESTERN SAND &amp; GRAVEL</b>	)	
<b>COMPANY, LLC.,</b>	)	
<b>an Illinois Corporation,</b>	)	
	)	
<b>Respondent.</b>	)	

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of the Respondent, WESTERN SAND & GRAVEL COMPANY, LLC, an Illinois corporation, as follows:

**COUNT I**

**CLEAN CONSTRUCTION OR DEMOLITION DEBRIS  
LOAD CHECKING VIOLATIONS**

1. This Count is brought by the Attorney General 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 (2008).

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 (2008), and charged, *inter alia*, with the duty of enforcing the Act and proceedings before the Illinois Pollution Control Board (“Board”).

3. At all times relevant to this Complaint, WESTERN SAND AND GRAVEL, LLC (“WS&G”), was and is an Illinois corporation in good standing with the State of Illinois.

4. At all times relevant to this Complaint, WS&G owns and operates a Clean

Construction or Demolition Debris ("CCDD") facility located at the intersection of 178 and I-80, La Salle, Illinois 60301 ("Facility").

5. On September 26, 2007, the Illinois EPA conducted a CCDD disposal site inspection at the Facility. The inspectors observed a fill area that contained broken concrete, rocks and soil.

6. During the September 26, 2007 inspection, the Illinois EPA learned that WS&G was not visually inspecting each load of fill brought to the Facility, was not conducting random discharge inspections, and was not using a photo ionization detection ("PID") instrument for its inspections.

7. The Illinois EPA also learned that WS&G did not properly train its employees to screen incoming CCDD, did not keep written procedures for its load checking/load rejection and training policies, and did not maintain an operating record at the Facility. In addition, WS&G did not adequately restrict unauthorized access to the Facility and did not have a sign at the entrance of the Facility, stating that only CCDD is accepted as fill.

8. On January 16, 2008, WS&G was issued Violation Notice ("VN") #L-2007-01371 by the Illinois EPA.

9. On February 7, 2008, WS&G responded to the VN with a proposed compliance commitment agreement ("CCA").

10. On March 6, 2008, the Illinois EPA rejected WS&G's CCA.

11. In February 2008, WS&G submitted an application to the Illinois EPA for a permit to operate a CCDD fill operation.

12. On January 8, 2009, the Illinois EPA sent to WS&G a Notice of Intent to Pursue Legal Action ("NITPLA").

13. On June 5, 2009, the Illinois EPA issued Operating Permit No. CCDD2008-012-DE/OP to WS&G.

14. Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), provides as follows:

- a) No person shall conduct any clean construction or demolition debris fill operation in violation of this Act or any regulations or standards adopted by the Board.

15. Section 1100.201(a) of the Illinois Pollution Control Board's ("Board") CCDD Regulations, 35 Ill. Adm. Code 1100.201(a), provides as follows:

Prohibitions

- a) No person shall conduct any CCDD fill operation in violation of the Act or any regulations or standards adopted by the Board.

16. Section 1100.205 of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.205, provides, in pertinent part, as follows:

Load Checking

The owner or operator must institute and conduct a load checking program designed to detect attempts to dispose of waste at the facility. At a minimum, the load checking program must consist of the following components:

- a) Routine Inspections
  - 1) An inspector designated by the facility must inspect every load before its acceptance at the facility utilizing an elevated structure, a designated ground level inspection area, or another acceptable method as specified in the Agency permit. In addition to a visual inspection, the inspector must use an instrument with a photo ionization detector utilizing a lamp of 10.6 eV or greater or an instrument with a flame ionization detector, or other monitoring devices approved by the Agency, to inspect each load. All instruments shall be interpreted based on the manufacturer's margin of error. Any reading in excess of background levels using any of these instruments must result in the rejection of the inspected load. In addition, any reading in excess of background levels on any monitoring device used

by the Agency during an Agency inspection must result in the rejection of the inspected load.

\* \* \* \* \*

b) Random Inspections

- 1) In addition to the inspections required under subsection (a) of this Section, an inspector designated by the facility must conduct a discharge inspection of at least one randomly selected load delivered to the facility each day. The driver of the randomly selected load must be directed to discharge the load at a separate, designated location within the facility. The inspector must conduct an inspection of the discharged material that includes, but is not limited to, additional visual inspection and additional instrument testing using the instruments required under subsection (a)(1) of this Section. All instruments shall be interpreted based on the manufacturer's margin of error. Any reading in excess of background levels using any of these instruments must result in the rejection of the inspected load. In addition, any reading in excess of background levels on any monitoring device used by the Agency during an Agency inspection must result in the rejection of the inspected load.

\* \* \* \* \*

c) Documentation of Inspection Results

The documentation for each inspection must include, at a minimum, the following:

- 1) The date and time of the inspection, the name of the hauling firm, the vehicle identification number or license plate number, and the source of the CCDD;
- 2) The results of the routine inspection required under subsection (a) of this Section, including, but not limited to, the monitoring instruments used, whether the load was accepted or rejected, and for rejected loads the reason for the rejection;

- 3) The results of any random inspection required under subsection (b) of this Section, including, but not limited to, the monitoring instruments used, whether the load was accepted or rejected, and for rejected loads the reason for the rejection; and
- 4) The name of the inspector.

\* \* \* \* \*

- g) The owner or operator must ensure that all appropriate facility personnel are properly trained in the identification of material that is not CCDD.
- h) All field measurement activities relative to equipment and instrument operation, calibration and maintenance and data handling shall be conducted in accordance with the following:
  - 1) "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), Vol. One, Ch. One (Quality Control), incorporated by reference at Section 1100.104 of this Part;
  - 2) The equipment or instrument manufacturer's or vendor's published standard operating procedures; or
  - 3) Other operating procedures specified in the Agency permit.

\* \* \* \* \*

17. Section 1100.103 of the Board's CCDD Regulations, 35 Ill. Adm. Code

1100.103, provides, in relevant part, the following definitions:

\* \* \* \* \*

"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.

"Operator" means a person responsible for the operation and maintenance of a CCDD fill operation.

"Owner" means a person who has any direct or indirect interest in a CCDD fill operation or in land on which a person operates and

maintains a CCDD fill operation. A "direct or indirect interest" does not include the ownership of publicly traded stock. The "owner" is the "operator" if there is no other person who is operating and maintaining a CCDD fill operation.

"Unit" means a contiguous area within a facility that is permitted for the placement of CCDD as fill material.

"Working face" means any part of a unit where CCDD is being placed as fill.

18. Section 3.315 of the Act, 415 ILCS 5/3.315 (2008), provides the following definition:

"PERSON" is an individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust estate, political subdivision, state agency, or other legal entity, or their legal representative, agent or assigns.

19. WS&G is a "person" as that term is defined by 415 ILCS 5/3.315 (2008).

20. WS&G has a direct or indirect interest in its CCDD fill operation and is therefore an "owner" as that term is defined by 35 Ill. Adm. Code 1100.103.

21. WS&G is responsible for the operation and maintenance of its CCDD fill operation and is therefore an "operator" as that term is defined by 35 Ill. Adm. Code 1100.103.

22. Beginning on a date better known to WS&G, and on at least September 26, 2007, continuing to a date better known by WS&G, WS&G failed to conduct visual inspections and inspections with a PID instrument for each load coming into the Facility.

23. By failing to conduct visual inspections and inspections with a PID instrument for each load coming into the Facility, WS&G violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.205(a)(1) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(a)(1).

24. Beginning on a date better known to WS&G, and on at least September 26, 2007, continuing to a date better known by WS&G, WS&G failed to conduct a discharge inspection of



at least one randomly selected load delivered to the Facility each day.

25. By failing to conduct a discharge inspection of at least one randomly selected load delivered to the Facility each day, WS&G violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.205(b)(1) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(b)(1).

26. Beginning on a date better known to WS&G, and on at least September 26, 2007, continuing to a date better known by WS&G, WS&G failed to retain records evidencing a load checking program is being used at the Facility.

27. By failing to retain records evidencing that a load checking program is being used at the Facility, WS&G violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.205(c) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(c).

28. Beginning on a date better known to WS&G, and on at least September 26, 2007, continuing to a date better known by WS&G, WS&G failed to properly train its personnel at the Facility to identify material that is not CCDD.

29. By failing to properly train its personnel at the Facility to identify material that is not CCDD, WS&G violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.205(g) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(g).

30. Beginning on a date better known to WS&G, and on at least September 26, 2007, continuing to a date better known by WS&G, WS&G failed to keep and maintain a calibrated PID at the Facility for checking loads of CCDD.

31. By failing to keep and maintain a calibrated PID at the Facility for checking loads

of CCDD, WS&G violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.205(h) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.205(h).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against the Respondent, WESTERN SAND & GRAVEL COMPANY, LLC, an Illinois corporation:

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 the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and
5. Granting such other relief as the Board may deem appropriate.

## COUNT II

### **CLEAN CONSTRUCTION OR DEMOLITION DEBRIS BOUNDARY CONTROL VIOLATIONS**

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 15 and 17 through 21 of Count I as paragraphs 1 through 20 of this Count II.

21. Section 1100.207 of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.207, provides as follows:

- a) Unauthorized vehicular access to the working face of all units and to all other areas within the boundaries of the facility must be restricted.

- b) A permanent sign must be posted at the entrance to the facility or each unit stating that only CCDD is accepted for use as fill.

22. Beginning on a date better known to WS&G, and on at least September 26, 2007, continuing to a date better known by WS&G, WS&G failed to restrict unauthorized vehicular access to the working face of the Facility.

23. By failing to restrict unauthorized vehicular access to the working face of the Facility, WS&G violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.207(a) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.207(a).

24. Beginning on a date better known to WS&G, and on at least September 26, 2007, continuing to a date better known by WS&G, WS&G failed to post a permanent sign at the entrance to the Facility stating that only CCDD is accepted for use as fill.

25. By failing to post a permanent sign at the entrance to the Facility stating that only CCDD is accepted for use as fill, WS&G violated Section 22.51(a) of the Act, 415 ILCS 5/22.51(a) (2008), and Sections 1100.201(a) and 1100.207(b) of the Board's CCDD Regulations, 35 Ill. Adm. Code 1100.201(a) and 1100.207(b).

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, WESTERN SAND & GRAVEL COMPANY, LLC, an Illinois corporation:

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 the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act

and associated regulations;

4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and

5. Granting such other relief as the Board may deem appropriate.

### COUNT III

#### **CLEAN CONSTRUCTION OR DEMOLITION DEBRIS RECORD KEEPING VIOLATIONS**

1-20. Complainant realleges and incorporates by reference herein paragraphs 1 through 15 and 17 through 21 of Count I as paragraphs 1 through 20 of this Count III.

21. Section 1100.210 of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.210, provides as follows:

##### Recordkeeping Requirements

The owner or operator must maintain an operating record at the facility or in some alternative location specified in the Agency permit. The owner or operator must make the operating record available for inspection and copying by the Agency upon request during normal business hours. Information maintained in the operating record must include, but is not limited to, the following:

- a) Any information submitted to the Agency pursuant to this Part, including, but not limited to, copies of all permits, permit applications, and annual reports;
- b) Written procedures for load checking, load rejection notifications, and training required under Section 1100.205 of this Part.

22. Beginning on a date better known to WS&G, and on at least September 26, 2007, continuing to a date better known by WS&G, WS&G failed to maintain an operating record at the Facility.

23. By failing to maintain an operating record at the Facility, WS&G violated

Sections 21(d)(2), (e) and 22.51(a) of the Act, 415 ILCS 5/21(d)(2), (e) and 22.51(a) (2008), and Sections 1100.201(a) and 1100.210 of the Board CCDD Regulations, 35 Ill. Adm. Code 1100.210.

WHEREFORE, Complainant, the PEOPLE OF THE STATE OF ILLINOIS, respectfully request that the Board enter an order against the Respondent, WESTERN SAND & GRAVEL COMPANY, LLC, an Illinois corporation:

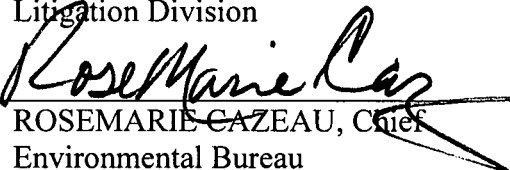
1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated the Act and regulations as alleged herein;
3. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
4. Assessing against Respondent a civil penalty of fifty thousand dollars (\$50,000) for each violation of the Act, and an additional penalty of ten thousand dollars (\$10,000) for each day during which each violation has continued thereafter; and
5. Granting such other relief as the Board may deem appropriate.

Respectfully submitted,

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

ANDREW J. NICHOLAS

Assistant Attorney General

69 W. Washington St., Suite 1800

Chicago, IL 60602

Tel: 312/814-2069

**CERTIFICATE OF SERVICE**

I, ANDREW J. NICHOLAS, an Assistant Attorney General, do certify that I caused to be served on this 30<sup>th</sup> day of September 2009, the foregoing Notice of Filing, Complaint, and a Certificate of Service, upon the persons listed on said Notice by placing same in an envelope bearing sufficient postage with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois.



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ANDREW J. NICHOLAS