

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

**NOTICE OF FILING**

To: See Attached Service List.  
(VIA ELECTRONIC FILING)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Complainant's Complaint for Civil Penalties, a copy of which is herewith 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.

LISA MADIGAN  
Attorney General  
State of Illinois

  
JENNIFER A. VAN WIE

Dated: June 21, 2010

Jennifer A. Van Wie  
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Environmental Bureau  
Illinois Attorney General's Office  
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**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

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

**COMPLAINT FOR CIVIL PENALTIES**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, ROCKFORD SAND AND GRAVEL, INC., a division of Rockford Blacktop Construction Co., an Illinois corporation, 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, 415 ILCS 5/31 (2008).
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.
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.
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.

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").

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

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.

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.

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.

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.

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

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.

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.

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.

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.

16. On February 15, 2008, 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.

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.

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.

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.

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

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

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.

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.

24. Section 12(a) of the Act, 415 ILCS 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.

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.

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).

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.

28. TSS is a “contaminant” as that term is defined by Section 3.165 of the Act, 415

ILCS 5/3.165 (2008).

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.

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.

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).

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.

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).

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).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully

requests that the Board enter an order against Respondent, ROCKFORD SAND & GRAVEL, INC., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2008);
3. Order Respondent to cease and desist from any further violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2008);
4. Order the Respondent to comply with all the terms and conditions of its NPDES Permit at the Facility;
5. Assess against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board regulations, and an additional civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2008), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Grant such other relief as the Board deems appropriate and just.

**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.

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

\* \* \*

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.

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.

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.

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).

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.

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 5/12(f) (2008), 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 against Respondent, ROCKFORD SAND & GRAVEL, INC., for the following relief:

1. Authorize a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Find that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a);
3. Order Respondent to cease and desist from any further violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2008), and Section 309.102(a) of the Board Water Pollution regulations, 35 Ill. Adm. Code 309.102(a);
4. Order the Respondent to comply with all the terms and conditions of its NPDES Permit at the Facility;
5. Assess against the Respondent a civil penalty of Ten Thousand Dollars

(\$10,000.00) for each day of each violation;

6. Order Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2008), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
7. Grant such other relief as the Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS,  
by 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:

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69 W. Washington Street, Suite 1800  
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(312) 814-0609

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached Complaint for Civil Penalties, by U.S. Certified Mail (return receipt requested), upon the following persons:

Charles F. Helsten  
Hinshaw & Culbertson LLP  
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P.O. Box 1389  
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Date: June 21, 2010