

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by LISA MADIGAN, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No.
)	(Enforcement)
AMERICAN EXCAVATING & SEPTIC)	
SERVICES, INC., an Illinois corporation, and)	
CBS LEASING, L.L.C., an Illinois limited)	
liability company,)	
)	
Respondents.)	

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, 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: February 28, 2011

Jennifer A. Van Wie
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

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 liability company,)
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 Respondents.)

PCB No.
(Enforcement)

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondents, AMERICAN EXCAVATING & SEPTIC SERVICES, INC. and CBS LEASING, L.L.C., as follows:

COUNT I
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 Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2010).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in 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 enforcement of the Illinois Pollution Control Board’s Water Pollution Regulations (“Board Water Pollution Regulations”), at 35 Ill. Adm. Code Subtitle C, Chapter I, and is also

responsible for administering the Federal Clean Water Act's National Pollutant Discharge Elimination System ("NPDES") permit program, 33 U.S.C. § 1343(b)(7), within the State of Illinois.

3. At all times relevant to this Complaint, Respondent, AMERICAN EXCAVATING & SEPTIC SERVICES, INC. ("AESS"), has been an Illinois corporation registered in good standing with the Illinois Secretary of State's office.

4. At all times relevant to this Complaint, Respondent, CBS LEASING, L.L.C. ("CBS"), has been an Illinois limited liability company registered and in good standing with the Illinois Secretary of State's office. Respondent CBS's president, Carl Schoenhard, is the owner of certain property located at 8937 West Stagecoach Trail, Galena, Jo Daviess County, Illinois ("Site").

5. On information and belief, beginning on or about May 17, 2006, or on a date better known to Respondents, Respondents commenced mining activities at the Site without an Illinois EPA-issued operating permit for mining operations. Respondents' mining operations at the Site utilize various types of heavy construction equipment, including but not limited to, a loader; a large, articulated dump truck; a tractor/trailer unit; crushing and classifying equipment; and various conveyors ("heavy construction equipment").

6. On July 22, 2009, an inspector from Illinois EPA visited the Site to determine its operational status ("July 22nd Inspection").

7. At the time of the July 22nd Inspection, Illinois EPA had not issued an operating permit or NPDES permit for the Site.

8. During the July 22nd Inspection, the Illinois EPA inspector found stockpiles of aggregate and mining equipment at the Site. The inspector also noted that storm water flows exited the Site to a roadside ditch along Stagecoach Trail and flowed eastward to a culvert near the Site's entrance. Flows drained through the culvert under Stagecoach Trail and entered a tributary to the Galena River. The Illinois EPA inspector noted that silt-laden sediment was leaving the Site and flowing into the ditch. She also observed silt-laden sediment on the south side of Stagecoach Trail in the drainage ditch.

9. On December 1, 2009, Illinois EPA sent violation notice ("VN") W-2009-00287 to AESS and VN W-2009-00288 to CBS, citing the Respondents for their failure to obtain an Illinois EPA mining permit for their mining operations at the Site and for unlawful discharge of contaminants into the waters of the state.

10. On March 16, 2010, Respondents submitted a proposed Compliance Commitment Agreement ("CCA") response to the VN which included an application for an operating permit which would authorize Respondent's mining operations at the Site.

11. On April 22, 2010, the Illinois EPA rejected the CCA.

12. On June 18, 2010, the Illinois EPA issued Respondent CBS a state mining permit allowing it to construct and operate a mine at the Site.

13. On June 22, 2010, pursuant to Section 31(b) of the Act, 415 ILCS 5/31(b) (2010), the Illinois EPA sent a Notice of Intent to Pursue Legal Action ("NIPLA") to the Respondents regarding the violations.

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

No person shall:

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.

15. 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.

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

17. CBS, a limited liability company, is a “person,” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2010).

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

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

19. The silt-laden water discharged from the Site, which then flows into the tributary to the Galena River, is a “contaminant,” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2010).

20. Section 3.545 of the Act, 415 ILCS 5/3.545 (2010), provides the following definition:

“Water pollution” is such alteration for 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.

21. Respondents' discharge of silt-laden water, a contaminant, into the roadside ditch and a tributary to the Galena River altered, or threatened to alter, the physical, thermal, chemical, biological or radioactive properties of the roadside ditch and a tributary of the Galena River; rendered, or was likely to render, the Galena River harmful or detrimental or injurious to wild animals, birds, fish and other aquatic life; or created, or was likely to create, a nuisance, and, therefore, constituted "water pollution" as defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2010).

22. 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.

23. The roadside ditch and the tributary into Galena River are each "waters" of the State of Illinois, as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2010).

24. By allowing silt-laden water to be discharged from the Site into the roadside ditch and the tributary to the Galena River, Respondents caused 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 Pollution Control Board enter an order against Respondents, AESS and CBS, with respect to Count I:

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

2. Finding that Respondents have violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2010);
3. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents for each violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2010), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;
4. Taxing all costs of this action to the Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and
5. Granting such other relief as the Board deems appropriate and just.

COUNT II
OPERATION OF EQUIPMENT CAPABLE OF CAUSING OR CONTRIBUTING
TO WATER POLLUTION WITHOUT A PERMIT

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 and 15 through 23 of Count I as paragraphs 1 through 22 of this Count II.

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

No person shall:

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.

24. The heavy construction equipment which Respondents use in conducting their mining operations at the Site is capable of causing or contributing to water pollution.

25. By operating heavy construction equipment in their mining operations which was capable of causing or contributing to water pollution in the roadside ditch and

the tributary to the Galena River, without first obtaining an Illinois EPA-issued construction or operating permit, Respondents 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 Pollution Control Board enter an order against Respondents, AESS and CBS, with respect to Count II:

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

2. Finding that Respondents have violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2010);

3. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents for each violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2010), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continued;

4. Taxing all costs of this action to Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

COUNT III
CREATION OF WATER POLLUTION HAZARD

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 and 15 through 23 of Count I as paragraphs 1 through 22 of this Count III.

23. Section 12(d) of the Act, 415 ILCS 5/12(d) (2010), provides as follows:

No person shall:

Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

24. Respondents allowed silt-laden sediment to be discharged from the Site and enter a drainage ditch tributary to the Galena River as a result of the mining operations conducted thereon. Therefore, Respondents have deposited contaminants upon the land in such place and manner so as to create a water pollution hazard.

25. By depositing contaminants upon the land in such place and manner so as to create a water pollution hazard, Respondents violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondents, AESS and CBS, with respect to Count III:

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

2. Finding that Respondents have violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2010);

3. Assessing a civil penalty of Fifty Thousand Dollars (\$50,000.00) against Respondents for each violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2010), with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which each violation continues;

4. Taxing all costs of this action to Respondents pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness, and consultant fees expended by the State in its pursuit of this action; and

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

COUNT IV
DISCHARGING WITHOUT A PERMIT

1-22. Complainant realleges and incorporates by reference herein paragraphs 1 through 13 and 15 through 23 of count I as paragraphs 1 through 22 of this Count IV.

23. Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), provides as follows:

No person shall:

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.

24. Section 401.11(d) of the Code of Federal Regulation ("C.F.R."), 40 C.F.R. 401.11(d), provides as follows:

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.

25. The ditch into which silt-laden storm water was discharged from the Site and which flows through the culvert into a tributary to the Galena River, is a point source within the meaning of 40 C.F.R. 401.11(d).

26. By allowing the silt-laden storm water to be discharged from the Site into the ditch, and then into the tributary to the Galena River, without a NDPEs permit, Respondents allowed the discharge of a contaminant into the waters of the State without an NPDES permit for point source discharges.

27. By allowing the discharge of a contaminant into the waters of the State without an NPDES permit for point source discharges, Respondents violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondents, AESS and CBS, with respect to Count IV:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations contained herein;
2. Finding that Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010);
3. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violation continues;
4. Taxing all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
5. Granting such other relief as the Board deems appropriate and just.

COUNT V
FAILURE TO OBTAIN A PERMIT TO CONSTRUCT OR CONDUCT MINING
OPERATIONS

1-23. Complainant realleges and incorporates by reference herein paragraphs 1 through 23 of Count IV as paragraphs 1 through 23 of this Count V.

24. Section 404.101(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 404.101(a), provides as follows:

Except as provided in Section 404.102 and 404.103 no person shall:

- (1) Prepare land for mining activities or construct a mine related facility which could generate refuse, result in a discharge or have the potential to cause water pollution without a construction permit; or
- (2) Carry out mining activities without an operating permit.

25. On or about May 17, 2006, or on a date better known to Respondents, Respondents prepared the Site for mining activities and constructed a mine-related facility thereon.

26. The mining activities conducted by the Respondents at the Site resulted in a discharge of contaminants and/or had the potential to cause water pollution and thus Respondent's mining activities at the Site were conducted in violation of Section 404.101(a)(1) and (2) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 404.101(a)(1) and (2) .

27. By conducting mining activities in violation of Section 404.101(a)(1) and (2) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 404.101(a)(1) and (2), Respondents thereby violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010).


WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondents, AESS and CBS, with respect to Count V:

1. Authorizing a hearing in this matter at which time the Respondents will be required to answer the allegations contained herein;
2. Finding that Respondents have violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2010), and Section 404.101(a)(1) and (2) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 404.101(a)(1) and (2);

3. Assessing a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violation continues;
4. Taxing all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2010), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
5. Granting 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
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BY: 
ROSEMARIE CAZEAU, Chief
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(312) 814-0609

CERTIFICATE OF SERVICE

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

Todd L. Stevenson
Kane, Norby & Reddick, P.C.
2100 Asbury Road, Suite 2
Dubuque, Iowa 52001-3091

James E. Goodman, Jr.
O'Conner & Thomas, P.C.
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Date: February 28, 2011