

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB No.
	)	(Enforcement - Water)
BINGHAM COMMERCIAL CONSTRUCTION,	)	
INC., an Illinois corporation,	)	
	)	
Respondent.	)	

**NOTICE OF ELECTRONIC FILING**

TO: See attached service list

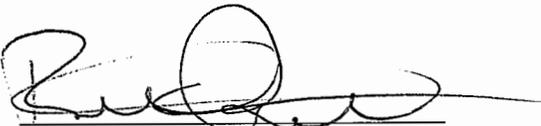
PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing the following Complaint, a copy of which is attached and hereby served upon you.

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 violations.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,  
LISA MADIGAN, Attorney General of the State of  
Illinois

By: 

ROBERT W. PETTI  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
69 W. Washington St., 18th Floor  
Chicago, Illinois 60602  
(312) 814-2069

Date: July 30, 2013

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

Service List

John Therriault  
Assistant Clerk  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, IL 60601  
*(by electronic filing)*

Steven J Bingham  
Bingham Commercial Construction, Inc.  
400 Cherry Ave.  
Rochelle, IL 61068  
*(by Certified Mail Return Receipt Requested)*

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	)	
Respondent.	)	

**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, complains of Respondent, BINGHAM COMMERCIAL CONSTRUCTION, INC., 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 (“Act”), 415 ILCS 5/31 (2012), and is an action for civil penalties.

2. The Illinois EPA is an administrative agency of the State of Illinois, created by Section 4 of the Act, 415 ILCS 5/4 (2012), and charged, inter alia, with the duty of enforcing the Act.

3. At all times relevant to this Complaint, Respondent, Bingham Commercial Construction, Inc. (“Bingham” or “Respondent”) was and is an Illinois corporation in good

standing with the Illinois Secretary of State.

4. At all times relevant to this Complaint, Respondent was and is the owner of the property located at 238 North Main Street, Rochelle, Ogle County, Illinois ("Site").

5. On or about April 20, 2012, on dates better known to the Respondent, Respondent was performing renovations to a warehouse at the Site. As part of the renovations, Respondent used an unknown amount of water to loosen hardened bags of diammonium phosphate ("DAP") fertilizer and DAP fertilizer dried onto the floor of the warehouse at the Site.

6. DAP is made up of ammonia and phosphoric acid, and is commonly used as a plant fertilizer.

7. During the renovations, the wash water used by the Respondent to loosen the bags of DAP fertilizer and to remove the DAP on the floors discharged into the Site's sanitary sewer.

8. The sanitary sewer at the Site is connected to the City of Rochelle's publicly-owned treatment works located at 888 Treatment Plant Road, Rochelle, Ogle County, Illinois (the "POTW"). The City of Rochelle holds a National Pollution Discharge Elimination System ("NPDES") Permit, Permit No. IL0030741, for operation of the POTW, which has a single outfall for the discharge of treated effluent into the Kyte River.

9. On April 22, 2012, there was an elevation in the phosphorus and ammonia concentrations in the influent waters received by the POTW.

10. On information and belief, the source of the elevated levels of phosphorus and ammonia discovered on April 22, 2012, came from the wash water containing DAP that entered the sanitary sewer at the Site during the Respondent's renovation work.

11. On April 26, 2012 Illinois EPA inspected the Site. At that time, Steve Bingham, president and registered agent of Bingham, confirmed that wash water used to clean DAP at the Site had entered the sanitary sewer at the Site.

12. From April 25, 2012 through April 30, 2012, an excess flow lagoon not used in the normal treatment process at the POTW was put into service to hold the influent waters containing elevated levels of phosphorus and ammonia.

13. The influent waters to the POTW were held in the excess flow lagoon because longer than normal nitrification of the influent waters was necessary to reduce the levels of ammonia and phosphorus before the POTW could discharge this water to the Kyte River in compliance with the NPDES permit.

14. Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), 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.

15. Section 3.315 of the Act, 415 ILCS 5/3.315 (2012), provides as follows:

“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. Respondent, an Illinois municipal corporation, is a “person,” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2012).

17. Section 3.550 of the Act, 415 ILCS 5/3.550 (2012), provides as follows:

“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.

18. The Kyte River constitutes “waters” of the State of Illinois, as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2012).

19. Section 3.165 of the Act, 415 ILCS 5/3.165 (2012), provides as follows:

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

20. DAP is a “contaminant” as that term is defined by Section 3.165 of the Act, 415 ILCS 5/3.165 (2012).

21. Section 3.545 of the Act, 415 ILCS 5/3.545 (2012), provides as follows:

“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.

22. Causing or allowing the discharge of DAP into the sanitary sewer and the POTW may cause serious harm to the POTW by upsetting the treatment process, interfering with the normal operations of the treatment plant, and allowing DAP or other wastewater contaminants to pass through the POTW untreated and discharge into the Kyte River, or requiring the utilization of measures by the POTW to address the exceedence, interfering with the normal operation of other processes and functions of the POTW.

23. DAP passing through the POTW untreated into the Kyte River 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.

24. By causing or allowing wash water containing DAP to enter the sanitary sewer and the POTW, thereby causing or threatening the pass through of DAP, or other wastewater contaminants, into the Kyte River, Respondent threatened the discharge of a contaminant into waters of the State which caused or tended to cause water pollution in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, BINGHAM COMMERCIAL CONSTRUCTION, INC., on this Count I:

1. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012);
3. Ordering the Respondent to cease and desist from any further violations of Section 12 (a) of the Act, 415 ILCS 5/12 (a) (2012);
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;
5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), including attorney, expert witness, 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**  
**INTERFERENCE WITH OPERATION OF POTW**

1-23. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 23 of Count I as paragraphs 1 through 23 of this Count II.

24. Section 307.1101 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 307.1101, provides as follows:

No person may introduce the following types of pollutants into a POTW:

- (a) General Requirements.
  - (1) Pollutants that pass through the POTW; or
  - (2) Pollutants that interfere with the operations or performance of the POTW.

25. The utilization of the excess flow basin to hold waters contaminated with DAP inhibited the normal use and function of the excess flow lagoon.

26. The utilization of the excess flow lagoon during the longer than normal nitrification of the influent waters constitutes an interference with the normal operation of the POTW.

27. By causing or allowing the introduction of DAP into the POTW in a manner that interfered with the normal operation of the POTW, Respondent violated Section 307.1101(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 307.1101(a).

28. By causing or allowing the discharge of a contaminant so as to violate a Board regulation, Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, BINGHAM COMMERCIAL CONSTRUCTION, INC., on this Count II:

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

2. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2012), and Section 307.1101(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 307.1101(a);

3. Ordering the Respondent to cease and desist from any further violations of Section 12 (a) of the Act, 415 ILCS 5/12 (a) (2012), and Section 307.1101(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 307.1101(a);

4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act and Board Water Pollution Regulations, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), including attorney, expert witness, 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**  
**NPDES PERMIT VIOLATION**

1-19. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 13, and 15 through 20 of Count I as paragraphs 1 through 19 of this Count III.

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

No person shall:

- (f) Cause, threaten or allow the discharge of any contaminants into the waters of the State, as defined herein, including but not limited to, water 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 the 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 with respect to the NPDES program.

21. Section 3.455 of the Act, 415 ILCS 5/3.455 (2012), provides the following definition:

“Sewage works” means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of sewage, industrial waste or other wastes or for the recovery of by-products from such wastes.

22. The sanitary sewer and the POTW are “sewage works” as that term is defined in Section 3.455 of the Act, 415 ILCS 5/3.455 (2012).

23. The Respondent caused or allowed the discharge of DAP into the sanitary sewer and the POTW without an NPDES permit.

24. By causing or allowing the discharge of DAP into the sanitary sewer and the POTW without an NPDES permit, the Respondent caused or allowed the discharge of a contaminant into a sewage works in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2012).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, BINGHAM COMMERCIAL

CONSTRUCTION, INC., on this Count III:

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

2. Finding that Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2012);

3. Ordering the Respondent to cease and desist from any further violations of Section 12 (f) of the Act, 415 ILCS 5/12 (f) (2012);

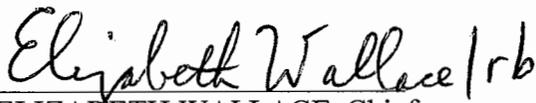
4. Assessing against Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of the Act;

5. Ordering Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2012), including attorney, expert witness, 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  
LISA MADIGAN,  
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