

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
 by KWAME RAOUL, Attorney General)
 of the State of Illinois,)
)
 Complainant,)
)
 v.)
)
 ONE EARTH ENERGY, LLC, an Illinois)
 limited liability company,)
)
 Respondent.)

PCB No.
 (Enforcement-Water)

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 Illinois Pollution Control Board by electronic filing the following Notice of Filing and Complaint, copies of which are attached and hereby served upon you. **You may be required to answer the charges of the Complaint at a hearing before the Board, at a date set by the Board.**

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,
 KWAME RAOUL, Attorney General of the
 State of Illinois

By: s/ Raymond J. Callery
 RAYMOND J. CALLERY, #6193579
 Assistant Attorney General
 Environmental Bureau
 500 South Second Street
 Springfield, Illinois 62706
 (217) 782-9031
rcallery@atg.state.il.us
ebs@atg.state.il.us

Date: February 28, 2019

Service List

For the Respondent

David M. Long
Schiff Hardin LLP
233 South Wacker Drive
Suite 6600
Chicago, IL 60606
DLoring@schiffhardin.com

Steven P. Kelly
Registered Agent
202 North Jordan Drive
Gibson City, IL 60936
Via Certified Mail

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by KWAME RAOUL, Attorney General)	
of the State of Illinois,)	
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Complainant.)	
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ONE EARTH ENERGY, LLC, an Illinois)	
limited liability company,)	
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Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of the Respondent, ONE EARTH ENERGY, LLC, an Illinois limited liability company, as follows:

COUNT I
WATER POLLUTION

1. This Complaint 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 (2016).

2. The Illinois EPA is an administrative agency of the State of Illinois, created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2016), and is charged, *inter alia*, with the duty of enforcing the Act in proceedings before the Illinois Pollution Control Board.

3. The Illinois Pollution Control Board ("Board") is an independent board created by the Illinois General Assembly in Section 5 of the Act, 415 ILCS 5/5 (2016), and charged, *inter alia*, with the duty of promulgating regulations and adjudicating violations under the Act.

4. Respondent One Earth Energy, LLC ("Respondent") is an active Illinois limited liability company in good standing that owns and operates an ethanol and distiller's grain production facility ("the Facility").

5. The Facility and Respondent's principal place of business is located at 202 North Jordan Drive, Gibson City, Ford County, Illinois.

6. The Facility discharges storm water and waste water effluent into Drummer Creek through Outfall 001 under the terms of its current National Pollutant Discharge Elimination System ("NPDES") Permit number IL0078808, issued on July 22, 2014, with an effective date of June 1, 2014, and an expiration date of July 31, 2019 ("NPDES Permit"). In accordance with Special Condition 11 of its NPDES Permit, the Facility is obligated to maintain a Storm Water Pollution Prevention Plan ("SWPPP") to manage storm water runoff at the Facility.

7. Storm water discharge may contain significant quantities of pollutants, sediments and other debris, including dust, dirt, oil and grease that, if not properly managed and controlled, can threaten the functionality and viability of aquatic habitats in the receiving waterbody.

8. Respondent controls storm water by accumulating Facility runoff in five storm water retention ponds. Ponds 1-4 are linked by piping that collects and diverts storm water to Pond 2 on the east side of the Facility, from which it flows into a drain system discharging into Drummer Creek via Outfall 001. The storm water management system is designed to minimize the sediment load of discharged storm water by allowing dissolved sediments to naturally settle out of collected storm water at the bottom of the retention ponds. Pond 2 contains an "L" shaped

standpipe structure designed to prevent poor quality bottom storm water containing high sediment concentrations from flowing directly into the drain system. A manually operated drain valve controls discharges from the drain system into Drummer Creek via Outfall 001.

9. On May 30, 2017, Illinois EPA conducted an inspection of the Facility and the storm water management system.

10. At the time of the May 30, 2017 inspection, there was a significant quantity of dark-colored discharge flowing into Drummer Creek from Outfall 001.

11. At the time of the May 30, 2017 inspection, the discharge from Outfall 001 into Drummer Creek was exhibiting a septic-like odor.

12. At the time of the May 30, 2017 inspection, the water of Drummer Creek directly below the point of discharge from Outfall 001 was turbid and odorous.

13. At the time of May 30, 2017 inspection, Illinois EPA discovered a broken pipe connected to the standpipe structure in Pond 2.

14. At the time of the May 30, 2017 inspection, dark colored and odorous storm water containing bottom sediment and sludge from Pond 2 was bypassing the standpipe structure and draining directly into the broken drain line through the broken pipe hole.

15. At the time of the May 30, 2017 inspection, discharge flowing through the drain system to Outfall 001 from Pond 2 was visibly dark colored and odorous.

16. At the time of the May 30, 2017 inspection, poor quality storm water was draining from Pond 1 into Pond 2.

17. At the time of the May 30, 2017 inspection, a representative of Respondent informed Illinois EPA inspectors that the drain valve had been open since May 25, 2017 due to high storm water levels in the retention ponds.

18. Upon Illinois EPA notifying them of the dark colored and odorous storm water flowing directly into the discharge pipe, representatives of Respondent closed the drain valve to stop the flow of storm water to Drummer Creek.

19. On June 2, 2017, the Illinois EPA conducted a follow-up inspection of the Facility.

20. At the time of the June 2, 2017 inspection, the storm water in the ponds had drained to a low level such that it was no longer draining through the standpipe structure.

21. At the time of the June 2, 2017, follow-up inspection, Illinois EPA observed that the water of Drummer Creek directly below the point of discharge from Outfall 001 was slightly turbid, but it was not black.

22. On September 13, 2017, Illinois EPA issued Respondent Violation Notice W-2017-50066, alleging violations of the Act and associated regulations.

23. On December 20, 2017, Illinois EPA issued Respondent Notice of Intent to Pursue Legal Action for Violation Notice W-2017-50066.

24. Section 12(a) of the Act, 415 ILCS 5/12(a) (2016), provides:

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 3.165 of the Act, 415 ILCS 5/3.165 (2016), provides the following definition:

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

26. Section 3.315 of the Act, 415 ILCS 5/3.315 (2016), 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.

27. Section 3.545 of the Act, 415 ILCS 5/3.545 (2016), 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.

28. Section 3.550 of the Act, 415 ILCS 5/3.550 (2016), 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.

29. Respondent is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2016).

30. Drummer Creek is a “water” as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2016).

31. The uncontrolled turbid and odorous storm water discharging from the Facility is a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2016).

32. The uncontrolled discharge of turbid and odorous storm water from Respondent's Facility into Drummer Creek creates or is likely to create a nuisance or is likely to render such waters harmful, detrimental or injurious to public health, commercial, industrial, recreational, or other legitimate uses, wild animals, birds, fish, or other aquatic life and therefore constitutes "water pollution" as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2016).

33. Respondent caused, threatened or allowed the discharge of a contaminant in the form of uncontrolled turbid and odorous storm water from the Facility into Drummer Creek so as to cause or tend to cause water pollution.

34. By causing or allowing the discharge of a contaminant in the form of uncontrolled turbid and odorous storm water from the Facility into Drummer Creek so as to cause or tend to cause water pollution, Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, ONE EARTH ENERGY, LLC:

- A. Authorizing a hearing in this matter at which time Respondent will be required to answer the allegations herein;
- B. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016);
- C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;
- D. Assessing against Respondent a civil penalty of \$50,000.00 for each violation of the Act and associated regulations, and an additional civil penalty of \$10,000.00 for each day the violation continued, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016);

E. Ordering Respondent to pay all costs, including expert witness, consultant and attorney fees, expended by the Complainant in pursuit of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016); and,

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

COUNT II
OFFENSIVE CONDITIONS

1-32. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 32 of Count I as paragraphs 1 through 32 of this Count II.

33. Section 302.203 of the Board Water Quality Regulations, 35 Ill. Adm. Code 302.203, provides:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin. The allowed mixing provisions of Section 302.102 shall not be used to comply with the provisions of this Section.

34. Respondent caused, threatened or allowed the discharge of turbid and odorous storm water containing bottom sediment and sludge from its Facility resulting in visibly turbid and odorous water in Drummer Creek.

35. By causing, threatening or allowing the discharge of turbid and odorous storm water containing bottom sediment and sludge, from its Facility resulting in visibly turbid and odorous water in Drummer Creek, Respondent violated Section 302.203 of the Board regulations, 35 Ill. Adm. Code 302.203, and Section 12(a) of the Act, 415 ILCS 5/12(a) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, ONE EARTH ENERGY, LLC:

A. Authorizing a hearing in this matter at which time Respondent will be required to

answer the allegations herein;

B. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016), and Section 302.203 of the Board's Water Quality Regulations, 35 Ill. Adm. Code 302.203;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of \$50,000.00 for each violation of the Act and associated regulations, and an additional civil penalty of \$10,000.00 for each day the violation continued, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016);

E. Ordering Respondent to pay all costs, including expert witness, consultant and attorney fees, expended by the Complainant in pursuit of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016); and,

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

COUNT III
OFFENSIVE DISCHARGES

1-32. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 32 of Count I as paragraphs 1 through 32 of this Count III.

33. Section 304.106 of the Board Water Quality Regulations, 35 Ill. Adm. Code 304.106, provides:

In addition to the other requirements of this Part, no effluent shall contain settleable solids, floating debris, visible oil, grease, scum or sludge solids. Color, odor and turbidity must be reduced to below obvious levels.

34. Section 301.275 of the Board Water Quality Regulations, 35 Ill. Adm. Code 301.275, provides, in pertinent part, the following definition:

“Effluent” means any wastewater discharged, directly or indirectly, to the waters of the State or to any storm sewer, and the runoff from land used for the disposition of wastewater and sludges, but does not otherwise include nonpoint source discharges.

* * *

35. The storm water discharges from the Facility are “effluent” as that term is defined in Section 301.275 of the Board regulations, 35 Ill. Adm. Code 301.275.

36. Respondent caused, threatened or allowed the discharge of effluent containing settleable solids and sludge from the Facility into Drummer Creek.

37. By causing, threatening or allowing the discharge of effluent containing settleable solids and sludge into Drummer Creek, Respondent violated Section 304.106 of the Board regulations, 35 Ill. Adm. Code 304.106, and Section 12(a) of the Act, 415 ILCS 5/12(a) (2016).

PRAYER FOR RELIEF

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order against Respondent, ONE EARTH ENERGY, LLC:

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

B. Finding that Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016), and Section 304.106 of the Board’s Water Quality Regulations, 35 Ill. Adm. Code 304.106;

C. Ordering Respondent to cease and desist from any further violations of the Act and associated regulations;

D. Assessing against Respondent a civil penalty of \$50,000.00 for each violation of the Act and associated regulations, and an additional civil penalty of \$10,000.00 for each day the violation continued, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2016);

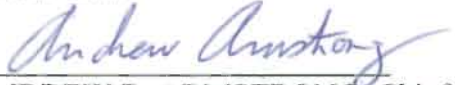
E. Ordering Respondent to pay all costs, including expert witness, consultant and attorney fees, expended by the Complainant in pursuit of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016); and,

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

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS
ex rel. KWAME RAOUL, Attorney General
of the State of Illinois

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

BY: 
ANDREW B. ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

RAYMOND J. CALLERY, #6193579
Assistant Attorney General
500 South Second Street
Springfield, Illinois 62706
(217) 782-9031
rcallery@atg.state.il.us
ebs@atg.state.il.us