

**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-Water)
J & M VEHICLE MANAGEMENT	)	
ENTERPRISES, LLC, an Illinois limited liability	)	
company, d/b/a B & O USED AUTO PARTS,	)	
	)	
Respondent.	)	

**NOTICE OF 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. 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.

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

By: s/ Arlene R. Haas, AAG

Dated: March 19, 2020

Arlene R. Haas  
Assistant Attorney General  
Environmental Bureau  
Illinois Attorney General's Office  
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**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**SERVICE LIST**

For the Respondent

Nadia Rodriguez

B & O Auto Parts

800 Brickville Road

Sycamore, Illinois 60178

**CERTIFICATE OF SERVICE**

I, Arlene Haas, an Assistant Attorney General, certify that on the 19th day of March 2020, I caused to be served by Certified Mail Return Receipt Requested the foregoing Notice of Filing and Complaint to the parties named on the attached Service List, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.

s/ Arlene R. Haas  
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**COMPLAINT**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of Respondent, J & M VEHICLE MANAGEMENT ENTERPRISES, LLC d/b/a B & O USED AUTO PARTS, as follows:

**COUNT I**  
**OPERATION OF INDUSTRIAL FACILITY WITHOUT NPDES PERMIT**

1. This Complaint is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, on his own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), against J & M VEHICLE MANAGEMENT ENTERPRISES, LLC., d/b/a B & O USED AUTO PARTS (“Respondent”) pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2018).

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 (2018), and charged, *inter alia*, with the duty of enforcing the Act.

3. Respondent is a limited liability company duly authorized to conduct business in Illinois.

4. At all times relevant to this Complaint, Respondent owned and operated an automobile and metals recycling operation located at 800 Brickville Road, Sycamore, DeKalb County, Illinois (“Facility”).

5. The Facility is an automobile junkyard classified as Standard Industrial Classification 5015.

6. At all times relevant to this Complaint, automobiles and automobile components brought to the Facility contained motor oil, gasoline, transmission fluid, brake fluid, power steering fluid, anti-freeze coolant, and/or windshield washer fluid (collectively “Automobile Fluids”).

7. Stormwater at the Facility comes into contact with Automobile Fluids and runs off into the South Branch Kishwaukee River adjacent to the north side of the Facility.

8. On or about April 5, 2014, on a date better known to Respondent, the Facility’s coverage under the State of Illinois’ General National Pollutant Discharge Elimination System (“NPDES”) Stormwater Permit for Industrial Activities, which had been obtained by a prior operator of the Facility, expired.

9. On February 8, 2019, Illinois EPA conducted an inspection of the Facility. During the inspection, Illinois EPA observed that Respondent had failed to renew the Facility’s General NPDES Stormwater Permit for Industrial Activities.

10. On July 19, 2019, Respondent submitted to Illinois EPA a Notice of Intent for General Permit to Discharge Storm Water Associated with Industrial Activity.

11. On July 19, 2019, Respondent submitted to Illinois EPA payment of the annual NPDES fee of \$500.00 to renew permit coverage.

12. On August 8, 2019, the Illinois EPA issued coverage under the General NPDES Permit to Respondent.

13. Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), 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.

14. Section 3.315 of the Act, 415 ILCS 5/3.315 (2018), 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.

15. Respondent is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2018).

16. Section 3.165 of the Act, 415 ILCS 5/3.165 (2018), provides the following definition:

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

17. The Automotive Fluids are each a “contaminant” as that term is defined in

Section 3.165 of the Act, 415 ILCS 5/3.165 (2018).

18. Section 3.550 of the Act, 415 ILCS 5/3.550 (2018), 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 the State.

19. The South Branch Kishwaukee River is a “water” of the State as that term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2018).

20. The Federal Clean Water Act, 33 U.S.C. §1251 *et seq.* (“CWA”), regulates the discharge of pollutants into navigable waters and prohibits such discharges without a NPDES permit. The United States Environmental Protection Agency (“USEPA”) administers the NPDES program in each state unless the USEPA has delegated the authority to do so in that State.

21. Section 122.2 of the USEPA NPDES Regulations, 40 C.F.R. § 122.2, provides the following definition:

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, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

22. Section 122.26(a)(1)(ii) of the USEPA NPDES Regulations, 40 C.F.R. § 122.26(a)(1)(ii), provides as follows:

a. Permit Requirement.

(1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

\* \* \*

(ii) A discharge associated with industrial activity;

23. 40 C.F.R. § 122.26(b)(14)(x) provides, in part, as follows:

(b) Definitions.

\* \* \*

(14) Storm water discharge associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. ... For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at part 401 of this chapter); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. ... The following categories of facilities are considered to be engaging in "industrial activity" for purposes of paragraph (b)(14):

\* \* \*

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

24. Respondent, who operates an automobile junkyard classified as Standard Industrial Classification 5015, conducts “industrial activity” for purposes of 40 C.F.R. § 122.26(b)(14).

25. Storm water discharge associated with industrial activity that is collected and conveyed at the Facility constitutes discharge from a “point source” as that term is defined in 40 C.F.R. § 122.2.

26. An NPDES permit is required for storm water discharge at the Facility pursuant to 40 C.F.R. § 122.26(a)(1)(ii).

27. By operating an automobile junkyard from a date better known to Respondent through August 8, 2019 without an NPDES permit, Respondent violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2018).

28. Section 309.102(a) of the Illinois Pollution Control Board (“Board”) Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

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.

29. Respondent, by operating an automobile junkyard from a date best known to Respondent to August 8, 2019, without first obtaining an NPDES permit, violated 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 the Board to enter an order in favor of Complainant and against Respondent J & M VEHICLE MANAGEMENT ENTERPRISES, LLC., d/b/a B&O AUTO PARTS, with respect to 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(f) of the Act, 415 ILCS 5/12(f) (2018), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering Respondent to cease and desist from any future violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2018), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
4. Assessing a civil penalty against Respondent of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2018); and
6. Granting such other relief as the Board deems appropriate and just.

**COUNT II**  
**WATER POLLUTION THREAT**

1-25. Complainant realleges and incorporates herein paragraphs 1 through 12 and 14 through 26 of Count I of this Complaint as paragraphs 1 through 25 of this Count II.

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

27. Section 3.545 of the Act, 415 ILCS 5/3.545 (2018), 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 domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

28. The flow of stormwater containing Automotive Fluids into the South Branch Kishwaukee River is the discharge of a contaminant that will or is likely to be harmful to public health, safety, and welfare, and would therefore constitute “water pollution” as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2018).

29. Section E of the State of Illinois’ General NPDES Permit for Industrial Activities requires a permittee to develop and implement a Stormwater Pollution Prevention Plan (“SWPPP”), and to submit the plan to Illinois EPA.

30. Section E of the State of Illinois’ General NPDES Permit for Industrial Activities provides, in pertinent part, as follows:

**E. STORM WATER POLLUTION PREVENTION PLAN (SWPPP or Plan)**

1. A SWPPP shall be developed by the Permittee and submitted to the Agency for each facility covered by this permit. The Plan shall identify potential sources of pollution which may be expected to affect the quality of storm water discharges associated with the industrial activity at the facility. The Plan shall describe the selection, design, and installation of control measures which are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility to comply with the requirements of this permit. An electronic copy of the Plan shall be submitted to the Agency at the following email address: [epa.indilr00swppp@illinois.gov](mailto:epa.indilr00swppp@illinois.gov)... The SWPPP shall be implemented by the Permittee on an on-going basis.

31. During the February 8, 2019 inspection, Illinois EPA observed that Respondent did not develop or submit a SWPPP to Illinois EPA describing the selection, design, and installation of control measures, and was not implementing control measures on an on-going basis.

32. On September 5, 2019, Illinois EPA received the SWPPP from Respondent.

33. On September 18, 2019, Respondent performed its first quarterly inspection of the Facility pursuant to its SWPPP.

34. By exposing Automotive Fluids to stormwater without implementing a SWPPP to ascertain that controls at the Facility are sufficient to prevent contaminated stormwater from discharging from the Facility into the South Branch Kishwaukee River, Respondent threatened the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois, thereby violating Section 12(a) of the Act.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests the Board to enter an order in favor of Complainant and against Respondent J & M VEHICLE MANAGEMENT ENTERPRISES, LLC., d/b/a B&O AUTO PARTS, with respect to 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) (2018),

3. Ordering Respondent to cease and desist from any future violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018),

4. Assessing a civil penalty against Respondent of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand

Dollars (\$10,000.00) per day of violation;

5. Ordering Respondent to pay all costs including attorney, expert witness and consultant fees expended by the State in its pursuit of this action pursuant to 415 ILCS 5/42(f) (2018); and

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

PEOPLE OF THE STATE OF ILLINOIS  
by KWAME RAOUL  
Attorney General of the State of Illinois

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

BY: s/Elizabeth Wallace  
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