

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
)	
Complainant,)	
)	
-vs-)	PCB No.
)	
BEL-ROCK ASPHALT PAVING, INC.)	
An Illinois corporation,)	
)	
Respondents.)	

TO: Persons on Attached Service List

NOTICE OF 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 Complaint, a true and correct copy of which is attached hereto 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 *by* KWAME RAOUL
Attorney General of the
State of Illinois,

BY: /s/ Daniel Abrams
Daniel Abrams (ARDC # 6338638)
Legal Fellow
Environmental Bureau
69 W. Washington Street, #1800
Chicago, IL 60602
Work Cell Number: 773-590-6796
Email Address: Daniel.Abrams@ilag.gov

Service List

Mr. Kelly Farina
Bel-Rock Asphalt Paving, Inc.
5095 Irene Road
Belvedere, IL 61108

CERTIFICATE OF SERVICE

I, Daniel Abrams, a Legal Fellow, certify that on the 7th day of January, 2022, I caused to be served the foregoing Notice of Filing and Complaint on 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/ Daniel Abrams

Daniel Abrams

Legal Fellow

Environmental Bureau

Illinois Attorney General's Office

69 W. Washington Street, Suite 1800

Chicago, Illinois 60602

Work Cell Number: 773-590-6796

Email Address: Daniel.Abrams@ilag.gov

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)	
by KWAME RAOUL, Attorney)	
General of the State of Illinois,)	
)	
Complainant,)	
)	
v.)	
)	PCB No. 22-
)	(Enforcement - Water)
BEL-ROCK ASPHALT PAVING, INC.)	
an Illinois corporation,)	
)	
Respondent.)	

COMPLAINT

Complainant, PEOPLE OF THE STATE OF ILLINOIS, by KWAME RAOUL, Attorney General of the State of Illinois, complains of the Respondent, BEL-ROCK ASPHALT PAVING, INC., as follows:

COUNT I
FAILURE TO OBTAIN A GENERAL NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) PERMIT FOR INDUSTRIAL ACTIVITIES

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 BEL-ROCK ASPHALT PAVING, INC. (“Bel-Rock”), pursuant to Section 31 of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/31 (2020).

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 (2020), and is charged with, *inter alia*, the duty of enforcing the Act.

3. At all times relevant to this Complaint, Bel-Rock has been and is an Illinois corporation.
4. At all times relevant to this Complaint, Bel-Rock owned and operated, and continues to own and operate an asphalt paving, sealcoating, pavement stripping and pothole repair business located at 5095 Irene Road, Belvedere, Boone County, Illinois (“Facility”).
5. Stormwater from the Facility flows in the direction of an unnamed tributary to the South Branch of the Kishwaukee River.
6. On March 3, 2014, the Illinois EPA issued coverage to Bel-Rock for the Facility under the General National Pollutant Discharge Elimination System (“NPDES”) Stormwater Permit for Industrial Activities (“NPDES Industrial General Permit”).
7. On April 5, 2017, the Illinois EPA reissued the NPDES Industrial General Permit.
8. To receive authorization to discharge under the reissued NPDES Industrial General Permit with the effective date of April 5, 2017, a facility operator is required to submit to the Illinois EPA a Notice of Intent (“NOI”) to obtain coverage and a Stormwater Pollution Prevention Plan (“SWPPP”).
9. On December 3, 2018, the Illinois EPA sent Bel-Rock a letter notifying it of its failure to renew coverage under the NPDES General Industrial Permit.
10. On July 25, 2019, the Illinois EPA sent a second letter to Bel-Rock notifying it of its failure to renew coverage under the NPDES Industrial General Permit.
11. On June 14, 2021, Bel-Rock submitted to the Illinois EPA a NOI for the Facility to renew coverage under the NPDES Industrial General Permit.
12. On, June 23, 2021, the Illinois EPA issued Bel-Rock a notice of renewal of coverage for the Facility under the NPDES Industrial General Permit.

13. Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), 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. Industrial sites are subject to the Act and the rules and regulations promulgated by the Illinois Pollution Control Board (“Board”). The Board’s regulations for water pollution are found in Title 35, Subtitle C, Chapter I of the Illinois Administrative Code (“Board Water Pollution Regulations”).

15. Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides as follows:

- (a) Except as in compliance with the provisions of the Act, Board Regulations, and the CWA, and the provisions and the conditions of the NPDES permit issued to the discharger, the discharge of any contaminant or pollutant by any person into waters of the State from a point source or into a well shall be unlawful.

16. Section 3.315 of the Act, 415 ILCS 5/3.315 (2020), 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.

17. Bel-Rock, a corporation, is a “person” as that term is defined in Section 3.315 of the Act, 415 ILCS 5/3.315 (2020).

18. Section 3.165 of the Act, 415 ILCS 5/3.165 (2020), provides the following definition:

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

19. The stormwater runoff generated at the Facility, which by the nature of the Facility comes into contact with industrial materials, such as oil and auto fluids from the operation of vehicles, gasoline, pavement stripping paints and solvents, and asphalt sealing compound constitutes a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2020).

20. Stormwater from rain and other precipitation events has the potential to carry off these industrial materials into the South Branch of the Kishwaukee River via an unnamed tributary.

21. Section 3.550 of the Act, 415 ILCS 5/3.550 (2020), 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.

22. The South Branch of the Kishwaukee River and its tributary streams are “waters” of the State of Illinois as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2020).

23. Section 502(14) of the Clean Water Act (“CWA”), 33 U.S.C.S. § 1362(14), provides the following definition:

(14) 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.

24. The Facility is a “point source”, as that term is defined in Section 502(14) of the CWA, 33 U.S.C.S. § 1362(14).

25. The CWA regulates the discharge of pollutants from a point source into navigable waters and prohibits such point source discharges without an NPDES permit. The United States Environmental Protection Agency (“USEPA”) administers the NPDES program in each State unless the USEPA has delegated authority to do so to that State.

26. The USEPA has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with NPDES federal regulations, including stormwater discharges regulated by 40 CFR § 122.26, which requires a person to, among other things, obtain an NPDES permit and prepare and implement a stormwater pollution prevention plan.

27. The USEPA NPDES Regulations require certain categories of point source dischargers to obtain coverage under a general NPDES permit.

28. 40 CFR § 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;

29. 40 CFR § 122.26(b)(14)(ii) provides as follows:

(b) Definitions.

* * *

- (14) Storm water discharge associated with industrial activity means the discharge of storm water from any conveyance that is used for collecting and conveying storm water . . . The following categories of facilities are considered to be engaging in “industrial activity” for purposes of paragraph (b)(14):

* * *

- (ii) Facilities classified within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in 40 CFR 122.27(b)(2)-(i) and Industry Groups 242 through 249; 26 (except 264 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities).

30. As an asphalt paving business, Bel-Rock is an operation within the Standard Industrial Classification (“SIC”) 2951 –Asphalt Paving Mixtures and Blocks.¹

31. Bel-Rock operates an asphalt paving business at the Facility classified as SIC 2951 as defined in 40 CFR § 122.26(b)(14)(ii), and stormwater discharges from the Facility are therefore discharges associated with industrial activity requiring a NPDES permit.

32. By engaging in industrial activities from April 5, 2017 to June 23, 2021, without first obtaining NPDES permit coverage for such operations, Bel-Rock violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), 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, BEL-ROCK ASPHALT PAVING, INC., with respect to Count I:

¹ See <https://www.osha.gov/data/sic-manual>.

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
3. Ordering the Respondent to cease and desist from any future violations of Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. 309.102(a);
4. Assessing against the Respondent a civil penalty of Ten Thousand Dollars (\$10,000.00) for each day of violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2020), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);
5. Ordering the Respondent to pay all costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2020), including any 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
WATER POLLUTION

1-12. The Complainant realleges and incorporates by reference herein paragraphs 1 through 5, and 16 through 22 of Count I as paragraphs 1 through 12 of this Count II.

13. Section 12(a) of the Act, 415 ILCS 5/12(a) (2020), 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

14. Section 3.545 of the Act, 415 ILCS 5/3.545 (2020), 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.

15. From April 5, 2017 to the date of filing of this Complaint, or such other dates better known to Bel-Rock, Bel-Rock threatened the discharge of stormwater runoff laden with industrial materials, such as oil and auto fluids from the operation of vehicles, gasoline, pavement stripping paints and solvents, and asphalt sealing compound from the Facility into the South Branch of the Kishwaukee River, and was likely to render such waters harmful or detrimental or injurious to (a) public health, safety or welfare, (b) domestic, commercial, industrial, agricultural, recreational, or other legitimate uses or (c) livestock, wild animals, birds, fish, or other aquatic life, which therefore constitutes “water pollution,” as that term is defined in 415 ILCS 5/3.545 (2020).

16. By threatening to discharge contaminants into the environment so as to cause or tend to cause water pollution, Bel-Rock violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2020).

17. Violations of the pertinent environmental statutes and regulations will continue unless and until this Court grants equitable relief in the form of preliminary and, after trial, permanent injunctive relief.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an Order against Respondent, BEL-ROCK ASPHALT PAVING, INC., with respect to Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations herein;
2. Finding that the Respondent has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2020);
3. Ordering the Respondent to cease and desist from any future violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2020);
4. Assessing against the Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day of each violation;
5. 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/ Stephen J. Sylvester
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