

Service List

For the Respondent

Soto's Pallet Company
Raul Soto, President
1150 North Rose Farm Road
Woodstock, IL 60098

CERTIFICATE OF SERVICE

I, Ellen F. O’Laughlin, an Assistant Attorney General, certify that on the 29th day of March, 2019, I caused to be served by certified mail with return receipt through the U.S. States Post Office the foregoing Notice of Filing and Complaint to the party 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/ Ellen F. O’Laughlin
Ellen F. O’Laughlin
Assistant Attorney General
Environmental Bureau
Illinois Attorney General’s Office
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3. The Respondent, SOTO'S PALLET COMPANY ("Soto"), was and is an Illinois corporation duly organized and existing under the laws of the State of Illinois and is in good standing with the Illinois Secretary of State.

4. Soto manufactures and stores wood pallets and skids, as well as mulch generated from shredded wooden pallets, at a nine acre property located at 1150 North Rose Farm Road in Woodstock, McHenry County, Illinois ("Facility").

5. On June 15, 2016, an Illinois EPA representative, accompanied by a representative from the City of Woodstock, performed an industrial storm water inspection of Soto's Facility. On June 29, 2016, a follow up inspection was conducted by the Illinois EPA representative, accompanied by a representative from the City of Woodstock and a representative from McHenry County Department of Health.

6. During the June 15th and 29th, 2016 inspections, the inspectors observed the following items or materials outdoors and exposed to the elements: (1) wood stain used to color mulch stored in totes with visible material on the outside of the totes which are exposed to storm water; (2) spilled stained mulch created from shredded pallets on the ground; (3) excess stain collecting on the ground; and (4) storage of materials such as barrels, totes, and other miscellaneous material on bare soil.

7. The flow pathway of storm water runoff from the Facility generally flows to a low lying wetlands area and then eventually to an unnamed creek that is a tributary to Nippersink Creek. The June 2016 inspections did not identify any storm sewers in the vicinity that would receive stormwater flows.

8. During the inspections, it was determined that the facility lacked a General NPDES Stormwater Permit for Industrial Activity.

9. The Illinois EPA inspector and accompanying representatives instructed Soto that the General NPDES Stormwater Permit for Industrial Activities is required for this Facility.

10. Industrial sites are subjected 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").

11. On November 8, 2016, Soto submitted a Notice of Intent and the applicable fee to the Illinois EPA for coverage under the General NPDES Stormwater Permit for Industrial Activities.

12. On November 15, 2016, Illinois EPA issued correspondence to Soto indicating that the Notice of Intent was incomplete until a Stormwater Pollution Prevention Plan was submitted to the Illinois EPA.

13. On July 17, 2018, Soto submitted a Stormwater Pollution Prevention Plan to the Illinois EPA. On July 24, 2018, Respondent received Notice of Coverage under the General Storm Water Permit for Industrial Activities, NPDES Permit number ILR007432 - Bureau ID: W1118090004 ("NPDES Permit") which covers Soto's storm water discharges. In November of 2018, Respondent submitted an industrial Storm Water Pollution Prevention Plan consistent with the NPDES Permit.

14. Section 12(f) of the Act, 415 ILCS 5/12(f) (2016), 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.

15. 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.

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

17. 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.

18. Stormwater runoff from the facility which comes into contact with wood stain, stained mulch or other miscellaneous materials such as totes, barrels, and rusting metals is a “contaminant” as the term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2016).

19. 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.

20. The low lying wetlands area and an unnamed creek that is a tributary to Nippersink Creek are “waters” as the term is defined in Section 3.550 of the Act, 415 ILCS 5/3.550 (2016).

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

NPDES PERMIT REQUIRED

- (a) 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.

22. The United States Environmental Protection Agency ("USEPA") has authorized the State of Illinois to issue NPDES permits through the Illinois EPA in compliance with federal regulations, including stormwater discharges regulated by 40 CFR § 122.26, which requires a person to obtain an NPDES permit and to implement a stormwater pollution prevention plan for stormwater discharges associated with industrial activity.

23. 40 CFR § 122.26(a) provides, in pertinent part, as follows:

(a) Permit Requirement

- (1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain an NPDES permit except:
 - (ii) A discharge associated with industrial activity

24. 40 CFR § 122.26(b) provides, in pertinent 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. ... The following categories of facilities are considered to be 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)-(3) and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities)

25. Soto is classified as Industry Group 244, Wood Containers, 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.

26. Soto, by operating a wood pallet manufacturing and storage Facility from a date best known to Respondent to July 24, 2018, without first obtaining a NPDES permit coverage for such operations was in violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2016), and Section 309.102(a) of the Board Water Pollution Regulation, 35 Ill. Adm. Code 309.102(a).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, SOTO'S PALLET COMPANY, with respect to Count I:

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

2. Finding that the Respondent has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2016), 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 future violations of 12(f) of the Act, 415 ILCS 5/12(f) (2016), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);

4. Assessing a civil penalty of \$10,000.00 against the Respondent for each and every violation of Section 12(f) of the Act, 415 ILCS 5/12(f) (2016), and Section 309.102(a) of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), for each day during which the violation continues;

5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f), 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
WATER POLLUTION

1-13. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 7, and 15 through 20 of Count I as paragraphs 1 through 13 of this Count II.

14. Section 12(a) of the Act, 415 ILCS 5/12(a) (2016), 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 3.545 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.

16. Respondent stored industrial materials outdoors resulting in discharges of contaminated stormwater to waters of the State, that will or is likely to create a nuisance or render such waters harmful or detrimental to public health, and therefore constitutes “water pollution” as that term is defined in Section 3.545 of the Act, 415 ILCS 5/3.545 (2016).

17. By causing, threatening, or allowing the discharge of contaminated stormwater into the environment so as to cause water pollution, Soto violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, SOTO'S PALLET COMPANY, with respect to Count II:

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that Respondent has violated Section 12(a) of the Act, 415 ICLS 5/12(a) (2016);
3. Ordering the Respondent to cease and desist from future violations of Section 12(a) of the Act, 415 ICLS 5/12(a) (2016);
4. Assessing a civil penalty against the 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. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016), 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
CREATING A WATER POLLUTION HAZARD

1-14. Complainant re-alleges and incorporates by reference herein paragraphs 1 through 7, and 15 through 20 of Count I and paragraph 15 of Count II as paragraphs 1 through 14 of this Count III.

15. Section 12(d) of the Act, 415 ILCS 5/12(d) (2016), provides as follows:

No Person shall:

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

16. By allowing stormwater to come into contact with wood stain, stained mulch and other miscellaneous materials such as totes, barrels, and rusting metals, at the facility which stormwater then likely flows to a low lying wetlands area and then eventually to an unnamed creek that is a tributary to Nippersink Creek, Respondent deposited contaminants on land in a manner that created a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2016).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Pollution Control Board enter an order against Respondent, SOTO'S PALLET COMPANY, with respect to Count III:

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

2. Finding that Respondent has violated Section 12(d) of the Act, 415 ICLS 5/12(d) (2016);

3. Ordering the Respondent to cease and desist from future violations of Section 12(d) of the Act, 415 ICLS 5/12(d) (2016);

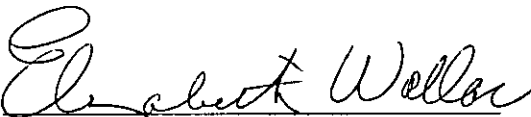
4. Assessing a civil penalty against the Respondent of Fifty Thousand Dollars (\$50,000.00) for each and every violation of the Act, with an additional penalty of Ten Thousand Dollars (\$10,000.00) per day of violation;

5. Taxing all costs of this action to the Respondent pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2016), 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,
by KWAME RAOUL, Attorney
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