

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, and  
THE STATE OF ILLINOIS,

Plaintiffs,

v.

PRAIRIE STATE SOLAR, LLC,

Defendant.

Civil Action No. 3:22-cv-2660

**COMPLAINT**

Plaintiffs, the United States of America, through its undersigned attorneys, by the authority of the Attorney General, and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Illinois (“State” or “Illinois”), by and through Kwame Raoul, Attorney General of the State of Illinois, on behalf of the People of the State of Illinois on his own motion and upon the request of the Illinois Environmental Protection Agency (“Illinois EPA”), file this Complaint and allege as follows:

**NATURE OF ACTION**

1. This is a civil action for injunctive relief and civil penalties under the Clean Water Act (“CWA”) against Prairie State Solar, LLC (“Prairie State” or “Defendant”). During construction of a solar energy facility in Perry County, Illinois (“the Site”), Defendant failed to comply with the conditions and limitations of a permit issued by Illinois EPA pursuant to 33 U.S.C. § 1342. Violations of permit conditions can result in excess sediment discharging to nearby waterways, impacting aquatic life and habitats and water quality. As a result of these

permit violations, construction at the Site took place without adequate safeguards designed to prevent discharges of excess sediment to nearby waterways. This action also is brought pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 et seq.

### **JURISDICTION, VENUE AND NOTICE**

2. This Court has jurisdiction over the subject matter of this action. 33 U.S.C. §§ 1319(b) and (d), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has jurisdiction over the State's claims pursuant to 28 U.S.C. § 1367 (supplemental jurisdiction), because they are related to the federal claims and form part of the same case or controversy.

3. Venue is proper in this district, because Defendant conducts business in this District and because the violations occurred in this District. 33 U.S.C. § 1319(b); 28 U.S.C. §§ 1391 and 1395.

4. The United States has provided notice of the commencement of this action to the State of Illinois, which is a co-plaintiff in this action, in accordance with 33 U.S.C. § 1319(b).

5. Authority to bring this action is vested in the United States Department of Justice under 28 U.S.C. §§ 516 and 519.

6. Authority to bring this action is vested in the Illinois Attorney General by Section 4 of the Illinois Attorney General Act, 15 ILCS 205/4, and Section 42(d) and (e) of the Illinois Environmental Protection Act, 415 ILCS 5/42(d) and (e).

### **PLAINTIFFS**

7. Plaintiff United States of America, by the undersigned attorneys, is acting on behalf of EPA.

8. Plaintiff State is acting through the Illinois Attorney General on his own motion and at the request of Illinois EPA.

## **DEFENDANT**

9. Defendant Prairie State is a limited liability company formed in Delaware, with its principal place of business in New York City. Because it is an association, Prairie State is a “person” as defined in 33 U.S.C. § 1362(5), 40 C.F.R. § 122.2, 415 ILCS 5/3.315, and 35 Ill. Adm. Code 301.355.

10. Prairie State is registered as a foreign limited liability company in Illinois.

## **LEGAL AUTHORITY**

### **A. Statutory & Regulatory Background**

11. The Clean Water Act is designed to restore and maintain the chemical, physical and biological integrity of the nation's waters. 33 U.S.C. § 1251(a).

12. To accomplish its objectives, the CWA prohibits the “discharge of any pollutant” by any person except in certain circumstances, such as in compliance with a National Pollutant Discharge Elimination System (“NPDES”) permit issued by EPA, or an authorized state. 33 U.S.C. § 1311(a).

13. The CWA defines the term “discharge of a pollutant” as, inter alia, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12).

14. The CWA defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). “Waters of the United States” has been further defined to include, among other things, waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, and tributaries of such waters. 40 C.F.R. § 122.2 (1993).

15. The CWA defines a “point source” as “any discernable, confined and discrete conveyance... from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

16. The CWA requires a permit for stormwater discharges “associated with industrial activity.” 33 U.S.C. § 1342(p).

17. “Industrial activity” includes construction activity that disturbs five acres or more of total land area. 40 C.F.R. § 122.26(b)(14)(x). Construction activity includes “clearing, grading, and excavation.” *Id.*

18. States may issue their own stormwater permits for discharges into navigable waters within their jurisdiction if they are authorized by EPA to do so. 33 U.S.C. § 1342(b).

19. EPA promulgated regulations relating to the control of stormwater discharges at 40 C.F.R. § 122.26. Any state-authorized permitting authority must include such requirements in its NPDES permitting program.

20. Persons who discharge or who propose to discharge stormwater “associated with industrial activity” are required to apply for an individual permit or to seek coverage under a promulgated stormwater general permit. *See* 40 C.F.R. §§ 122.21(a), 122.26(c), 122.28, 123.25.

21. Persons who discharge or who propose to discharge stormwater associated with construction activity covered by 40 C.F.R. § 122.26(b)(14)(x) must submit an application 90 days before the date construction is to commence, or by the deadlines provided by the terms of any applicable general permit. 40 C.F.R. § 122.21(c). Application under a general permit is made by submitting a Notice of Intent (“NOI”), and submission of a complete and timely NOI provides the discharger with coverage under the general permit by the date specified in the permit unless notified otherwise by EPA. *See* 40 C.F.R. § 122.28(b)(2).

22. The Illinois Environmental Protection Act prohibits causing, threatening, or allowing the discharge of any contaminant into waters of the State without an NPDES permit

issued by the Illinois EPA for point source discharges, or in violation of any term or condition imposed by such NPDES permit. 415 ILCS 5/12(f).

23. The Illinois Pollution Control Board Regulations prohibit discharge of any contaminant or pollutant by any person into the waters of the State from a point source or into a well, except as in compliance with the provisions of the Illinois Environmental Protection Act, Board regulations, the CWA, and the provisions and conditions of the NPDES permit issued to the discharger. 35 Ill. Adm. Code 309.102(a).

24. Section 3.165 of the Illinois Environmental Protection Act, 415 ILCS 5/3.165, provides that “contaminant” is any solid or gaseous matter, any odor, or any form of energy, from whatever source. Section 3.550 of the Illinois Environmental Protection Act, 415 ILCS 5/3.550, provides that “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 Illinois.

B. The Illinois Construction General Permit

25. At all times relevant to this Complaint, the State of Illinois, through Illinois EPA, was authorized to issue its own permits for the discharge of stormwater associated with construction activity.

26. On August 3, 2018, Illinois EPA issued General NPDES Permit No. ILR10 for Storm Water Discharges from Construction Site Activities (“Illinois Permit”). The Illinois Permit became effective on August 3, 2018, and expires on July 31, 2023. The Illinois Permit was applicable at all times relevant to this Complaint.

27. A person must obtain coverage under the Illinois Permit prior to discharging stormwater if that person engages in construction that meets the definition of “industrial activity” pursuant to 40 C.F.R. § 122.26(b)(14)(x) and 35 Ill. Adm. Code 301.325.

28. A permittee obtains coverage under the Illinois Permit by submitting a complete NOI to Illinois EPA. Illinois Permit, Parts I.C.1., II.A.1. The NOI must be signed and certified. *Id.*, Part II.C and Part VI.G. Unless notified to the contrary by Illinois EPA, a permittee is authorized to discharge stormwater associated with construction activity in accordance with the requirements of the Illinois Permit 30 days following Illinois EPA’s receipt of the NOI and required attachments. *Id.*

29. The NOI must include, among other information, the identity and contact information for any general contractors that are identified at the time of NOI submittal. Illinois Permit, Part I.C. If a new contractor is selected after the submittal of the NOI, the owner must submit a new NOI. *Id.*, Parts I.C.2 and II.C.9.

30. With the NOI, a permittee must submit a site-specific SWPPP that complies with the requirements in Part IV of the Illinois Permit. In general, the SWPPP describes how the permittee intends to comply with the terms and conditions of the Illinois Permit at its construction site. The SWPPP must be signed and certified. *Id.*, Parts IV.F and VI.G.

31. Part IV.D of the Illinois Permit sets forth the content required for a SWPPP. Among other things, each SWPPP must include: a description of the site and planned construction activities; identification of stormwater controls, including a site map depicting the location of such controls; procedures for inspections; stabilization practices, including plans for stabilization of disturbed areas where earth-disturbing activities have ceased for more than 14 days; and identification of each contractor and subcontractor responsible for implementing each

measure under the SWPPP. *Id.*, Part IV.D. The SWPPP must be maintained on site at all times, along with any revisions.

32. The SWPPP must be signed in accordance with Part VI.G of the Illinois Permit and include a signed certification statement by the general contractor and any contractor or subcontractor identified in the SWPPP as responsible for implementing a measure under the SWPPP. *Id.*, Part IV.F & VI.G. Contractors or subcontractors must sign the certification statement prior to undertaking work at the Site. *Id.*

33. Part IV.D.2 of the Illinois Permit sets forth the minimum components for controls to be designed and included in a SWPPP, and implemented at a site, including, among others: erosion and sediment controls that control the volume and velocity of stormwater; structural practices to limit runoff and discharge of pollutants from exposed areas; pollution prevention practices to minimize exposure of waste to precipitation; establishment of natural buffers to protect nearby waterways; and stabilization practices to prevent sediment from being washed off disturbed areas of earth.

34. Under the Illinois Permit, the SWPPP must also be amended to identify any new contractors or subcontractors that will implement a SWPPP measure. Illinois Permit, Part IV.C. Any revisions of the SWPPP must be signed in accordance with Part IV.G of the Illinois Permit.

35. Part IV.D.4 of the Illinois Permit sets forth requirements for site inspections. Among other requirements, site inspections must be performed by “qualified personnel” every seven days; include disturbed areas that have not been finally stabilized, structural measures, and locations where vehicles enter or exit the site, and, where accessible, all discharge locations or points; and identify whether stormwater controls are operating correctly.

36. The Illinois Permit defines “qualified personnel” as a person knowledgeable in the principles and practices of erosion and sediment control measures who possesses the skills to assess conditions at the site that could impact stormwater quality and to assess the effectiveness of control measures selected to control the quality of discharges from the construction activity, such as a licensed Professional Engineer or a Certified Professional in Erosion and Sediment Control. Part IV.D.4, Illinois Permit.

37. Each inspection must be documented in a report that includes the following information: the name and qualifications of personnel making the inspection; major observations relating to the implementation of the SWPPP; whether controls are operating correctly; and actions taken to ensure erosion and control measures are operating correctly. Each report must be retained on site and signed and certified in accordance with Part VI.G of the Illinois Permit. *Id.*

38. The Illinois Permit requires that corrective action be taken to address any of the following conditions identified at the site: a stormwater control needs repair or replacement; a stormwater control necessary to comply with the permit was never installed or installed incorrectly; discharges are causing an exceedance of applicable water quality standards; or a prohibited discharge has occurred. Illinois Permit, Part IV.D.5. Corrective actions must be taken as soon as possible and documented within seven days in an inspection report or report of noncompliance. If it is infeasible to complete the action within seven days, this must be documented.

39. When site construction is completed, the permittee is required to submit a Notice of Termination (NOT) that is signed in accordance with Part IV.G of the Illinois Permit. The NOT must include, among other things, the dates when construction was completed and the site



was stabilized, and a certification that storm water discharges associated with construction site activity have been eliminated and that all disturbed soils have been finally stabilized. Illinois Permit, Part II.F.

### **ENFORCEMENT AUTHORITIES**

40. If a state NPDES program is approved pursuant to 33 U.S.C. § 1342(b), the Administrator of EPA retains the authority to take enforcement action under 33 U.S.C. § 1319. *See* 33 U.S.C. § 1342(i).

41. The CWA authorizes the Administrator of EPA “to commence a civil action for appropriate relief, including a permanent or temporary injunction,” when any person is in violation of any condition or limitation in a permit issued pursuant to 33 U.S.C. § 1342, including state permits. 33 U.S.C. § 1319(b).

42. The CWA provides, in part, that any person who violates any condition or limitation in a permit issued pursuant to 33 U.S.C. § 1342, shall be subject to a civil penalty not to exceed \$59,973 per day for each such violation occurring after November 2, 2015, where penalties are assessed on or after January 12, 2022. 33 U.S.C. § 1319(d); 87 Fed. Reg. 1676 (Jan. 12, 2022) (codified at 40 C.F.R. pt. 19).

43. The Illinois Environmental Protection Act authorizes the Illinois Attorney General to commence a civil action to recover penalties and to restrain violations of the Illinois Environmental Protection Act, any permit or term or condition of a permit, or to require such other actions as may be necessary to address violations of any permit or term or condition of a permit. 415 ILCS 5/42(d) and (e).

44. The Illinois Environmental Protection Act provides that any person that violates Section 12(f) of the Illinois Environmental Protection Act or any NPDES permit or term or

condition thereof shall be liable for a civil penalty not to exceed \$10,000 per day of violation.  
415 ILCS 5/42(b)(1).

### **ALLEGATIONS**

#### **A. Construction at the Site**

45. The Site consists of over 1000 acres of previously undeveloped agricultural land, located at the intersection of Goldenrod Road and Tigerlily Road in unincorporated Perry County, Illinois.

46. Defendant is the owner of the Site and has been the owner of the Site since at least July 1, 2020.

47. Starting in approximately July 2020, the Site was developed into a 99-megawatt solar farm consisting of solar panel arrays, inverters, a substation, and associated roads for service, maintenance, and access.

48. From approximately July 1, 2020 through the present, Defendant has hired contractors to perform the following activities on approximately 640 acres of the Site: stumping and removing brush; grading and regrading the land; constructing solar panel arrays, roads, a substation, and perimeter fencing; installing electrical cables; and earthworks.

49. The activities described in Paragraph 48 are “construction” and “construction activity” within the meaning of 40 C.F.R. § 122.26(b)(14)(x), 35 Ill. Adm. Code 301.265, 35 Ill. Adm. Code 301.325, and the Illinois Permit, Part VIII.

50. From approximately July 1, 2020 through the present, Defendant has directed and controlled construction activity at the Site.

51. At the Site, Defendant has engaged in construction activities that resulted in the disturbance of at least five acres.

B. Permit Coverage for the Site

52. On or about May 6, 2020, an NOI was submitted to Illinois EPA for coverage under the Illinois Permit for construction activity at the Site, along with a SWPPP dated April 2020 (“the April 2020 SWPPP”).

53. The NOI identified 640 acres to be disturbed. The NOI identified Mudd Creek [correctly, Mud Creek] among the closest receiving water bodies to which the Site would discharge.

54. A representative of Defendant signed and certified the NOI and the April 2020 SWPPP.

55. In a letter dated July 22, 2020, Illinois EPA granted coverage and assigned Permit # ILR10BK15 for the Site.

56. As of October 2022, Defendant has not submitted a NOT for the Site and is still obligated to comply with the requirements of the Illinois Permit for the Site.

C. Investigations of the Prairie State Site

57. On April 19, 2021, EPA personnel and contractors (“EPA inspectors”) inspected the Site to determine its compliance with the Illinois Permit and the CWA. During the inspection, EPA inspectors did a walk-through of the Site and reviewed and obtained copies of Site documentation, including the on-Site SWPPP, records of amendments to the SWPPP, and self-inspection reports.

58. At the time of the inspection, EPA inspectors informed Site representatives of their observations.

59. In May 2021, EPA requested that Defendant and the general contractor for the Site provide additional information regarding stormwater compliance at the Site for the purpose

of determining compliance with the CWA and the Illinois Permit. This request was pursuant to EPA's authority under 33 U.S.C. § 1318.

60. Defendant and the Site's general contractor provided EPA with additional information regarding the Site in response to those requests, including SWPPPs, SWPPP amendments, self-inspection reports, aerial and site photos, BMP installation logs, rainfall logs, and NOIs.

61. At the time of the inspection, the SWPPP maintained on the Site, and provided to the EPA inspectors as the current SWPPP, was dated July 2020 ("July 2020 SWPPP"). An Erosion Control Plan, a BMP Installation Log, and a SWPPP Amendment Log, among other things, were attached to the July 2020 SWPPP.

62. At the time of the inspection, the July 2020 SWPPP was not signed or certified by Defendants and did not include any signed certification statements by contractors or subcontractors.

63. During the inspection, the EPA inspectors observed that controls installed on the Site differed from those identified and described in the July 2020 SWPPP, including use of earth dikes instead of the silt fences and fiber rolls described in the SWPPP and installation of a rock check dam and silt fences in locations not identified in the SWPPP. The SWPPP's Erosion Control Plan had not been updated to show these different controls on the Site.

64. During the inspection, EPA inspectors also identified that neither the BMP Installation Log nor the SWPPP Amendment Log in the July 2020 SWPPP included sufficient detail for the inspectors to determine when or where specific stormwater controls were installed.

65. During the inspection, and following a review of documents provided by the Defendant, EPA inspectors identified additional areas of concern at the Site, including but not

limited to: improperly designed, installed, or maintained stormwater controls; sediment track-out from construction entrances on Site; an unstabilized construction entrance on Block 3.8; unstabilized, exposed soils on Block 3.8, an area where construction had ceased more than 14 days earlier; failure to control stormwater volume and velocity within the Site to minimize erosion; failure to timely correct these and other observed issues; and failure to document corrective actions taken.

66. EPA's review of Defendant's self-inspection reports identified that in some instances the self-inspections did not occur at the required weekly intervals.

67. Furthermore, in many instances, the inspectors at the Site were not "qualified personnel" within the definition of the Illinois Permit.

68. Defendant's self-inspection reports did not include the qualifications of the personnel conducting the inspection, and some did not accurately reflect conditions on the Site or did not document actions taken to ensure that control measures were operating correctly.

69. None of Defendant's self-inspection reports were signed and certified in the manner required by Part VI.G of the Illinois Permit.

70. The self-inspection reports provided by Defendant and the Site's general contractor demonstrated that steps were not promptly taken to address improperly working stormwater controls or practices and that some steps taken to address these issues were not documented.

#### **CLAIM FOR RELIEF**

71. Plaintiffs reallege and incorporate by reference Paragraphs 1 through 70.

72. As described in Paragraphs 61 through 64, between at least August 17, 2020 and October 14, 2021, Defendant failed to maintain an updated SWPPP for the Site that complied with Parts IV.C and IV.D of the Illinois Permit.

73. As described in Paragraph 65, between at least January 2021 and April 19, 2021, Defendant failed to design, install, or maintain effective stormwater controls that complied with the requirements of Part IV.D.2 of the Illinois Permit.

74. As described in Paragraphs 66 - 69, on numerous occasions between July 1, 2020 and at least May 2021, Defendant failed to meet conditions and limitations related to inspections and inspection reports in Part IV.D.4 of the Illinois Permit.

75. As described in Paragraph 70, on numerous occasions between at least July 1, 2020 and at least May 2021, Defendant failed to meet conditions and limitations related to taking and documenting corrective action in Part IV.D.5 of the Illinois Permit.

76. Each failure to comply with the Illinois Permit is a separate violation of the conditions or limitations of the Illinois Permit by Defendant.

77. Unless enjoined, Defendant will continue to violate the conditions and limitations of the Illinois Permit at the Site.

78. As described in Paragraphs 40 - 42, for each day of violation of a condition or limitation of the Illinois Permit referred to in this Claim for Relief, the United States is entitled to civil penalties and injunctive relief, pursuant to 33 U.S.C. § 1319.

79. As described in Paragraphs 43 - 44, for each day of violation of a condition or limitation of the Illinois Permit referred to in this Claim for Relief, the State is entitled to civil penalties and injunctive relief, pursuant to 415 ILCS 5/42(b)(1), (d) and (e).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, the United States of America and the State of Illinois, respectfully request that the Court grant the following relief:

1. Order Defendant to comply with the terms of the CWA, the Illinois Environmental Protection Act and Illinois Pollution Control Board regulations, and the conditions of any applicable General Permits for Discharge of Stormwater Associated with Construction Activities at the Site;
2. Permanently enjoin Defendant from discharging pollutants into any water of the United States except in compliance with a permit issued pursuant to 33 U.S.C. § 1342;
3. Order Defendant to pay civil penalties to the United States, pursuant to 33 U.S.C. § 1319(d), for each day of violation of the CWA;
4. Order Defendant to pay civil penalties to the State for each day of violation of the Illinois Environmental Protection Act;
5. Award the United States and the State their costs and disbursements in this action; and
6. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

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