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# NOTICE OF APPEAL FORM

## APPEAL INFORMATION

RECEIVED  
2014 AUG 11 PM 12: 53

ENVIRONMENTAL  
HEARING BOARD

1. Name, address, telephone number, and email address (if available) of Appellant:

Advanced Drainage Systems -Green Line Polymers ("Green Line")  
4640 Trueman Blvd., Hilliard, Ohio, 43026; 1-800-821-6710

2014-108-B

2. Describe the subject of your appeal:

(a) What action of the Department do you seek review?

*(NOTE: If you received written notification of the action, you must attach a copy of the action to this form.)*

Order issued under the Solid Waste Management Act and the Clean Streams Law.

(b) Which Department official took the action?

Todd B. Carlson, Regional Manager and Brian A. Mummert, Solid Waste Supervisor.

(c) What is the location of the operation or activity which is the subject of the Department's action (municipality, county)?

22793 Rte 66 N, Shipperville, PA

(d) How, and on what date, did you receive notice of the Department's action?

Appellant Green Line first received a copy of the Order from The Commodore Corporation by mail on July 14, 2014.

3. Describe your objections to the Department's action in separate, numbered paragraphs.

*(NOTE: The objections may be factual or legal and must be specific. If you fail to state an objection here, you may be barred from raising it later in your appeal. Attach additional sheets, if necessary.)*

Please see attached Notice of Appeal.

4. Specify any related appeal(s) now pending before the Board. If you are aware of any such appeal(s) provide that information.

To the knowledge of Appellants, there are no related appeals pending before the Board.



## NOTICE OF APPEAL FORM PROOF OF SERVICE

In addition to filing this form with the Environmental Hearing Board, the Appellant *must* certify, by indicating below, how the Notice of Appeal was served on the Department under numbers 1 and 2 below, and where applicable, upon other interested parties indicated by numbers 3 and 4. Failure to do so may result in dismissal of your appeal. Please check the box indicating the method by which you served the following:

- (1) Department of Environmental Protection  
Office of Chief Counsel  
Attn: Glenda Davidson  
16<sup>th</sup> Flr. Rachel Carson State Office Building  
400 Market Street, P.O. Box 8464  
Harrisburg, PA 17105-8464
- via*
- first class mail, postage pre-paid  
 overnight delivery  
 personal delivery

AND

- (2) The officer of the Department  
who took the action being  
appealed.
- via*
- first class mail, postage pre-paid  
 overnight delivery  
 personal delivery

Additionally, if your appeal is from the Department of Environmental Protection's issuance of a permit, license, approval, or certification to another person, you *must* serve the following, as applicable:

- (3) The entity to whom the permit,  
license, approval, or  
certification was issued.
- via*
- first class mail, postage pre-paid  
 overnight delivery  
 personal delivery

AND

- (4) Where applicable, any of the following:
- Any affected municipality, its municipal authority, and the proponent of the decision, where applicable, in appeals involving a decision under Sections 5 or 7 of the Sewage Facilities Act, 35 P.S. §§ 750.5, 750.7;
  - The mining company in appeals involving a claim of subsidence damage or water loss under the Bituminous Mine Subsidence and Land Conservation Act, 52 P.S. § 1406.1 et seq.;
  - The well operator in appeals involving a claim of pollution or diminution of a water supply under Section 208 of the Oil and Gas Act, 58 P.S. § 601.208;
  - The owner or operator of a storage tank in appeals involving a claim of an affected water supply under Section 1303 of the Storage Tank and Spill Prevention Act, 35 P.S. § 6021.1303.



**NOTICE OF APPEAL FORM**  
**SIGNATURE PAGE**

By filing this Notice of Appeal with the Environmental Hearing Board, I hereby certify that the information submitted is true and correct to the best of my information and belief. Additionally, I certify that a copy of this Notice of Appeal was served upon each of the individuals indicated on Page 2 of this form on the following date: August 8, 2014.

*Lianne Mantione*  
Signature of Appellant or Appellant's Counsel

Date: August 8, 2014

Telephone No.: 1-216-479-8471

Email: lianne.mantione@squirepb.com

If you have authorized counsel to represent you, please supply the following information (*Corporations must be represented by counsel*):

Lianne Mantione (PA Bar No. 318149)  
Craig A. Sturtz (Pro Hac Vice to follow)  
Name (Type or Print)

Squire Patton Boggs (US) LLP

4900 Key Tower, 127 Public Square

Cleveland, Ohio 44114  
Address

Telephone No.: 1-216-479-8471

Email: lianne.mantione@squirepb.com

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TDD users please contact the Pennsylvania Relay Service at 1-800-654-5984. If you require an accommodation or this information in an alternative form, please contact the Secretary to the Board at 717-787-3483.

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**Please see the attached Filing Instructions for additional information and requirements regarding the filing of this form.**



BEFORE THE  
COMMONWEALTH OF PENNSYLVANIA  
ENVIRONMENTAL HEARING BOARD

ADVANCED DRAINAGE SYSTEMS, INC. -  
GREEN LINE POLYMERS  
4640 Trueman Blvd.  
Hilliard, Ohio 43026

Appellant,

v.

COMMONWEALTH OF PENNSYLVANIA  
Department of Environmental Protection,

Appellee.

Docket No. 2014-108-B

NOTICE OF APPEAL

**I. ACTION COMPLAINED OF**

Notice is hereby given that, pursuant to 25 Pa. Code Sections 1021.51 and 1021.52, Appellant Advanced Drainage Systems, Inc. - Green Line Polymers ("Appellant") appeals to the Commonwealth of Pennsylvania Environmental Hearing Board ("Board") from the action of the Pennsylvania Department of Environmental Protection, hereinafter referred to as "Appellee," in issuing to Appellant an Order under the Solid Waste Management Act and Clean Streams Law ("Order"), attached hereto as Exhibit A. Appellant is aggrieved by the findings, terms and obligations in the Order and timely files this appeal within 30 days of receipt of the Order.

The following sets forth certain background information and Appellants' specific objections to be resolved by this Board.

**II. BACKGROUND**

1. The facility that is the subject of the Order is located at 22793 Rte 66 N, Shipperville, PA ("Facility").



2. Green Line receives post-consumer high density polyethylene ("HDPE") products as a raw material at the Facility and transforms it directly into environmentally-friendly products for sale. These operations commenced in April 2013 and now involve 75-80 employees.

3. The Order relates to Green Line's operations at the Facility.

### III. SPECIFIC OBJECTIONS

4. Appellant appeals Appellee's action because Appellee's issuance of the Order includes findings, terms and obligations that are arbitrary, capricious, unreasonable, an abuse of discretion, not in accordance with applicable law, and factually, and/or legally erroneous, or otherwise exceed Appellee's authority. In addition, Appellant asserts the following specific objections regarding the Order:

(a) Materials identified in the Order at the Facility are not "residual waste," "industrial waste," "solid waste" or "pollution," as those terms are defined in Pennsylvania's Solid Waste Management Act ("SWMA") or Clean Streams Law, or were not handled, disposed or discharged in violation of the SWMA or Clean Streams Law.

(b) Green Line is not a "generator" with respect to the activities alleged in the Order as being in violation of the SWMA.

(c) The activities and conditions referenced in the Order do not constitute waste disposal under the SWMA or present a public nuisance.

(d) The roll-off containers were designed to prevent leaks.

(e) The alleged activities at the Facility could not cause groundwater degradation.

(f) The Order incorrectly recites certain violations contained in a Notice of Violation that are not actually cited in the referenced Notice of Violation.

(g) The Facility is not a "solid waste disposal area" and "facility" as those terms are defined in the SWMA and no related permit is required.



(h) Appellant has not violated the SWMA or Clean Streams Law and Appellant should not be subject to claims for civil penalty.

(i) The Order does not include reasonable compliance time frames.

(j) Appellant reserve the right to amend this Notice of Appeal or raise additional objections in this proceeding based upon, among other things, subsequent discovery of any information that would tend to provide additional bases for challenging Appellant's actions with regard to issuance of the Order or the effective application of any law or regulations to the conditions at the Facility.

**IV. PRAYER FOR RELIEF**

WHEREFORE, Appellant prays:

1. This Board conduct a hearing de novo;
2. For reversal of Appellee's Oder for the reasons set forth more fully in this Notice of Appeal and as will be adjudicated in this proceeding; and
3. For such other relief as this Board may deem appropriate and just.

Respectfully submitted,

Lianne Mantione (PA Bar No. 318149)  
Craig A. Sturtz (*Pro Hac Vice Application to be Filed*)  
SQUIRE SANDERS (US) LLP  
4900 Key Tower  
127 Public Square  
Cleveland, Ohio 44114  
Phone: (216) 479-8500  
Fax: (216) 479-8780  
Email: [lianne.mantione@squirepb.com](mailto:lianne.mantione@squirepb.com)  
Email: [craig.sturtz@squirepb.com](mailto:craig.sturtz@squirepb.com)

*Attorneys for Appellant  
Advanced Drainage Systems, Inc. - Green Line Polymers*



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Appeal of Advanced Drainage Systems, Inc. - Green Line Polymers was served on this 8th day of August, 2014 via first class U.S. Mail upon the following:

Department of Environmental Protection  
Office of Chief Counsel  
Attention: Glenda Davidson  
16th Floor, Rachel Carson State Office Building  
400 Market Street, P.O. Box 8464  
Harrisburg, PA 17105-8464

Todd B. Carlson, Regional Manager  
Brian A. Mummert, Solid Waste Supervisor  
Department of Environmental Protection  
Northwest Regional Office  
230 Chestnut Street  
Meadville, Pennsylvania 16335

Lianne Mantione  
Counsel for Appellants



EXHIBIT A:

Order





COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In the Matter of:

Advanced Drainage Systems, Inc., : Violations of the Solid Waste  
d/b/a Greenline Polymers, : Management Act and  
and The Commodore Corporation : The Clean Streams Law

ORDER

NOW, this 9<sup>th</sup> day of July 2014, the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department") has made and determined the following FINDINGS and issues this ORDER against Advanced Drainage Systems, Inc., d/b/a Green Line Polymers, and The Commodore Corporation.

The Department has found and determined the following:

A. The Department is the agency with the duty and authority to administer and enforce the Solid Waste Management Act, Act of July 7, 1980, P.L. 380, *as amended*, 35 P.S. §§6018.101-6018.1003 ("Solid Waste Management Act"); The Clean Streams Law, Act of June 22, 1937, P.L. 1987, *as amended*, 35 P.S. §§691.1-691.1001 ("Clean Streams Law"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, *as amended*, 71 P.S. §510-17 ("Administrative Code"); and the rules and regulations promulgated thereunder ("Regulations").

B. Advanced Drainage Systems, Inc. ("Advanced Drainage") is registered as a foreign business corporation with the Pennsylvania Department of State. Advanced Drainage does business under the name of Green Line Polymers ("Green Line"), and has a mailing address of 22793 PA Route 66, Shippenville, PA 16254. Advanced Drainage's registered agent in Pennsylvania is CT Corporation System, located at 1515 Market Street, No. 1210, Philadelphia, PA 19102.



C. The Commodore Corporation ("Commodore") is registered as a foreign business corporation with the Pennsylvania Department of State and has a business address of 1423 Lincoln Way East, Goshen, IN 46527-4577. Commodore owns a parcel of property located at 22793 PA Route 66, Shippenville, PA 16524, in Paint Township, Clarion County ("Property"). The Property is identified in Deed Book 207, Pages 257 through 259, recorded in the office of Recorder of Deeds for Clarion County.

D. At the Property, Advanced Drainage operates a manufacturing facility where it processes high density polyethylene scrap into plastic flake and pellets ("Facility").

E. As part of the manufacturing process at the Facility, Advanced Drainage generates waste plastic flake, mixed plastic flake/paper waste, wastewater, and plastic scrap waste ("residual waste").

F. The "residual waste" is also a "solid waste" as defined by Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103.

G. Advanced Drainage and Commodore are each a "person" as defined by Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103.

H. Advanced Drainage is a "generator" of residual waste as defined by 25 Pa. Code §287.1.

I. On June 26, 2013, the Department inspected the Facility and observed that roll-off containers containing the plastic flake/paper waste were leaking onto the ground in violation of 25 Pa. Code §299.121(b)(3).

J. On July 11, 2013, the Department inspected the Facility and observed the following violations:

1. Roll-off containers storing plastic flake/paper waste were still leaking onto the ground in violation of 25 Pa. Code §299.121(b)(3); and



2. Residual waste generator recordkeeping requirements were not completed and available in violation of 25 Pa. Code §§287.51(a) and 287.55.

K. On August 26, 2013, the Department issued a Notice of Violation to Advanced Drainage d/b/a Green Line for the violations identified in Paragraphs I and J, above.

L. On October 24, 2013, the Department inspected the Facility and observed the following violations:

1. Four roll-off containers storing plastic flake/paper waste were still leaking onto the ground in violation of 25 Pa. Code §299.121(b)(3);

2. Residual waste generator recordkeeping requirements were still not completed and available to the Department in violation of 25 Pa. Code §§287.51(a) and 287.55; and

3. Advanced Drainage allowed plastic flake waste to be deposited outside of the storage area in violation of 25 Pa. Code §§299.111(4) and 299.116(c).

M. On November 19, 2013, the Department issued a Notice of Violation to Advanced Drainage d/b/a Green Line for the violations identified in Paragraph L, above.

N. On January 16, 2014, and on July 7, 2014, the Department inspected the Facility and observed that plastic flake/paper waste, and other plastic waste was still deposited on the ground around the Facility and in a storm water outfall channel in violation of 25 Pa. Code §§299.111(4) and 299.116(c).

O. An unnamed tributary to Paint Creek originates at the Property, and is "waters of the Commonwealth" as defined in Section 1 of the Clean Streams Law, 35 P.S. §691.1.

P. The plastic flake/paper waste and other plastic waste discharged, to waters of the Commonwealth is an "industrial waste" as defined in Section 1 of the Clean Streams Law, 35 P.S. §691.1.



Q. The discharges of industrial waste to waters of the Commonwealth constitutes "pollution" as defined in Section 1 of the Clean Streams Law, 35 P.S. §691.1, and was not authorized or permitted by the Department.

R. On February 28, 2014, a Notice of Violation was sent to Commodore for the violations identified in Paragraphs I, J, and L, above.

S. On April 23, 2014, the Department inspected the Facility and the unnamed tributary to Paint Creek that originates on the Property, and observed the following violations:

1. Plastic flake waste and other plastic waste were deposited outside of the storage area including the unnamed tributary to Paint Creek in violation of 25 Pa. Code §§299.111(4) and 299.116(c); and

2. A roll-off container storing plastic flake/paper waste was leaking onto the ground in violation of 25 Pa. Code §299.121(b)(3).

T. The depositing and discharging of the solid waste at the Property constitutes "disposal," as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103, and 25 Pa. Code §287.1.

U. The Property is a "solid waste disposal area" within the meaning of Section 501 of the Solid Waste Management Act, 35 P.S. §6018.501, and a "facility" as that term is defined in Section 103 of the Solid Waste Management Act, 35 P.S. §6018.103.

V. Neither Advanced Drainage, Commodore, nor any other person or entity had or has a permit issued by the Department authorizing the ownership and/or operation of a solid waste disposal facility at the Property, in violation of Section 501 of the Solid Waste Management Act, 35 P.S. §6018.501.

W. The violations described in Paragraphs I, J, L, N, S, and V, above, constitute unlawful conduct under Sections 302, 610(1), and 610(4) of the Solid Waste Management Act, 35 P.S.



§§6018.302, 6018.610(1), and 6018.610(4); and a public nuisance pursuant to Section 601 of the Solid Waste Management Act, 35 P.S. §6018.601; and subject Advanced Drainage and Commodore, jointly and severally, to a claim for civil penalties under Section 605 of the Solid Waste Management Act, 35 P.S. §6018.605.

X. The unpermitted discharges of waste water, plastic flake, paper waste, and other industrial wastes into waters of the Commonwealth constitutes violations of Sections 301, 307, 401, and 402 of the Clean Streams Law, 35 P.S. §§691.301, 691.307, 691.401, and 691.402.

Y. The violations described in Paragraph X, above, constitute unlawful conduct under Section 611 of the Clean Streams Law, 35 P.S. §691.611, and subject Advanced Drainage and Commodore, jointly and severally, to a claim for civil penalty under Section 605 of the Clean Streams Law, 35 P.S. §691.605.

### ORDER

NOW, THEREFORE, pursuant to Sections 104 and 602 of the Solid Waste Management Act, 35 P.S. §§6018.104 and 6018.602; Sections 5 and 610 of the Clean Streams Law, 35 P.S. §§691.6105 and 691.610, and Section 1917-A of the Administrative Code, 71 P.S. §510-17, the Department hereby orders:

1. By August 15, 2014, Advanced Drainage and Commodore shall store all residual waste and industrial waste generated at the Facility in accordance with 25 Pa. Code Chapter 299.
2. By September 15, 2014, Advanced Drainage and Commodore shall remove all residual waste and industrial waste, including but not limited to, plastic flake/paper waste, other plastic waste, and any other residual waste and industrial waste deposited on the ground around the Facility, in the storm water collection channels, diversion channels, outfalls, and affected areas on



and off the Property including, but not limited to, the unnamed tributary to Paint Creek originating from the Property.

3. Advanced Drainage and Commodore shall manage and dispose of all residual waste and industrial waste removed from the Property under Paragraph 2, above, in accordance with all applicable Regulations.

4. By September 15, 2014, Advanced Drainage and Commodore shall submit to the Department an Administratively Complete application for a National Pollution Discharge Elimination System ("NPDES") permit for the discharge of industrial storm water from the Facility. For purposes of this Order, the term "Administratively Complete" means that the application shall contain all applicable fees, modules, signatures, certifications/reports by applicable licensed professionals with all necessary laboratory analysis, plans, maps, drawings, specifications, and/or supporting calculations, and any other necessary information/documents of sufficient quality to merit a full technical review by the Department.

5. Advanced Drainage and Commodore shall be jointly and severally liable for all obligations under this Order.

6. All correspondence with the Department concerning this Order shall be addressed as follows:

Brian A. Mummert, Solid Waste Supervisor  
Department of Environmental Protection  
230 Chestnut Street  
Meadville, PA 16335-3481  
Telephone: 814-332-6848

Any person aggrieved by this action may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. §7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the



Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in Braille or on audiotape from the Secretary to the Board at 717-787-3483. This Paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

IF YOU WANT TO CHALLENGE THIS ACTION, YOUR APPEAL MUST REACH THE BOARD WITHIN 30 DAYS. YOU DO NOT NEED A LAWYER TO FILE AN APPEAL WITH THE BOARD.

IMPORTANT LEGAL RIGHTS ARE AT STAKE, HOWEVER, SO YOU SHOULD SHOW THIS DOCUMENT TO A LAWYER AT ONCE. IF YOU CANNOT AFFORD A LAWYER, YOU MAY QUALIFY FOR FREE PRO BONO REPRESENTATION. CALL THE SECRETARY TO THE BOARD (717-787-3483) FOR MORE INFORMATION.

FOR THE COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION:

Todd B. Carlson  
Regional Manager  
Waste Management  
Northwest Regional Office