

September 27, 2019

ATTORNEY GENERAL RAOUL FILES LAWSUIT AGAINST DEVANSOY, INC.

Lawsuit Alleges Devansoy Improperly Handled Wastewater Resulting in Substantial Danger to the Environment and Public Health

Chicago — Attorney General Kwame Raoul filed a lawsuit against Devansoy, Inc. alleging the company violated its water pollution permit and released wastewater to the Rock Run Creek that resulted in the death of at least 178,000 fish.

Raoul filed [the lawsuit](#) in Stephenson County Circuit Court following an Aug. 27 release of wastewater from a hose to the pump Devansoy uses to transfer wastewater. Devansoy operates a facility in Rock City, Ill. where it produces pea protein and processes soy beans to make soy powder which is then used to make soy milk and other soy products. During the manufacturing process, wastewater is produced and then stored in a primary lagoon until it is sprayed onto nearby fields. Devansoy has a permit from the Illinois Environmental Protection Agency (IEPA) to operate and store water in a primary lagoon year-round, as well as two adjacent lagoons December through March.

Raoul alleges Devansoy violated this permit and improperly handled wastewater. According to the complaint, on Aug. 30 the Illinois Department of Natural Resources (IDNR) received calls regarding a fish kill in Rock Run Creek. The IDNR and IEPA investigated the complaint and traced the fish kill to Devansoy's facility. The IDNR and IEPA determined that on Aug. 27, Devansoy's hose to the pump that transfers soy process wastewater ruptured and caused a large amount of wastewater to travel to Rock Run Creek, causing the fish kill. IEPA also learned that Devansoy was utilizing the temporary adjacent lagoons throughout the year.

"Devansoy's irresponsible actions had lasting effects on the surrounding environment," Raoul said. "I am committed to holding businesses accountable for complying with the laws that protect our environment."

Additionally, according to the lawsuit, Devansoy did not attempt to clean up the release of wastewater or report the discharge it discovered on Aug. 27. An employee of Devansoy also reported that it was allegedly normal for the pump to leak water onto the ground.

The case is being prosecuted by the Attorney General's office, based on a referral from the IEPA.

"The actions of the company were in direct violation of Illinois environmental regulations and the terms of their operating permit," IEPA Director John J. Kim said. "The company failed to properly mitigate the release from their property and failed to report the incident, resulting in significant impacts to the Rock Run Creek, including a fish kill. These factors necessitated that the State take immediate action to address the situation."

"IDNR Conservation Police and Fisheries personnel are committed to protecting our state's waterways, aquatic life and all of our natural resources," IDNR Office of Law Enforcement Director Jerry Costello said. "We appreciate the support of our partners at the IEPA and the Illinois Attorney General's office in investigating pollution cases like the one that resulted in a significant fish kill on Rock Run Creek in Stephenson County."

The Attorney General's office and Devansoy have reached an agreement on an agreed immediate and preliminary injunction order, which obligates Devansoy to immediately stop discharging into the adjacent lagoons, empty the lagoons, clean up any waste residue, and investigate and remedy the causes of the

releases from the lagoons. Devansoy is also prohibited from using the adjacent lagoons until the company demonstrates to IEPA that they can operate in accordance with their permit.

Assistant Attorneys General Ellen O'Laughlin and Elizabeth Dubats are handing the case for Raoul's Environmental Enforcement Division.

**IN THE CIRCUIT COURT FOR THE FIFTHTEENTH JUDICIAL CIRCUIT
STEPHENSON COUNTY, ILLINOIS
CHANCERY DIVISION**

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. KWAME RAOUL, Attorney)
 General of the State of Illinois,)
)
 Plaintiff,)
)
 v.)
)
 DEVANSOY, INC.,)
 an Iowa corporation,)
)
 Defendant.)

FILED
 STEPHENSON COUNTY, IL
 9/26/2019 4:07 PM
 Nathan Luy
 CLERK OF THE CIRCUIT COURT

No. **2019CH61**

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* KWAME RAOUL, Attorney
 General of the State of Illinois, on his own motion and at the request of the Illinois
 Environmental Protection Agency, complains of the Defendant, DEVANSOY, INC., as follows:

COUNT I

**SUBSTANTIAL DANGER TO THE ENVIRONMENT,
PUBLIC HEALTH, AND WELFARE**

1. This count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS
ex rel. 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” or “Agency”) pursuant
 to the terms and provisions of Section 43(a) of the Illinois Environmental Protection Act (“Act”),
 415 ILCS 5/43(a) (2018), and is an action to restrain a substantial danger to human health and
 the environment.

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 with, *inter alia*, the duty of enforcing the Act.

3. At all times relevant to this Complaint, DEVANSOY, INC. was and is an Iowa Corporation in good standing and registered to do business and active in Illinois (“DEVANSOY”).

4. At all times relevant to this Complaint, DEVANSOY produces soy ingredients that are used to produce soy based products such as soy milk, and also manufactures pea protein.

5. At all times relevant to this Complaint, DEVANSOY owns and operates a facility located at 10014 N. Rock City Road, Rock City, Stephenson County, Illinois (“Facility”). The Facility consists of a soy product manufacturing plant, a wastewater lagoon with a capacity of 8.8 million gallons that is synthetically lined (“primary lagoon”), and two adjacent auxiliary lagoons which are located approximately .25 miles south of the primary lagoon (“adjacent lagoons”). During its production process, DEVANSOY produces soy milk production wastewater.

6. On July 16, 2019, the Illinois EPA issued to DEVANSOY water pollution control permit 2019-SC-64295, which renewed and replaced permit 2018-SC-63678, issued November 13, 2018, and supplemental permit 2018-SC-63868, issued March 4, 2019, and which continued to allow DEVANSOY to spray irrigate from its primary lagoon (“Permit”). This Permit allows DEVANSOY: to spray 19.572 million gallons a year of soy milk production wastewater to a specific 43 acre spray field; to spray 14.95 million gallons of soy milk production wastewater to a specific 50 acre field; and to spray 9.27 million gallons of soy milk production wastewater to a specific 103 acre field.

7. DEVANSOY's Permit also allows temporary storage of wastewater generated during the production of soy milk at the two adjacent lagoons that are to be used on a seasonal basis only, from December 2018 to March 2019 and December 2019 to March 2020. This permission was consistent with the supplemental permit issued by the Illinois EPA on March 4, 2019. The adjacent lagoons are not lined.

8. The Rock Run Creek borders the Facility and is separated from the adjacent lagoons by an approximately 50 foot wide wooded area.

9. On August 30, 2019, the Illinois Department of Natural Resources ("Illinois DNR") received complaints of a fish kill in the Rock Run Creek. Illinois DNR contacted the Illinois Emergency Management Agency to request assistance from the Illinois EPA.

10. On August 30, the Illinois DNR representatives traced the source of the fish kill to a discharge that occurred near the adjacent lagoons at the DEVANSOY Facility.

11. On August 30 and 31, 2019, a representative of the Illinois EPA inspected the area, including the adjacent lagoons, approximately 0.5 miles upstream and downstream from the adjacent lagoons, as well stream observations at various locations downstream from the adjacent lagoons area.

12. On August 30, 2019, an employee of DEVANSOY told Illinois DNR representatives that on August 27, 2019, he discovered that a discharge hose attached to the primer port of a portable pump utilized by DEVANSOY had ruptured which resulted in the discharge of wastewater. The portable pump is reportedly checked twice a day, although no log is kept.

13. During the Illinois EPA's inspection on August 30, 2019, the inspector learned that generally, the Facility handles wastewater by using the portable pump to transfer wastewater

from the primary lagoon to the two adjacent lagoons, and it takes approximately three days to fill the adjacent lagoons. Once the adjacent lagoons are full, the same portable pump is moved and used to empty the adjacent lagoons to the Facility's spray irrigation system. It takes about seven days to empty the adjacent lagoons. At the time of the rupture and during the August 30 and 31, 2019 inspections, the portable pump was located near the adjacent lagoons. On August 30, 2019, wastewater was being pumped from the adjacent lagoons to the spray fields.

14. On August 30, 2019, the Illinois EPA inspector examined the area where the release from the ruptured hose occurred. He observed a deep channel cut into the ground where the hose had ruptured. There were puddles of wastewater on the ground from the release. Grass was matted down where the release had pooled and the flow path to the Rock Run Creek was clear and obvious. He also observed a channel cut into the left descending bank of the Rock Run Creek.

15. DEVANSOY did not attempt to clean up the release of wastewater after it discovered the ruptured hose on August 27, 2019. DEVANSOY also did not report the discharge it discovered on August 27, 2019.

16. The rupture of a hose on the portable pump resulted in the discharge of wastewater which travelled to the Rock Run Creek, where it discharged into Rock Run Creek.

17. The Illinois DNR conducted an investigation into the cause and extent of the fish kill. By investigating and tracing the extent and location of dead fish, the Illinois DNR determined that the lower limit area of the fish kill on Rock Run Creek was at Cedarville Road. Illinois DNR determined that the upper limit area of the fish kill was approximately 1000 feet downstream of Pleasant View Road, next to DEVANSOY's adjacent lagoons. The fish kill area on Rock Run Creek extended approximately eleven miles.

18. The Illinois DNR conservatively estimated that the total number of dead fish (all species) was approximately 178,059 fish killed with an approximate value of \$117,025.

19. On August 30, 2019, the Illinois EPA inspector also observed that DEVANSOY was currently operating its portable pump and wastewater was being pumped from the adjacent lagoons to the spray fields. The Illinois EPA inspector observed that the portable pump had an approximately one inch diameter hose attached, that had been inserted into a metal pipe that was leaking wastewater onto the ground beside the pump. The wastewater was pooled around the pump and was draining and had drained into the adjacent woods.

20. This wastewater was not directed back into an adjacent lagoon, but instead was allowed to drain freely. The manufacturer of the portable pump refers to the one inch diameter hose as the "leak off hose" and recommends that the discharge of this hose be directed back to the source where the pump is drawing from. DEVANSOY was not following the portable pump manufacturer's recommendations by allowing the wastewater to drain freely.

21. An employee of DEVANSOY reported that it was normal for the portable pump to leak wastewater onto the ground.

22. On August 31, 2019, the Illinois EPA inspector observed pools of wastewater and staining from wastewater in the woods between the adjacent lagoons and Rock Run Creek. The Illinois EPA inspector observed an area of the bank of Rock Run Creek with fresh staining. The inspector traced the trail of wastewater through the woods back to the puddle from the leak off the hose on the portable pump.

23. On August 31, 2019, the Illinois EPA inspector observed more staining on the left descending bank downstream of the release likely caused by another spill or overflow from the adjacent lagoons by the leaking portable pump. At the time of the August 30 and 31, 2019

Illinois EPA inspections, there were deposits of dried wastewater as well as puddles of wastewater in the woods indicating a previous release.

24. DEVANSOY utilized the adjacent lagoons throughout the year of 2019, rather than solely during the permitted time period of December 2018 through March 2019.

25. The berms of the adjacent lagoons have not been maintained. The interior and exterior slopes are overgrown with weeds, trees and shrubs, and the structural integrity of the berms is uncertain.

26. Through the improper handling of wastewater from the Facility, Defendant caused or allowed the discharge of wastewater into the Rock Run Creek.

27. Defendant caused or allowed wastewater to discharge into Rock Run Creek, and thereby caused the death of at least 178,059 fish.

28. Section 43(a) of the Act, 415 ILCS 5/43(a) (2018), provides as follows:

- (a) In circumstances of substantial danger to the environment or to the public health of persons or to the welfare of persons where such danger is to the livelihood of such persons, the State's Attorney or Attorney General, upon request of the Agency or on his own motion, may institute a civil action for an immediate injunction to halt any discharge or other activity causing or contributing to the danger or to require such other action as may be necessary. The court may issue an ex parte order and shall schedule a hearing on the matter not later than 3 working days from the date of injunction.

29. By causing or allowing the conditions alleged herein, Defendant created, and is creating, circumstances of substantial danger to the environment and to the public health and welfare. The substantial danger alleged herein shall continue until such time that DEVANSOY operates its facility so as to properly manage its wastewater production.

30. Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), provides as follows:

- (a) Except as provided in this Section, any person that violates any provision of this Act or any regulation adopted by the Board, or any

permit or term or condition thereof, or that violates any order of the Board pursuant to this Act, shall be liable for a civil penalty of not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues; such penalties may, upon order of the Board or a court of competent jurisdiction, be made payable to the Environmental Protection Trust Fund, to be used in accordance with the provisions of the Environmental Protection Trust Fund Act.

31. 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.

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

33. Pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), civil penalties can be assessed for violations of any provision of the Act.

34. Violations of the pertinent environmental statutes and regulations will continue until and unless this Court grants equitable relief in the form of an immediate and, after trial, permanent injunction.

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, prays that this Court enter an immediate and, after trial, permanent injunction and an order in favor of Plaintiff and against the Defendant, DEVANSOY, INC., on Count I:

1. Finding that DEVANSOY has caused and allowed a substantial danger to the environment and public health and welfare;

2. Enjoining DEVANSOY from creating any further substantial endangerment pursuant to Section 43(a) of the Act, 415 ILCS 5/43(a) (2018);

3. Ordering DEVANSOY to remediate all waste water and residues deposited on the land from the adjacent lagoons; empty the adjacent lagoons of wastewater in compliance with its Permit; cease and desist storage of wastewater in the adjacent wastewater lagoons outside of the December 2019 through March 2020 timeframe allowed by Defendant's Permit.

4. Ordering DEVANSOY to:

a. investigate the cause of the unpermitted wastewater discharges; and

b. develop and implement a wastewater plan that addresses wastewater disposal at the Facility that is consistent with the Facility's water pollution control permit that includes but is not limited to:

i. updated employee training materials and procedures;

ii. analysis of the wastewater capacity of the Facility and measures to allow

Defendant to operate in compliance with its water pollution control permit;

iii. a plan to reconfigure the portable pump to prevent wastewater discharges;

iv. installation of safety devices on its hoses used to transport wastewater;

v. demonstrate it is safe to resume operation of the adjacent lagoons for the December 2019 to March 2020 period;

vi. remove overgrowth on the lagoon berms; and

vii. establish the structural integrity of the berms and the permeability requirements of the lagoons.

5. Assessing against DEVANSOY, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2018), 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 violation;

6. Ordering DEVANSOY, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), to pay all costs, including oversight, sampling and clean-up costs, and attorney, expert witness and consultant fees expended by the Plaintiff in its pursuit of this action; and

7. Granting such other relief as this court deems appropriate and just.

COUNT II

WATER POLLUTION

1- 29. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 27 and 31 through 32 of Count I as paragraphs 1 through 29 of this Count II.

30. Section 12(a) of the Act, 415 ILCS 5/12(a) (2018), 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.

31. 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.

32. Soy milk production wastewater is a “contaminant” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2018).

33. 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 throughout, or border upon this State.

34. Rock Run Creek is a “waters” of the State of Illinois as that term is defined by Section 3.550 of the Act, 415 ILCS 5/3.550 (2018).

35. Section 3.545 of the Act, 415 ILCS 5/3.545 (2018), provides as follows:

“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.

36. From a time best known to Defendant through at least August 31, 2019, Defendant caused, allowed, or threatened the discharge of contaminants into the Rock Run Creek.

37. The discharge of soy milk production wastewater into waters of the State was or was 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, and therefore constituted “water pollution” as that term is defined by Section 3.545 of the Act, 415 ILCS 5/3.545 (2018).

38. By its acts and omissions, Defendant caused, threatened, and/or allowed the discharge of contaminants into the environment so as to cause or tend to cause water pollution in Illinois, in violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018).

39. 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, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant a preliminary and after trial, permanent injunction, in favor of Plaintiff and against Defendant, DEVANSOY, INC., on this Count II:

1. Finding that Defendant has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018);

2. Enjoining Defendant from any further violation of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018);

3. Ordering Defendant to take immediate corrective action which will result in a final and permanent abatement of violations of Section 12(a) of the Act, 415 ILCS 5/12(a) (2018);

4. Assessing a civil penalty against Defendant 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. Assessing all costs against Defendant, 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 this Court deems equitable and just.

COUNT III

VIOLATION OF PERMIT CONDITIONS

1-29. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 27 and 31 through 32 of Count I as paragraphs 1 through 29 of this Count III.

30. Section 12(b) of the Act, 415 ILCS 5/12(a) (2018), provides as follows:

No person shall:

(a) Construct, install, or operate any equipment, facility, vessel, or aircraft capable of causing or contributing to water pollution, or designed to prevent water pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

31. Section 309.204 of the Illinois Pollution Control Board (“Board”) Water Pollution Regulations, 35 Ill. Adm. Code 309.204, provides, in pertinent part, as follows:

Section 309.204 Operating Permits; Existing Sources

a) No person shall cause or allow the use or operation of any treatment works, pretreatment works or wastewater source without an operating permit issued by the Agency ...

32. DEVANSOY’s Water Pollution Permit provides, in pertinent part, as follows:

Special Condition 7: The use of the “Adjacent Waste Water Lagoons” is proposed to be seasonal only, December-March, 2018-2019 and possibly December-March, 2019-2020. No wastewater storage shall be allowed in the Adjacent Lagoons after March 2020 unless a liner that meets the requirements of 35 Ill. Adm. Code 370.930 is installed.

33. Through the filing of this Complaint, DEVANSOY has used and continues to use the adjacent lagoons, even though its Water Pollution Permit specifically provides that DEVANSOY is not allowed to use them other than the months of December through March of 2019 and 2020.

34. By using the Adjacent Lagoons after March 31, 2019, outside the time frame set forth in Special Condition 7 of the Permit, DEVANSOY violated Section 309.204 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204, and Section 12(b) of the Act, 415 ILCS 5/23(b) (2018).

35. 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, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant a preliminary and after trial, permanent injunction, in favor of Plaintiff and against Defendant, DEVANSOY, INC., on this Count III:

1. Finding that Defendant has violated Section 12(b) of the Act, 415 ILCS 5/12(b) (2018), and Section 309.204 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204 ;

2. Enjoining Defendant from any further violation of Section 12(b) of the Act, 415 ILCS 5/12(b) (2018), and Section 309.204 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204;

3. Ordering Defendant to take immediate corrective action which will result in a final and permanent abatement of violations of Section 12(b) of the Act, 415 ILCS 5/12(b) (2018), and Section 309.204 of the Board Water Pollution Regulations, 35 Ill. Adm. Code 309.204;

4. Assessing a civil penalty against Defendant 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. Assessing all costs against Defendant, 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 this Court deems equitable and just.

COUNT IV

CREATING A WATER POLLUTION HAZARD

1-37. Plaintiff realleges and incorporates by reference herein paragraphs 1 through 27 and paragraphs 31 through 32 of Count I and paragraphs 30 through 37 of Count II as paragraphs 1 through 37 of this Count IV.

38. Section 12(d) of the Act, 415 ILCS 5/12(d) (2018), provides as follows:

No person shall:

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

39. From time best known to Defendant through at least August 31, 2019, Defendant caused or allowed soy milk production wastewater to discharge upon the land at the Facility, which flowed toward Rock Run Creek, thereby creating a water pollution hazard in violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2018).

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

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant a preliminary injunction and, after trial, a permanent injunction, in favor of Plaintiff and against Defendant, DEVANSOY, INC., on this Count IV:

1. Finding that Defendant has violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2018);
2. Enjoining Defendant from any further violation of Section 12(d) of the Act, 415 ILCS 5/12(d) (2018);

3. Ordering Defendant to take immediate corrective action which will result in a final and permanent abatement of violations of Section 12(d) of the Act, 415 ILCS 5/12(d) (2018);

4. Assessing a civil penalty against Defendant 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. Assessing all costs against Defendant, 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 this Court deems equitable and just.

COUNT V

DEATH OF AQUATIC LIFE AND RESPONSE COSTS

1. This count is brought on behalf of the People of the State of Illinois, *ex rel.* Kwame Raoul, Attorney General of the State of Illinois, on his own motion, pursuant to Section 805-100 of the Civil Administrative Code of Illinois, Department of Natural Resources (Conservation) Law, 20 ILCS 805/805-100, and Section 5-5 of the Illinois Fish and Aquatic Life Code ("Fish Code"), 515 ILCS 5/5-5.

2-37. Plaintiff realleges and incorporates herein by reference paragraphs 2 through 27 and paragraphs 31 through 32 of Count I and paragraphs 30 through 37 of Count II as paragraphs 2 through 37 of this Count V.

38. Section 42(c) of the Act, 415 ILCS 5/42(c) (2018), provides as follows:

Any person that violates this Act, any rule or regulation adopted under this Act, any permit or term or condition of a permit, or any Board order and causes the

death of a fish or aquatic life shall, in addition to the other penalties provided by this Act, be liable to pay to the State an additional sum for the reasonable value of the fish or aquatic life destroyed. Any money so recovered shall be placed in the Wildlife and Fish Fund in the State Treasury.

39. Section 805-100 of the Civil Administrative Code of Illinois, Department of Natural Resources (Conservation) Law, 20 ILCS 805/805-100, provides, in pertinent part:

Sec. 805-100. Conservation of fish and game. The Department has the power to take all measures necessary for the conservation, preservation, distribution, introduction, propagation, and restoration of fish, mussels, frogs, turtles, game, wild animals, wild fowls, and birds.

40. Section 1-130 of the Fish Code, 515 ILCS 5/1-130 (2018), provides as follows:

Cooperation with EPA. The Department is authorized to cooperate with the Environmental Protection Agency of the State of Illinois in making pollution investigations and reports of pollution investigations.

41. Section 1-150 of the Fish Code, 515 ILCS 5/1-150 (2018), provides, in pertinent part, as follows:

Preservation of aquatic life; actions to enforce Code. The Department shall take all measures necessary for the conservation, distribution, introduction, and restoration of aquatic life. . .

The Department shall also bring or cause to be brought actions and proceedings, in the name and by the authority of the People of the State of Illinois, to enforce this Code, including administrative rules, and to recover any and all fines and penalties provided for. . .

42. Section 1-20 of the Fish Code, 515 ILCS 5/1-20 (2018), provides, in pertinent part, the following definition:

"Aquatic life" means all fish, reptiles, amphibians, crayfish, and mussels. * * *

43. Section 5-5 of the Fish Code, 515 ILCS 5/5-5 (2018), provides, in pertinent part, as follows:

Ownership and title; violations; penalties. The ownership of and title to all aquatic life within the boundaries of the State, are hereby declared to be in the State, and no aquatic life shall be taken or killed, in any manner or at any time, unless the

person or persons so taking or killing the aquatic life shall consent that the title to the aquatic life shall be and remain in the State for the purpose of regulating the taking, killing, possession, use, sale, and transportation of aquatic life after taking or killing, as set forth in this Code.

* * *

If any person causes any waste, sewage, thermal effluent, or any other pollutant to enter into, or causes or allows pollution of, any waters of this State so as to kill aquatic life, the Department, through the Attorney General, may bring an action against that person and recover the value of and the related costs in determining the value of the aquatic life destroyed by the waste, sewage, thermal effluent, or pollution. Any money so recovered shall be placed into the Wildlife and Fish Fund in the State Treasury.

44. Section 1-70 of the Fish Code, 515 ILCS 5/1-70 (2018), provides the following definition:

“Person” includes the plural “persons”, females as well as males, and shall extend and be applied to clubs, associations, corporations, firms, and partnerships as well as individuals.

45. Defendant is a “person” as that term is defined in Section 1-70 of the Code, 515 ILCS 5/1-70 (2018).

46. By causing or allowing the release of soy milk production wastewater from its Facility, DEVANSOY caused the death of aquatic life in Rock Run Creek.

47. The discharge of soy milk production wastewater from its Facility into the Rock Run Creek killed approximately 178,059 fish and had a monetary value of approximately \$117,025.

48. By causing or allowing the release of soy milk production wastewater from its Facility so as to cause water pollution and the death and destruction of fish and aquatic life in the Rock Run Creek and violations of the Act, DEVANSOY, INC. is liable to the State for the reasonable value of the aquatic life lost in the amount of \$117,025 and for the related costs in determining the value of the aquatic life destroyed and for related investigation costs, pursuant to

Section 42(c) of the Act, 415 ILCS 5/42(c) (2018), and Section 1-150 of the Fish Code, 515 ILCS 5/1-150 (2018).

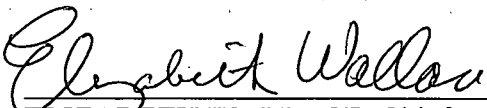
WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this court enter a judgment in favor of Plaintiff and against the Defendant, DEVANSOY, INC., on Count V:

1. Finding that the Defendant has violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2018);
2. Finding that the Defendant has caused the death and destruction of aquatic life in the Rock Run Creek, and have adversely affected the aquatic life present in the Rock Run Creek system;
3. Finding that the Defendant is liable for the aquatic life kill investigation costs and restoration costs representing the reasonable value of the fish and aquatic life destroyed by the Defendant, pursuant to Section 42(c) of the Act, 415 ILCS 5/42(c) (2018), and Section 1-150 of the Fish Code, 515 ILCS 5/1-150 (2018);
4. Pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2018), award the Plaintiff its costs in this matter, including reasonable attorneys' fees and expert witness costs; and

5. Granting such other relief as this Court deems appropriate and just.

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

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

By: 
ELIZABETH WALLACE, Chief
Environmental Bureau
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OF COUNSEL:

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