

WHEN TINY PLASTICS CAUSE BIG PROBLEMS: THE COSTLY EXPENSE OF NURDLE POLLUTION

PENNSYLVANIA PLASTIC PRODUCER SETTLES CLEAN WATER ACT CLAIMS

Unless you are in the industry, you may never have heard of a “nurdle.” Nurdles are small plastic beads or pellets used by hundreds of businesses across the country to extrude plastic, often in the production of bottles, containers and substrates, like plastic films used in food packaging. Nurdles of varied sizes arrive at facilities in bulk transport vehicles or railcars, and get “blown” into silos for use in the plastic extrusion process. They are often viewed within the industry as “inert” and harmless, and their presence on driveways, parking lots, loading bays and stormwater catchments often goes completely unnoticed by company personnel and regulators alike.

It is not unusual for nurdles (which can be as small as the head of a pin) to spill onto the ground or, if care is not taken, get blown out open doors or windows, or even tracked out on forklift tires or employee shoes and clothing. In static environments they can often be seen clinging to shrink-wrapped pallets of outgoing goods. However it occurs, once nurdles have “escaped” containment, they are light enough to get blown on the air or carried by stormwater into area waterways, where they are seen as a pollutant. Last week, a Pennsylvania nurdle manufacturer found out the hard way that failing to contain these tiny plastic beads was an expensive oversight.

In December 2023, using the citizen suit provisions for the Federal Clean Water Act, two Pennsylvania environmental groups, PennEnvironment, Inc. and Three Rivers Waterkeeper, joined forces to sue BVPV Styrenics LLC and its parent company, Styropek USA, Inc. for pollution of area waterways ... with nurdles.

In the *Styrenics* suit, the two environmental groups, acting as citizen attorneys general, alleged that the plastic beads being manufactured at the company’s Monaca, Pennsylvania operation were regularly making their way into Racoon Creek, a tributary of the Ohio River south of Pittsburgh, in violation of the company’s discharge permit and the federal statute. Both Racoon Creek and the Ohio River are “waters of the United States” under the Clean Water Act. While the company possessed a valid discharge permit under the Clean Water

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Act (called an NPDES permit), the two groups alleged that the NPDES permit in question did not allow the discharge of the nurdles themselves, which the groups had observed and photographed in Racoon Creek and downstream in the Ohio River. The company defended, in part, by claiming the nurdles the groups found were the result of an historic explosion caused during a prior owner's management of the facility.

Nevertheless, faced with evidence that its plastic beads were entering the Ohio River in violation of the statute, the company reached an expensive settlement. In the proposed settlement, which was lodged with the court on September 3rd, the company agreed to redesign its stormwater collection and treatment systems, install innovative monitoring technology that will track the movement of nurdles, and vigorously maintain filtration systems and curtains designed to contain nurdles within the plant and plant grounds. Failing to hit deadlines for this work, or the appearance of nurdles in Racoon Creek or the Ohio River, will result in automatic, stipulated penalties up to \$5,000 per incident.

On top of the considerable expense it will incur to upgrade its facilities, the company agreed to spend an additional \$2.6 million, comprised of \$100,000 to resolve civil penalty liability, \$500,000 to remediate Racoon Creek, the immediately impacted tributary, and \$2 million for other work within the impacted Ohio River watershed. To add insult to injury, the company will pay the two environmental groups \$375,000 for their attorneys' fees. An expensive resolution for the company, which reserved the right to limit the future expense by shuttering its operations at the Monaca, Pennsylvania facility.

The settlement is being hailed as a great win for the environmental groups and touted as a blueprint for other groups around the country to tackle nurdle impacts in waterways under their stewardship.

The *Styrenics* case underscores that nurdles present a unique compliance challenge. Unlike chemical pollutants that can often be addressed through treatment systems, nurdles are largely a housekeeping issue. Their small size and static charge mean they can cling to clothing, forklift tires or shrink-warapped pallets, and a simple breeze or opening of a door can carry them into the environment.

For companies handling nurdles, diligence at every level of operation is critical. Proactive managers should consider practical strategies such as:

- **Creating negative air pressure zones** in transfer areas to keep nurdles from escaping.
- **Using antistatic mats and soft curtains** to reduce the spread through clothing, equipment or airflow.
- **Increasing housekeeping measures** like frequent sweeping and vacuuming, with proper disposal methods to ensure collected nurdles aren't re-released outdoors.

- **Employing skimmers or filters in stormwater systems** to capture floating nurdles before they enter waterways.

Every facility has its own unique vulnerabilities, but the common thread is that consistent oversight and employee awareness are essential. By investing in preventative measures, companies can reduce compliance risk, avoid costly litigation and demonstrate their commitment to the environment.

Armstrong Teasdale has considerable experience across the country defending clients in citizens' suits under federal and state environmental statutes, including a case involving nurdles. These types of suits are initiated by a 60-day notice letter sent to the targeted company, and copied to state and federal regulators. It is *critically important* that these notice letters be taken seriously, and their allegations of non-compliance promptly investigated and, if appropriate, remediated. Citizens' suits are expensive to defend, and as seen in *Styrenics*, even more expensive to resolve, partly because prevailing citizens' groups may be entitled to an award of attorneys' fees and costs. This means the targeted company potentially shoulders the burden of both sides' legal costs, in addition to potential civil penalties for the underlying violations, and any costs of remediation.

Nurdle users would do well to learn from the lessons of the *Styrenics* litigation – nurdles simply cannot go unseen, or unmanaged.

Importantly, among the legal defenses available to a targeted company, a citizens' suit may only be pursued for violations which are "on-going," so taking prompt action to rectify alleged non-compliance is quite important. If your company or organization is the target of a 60-day notice letter, please do not hesitate to reach out to your counsel at Armstrong Teasdale. Please contact [Tim Bergère](#) or [Jana Reznickova](#) with questions about citizen suits, or if you would like a copy of the proposed consent decree in the *Styrenics* case.