

2015CH000012D 001
PEOPLE OF THE STATE OF ILLINOIS
VS.
CITY OF MONTICELLO

SPROUL, BRIAN C

ANCEL, GLINK, DIAMOND ET AL

ENTERED JDG CR TEXT

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6/04/2015 Complaint filed on 06/04/2015.

6/04/2015 OOO CLK COMPLAINT FOR INJUNCTIVE RELIEF AND PENALTIES ON FILE, TOGETHER WITH
CERTIFICATE OF SERVICE.

IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
PIATT COUNTY, ILLINOIS

FILED

JUN 04 2015

Charles A. Banc
CLERK OF THE CIRCUIT COURT

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Plaintiff,)
)
v.)
)
CITY OF MONTICELLO, an Illinois)
municipal corporation,)
)
Defendant.)

NO. 15-CH-12

COMPLAINT FOR INJUNCTIVE RELIEF AND PENALTIES

The PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, complains of the Defendant, CITY OF MONTICELLO, as follows:

COUNT I
WATER POLLUTION VIOLATIONS

1. This Count is brought on behalf of the PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, on her own motion and at the request of the Illinois Environmental Protection Agency (“Illinois EPA”), pursuant to the terms and provisions of Section 42 of the Illinois Environmental Protection Act (“the Act”), 415 ILCS 5/42 (2014).

2. The Illinois EPA is an agency of the State of Illinois created by the Illinois General Assembly in Section 4 of the Act, 415 ILCS 5/4 (2014), and charged, *inter alia*, with the duty of enforcing the Act.

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3. The Defendant, CITY OF MONTICELLO (“Monticello”) is an Illinois municipal corporation duly authorized and existing under the State of Illinois. Monticello is located in Piatt County and within the Upper Sangamon Watershed, draining into the Sangamon River.

4. On September 14, 2011, Illinois EPA issued National Pollution Discharge Elimination System Permit No. IL0029980 (“NPDES Permit”) to Monticello, setting forth the terms and conditions for operation of its wastewater treatment plant (“WWTP”) and limiting discharge from the system to two authorized outfalls. The NPDES Permit identifies the Sangamon River as the receiving waters for Monticello’s WWTP.

5. Section 301.385 of the Illinois Pollution Control Board’s (“Board”) Water Pollution Regulations, 35 Ill. Adm. Code 301.385, provides:

“Sewage” means water-carried human and related wastes from any source.

6. Section 301.425 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 301.425, provides:

“Wastewater” means sewage, industrial waste, or other waste, or any combination of these, whether treated or untreated, plus any admixed land runoff.

7. Section 301.375 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 301.375, provides:

“Sanitary Sewer” means a sewer that carries wastewater together with incidental land runoff.

8. Section 3.165 of the Act, 415 ILCS 5/3.165 (2014), provides:

“Contaminant” is any solid, liquid or gaseous matter, any odor, or any form of energy, from whatever source.

9. Section 3.455 of the Act, 415 ILCS 5/3.455 (2014), provides:

“Sewage works” means individually or collectively those constructions or devices used for collecting, pumping, treating, and disposing of sewage, industrial waste or other wastes or for the recovery of by-products from such wastes.

10. Section 3.545 of the Act, 415 ILCS 5/3.545 (2014), provides:

“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.

11. Section 12 of the Act, 415 ILCS 5/12 (2014), provides, in pertinent part:

Actions prohibited. 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.

* * *

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

* * *

12. Sewage and wastewater are “contaminants” as that term is defined in Section 3.165 of the Act, 415 ILCS 5/3.165 (2014).

13. At all times relevant to this Complaint, Monticello was and is the owner and operator of the “sanitary sewers” and “sewage works” serving Monticello, as those terms are defined in Section 301.375 of the Board’s Water Pollution Regulations, 35 Ill. Adm. Code 301.375, and Section 3.455 of the Act, 415 ILCS 5/3.455 (2014), respectively.

14. On July 12, 2014, Monticello received three (3) inches of rain.

15. On July 12, 2014, Monticello pumped approximately eight hundred sixty-seven thousand (867,000) gallons of untreated sewage, wastewater and storm water from five (5) manholes throughout Monticello in order to prevent sewage from backing up into residential buildings. The pumping and subsequent releases took place from manholes on the following streets:

- a. South Independence Street (south of the intersection of Independence Street and South Marion);
- b. West Monroe Street (at the intersection of Monroe Street and South Irving Street);
- c. South Charter Street (intersection of Charter Street and West Marion Street);
- d. Front Street; and
- e. Cedar Street.

16. Monticello pumped and released the raw sewage, untreated wastewater and storm water for over seven hours into various storm drains and drainage channels, which themselves release into the Sangamon River.

17. On July 14, 2014, Illinois EPA received a citizen's complaint regarding the July 12, 2014 overflows and noxious odors coming from the untreated sewage, wastewater and storm water.

18. On July 14, 2014, Monticello's treatment plant operator notified Illinois EPA of the sewage pumping and releases that occurred on July 12, 2014.

19. On August 26, 2014, Illinois EPA issued Monticello Violation Notice No. W-2014-50160 ("VN"), citing Monticello for overflows from sanitary sewers; wastewater treatment

plant bypass; the creation of offensive conditions; unauthorized discharge of contaminants; system reliability deficiencies; and creating a water pollution hazard.

20. On October 22, 2014, Illinois EPA received Monticello's response to the VN via written letter, stating that its WWTP is incapable of handling precipitation events similar to the July 12, 2014 rain event. The response further stated that certain upgrades to its WWTP are necessary and until those upgrades are made, Monticello will be unable to effectively implement its Capacity Management, Operation and Maintenance ("CMOM") requirement.

21. On July 12, 2014, Monticello caused, threatened or allowed the discharge of contaminants so as to cause or tend to cause water pollution by pumping and releasing approximately eight hundred sixty-seven thousand (867,000) gallons of untreated sewage, wastewater and storm water from manholes located on various streets in Monticello into the environment where it discharged into waters of the State.

22. By causing, threatening or allowing the discharge of contaminants into the environment so as to cause or tend to cause water pollution, Monticello violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

23. On July 12, 2014, Monticello deposited contaminants in the form of sewage and wastewater upon the land and in a manner that created a water pollution hazard.

24. By depositing contaminants upon the land in a place and manner that created a water pollution hazard, Monticello violated Section 12(d) of the Act, 415 ILCS 5/12(d) (2014).

25. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and 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.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief against the Defendant, CITY OF MONTICELLO:

- A. Find that the Defendant violated Sections 12(a) and (d) of the Act, 415 ILCS 5/12(a), (d) (2014);
- B. Permanently enjoin the Defendant from further violations of the Act and associated regulations, pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2014);
- C. Impose upon the Defendant a monetary penalty of not more than the statutory maximum, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);
- D. Award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014); and
- E. Grant such other and further relief as the Court deems appropriate.

COUNT II
OFFENSIVE CONDITIONS

1-22. Plaintiff realleges and incorporates by reference paragraphs 1 through 22 of Count I as paragraphs 1 through 22 of this Count II.

23. Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, provides, in pertinent part:

Waters of the State shall be free from sludge or bottom deposits, floating debris, visible oil, odor, plant or algal growth, color or turbidity of other than natural origin

24. On July 12, 2014, Monticello released approximately eight hundred sixty-seven thousand (867,000) gallons of untreated sewage, wastewater and storm water with noxious odors and unnatural color and turbidity into the waters of the State.

25. By releasing untreated sewage, wastewater and storm water into waters of the State, Monticello created offensive conditions in violation of Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203.

26. By discharging contaminants so as to violate the regulations or standards adopted by the Board, the Defendant violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

27. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that this Court grant the following relief against the Defendant, CITY OF MONTICELLO:

A. Find that the Defendant violated Section 302.203 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 302.203, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);

B. Permanently enjoin the Defendant from further violations of the Act and associated regulations, pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2014);

C. Impose upon the Defendant a monetary penalty of not more than the statutory maximum, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);

D. Award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014); and

E. Grant such other and further relief as the Court deems appropriate.

COUNT III
SANITARY SEWER OVERFLOW VIOLATIONS

1-25. Plaintiff realleges and incorporates by reference paragraphs 1 through 22 of Count I and paragraphs 23 through 25 of Count II as paragraphs 1 through 25 of this Count III.

26. Section 306.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a), provides:

Malfunctions: All treatment works and associated facilities shall be so constructed and operated as to minimize violations of applicable standards during such contingencies as flooding, adverse weather, power failure, equipment failure, or maintenance, through such measures as multiple units, holding tanks, duplicate power sources, or such other measures as may be appropriate.

27. Section 306.304 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.304, provides:

Overflows from sanitary sewers are expressly prohibited.

28. Section 306.305 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.305, provides:

All combined sewer overflows and treatment plant bypasses shall be given sufficient treatment to prevent pollution, or the violation of applicable water quality standards unless an exception has been granted by the Board pursuant to subpart D. . . .

29. Monticello's WWTP is not constructed and operated so as to minimize violations of applicable standards during heavy rains or flooding.

30. By failing to construct and operate its sewer system so as to minimize violations of applicable standards, Monticello violated Section 306.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a).

31. On July 12, 2014, Monticello allowed sewer overflows to occur from its sewer collection system.

32. By allowing sewer overflows to occur from its sewer collection system, Monticello violated Section 306.304 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.304.

33. On July 12, 2014, Monticello failed to provide sufficient treatment to sewer overflows to prevent pollution and the violation of applicable water quality standards.

34. By failing to sufficiently treat sewer overflows to prevent pollution and the violation of applicable water quality standards, Monticello violated Section 306.305 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.305.

35. By discharging contaminants so as to violate the regulations or standards adopted by the Board, the Defendant violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014).

36. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests this Court grant the following relief against the Defendant, CITY OF MONTICELLO:

- A. Find that the Defendant violated Sections 306.102(a), 306.304 and 306.305 of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 306.102(a), 306.304 and 306.305, and thereby violated Section 12(a) of the Act, 415 ILCS 5/12(a) (2014);
- B. Permanently enjoin the Defendant from further violations of the Act and associated regulations, pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2014);
- C. Impose upon the Defendant a monetary penalty of not more than the statutory maximum, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);
- D. Award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014); and
- E. Grant such other and further relief as the Court deems appropriate.

COUNT IV
NPDES PERMIT VIOLATIONS

1-34. Plaintiff realleges and incorporates by reference paragraphs 1 through 22 of Count I, paragraphs 23 through 25 of Count II, and paragraphs 26 through 34 of Count III as paragraphs 1 through 34 of this Count IV.

35. Section 12 of the Act, 415 ILCS 5/12 (2014), provides, in pertinent part:

Actions prohibited. 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.

36. Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a), provides:

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.

37. On July 12, 2014, Monticello discharged untreated sewage, wastewater and storm water from at least five (5) points in its system not permitted for such a discharge.

38. By causing, threatening or allowing the discharge of contaminants from unpermitted discharge points, Monticello violated NPDES Permit No. IL0029980 and Section 12(f) of the Act, 415 ILCS 5/12(f) (2014).

39. By discharging untreated sewage, wastewater and storm water in noncompliance with its NPDES Permit, the Act and Board Regulations, Monticello violated Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a).

40. Plaintiff is without an adequate remedy at law. Plaintiff will be irreparably injured and 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.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests this Court grant the following relief against the Defendant, CITY OF MONTICELLO:

A. Find that the Defendant violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and Section 309.102(a) of the Board's Water Pollution Regulations, 35 Ill. Adm. Code 309.102(a);


- B. Permanently enjoin the Defendant from further violations of the Act and associated regulations, pursuant to Section 42(e) of the Act, 415 ILCS 5/42(e) (2014);
- C. Impose upon the Defendant a monetary penalty of not more than the statutory maximum, pursuant to Section 42(a) of the Act, 415 ILCS 5/42(a) (2014);
- D. Award the Plaintiff its costs in this matter, including reasonable attorney's fees and costs, pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f) (2014); and
- E. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN, Attorney General of the
State of Illinois

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

By:



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Dated:

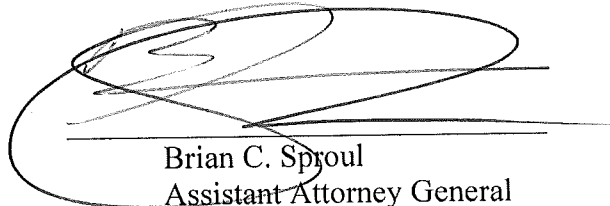
People v. City of Monticello

CERTIFICATE OF SERVICE

I hereby certify that I did on June 2, 2015, send by First Class Mail, with postage thereon fully prepaid, by depositing in a United States Post Office Box in Springfield, Illinois, a true and correct copy of the document entitled COMPLAINT FOR INJUNCTIVE RELIEF AND

PENALTIES to:

Paul N. Keller
Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer, P.C.
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Brian C. Sproul
Assistant Attorney General
Environmental Bureau