



295339

PHYSICAL DOCUMENT

LPS-n295339-v1

NOTICE OF INTENT TO SUE UNDER FWPCA

Author: McDonald, Chelsea

Document Type: CORRES

LSA(s):

Co-Counsel:

Counsel LSA(s):

Distribution List: Rose, Robert (ENRD);Reed, Jason (ENRD);Smith, Justin (ENRD);Clark, Lisa M. (ENRD);McDonald, Chelsea (ENRD);White, Jessica C. (ENRD)

Fileroom: LPS - Main Justice

DJ#: PL20210075

Case Name: CITIZEN SUITS GENERAL NOTICES OF INTENT – CAA AND CWA

Court:

Notes: SCANNED/UNASSIGNED

Double-Sided: N

Received Date: 1/30/2023

Urgent: N

Oversize: N

Bound Document: N

55 23-153044
Alexander Wyrick
Alexander L. Wyrick Law Firm, PLLC
PO Box 472, Greenwood, AR 72936
479-206-9087
alexander@wyrick.legal

EXPD
DeeAnna Weimar
Weimar Law Offices, PA
PO Box 58, Greenwood, AR 72936
479-996-0887
weimarlaw@hotmail.com

January 13, 2023

Michael S. Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Alan York
Associate Director
Office of Water Quality
Division of Environmental Quality
Arkansas Department of Energy and Environment
4301 North Shore Drive
North Little Rock, AR 72118-5317

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL
RESOURCES DIVISION

JAN 30 2023

EXECUTIVE OFFICE

Re: Notice of intent to sue for violation of effluent standards, limitations, or orders and failure to perform a non-discretionary duty under the Federal Water Pollution Control Act Section 303(d)(2), 33 U.S.C. § 1313(c)(4); a citizen suit against a municipality.

Dear Mr. Regan and Mr. Garland:

I'm writing to provide notice that my client, Gina Saltee, intends to file suit under the Federal Water Pollution Control Act ("FWPCA"), Section 505(a)(2), 33 U.S.C. § 11365(a)(2), against the City of Alma, Arkansas.

The U.S. Environmental Protection Agency ("EPA"), the EPA Administrator, the EPA Regional Administrator for Region 6, and the City of Alma's water department failed to perform their non-discretionary duty to prevent, mitigate, correct, or sanction the unauthorized amounts of overflow of effluents from the City's separate sanitary sewer system and require the City to comply with Federal and State guidelines. In order to achieve a settlement, the United States and the EPA will be made a party to the intended action should EPA decline to file suit against the City of Alma and the State of Arkansas before the sixty-day notice period runs.

This letter was originally written preceding the filing of the relevant matter. However, as discussed in the Conclusion & Case Update section at the end of this letter, a claim based on fraud against one set of "Seller Defendants" and a claim for inverse condemnation against a second set of "City Defendants" was originally filed in state court and removed to federal court.

This letter provides notice to the EPA and to the Arkansas Department of Energy and Environment, Division of Environmental Quality, as required by the Clean Water Act, Section 505.

A. Facts

On November 5, 2021, Gina Sallee closed on purchase and moved into 829 Maple Shade Road, Alma, Arkansas, a property containing the City of Alma's manhole no. 62. In days, Ms. Sallee noticed the extensive flooding in her backyard emanating from the above-ground manhole constructed by the City of Alma, located on her property. Ms. Sallee immediately made a report to the City that mixtures of wastewater and stormwater effluents including raw sewage, toilet paper debris, and odorous dark liquids were flowing from the manhole at alarming rates and rising from underground in her backyard.

As of March 7, 2022, the City has not prevented sewage, wastewater, or stormwater discharge onto Ms. Sallee's property.

Ms. Sallee spoke with City officials and employees to report the sewage overflows on the following dates: 11/05/2021; 11/08/2021; 11/10/2021; 11/11/2021; 11/12/2021; 11/16/2021. Ms. Sallee spoke again to City officials on 11/22/2021 and 12/15/2021 regarding the ongoing violations. However, since 2009, the City of Alma has only reported to ADEQ their SSO violations for 829 Maple Shade Road, containing manhole no. 62, on the following dates: 01/30/2009; 09/22/2009; 02/22/2018; 05/24/2021; 06/08/2021; 11/15/2021.

Since November 2021, Ms. Sallee has received several admissions from the City of Alma that their separate sewer system is damaged and in need of repair. Specifically, Ms. Sallee has received:

- (i) communications on November 11, 2021, from the director of the City's water department stating the wastewater and stormwater overflows, causing sewage to flow from the manhole and from underground on Ms. Sallee's property, have been a recurring issue for over three years;
- (ii) communications on November 22, 2021, from the Mayor of the City of Alma describing the broken wastewater pipes running under her property;
- (iii) communications on December 15, 2021, from the City's water department describing a blockage in the pipes their plans to remedy the damaged wastewater pipes under her property—plans which have yet to come to fruition.

B. Governing Law

1. Federal & State law

Under FWPCA Section 505(a)(1), "any citizen may commence a civil action on [her] own behalf against any person [or governmental agency] . . . alleged to be in violation of an effluent standard or limitation."

An "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents

which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean, including schedules of compliance. FWPCA 502(11). A manhole is an example of a point source.

FWPCA Section 301(a) makes “the discharge of any pollutant by any person” unlawful, except when in compliance with sections 302, 306, 307, 318, 402, and 404. Under 33 U.S.C. 1362(12), “discharge of pollutants” is defined as “any addition of any pollutant to navigable waters from any point source.” The term “pollutant” includes sewage, biological materials, and municipal waste discharged into water. 33 U.S.C. 1362(6).

In Arkansas, “waters of the state” are defined as “all streams, lakes, marshes, ponds, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies of accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion of the state.” Ark. Code Ann. § 8-4-102(10).

2. City’s NPDES Permit

The City of Alma has a National Pollutant Discharge Elimination System (NPDES) permit issued by ADEQ, acting for EPA, as allowed under FWPCA—NPDES permit no. ARR050061; AFIN 88-01433.

This permit does not authorize “discharges that are mixed with sources of non-stormwater,” unless otherwise in compliance with the permit or allowed by ADEQ. Also, the City as permittee is required under Part 5.4 of the NPDES permit to “take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.”

Part 5.1 of the City’s NPDES permit makes noncompliance with the conditions of the permit “a violation of the Federal Clean Water Act and the Arkansas Water and Air Pollution Control Act and is grounds for an enforcement action.”

C. Analysis

The City of Alma has failed to uphold its reporting requirements. Although Ms. Sallee made six reports of the past and ongoing overflows from the City’s manhole in her backyard, the City has reported only one SSO to ADEQ regarding 829 Maple Shade since November 2021.

Many of these lack information such as the impact of the overflow, cause, environmental damage, and action taken. The City is alleged to be in violation of effluent limitations set by the State of Arkansas.

Moreover, the City has reported that every SSO has not caused adverse environmental damage, which stands in stark contrast to Ms. Sallee’s observations and the observations of experts hired to examine her property. Extensive and lasting damage has occurred because of the overflowing manhole, including without limitation: structural damage to her house, perpetual

saturation of her yard, noxious odors emanating from the standing wastewater and stormwater overflow, erosion of the soil in her yard, and potential groundwater contamination (pending further testing).

Ms. Sallee's back yard is consistently filled with standing wastewater and stormwater effluent that flows periodically from the City's manhole or comes up from underground, escaping from the City's sewer system pipes. This wastewater and stormwater are mixtures of toxic sewage and contaminated stormwater, which is an unauthorized discharge under the City's NPDES permit.

Further, the City's failure to mitigate the discharge by continually offering new and varying explanations of the cause of the overflow and the reasons for why it is unable to solve the problem is a violation of the City's NPDES permit.

The sewage, wastewater, and stormwater constitute pollutants under the FWPCA's definitions. The effluent limitations set by ADEQ do not allow for the uncontrolled discharge of pollutants to the extent experienced by Ms. Sallee. Further the discharged sewage, wastewater, and stormwater is contaminating waters of the State of Arkansas as it flows onto the surface and through the ground water at 829 Maple Shade.

Here, our client has suffered from past violations of the FWPCA and continues to suffer from ongoing violations, despite the City of Alma's NPDES permit inspections. Although the City may currently be considered in compliance with their NPDES permit by ADEQ, serious gaps in information and serious effluent emissions fly in the face of prohibited discharge regulations in the FWPCA. However, ADEQ's current failure to sanction the City's noncompliance with its NPDES permit requires the enforcement of the FWPCA by the EPA or its proxy. My co-counsel and I are prepared to prosecute our client's claims for EPA.

D. Persons Giving Notice and Representing Counsel

The name, address, and telephone number of the party giving notice is:

Gina Sallee
829 Maple Shade Rd
Alma, AR 72921.

You are requested to contact the party through her attorneys:

Alexander Wyrick
Alexander L. Wyrick Law Firm, PLLC
P.O. Box 472, Greenwood, AR 72936
479-252-5164 | alexander@wyrick.legal

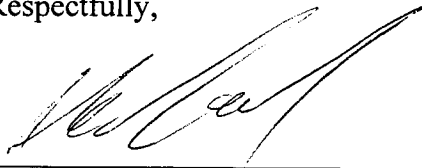
DeeAnna Weimar
Weimar Law Offices, PA
P.O. Box 58, Greenwood, AR 72936
479-996-0887 | weimarlaw@hotmail.com

E. Conclusion & Case Update

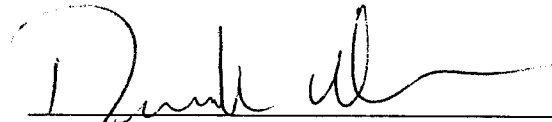
Ms. Sallee prefers to resolve this dispute without litigation and will discuss a settlement framework to resolve the claims above. However, should EPA fail to file suit before the 60-day notice period runs, or if meaningful progress toward settlement is not made during the 60-day notice period, Ms. Sallee will file suit against the City of Alma, joining EPA and the United States as parties as required by statute.

This letter was drafted because the matter was removed from the Crawford County Circuit Court in the State of Arkansas to the Federal District Court for the Western District of Arkansas by one set of the Defendants in the original filing. The removing-defendants interpreted the complaint to be alleging a federal question; my client did not object. I have included a copy of the original complaint plus the order to remove for your review. At this stage, it is unclear whether this notice operates as intended under the citizen-suit provisions of the Clean Water Act. Please advise.

Respectfully,



Alexander Wyrick
Alexander L. Wyrick Law Firm, PLLC
P.O. Box 472, Greenwood, AR 72936
479-252-5164 | alexander@wyrick.legal



DeeAnna Weimar
Weimar Law Offices, PA
P.O. Box 58, Greenwood, AR 72936
479-996-0887 | weimarlaw@hotmail.com

Weimar Law Office
P O Box 58
Greenwood, AR 72936

U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT AND NATURAL
RESOURCES DIVISION
7021 2720 0000 8740 1946



GENERIC MAIL

JAN 30 2023

EXECUTIVE OFFICE

Merrick Garland
Attorney General
US Dept. of Justice
950 Pennsylvania Ave, N.W.
Washington, D.C. 20530

20530

X-RAYED

JAN 23 2023

DOJ MAILROOM

