

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

City of Aurora, an Illinois municipal corporation,))
Plaintiff,))
vs.))
BS Iron, Inc., Fox Valley Iron and Metal, LLC,)
Robert H. Swickert, Sr., and Robert H. Swickert,)
Jr.)
Defendants.)
Case No. 113-0000000

COMPLAINT

Now comes Plaintiff, CITY OF AURORA, ILLINOIS, an Illinois Home Rule Municipal Corporation (the “City” or “Aurora”), by its attorneys, Jeffery D. Jeep and Jeep & Blazer, LLC, and for its Complaint against Defendants, BS IRON, INC., FOX VALLEY IRON AND METAL, LLC, ROBERT H. SWICKERT, SR., and ROBERT H. SWICKERT, JR., states as follows.

ALLEGATIONS COMMON TO ALL COUNTS

Nature of Action

1. This is a civil action for declaratory and injunctive relief, cost recovery and damages brought pursuant to: (1) Section 7002 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6972, *et seq.*; (2) Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §9607, *et seq.*; (3) Section 505 of the Clean Water Act (“CWA”), 33 U.S.C. §1365, *et seq.*; and (3) the Illinois common law of trespass and nuisance.

2. Pursuant to Section 7002 of RCRA, 42 U.S.C. §6972, and Section 505 of the CWA, 42 U.S.C. §1365, the City has served a Notice of Intent to Sue (“NOITS”) on Defendants. A copy of the NOITS, including its Exhibits A - O, consisting of 268 pages, is attached hereto as **Exhibit 1.**¹

3. This Complaint concerns the (1) disposal of solid waste or hazardous waste at the Fox Valley Iron & Metal scrap metal recycling operation (the “Site”) and (2) the discharge of contaminated stormwater in violation of surface water effluent standards and limitations at and from the Site.

Defined Terms

4. The term “disposal” is defined in RCRA and CERCLA to mean the “discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.” See RCRA, 42 U.S.C. § 6903(3) and CERCLA, 42. U.S.C. § 9601(29)

5. The term “CWA” in this Complaint means the federal Clean Water Act (also known as the Federal Water Pollution Control Act), 33 U.S.C.A. § 1251 *et seq.*, including, § 1342, National Pollutant Discharge Elimination System (“NPDES”).

6. As used in this Complaint, the term “ILR00” means General NPDES Permit No. ILR00 issued by the Illinois Environmental Protection Agency (“IEPA”) on April 5, 2017 for

¹ This Complaint refers to exhibits to the NOITS as **Exhibit 1** [identifying letter(s)], e.g., **Exhibit 1-A, Exhibit 1-B**, etc.

Stormwater Discharges from Industrial Activities, available at <https://www2.illinois.gov/epa/topics/forms/water-permits/storm-water/Pages/industrial.aspx> (last visited September 10, 2020) (consisting of a General Stormwater Permit for Industrial Activity and Final Attachments 1 – 3) (**Exhibit 1-A**).

7. As used in this Complaint, the term “ILR007180” means the NPDES permit issued by IEPA for the Site on October 13, 2013, under general permit ILR00, that has been assigned the identifying number of ILR007180 and that replaced an earlier NPDES permit for the Site, assigned the identifying number of ILR007175 by IEPA.

8. As used in this Complaint, the term “SWPPP” means the Stormwater Pollution Prevention Plan for the Site dated September 10, 2013 available on the IEPA NPDES Website at <http://dataservices.epa.illinois.gov/StormWaterPermitFileImage/IndustrialUploadedFiles.aspx?PermitId=7175> (last visited September 10, 2020) (**Exhibit 1-B**).

9. As used in this Complaint, the phrase “CWA Violations” means the violations of the CWA, ILR00, ILR001780 and the SWPPP described in ¶¶ 40 through 52 of this Complaint.

The Site

10. The Site is generally located at 637–663 North Broadway Avenue in Aurora, Illinois, and is generally bounded on the North by 101 E. Illinois, on the East by the BNSF Railway, on the South by 605 N. Broadway Avenue and 138 Pierce Street, and on the West by North Broadway Avenue. The Site consists of Kane County tax parcels 15-15-452-010 and 15-15-452-011. The IEPA has assigned the Site a Bureau of Land Site identifying number of 0894076019. The United States Environmental Protection Agency (“USEPA”) has assigned the Site the identifying number of 110011590162. The Site is shown on **Exhibit 1-C** (Site Map) and **Exhibit 1-G** (Aerial Photo).

11. The Site includes locations where solid wastes, including contaminated stormwater and groundwater, emanating from the Site have, on information and belief, come to be located, or threaten to become located on properties adjacent to and in the vicinity of the Site, including North Broadway Avenue and East Illinois Avenue, the City owned stormwater sewer shown on **Exhibit 1-G**, and ultimately, the Fox River.

12. On information and belief, scrap metal recycling operations began at the Site in 1933.

13. On information and belief, piles of scrap metal and other Solid Waste have continuously been stockpiled, stored or disposed of at the Site since 1933.

14. The following photographs show piles of scrap metal and other Solid Waste that is stockpiled, stored or disposed of at the Site:

- a. Photographs taken of the Site by the IEPA in 2010 (**Exhibit 1-O**);
- b. A photograph of the Site that was included in the SWPPP that Fox Valley Iron 1 submitted to the IEPA in 2013 (**Exhibit 1-B**, Figure 9, Proposed Curb); and;
- c. Google Earth photos of the Site from 2018 (**Exhibits 1-J through 1-M**).

15. On information and belief, since 1933 scrap metal recycling operations have released large quantities of dust, metal fines, residual particulate matter and solid waste that has been allowed to accumulate and been disposed at the Site.

16. The residual particulate matter and solid waste that has been allowed to accumulate and been disposed at the Site is commonly referred to in the scrap metal industry as “Scrap Yard Soil Fill”.

17. On information and belief, since 1933 a three to five-foot layer (or more) of Scrap Yard Soil Fill has been disposed across some or all of the Site.

18. On information and belief, since 1933 solid, toxic or hazardous waste has been disposed at the Site, including, but not limited to, Scrap Yard Soil Fill, special waste, oil, grease, used oil, oily water, lubricants, chemical residue, cutting oil, oil residue, coolants, antifreeze, glycol, fuel (gasoline, kerosene and diesel), hydraulic oil, transmission fluid, brake fluid, hazardous substances, hazardous materials, volatile organic compounds (“VOCs”), semi-volatile organic compounds (“SVOCs”), polycyclic aromatic hydrocarbons, organic solvents, acetone, benzene, xylenes, methylene chloride, toluene, tetrachloroethene, trichloroethene, vinyl chloride, anthracene, benzo(a)pyrene, chrysene, fluoranthene, naphthalene, phenanthrene, pyrene, phenol, polychlorinated biphenyls (“PCBs”), switches, capacitors, insulation, asbestos (friable and non-friable), metals with painted and coated surfaces, fluorescent lights, ballasts, diagnostic equipment, engines, transmissions, motors, valves, gauges, sensors, tanks, piping, discarded cracked or damaged lead-acid batteries, and heavy metals, including iron, magnesium, cadmium, zinc, chromium, lead, nickel, mercury, and arsenic, (collectively “Solid Waste” or “Solid Waste Constituents”).

19. The CWA Violations may endanger the water quality of the Fox River on which the City of Aurora, other communities and their residents depend for potable water and for use as a natural resource for fishing, recreation and other activities.

20. Defendants have failed to take necessary corrective action to remediate a petroleum release from underground storage tanks at the Site.

21. The above conditions at and around the Site are known to Defendants.

22. In general terms, the City seeks to have Defendants held liable for the conditions at and around the Site, which may threaten human health, public safety and the environment. The City also seeks:

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