

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

UNITED STATES OF AMERICA,

and

THE STATE OF INDIANA,

Plaintiffs,

v.

SANITARY DISTRICT OF HIGHLAND,
INDIANA; and the TOWN OF GRIFFITH,
INDIANA,

Defendants.

Civil Action No.

Judge

COMPLAINT

The United States of America, by authority of the Attorney General of the United States, and acting on behalf of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Indiana (the “State”), by the authority of its Attorney General and on behalf of the Indiana Department of Environmental Management (“IDEM”), allege as follows:

NATURE OF ACTION

1. This is a civil action brought by the United States and the State pursuant to the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d), seeking injunctive relief and the assessment of civil penalties against the Sanitary District of Highland, Indiana (“Defendant Highland”) and the Town of Griffith, Indiana (“Defendant Griffith”). The Complaint alleges that Defendants Highland and Griffith had numerous unauthorized and illegal discharges of sanitary sewage from their sanitary sewer collection systems to navigable waters, including the Little

Calumet River and/or adjacent wetlands in violation of 33 U.S.C. § 1311(a); Title 13 of the Ind. Code; and Title 327 of the Indiana Administrative Code (“IAC”), Articles 2 and 5. The Complaint also alleges that Defendants Highland and Griffith have failed to comply with administrative orders issued to them by EPA pursuant to the CWA, 33 U.S.C. §§ 1318(a) and 1319(a).

2. Defendants are joined in the same cause of action pursuant to Fed. R. Civ. P. 20(a)(2) because the claims against Defendants Highland and Griffith are similar in nature. In addition, both communities rely on the neighboring town of Hammond, Indiana to treat all of their sanitary sewage and pay relative percentages of Hammond’s capital investments in its wastewater conveyance and treatment infrastructure.

JURISDICTION, VENUE, AUTHORITY, AND NOTICE

3. This Court has jurisdiction over the subject matter of this action pursuant to 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. The State is a party to this action pursuant to 33 U.S.C. § 1319(e), and 28 U.S.C. § 1367(a).

4. This Court has supplemental jurisdiction over the State law claims alleged here pursuant to 28 U.S.C. § 1367(a) because the State claims are related to the federal claims and form part of the same case or controversy.

5. Venue is proper in the Northern District of Indiana pursuant to 28 U.S.C. § 1391(b) and 33 U.S.C. § 1319(b) because it is the judicial district where Defendants Highland and Griffith are located and where the alleged violations occurred. Venue in this District is also proper under 28 U.S.C. § 1367(a).

6. As a signatory to this Complaint, the State has actual notice of the commencement of this action in accordance with 33 U.S.C. § 1319(b).

7. The Attorney General of the United States is authorized to appear and represent the United States in this action pursuant to 33 U.S.C. § 1366, and 28 U.S.C. §§ 516 and 519.

8. The Indiana Attorney General is authorized to appear and represent the State in this action pursuant to Ind. Code §§ 4-6-3-2(a), 13-30-4-1, and 13-14-2-6.

THE PARTIES

9. Plaintiff United States is acting at the request and on behalf of the Administrator of EPA. Plaintiff the State of Indiana is acting at the request and on behalf of the Commissioner of IDEM. Plaintiff, the State of Indiana is a “State” and “person” within the meaning of the CWA, 33 U.S.C. § 1362(4) and (5).

10. The CWA requires that a state be joined as a party when the United States sues a municipality of the state. 33 U.S.C. § 1319(e). Here, the State is a co-plaintiff, along with the United States, in this action. IDEM is authorized to implement the CWA within the State. Ind. Code § 13-13-5-1(1). Indiana regulations incorporate the CWA, 33 U.S.C. § 1251 *et seq.*, by reference. 327 IAC 5-2-1.5(1).

11. Defendant Highland is a political subdivision of the State. Defendant Highland owns and operates a sanitary sewer collection system in the Town of Highland, Indiana.

12. Defendant Griffith is an incorporated township in Lake County, Indiana. Defendant Griffith owns and operates a sanitary sewer collection system and equalization basin in the Town of Griffith, Indiana.

13. Defendants Highland and Griffith are “municipalities” and “persons” within the meaning of the CWA, 33 U.S.C. § 1362(4) and (5).

GOVERNING LAW

14. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters. 33 U.S.C. § 1251.

15. To promote the objective of the CWA, the CWA and Indiana Code prohibit the “discharge of any pollutants” by any person except, among other things, in compliance with a NPDES permit issued by an authorized state pursuant to 33 U.S.C. § 1342(b). 33 U.S.C. § 1311(a); Ind. Code 13-30-2, 327 IAC 5-2-2.

16. The CWA defines “discharge of a pollutant” to mean, among other things, “any addition of any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12). *See also* 327 IAC 5-1.5-11 (similarly defining “discharge of a pollutant”).

17. The CWA and Indiana regulations define “pollutant” to include sewage. 33 U.S.C. § 1362(6); 327 IAC 5-1.5-41.

18. Under the CWA and Indiana Code, a “point source” is “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel . . . from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14); 327 IAC 5-1.5-40.

19. The CWA defines “navigable waters” as “the waters of the United States, including the territorial seas.” 33 U.S.C. § 1362(7). “Waters of the United States” have been further defined to include, among other things, waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, interstate waters, tributaries of such waters, and wetlands adjacent to the foregoing waters. 40 C.F.R. § 122.2.

20. Indiana law defines “waters of the state” to include “the accumulations of

water, surface and underground, natural and artificial, public and private; or a part of the accumulations of water that are wholly or partially within, flow through, or border upon Indiana.” Ind. Code. 13-11-2-265.

21. 33 U.S.C. § 1319(a)(3), states that whenever the Administrator of EPA finds a person in violation of 33 U.S.C. § 1311(a), the Administrator may issue an order requiring that person to comply with the provisions of the CWA.

22. The CWA provides that EPA is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, when any person violates 33 U.S.C. § 1311. Indiana is authorized to enforce its water pollution control laws under Ind. Code §§ 13-30-1-1, 13-30-3, or 13-14-1-12.

23. Any person who violates 33 U.S.C. § 1311, or an order issued pursuant to 33 U.S.C. § 1319(a), is subject to a civil penalty. The applicable civil penalty levels are up to \$37,500 per day for each violation occurring between January 12, 2009 and November 2, 2015; and \$59,973 per day for each violation occurring after November 2, 2015. *See* 40 C.F.R. § 19.4.

24. The State is authorized to commence a civil action for appropriate relief, including injunctive relief and civil penalties, to address violations of Title 327 of the Indiana Administrative Code, Article 5. 327 IAC 5-2-20 and Ind. Code §§ 13-30-4-1 and 13-14-2-6. This relief may include a permanent or temporary injunction, as well as a civil penalty of up to \$25,000 per day for each violation.

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