

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

Plaintiff,

COMPLAINT

16 Civ. _____

-against-

STATE OF NEW YORK;
NEW YORK STATE OFFICE
OF PARKS, RECREATION AND
HISTORIC PRESERVATION;
PALISADES INTERSTATE PARKS
COMMISSION,

Defendants.
-----X

CV 16 - 6989

WEXLER, J.

SHIELDS, M.J.

FILED
CLERK

2016 DEC 19 PM 3:20

U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

The United States of America, by authority of the Attorney General of the United States and through the undersigned counsel acting at the request of and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action against Defendants State of New York; New York State Office of Parks, Recreation and Historic Preservation ("NYS Parks"); and Palisades Interstate Parks Commission ("the Commission") (collectively "Defendants") for their operation of 54 large-capacity cesspools in violation of the Safe Drinking Water Act ("SDWA") and EPA's regulations promulgated thereunder. The relevant regulations require the closure of all large-capacity cesspools nationwide as of April 5, 2005. Large-capacity cesspools pose a serious risk to the public because they can contaminate underground sources of drinking water. This action

seeks injunctive relief and civil penalties for NYS Parks' violations of the SDWA and EPA's regulations.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), and 28 U.S.C. § 1331, 1345 and 1355.

3. Venue is proper in this judicial district under Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), 28 U.S.C. §§ 1391(b)(2) and 1395, because a "substantial part" of the SDWA violations occurred in Nassau and Suffolk counties, which are within this district. In fact, more than two thirds of the Prohibited LCCs, as defined in Paragraph 6, below, are located within this district.

DEFENDANTS

4. NYS Parks is an office within the Executive Department of the State of New York, established under the Parks, Recreation and Historic Preservation Law ("PRHPL"). NYS Parks operates and maintains parks, parkways, recreational facilities and historic sites under PRHPL Section 3.09(2).

5. The Commission is a municipal corporation established by a compact between the states of New York and New Jersey, which was approved by the Congress of the United States. The State of New York regulates and controls New York State parks located in the Palisades region (NYS Parks Region 8), which fall within the Commission's territory. PRHPL, Art. 9; 9 N.Y.C.R.R. Parts 403, 404, *et. seq.*

6. State of New York and NYS Parks own and/or operate 54 large-capacity cesspools ("LCC"). These 54 large capacity cesspools are collectively referred to as "the

Prohibited LCCs.” The Commission owns and jointly operates with NYS Parks eight of the Prohibited LCCs. These eight LCCs are located in Orange County.

7. State of New York, NYS Parks, and the Commission (hereafter “Defendants”) are “persons” as defined by Section 1401 of the SDWA, 42 U.S.C. § 300f(12),

STATUTORY AND REGULATORY FRAMEWORK

The Safe Drinking Water Act and the Underground Injection Control Program

8. The SDWA, 42 U.S.C. §§ 300f-300j, was enacted by Congress in 1974 to protect public health by regulating the nation’s public drinking water sources.

9. Many of the nation’s public water systems rely on underground sources of water for their supply. Underground injection wells, including cesspools, pose a risk to the public because they can contaminate underground drinking water sources and the public water systems that use those sources.

10. Accordingly, Congress enacted Part C of the SDWA, 42 U.S.C. §§ 300h to 300h-8, which addresses the regulation of underground injection wells.

11. Section 1422(b) of the SDWA, 42 U.S.C. § 300h-1(b), provides for EPA to delegate primary enforcement responsibility over underground injection wells to a state, if the state submits to EPA an acceptable underground injection control (“UIC”) program by the statutory deadline.

12. Section 1421 of the SDWA, 42 U.S.C. § 300h, requires EPA to promulgate regulations containing minimum requirements for state UIC programs. 42 U.S.C. §§ 300h(a) and (b).

13. As required by Section 1421 of the SDWA, EPA promulgated the Class V UIC regulations, which are found at 40 C.F.R. §§ 144.80 to 144.89.

14. Section 1422(c) of the SDWA, 42 U.S.C. § 300h-1(c), requires EPA to prescribe and implement the UIC program in a state if that state fails to submit to EPA an acceptable UIC program by the statutory deadline.

15. New York State failed to submit an acceptable UIC program to EPA by the statutory deadline and, therefore, EPA directly implements the UIC program, including the Class V UIC regulations, in New York. 40 C.F.R. § 144.83(a)(1).

16. The Class V UIC regulations cover various types of injection wells, including cesspools.

17. Pursuant to 40 C.F.R. § 144.81(2), a “large capacity cesspool” includes multiple dwelling, community or regional cesspools, or other devices that receive sanitary wastes, containing human excreta, which have an open bottom and sometimes perforated sides and non-residential cesspools with the capacity to serve 20 or more persons a day.

18. Pursuant to 40 C.F.R. §§ 144.82(b) and 144.88(a), owners and operators of “existing” (*i.e.*, operational or under construction by April 5, 2000) large-capacity cesspools were required to close them by April 5, 2005 (“Class V Rule”).

Enforcement of the SDWA

19. Under Section 1423(a)(2) of the SDWA, 42 U.S.C. § 300h-2(a)(2), EPA is authorized to commence a civil action whenever any person violates any requirement of a UIC program that EPA directly implements.

20. Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), provides that the United States district court in which the civil action is brought has the jurisdiction to require compliance with any requirement of the UIC program and may enter such judgment as protection of public health may require.

21. Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), also provides that any person who violates any requirement of a UIC program shall be subject to a civil penalty.

FACTUAL BACKGROUND AND GENERAL ALLEGATIONS

22. As of October 2013, NYS and NYS Parks owned and/or operated 78 large capacity cesspools in the State of New York, all of which were in existence as of April 5, 2005. The Commission owned and jointly operated eight of these large-capacity cesspools.

23. In October 2013, NYS Parks entered into a consent order with the New York State Department of Conservation (“October 2013 Consent Order”) which required NYS Parks to close 24 of its cesspools by certain specified deadlines. The 54 large-capacity cesspools that are not covered by the October 2013 Consent Order are the subject of this action.

24. The Prohibited LCCs are used for the purpose of subsurface discharge of sanitary sewage flowing from NYS Parks “comfort stations” (men’s and women’s restrooms), visitor centers and recreational centers and cultural centers.

25. The Prohibited LCCs are located on NYS Parks’ properties within the following associated counties: Suffolk (33), Nassau (3), Broome (1), Clinton (4), Columbia (1), Orange (8), Rensselaer (1), and Schoharie (3). A summary table of the Prohibited LCCs is attached hereto as Exhibit A and incorporated by reference herein.

26. Thirty-six of the Prohibited LCCs are above the Nassau/Suffolk County Aquifer, which supplies most of the drinking water for the population of Long Island.

27. Pursuant to Section 1424 of the SDWA, 42 U.S.C. § 300h-3(e), the Regional Administrator, EPA, Region II, has designated the Nassau/Suffolk County Aquifer as a Sole Source Aquifer, which, if contaminated, would create a significant hazard to public health. *See* 43 Fed. Reg. 26611 (1978).

28. Nine of the Prohibited LCCs, which are located in Broome and Orange Counties, are above the Clinton Street-Ballpark Aquifer and the Ramapo Aquifer, which supply most of the drinking water for the populations of the Broome and Orange County areas.

29. Pursuant to Section 1424 of the SDWA, 42 U.S.C. § 300h-3(e), the Regional Administrator, EPA, Region II, has designated the Clinton Street-Ballpark Aquifer as a Sole Source Aquifer for the Broome County area, which, if contaminated, would create a significant hazard to public health. *See* 50 Fed. Reg. 2025-01 (1985).

30. Pursuant to Section 1424 of the SDWA, 42 U.S.C. § 300h-3(e), the Regional Administrator, EPA, Region II, has designated the Ramapo Aquifer as a Sole Source Aquifer for the Orange County area, which, if contaminated, would create a significant hazard to public health. *See* 57 Fed. Reg. 39201-01 (1992).

31. Each of the Prohibited LCCs is a “large-capacity cesspool” as defined by 40 C.F.R. § 144.81(2). Defendants failed to close the Prohibited LCCs by April 5, 2005, as required by the Class V Rule.

32. Six of the Prohibited LCCs have ceased operating, or been closed, since approximately October 2014.

CLAIM FOR RELIEF

33. The United States incorporates by reference paragraphs 1 through 32 as if fully set forth herein.

34. After April 5, 2005, Defendants owned and/or operated 54 large-capacity cesspools in New York that had not been closed in accordance with the Class V Rule. 40 C.F.R. §§ 144.82(b) and 144.88(a).

35. Each day of its failure to close each of the remaining 48 large capacity cesspools is a violation of Section 1423 of the SDWA for which NYS Parks is liable for civil penalties.

36. Pursuant to Section 1423(b) of the SDWA, 42 U.S.C. § 300h-2(b), NYS Parks is subject to injunctive relief for its violations of the Class V Rule.

PRAYER FOR RELIEF

WHEREFORE, the United States of America respectfully requests that this Court:

- A. Order NYS Parks to immediately close its 48 remaining Prohibited LCCs in accordance with the requirements of the Class V Rule.
- B. Order that NYS Parks be assessed civil penalties pursuant to Section 1423 of the SDWA, 42 U.S.C. § 300h-2(b), as amended by the Civil Monetary Penalty Inflation Adjustment Rule per day for each violation of the SDWA.
- C. Award the United States its costs and disbursements in this action; and
- D. Grant such other relief as the Court deems just and proper.

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Dated: December 19, 2016
Brooklyn, New York

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Ex. A

Exhibit A to Complaint, NYS Parks Large-Capacity Cesspools List of Prohibited Wells

NYS Parks Region	County	NYS Park Name	Location(s)	Number of LCCs	
5 - Central	Broome	Chenango Valley State Park	Camp Evans (closed)	1	
7 - Taconic	Columbia	Taconic State Park Copake Falls Area	Ironworkers Cabin	1	
8 - Palisades	Orange	Harriman-Lake Kanawauake	Camps K-1, K-3, K-3, K-24, and K-31	5	
			Orange	Harriman-Various Locations	Camps K-20, K-20, and UT-2
9 - Long Island	Nassau	Planting Fields Arboretum State Historic Park	Coe Hall, Carriage House/LI 55 Residence, Hay Barn/Conference Center/Dairy Cottage	3	
			Suffolk	Bayard Cutting Arboretum State Park	Administration Building Café and Public Restrooms
	Suffolk	Bethpage State Park	Yellow & Blue Course Refreshment Stand/Golf Cart Rental, Maintenance Building East, Red Course Refreshment Stand, Black Course Refreshment Stand, Green Course Refreshment Stand	5	
			Suffolk	Caleb Smith State Park Preserve	BOCES Lab, Clubhouse/Museum Park Office, Walden Building
	Suffolk	Connetquot River State Park Preserve	New Annex/Main Building/Main Garage, Old Annex/Administration/ Comfort Station	5	
			Suffolk	Hither Hills State Park	West Comfort Station, West Showers, East Comfort Station, Far West Comfort Station, East Showers, Employee Comfort Station/Temporary Trailer, Employee Campground Section X, Employee Campground Section Z
	Suffolk	Montauk Downs State Park	Pool/Snack Bar Comfort Station	1	
			Suffolk	Orient Beach State Park	Bath House (Men's), Bath House (Women's), Bath House Showers (Men's), Bath House Showers (Women's), Comfort Station
	10 - Thousand Islands	Suffolk	Sag Harbor State Golf Course	Clubhouse	3
	11 - Saratoga	Clinton	Macomb Reservation State Park	Building #6 (closed), Building #7 (closed), Building #8 (closed), Building #9 (closed)	4
Rensselaer	Schoharie	Bennington Battlefield State Historic Site	Comfort Station	1	
			Max V Shaul State Park	Comfort Station, Comfort Station, Comfort Station	3