

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Clean Water and Air, LLC, individually
and on behalf of all others similarly
situated,

Plaintiff,

v.

Tofte Wastewater Treatment Association
d/b/a Bluefin Bay on Lake Superior
WWTP,

Defendant,

Case No.:

CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT AND FACTS

1. This is a citizen enforcement action brought to address Bluefin Bay's past and ongoing violations of the federal Clean Water Act, 33 USC § 1251 et. seq. (CWA) on an individual basis, together with causes of action sounding in nuisance and negligence individually, and on behalf of itself and all others similarly situated.

2. For years, Defendant Tofte Wastewater Treatment Association d/b/a Bluefin Bay on Lake Superior WWTP (Bluefin Bay) has polluted the pristine waters of Lake Superior with Mercury, Fecal Matter, Coliform and Suspended Solids.

3. According to the Environmental Protection Agency, Bluefin Bay has violated its Clean Water Act permit on three-hundred and twelve (312) days since November 30, 2018, has failed to comply with its Clean Water Act permit for 7 out of 12 quarters, and is currently in violation of its Clean Water Act Permit.

4. This action seeks relief including, but not necessarily limited to, a declaration that Bluefin Bay has and continues to violate the terms of its Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit; an order requiring Bluefin Bay to comply with the Clean Water Act and its NPDES permit; an order assessing the maximum penalties available under the law against Bluefin Bay for each day it has and continues to violate the terms of its NPDES permit; an award to Plaintiff of its costs of litigation including reasonable attorney's and expert's fees; damages pursuant to Plaintiff's nuisance and negligence claims, punitive damages, and such other relief as the Court deems appropriate.

PARTIES

5. Plaintiff is an organization formed for the purpose of advocating for clean waterways and air and the preservation of natural resources by seeking to ensure enforcement of the country's environmental laws.

6. Bluefin Bay is located on the North Shore of Lake Superior, in Tofte, Minnesota (Tofte). Bluefin Bay discharges wastewater directly into Lake Superior pursuant to the its ("NPDES") permit No. MN-0054593.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction under 33 U.S.C. § 1365(a) and 28 U.S.C. § 1331.

8. Venue lies with this Court under 33 U.S.C. § 1365(c)(1) because the Facility at issue is located in this District.

**DEFENDANT’S POLLUTION AND REPEATED VIOLATIONS OF ITS CLEAN
WATER ACT PERMIT**

9. Bluefin Bay discharges wastewater directly into Lake Superior pursuant to the its (“NPDES”) permit No. MN-0054593.

10. Lake Superior is the largest and northernmost of the Great Lakes of North America. It is the world’s largest freshwater lake by surface area and holds 10% of the world’s surface freshwater.

11. Lake Superior is home to numerous freshwater fish including salmon and trout, and borders the natural habitat of wolves, bears, moose, loons, and numerous other wildlife.

12. Lake Superior’s Minnesota Shoreline, often referred to as the North Shore, is exceptionally scenic and regularly enjoyed by visitors who camp, hike, fish, kayak, boat, and visit to simply enjoy the views, peace and natural beauty it offers.

13. Bluefin Bay is located on the North Shore of Lake Superior, within or in close proximity to the city of Tofte, Minnesota.

14. Bluefin Bay’s NPDES permit strictly limits the amount of allowable pollutants in the Facility’s wastewater discharges into Lake Superior. But despite its strict NPDES permit limits, Bluefin Bay has, for years, repeatedly and on an ongoing basis, discharged wastewater directly into Lake Superior with pollutant levels that violate its NPDES permit limits for mercury, fecal matter, coliform and suspended solids, which are in turn violations of the Clean Water Act.

CWA PRE-SUIT NOTICE

15. On October 28, 2021, in accordance with 33 U.S.C. § 1365(b)(1)(A), Plaintiff provided notice of intent to file suit under the Federal Clean Water Act (60-Day Notice Letter) to the Administrator of the Environmental Protection Agency (EPA), the Regional Administrator of EPA Region 5, the Commissioner of the Minnesota Pollution Control Agency, and to Defendant.

16. The Notice Letter provided Defendant with sufficient information to determine the CWA requirements Plaintiff alleges Defendant violated, the activity alleged to constitute the violations, sufficient information to determine the date, location and person responsible for the violations, and the contact information for Plaintiff and Plaintiff's counsel. Among other things, the Notice letter identified 312 specific days between November 30, 2018, and August 31, 2021, when Defendant had discharged wastewater into Lake Superior with pollutant levels that violate its NPDES permit limits and exceedance details including the subject outfall, parameter, limit type, percent exceedance, exceedance counts by pollutant, the number of exceedances, the days with exceedances, and the dates of the exceedances, all as set forth on Exhibit A hereto.

17. Defendant's unlawful discharges included ongoing and repeated violations of, among other things, mercury by as much as 94% of the permitted discharge, fecal matter by as much as 43% of the permitted discharge, coliform by as much as 43% of the permitted discharge and suspended solids by as much as 111% of the permitted discharge.

18. The Notice Letter also advised Defendant that EPA records designate the Facility's current CWA compliance status as "Non compliant" and show that the Facility has been designated as Non-complaint with its CWA permit for five of the last 12 quarters.

19. As of the date of this filing, the Defendant continues to be designated as Non-compliant with its CWA permit by the EPA.

20. 33 U.S.C. § 1319 (g)(6)(B) provides that governmental action cannot bar a CWA citizen suit unless it either was commenced before the 60-day notice letter or the citizen suit is not filed more than 120 days after the 60-day notice letter.

21. Minnesota is a "delegated state" such that the EPA has delegated enforcement authority under the CWA to the MPCA.

22. No enforcement action was commenced before the 60-day notice letter as to the violations identified in the 60-day notice letter.

23. Following receipt of the October 28, 2021, 60-day Notice Letter, Defendant entered into a "compliance agreement" with the State of Minnesota Pollution Control Agency (MPCA). The "compliance agreement" was executed by Defendant on December 28, 2021, and was effective as of the date the MPCA executed it on January 4, 2022.

24. More than 60 days have passed since the 60-day Notice Letter was sent.

25. Less than 120 days have passed since the 60-day Notice Letter was sent and the date this action was filed and therefore commenced.

26. 33 U.S.C. § 1319 (g)(6)(B) therefore bars any effort by Defendant to contend that this action is barred by a diligent prosecution. See e.g., *Black Warrior Riverkeeper, Inc. v. Cherokee Mining, LLC.*, 548 F.3d 986 (11th Cir. 2008).

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