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(1919 - 2003)

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July 3, 2012

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State of Illinois
Pollution Control Board
James R. Thompson Center
100 W. Randolph Street, Suite 11-500
Chicago, IL 60601

Re: Welch vs. DeKalb Sanitary District (PCB 2012-131)
Our File No.: 2012-0438

To Whom It May Concern:

Please find enclosed an original Proof of Service, Affidavit, and Motion to Dismiss with regard to the above-referenced matter. I have also provided the requested nine copies of the Motion to Dismiss and Affidavit.

Thank you, and please contact me if you have any questions.

Very truly yours,

THE FOSTER & BUICK LAW GROUP, LLC

By: Shannon R. Barnaby
Shannon R. Barnaby, for the firm

Enclosures

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

LARRY D. WELCH,)
)
 Complainant,)
)
 vs.) No. PCB 2012-131
)
 DEKALB SANITARY DISTRICT,)
)
 Respondent.)

PROOF OF SERVICE

STATE OF ILLINOIS)
) SS.
 COUNTY OF DE KALB)

I, the undersigned, being first duly sworn, on oath depose and say that I served the within **AFFIDAVIT and MOTION TO DISMISS** upon the within named

Larry D. Welch
 3336 Meadow Trail E
 DeKalb, IL 60115

by placing a true and correct copy of said **AFFIDAVIT and MOTION TO DISMISS** in an envelope, addressed as is shown above.

That I sealed said envelope and placed sufficient U.S. postage thereon; that I deposited said envelope so sealed and stamped in the U. S. mail at Sycamore, Illinois, at or before the hour of 5:00 P.M. on the 3rd day of July, 2012.

Shannon R. Barnaby

Subscribed and sworn to before me this 3rd day of July, 2012.

Jessica Magana
 NOTARY PUBLIC



THE FOSTER & BUICK LAW GROUP
 2040 ABERDEEN COURT
 SYCAMORE, ILLINOIS 60178
 PHONE: (815) 758-6616

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|----------------------------------|---|--------------|
| LARRY D. WELCH, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 2012-131 |
| |) | |
| DEKALB SANITARY DISTRICT, |) | |
| |) | |
| Respondent. |) | |

AFFIDAVIT

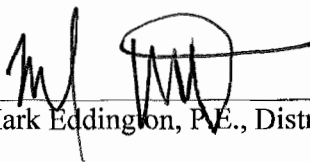
I, Mark Eddington, P.E., under penalty of perjury pursuant to Section 1-109 of the Illinois Code of Civil Procedure do hereby testify and state as follows:

1. I am over eighteen (18) years of age and competent to make this Affidavit.
2. I am the District Manager of the DeKalb Sanitary District and have been since 2010, and in such capacity I have personal knowledge of the facts of which are outlined below and if called to testify I am able to testify to the matters stated below:
3. It is the District policy to physically inspect each lift station within the district on a daily basis to be certain all systems are functioning properly;
4. During the morning of June 15, 2011, the District performed a physical check of the Meadow Trail lift station located at 457 Red Wing Drive, DeKalb Illinois, and found no malfunctions with the lift station;
5. At 8:30 a.m. on June 16, 2011, the District performed a physical check of the Meadow Trail lift station located at 457 Red Wing Drive, DeKalb Illinois, and discovered that both pump motor capacitors had failed and a relay in the lift station's high water alarm had failed;
6. Due to the failure of the high water alarm that occurred sometime between the physical check performed by the District on June 15 and June 16, 2011, District staff did not become aware of the pump motor capacitor failures or ensuing sewage back-up until the District's daily inspection on June 16, 2011;
7. Immediately after District staff discovered said failures, they returned to the wastewater treatment plant (WWTP) to obtain the 4" emergency trash pump. District staff then returned to the lift station; bypassed the malfunctioning pumps, and sent the emergency pump down the wet well;

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8. Upon the District staff raising the first pump to check for malfunctions or other problems with the pump, none were found. District staff then returned the pump to the wet well and replaced the start capacitor. Said pump was started and proper voltage and amperage was checked;
9. District staff then pulled the second pump and found no malfunction or other problems with this pump as well. Said Pump was replaced in wet well and it was determined that the pump was pulling high amperage. District staff replaced said pump with a spare;
10. District staff determined that the high water alarm did not function because the intrinsically safe relay had malfunction. Accordingly, this relay was promptly replaced by District staff;
11. After this incident, Mr. Welch reported that a back-up had occurred in his basement and sought damages for the repair costs;
12. On October 19, 2011, Mr. Welch filed a civil lawsuit against the District in the Circuit Court of Sixteenth Judicial Circuit, DeKalb County, Case No. 11-SC-1343.
13. The issues raised in the Complaint now before the board are identical to, or substantially similar to, the issues raised by Mr. Welch in the DeKalb County, Illinois lawsuit.
14. On March 30, 2012, the civil lawsuit was dismissed with prejudice upon the parties reaching a settlement. This settlement contained a release of both parties, which specifically did not admit liability or responsibility on either party.
15. I am familiar with Exhibits A and B attached to this Motion.
16. All of said Exhibits are a true and correct copy of the originals of said documents.

Affiant further sayeth naught.



 Mark Eddington, P.E., District Manager

Subscribed and sworn to before me

this 3rd day of July, 2012.



Notary



THE FOSTER & BUICK LAW GROUP, LLC
 2040 ABERDEN COURT
 SYCAMORE, ILLINOIS 60178
 PHONE: (815) 758-6616

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|----------------------------------|---|--------------|
| LARRY D. WELCH, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 2012-131 |
| |) | |
| DEKALB SANITARY DISTRICT, |) | |
| |) | |
| Respondent. |) | |

MOTION TO DISMISS

NOW COMES the Respondent, the DEKALB SANITARY DISTRICT (“District”), by and through its attorneys, The Foster and Buick Law Group, LLC, respectfully requests that the Illinois Pollution Control Board, pursuant to 35 Illinois Administrative Code Part 101, Section 101.506 of the Rules of the Illinois Pollution Control Board (“Board”), not accept the Complaint filed in his matter for hearing, and therefore dismiss the Complaint herein because it is frivolous. In support of this Motion the District states:

Facts

1. The District policy is to physically inspect each lift station within the district on a **daily** basis to be certain all systems are functioning properly;
2. During the morning of June 15, 2011, the District performed a physical check of the Meadow Trail lift station located at 457 Red Wing Drive, DeKalb Illinois, and found no malfunctions with the lift station;
3. At 8:30 a.m. on June 16, 2011, the District performed a physical check of the Meadow Trail lift station located at 457 Red Wing Drive, DeKalb Illinois, and discovered that both pump motor capacitors had failed and a relay in the lift station’s high water alarm had failed;
4. Due to the failure of the high water alarm that occurred sometime between the physical check performed by the District on June 15 and June 16, 2011, District staff did not become aware of the pump motor capacitor failures or ensuing sewage back-up until the District’s daily inspection on June 16, 2011;
5. Immediately after District staff discovered said failures, they returned to the wastewater treatment plant (WWTP) to obtain the 4” emergency trash pump. District staff then returned to the lift station; bypassed the malfunctioning pumps, and sent the emergency pump down the wet well;

THE FOSTER & BUICK LAW GROUP, LLC
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6. Upon the District staff raising the first pump to check for malfunctions or other problems with the pump, none were found. District staff then returned the pump to the wet well and replaced the start capacitor. Said pump was started and proper voltage and amperage was checked;
7. District staff then pulled the second pump and found no malfunction or other problems with this pump as well. Said Pump was replaced in wet well and it was determined that the pump was pulling high amperage. District staff replaced said pump with a spare;
8. District staff determined that the high water alarm did not function because the intrinsically safe relay had malfunction. Accordingly, this relay was promptly replaced by District staff;
9. After this incident, Mr. Welch reported that a back-up had occurred in his basement and sought damages for the repair costs;
10. As Mr. Welch mentions on the face of his Complaint, on October 19, 2011, Mr. Welch filed a civil lawsuit against the District in the Circuit Court of Sixteenth Judicial Circuit, DeKalb County, Case No. 11-SC-1343.
11. The issues raised in the Complaint now before the board are identical to, or substantially similar to, the issues raised by Mr. Welch in the DeKalb County, Illinois lawsuit. (See a copy of the civil complaint attached as Exhibit A);
12. On March 30, 2012, the civil lawsuit was dismissed with prejudice upon the parties reaching a settlement. This settlement contained a release of both parties, which specifically did not admit liability or responsibility on either party. (See a copy of the executed release to settlement attached as Exhibit B);

Reasons Why The Complaint Should Be Dismissed

13. Pursuant to 415 ILCS 5/31 (d)(1), Mr. Welch's formal Complaint should not be accepted for a hearing by this Board because it is frivolous as defined by 35 Ill. Adm. Code 103.212(a). "Frivolous" is defined as a formal complaint that seeks relief that the Board does not have authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief;
14. The allegations in Mr. Welch's Complaint are void of facts which reasonably inform the District of the manner and extent to which the Environmental Protection Act and/or regulations are being violated. Instead, the allegations contained in Mr. Welch's Complaint are pure conclusions which fall short of being factually or legally sufficient to allege an improper or culpable act on the part of the District. Inasmuch as the Complaint is factually deficient, it is "frivolous" within the meaning of the Rules of this Board. *See Roche v. Illinois Pollution Control Board*, 78 Ill. App. 3d 476, 481 (1st Dist. 1979); *Winnetkans Interested in Protecting the Environment (WIPE) v. Pollution Control Board*, 55 Ill. App. 3d 475, 480 (1st Dist. 1977);
15. Further the Complaint is frivolous because Mr. Welch fails to state a cause of action upon which the Board can grant relief. It is difficult, if not impossible, to determine what Mr. Welch is alleging and requesting from this Board;

16. First, Mr. Welch alleges that the District violated 35 IL Adm. Code §370.440, which details alarm system requirements. Yet, the District **does** have the required alarm systems in place. 35 IL Adm. Code §370.440 is not a strict liability statute: it does not require that an alarm in place never suffer a malfunction. Therefore, no violation of the aforementioned section of the Illinois Recommended Standards for Sewage Works occurred;

17. Rather, on the date in question the alarm malfunctioned due to a failure on an intrinsically safe alarm relay. Further, the District immediately replaced all components of said alarm, and the District is currently working with an electrical consultant which would enable staff to receive an additional alarm in the unlikely event that a multiple failure of this nature was to occur again. Therefore, no violation has occurred; the District is within compliance, and there is no relief to be granted by this Board;

18. Second, Mr. Welch alleges that the District violated 35 IL Adm. Code §370.450, which details emergency operations. Nevertheless, again the District **does** have the required emergency operations in place. In fact, the District owns portable pumps and generators utilized at this lift station. The lift station averages about 2.5 hours of run time/day and at base flow, the pumps typically run approximately once every twenty to thirty minutes, which is a design standard cited in 35 IL Adm. Code §370.410 (f). The failure of the alarm system itself was the reason for the backup rather than a failure of emergency operations or a lack of reaction time by District staff. If the high water alarm had been delivered, District staff would have had ample time to mobilize either emergency power or emergency bypass pumping capacity before a back-up occurred. District staff has successfully performed this operation in the past with the emergency operation currently in place. Consequently, no violation has occurred; the District is within compliance, and there is no relief to be granted by this Board;

19. Lastly, Mr. Welch alleges that the District violated the Schedule F Application for Lift Station Construction/Operation. Nonetheless, the District has met the requirements for said permit. The District does not have any fencing around any of our seven pumping stations. However, District lift station, wet wells, valve vaults, instrumentation, and controls are locked and secure, which would make it difficult for vandals to penetrate District facilities. To date, we have not experienced vandalism or related problems at any of our pumping stations. Certainly the District would reevaluate the need for fencing if vandalism became a problem. Accordingly, no violation has occurred; the District is within compliance, and there is no relief to be granted to Mr. Welch on this count;

20. No violation of the Environmental Protection Act, Board regulations, Board order, or permit has occurred in the matter at hand; therefore, Mr. Welch's Complaint is frivolous and should not be accepted for hearing by the Board;

21. Also, the Complaint submitted by Mr. Welch is duplicative within the meaning of Section 101.202 of the Illinois Pollution Control Board's procedural rules. "Duplicative" means the matter is identical or substantially similar to one brought before the Board or another forum. Mr. Welch answers that he has no knowledge of any identical or substantially similar case already pending before the Board or in another forum against this Respondent (the District) for the same alleged pollution.

In spite of this, as aforementioned, a lawsuit was filed by Mr. Welch with allegations identical or substantially similar to those in the Complaint which has since been dismissed with prejudice on March 30, 2012, due to the parties reaching a settlement agreement.

WHEREFORE, the Respondent, the DEKALB SANITARY DISTRICT, prays that this Board find the Complaint at hand frivolous and therefore not accept Mr. Welch's Formal Complaint for hearing. Furthermore, it is requested that Complainant's Formal Complaint be dismissed and that the Pollution Control Board award Respondent and all other relief as this Board may deem just.

Dated: July 2, 2012

Respectfully submitted,

DEKALB SANITARY DISTRICT

By: 

Keith L. Foster, One of its Attorneys

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
DEKALB COUNTY, ILLINOIS

LARRY D. Welch
Plaintiff,

CASE NO.:

11XC1343

FILED

OCT 19 2011

Maureen A. Josh
Clerk of the Circuit Court
DeKalb County, Illinois

vs.
DeKalb Sanitary District
Defendant.

SMALL CLAIM COMPLAINT

I, LARRY D. Welch the Plaintiff herein, claim that the Defendant, DeKalb Sanitary District is indebted to the Plaintiff in the sum of \$ 8,621.37 for damages incurred due to raw sewage backing up into the basement of my home on June 16, 2011. Plaintiff has demanded payment of said sum from the Defendant and he/she refused to pay the same and no part thereof has been paid.

Defendant resides at:
Address: 303 Hollister Ave
City/State/Zip: DeKalb, IL 60115
Telephone No.: 815-758-3513

Plaintiff resides at:
Address: 3336 Meadow Trail E
City/State/Zip: DeKalb, IL 60115
Telephone No.: 815-748-4390

Dated 10/19/11

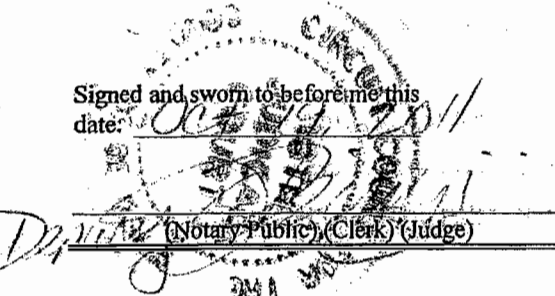
x Larry D. Welch
Signature of Plaintiff

AFFIDAVIT

Larry Welch on oath states that the allegation(s) in this Complaint are true.

x Larry Welch
Signature of Affiant

Signed and sworn to before me this date: Oct 19 2011



(Seal)

ORDER

Plaintiff in Court _____
Defendant in Court _____
Judgment for \$ _____ costs \$ _____ stay _____ days.
Against _____
Dismissed as to _____

Dated: _____ Judge _____

COURT'S NOTATIONS

Vol _____ Page _____ Date _____



(Whit tabbies k - DF)

RELEASE FOR PROPERTY DAMAGE ONLY

This release executed on March 26, 2012, at 3336 Meadow Trail East Dekalb, IL, by LARRY WELCH AND MARCY WELCH of 3336 Meadow Trail, Dekalb IL herein referred to as Releasor, and DEKALB SANITARY DISTRICT; of Dekalb IL herein referred to as Releasee.

Stipulation

Releasor suffered damage to his property as a result of an accident occurring on or about June 16, 2011, at or near 3336 MEADOW TRAIL EAST, DEKALB, IL and involving DEKALB SANITARY DISTRICT; and Releasor is willing to release the Releasee from all past, present and future claims for such property damage, on the terms set forth herein.

NOW, THEREFORE, in consideration of the sum of SEVEN THOUSAND SEVEN HUNDRED THIRTY THREE AND 87/100 (\$7,733.87), receipt of which is acknowledged by Releasor, Releasor, being of lawful age, releases and discharges Releasee from any and all claims, demands, and causes of action that Releasor ever had, has or will have for property damage, known or unknown, arising from the above described accident.

It is understood that this release shall inure to the benefit of the Releasee and his heirs, legal representatives, successors, assigns and insurers and that this release shall bind Releasor and his heirs, legal representatives, successors and assigns.

It is also understood that payment of said amount is not to be construed as an admission of liability by Releasee or anyone else and that such payment is made in full, complete and final satisfaction and discharge of all claims, demands and causes of action by reason of the damage to the property mentioned above.

Releasor acknowledges that he fully understands the terms of this release and that it represents the entire agreement between Releasee and him.

Payment of said amount shall be to: Larry Welch and Marcy Welch.

IN WITNESS WHEREOF, Releasor has executed this release at the place, day and year first above written.

Larry D. Welch
Marcy K. Welch

State of Illinois)
County of Dekalb) ss.

Before me, a Notary Public, in and for said state, personally appeared the above named Larry D. Welch marcy k. Welch who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

In testimony whereof, I have herunto subscribed my name and affixed my official seal at Dekalb, Ill., this 6th day of April, 2012.

Pamela J. Franks
Notary Public

