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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KAREN PEREZ, individually, and on behalf of)
all persons similarly situated,)

Plaintiff,)

-v-

FOREST PRESERVE DISTRICT OF)
DU PAGE COUNTY, a municipal corporation,)
and BFI WASTE SYSTEMS OF NORTH)
AMERICA, INC., a Delaware corporation,)
individually and as successor by merger to)
E & E Hauling, Inc. and Browning-Ferris)
Industries of Illinois, Inc.,)

Defendants.)

07CV5009
JUDGE MORAN
MAG. JUDGE COX

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, KAREN PEREZ, individually and on behalf of all others similarly situated, by and through her attorneys, SHAWN M. COLLINS, EDWARD J. MANZKE and AARON W. RAPIER, of THE COLLINS LAW FIRM, P.C., of counsel, and NORMAN B. BERGER, MICHAEL D. HAYES, and ANNE E. VINER of VARGA BERGER LEDSKY HAYES & CASEY, of counsel, for her Complaint against Defendants, Forest Preserve District of DuPage County ("FPDDC"), a municipal corporation, and BFI Waste Systems of North America, Inc., individually and as successor by merger to both E & E Hauling, Inc. and Browning-Ferris Industries of Illinois, Inc. ("BFI"), states as follows:

NATURE OF ACTION

1. This is a class action brought by and on behalf of all persons and non-governmental entities that own residential property or reside on property located in two

residential subdivisions – the U.S. Homes subdivision and the Mallard Lakes Estates subdivision – located immediately adjacent to the Mallard Lake Landfill (the “Landfill”) in DuPage, Illinois (“the Class”).

2. The properties of Plaintiff and residents throughout the Class are contaminated with various hazardous and other harmful chemicals and substances from wastes disposed of at the Landfill, and the migration of such contaminants in gas and/or vapor form to properties adjacent to the Landfill, including the U.S. Homes and Mallard Lakes Estates subdivisions.

3. The chemicals that have been released from the Landfill into the Class area include several known human carcinogens. In addition to exposing Class members to sickness and disease, the gases released from the Landfill expose Class members to the threat of explosion on and adjacent to their residences.

4. This Complaint details – and ultimately prays that Defendants be held accountable for – their knowledge, acts and omissions which are responsible for the contamination of Plaintiff’s and the Class’ properties.

5. This Complaint seeks the recovery of: (1) injunctive relief under Plaintiff’s common law and RCRA claims restraining and enjoining Defendants from allowing continued contamination of the Class area, and compelling Defendants to abate the contamination they have caused in the Class area; (2) compensatory damages caused by Defendants’ continuing acts and omissions, and (3) punitive damages, as may be permitted by law, for the purpose of punishing Defendants for, *inter alia*, permitting hazardous wastes and substances to migrate into the Class area, and failing to promptly and responsibly address and mitigate the threats and to warn Plaintiff and Class area families of the contamination released into the Class area.

PLAINTIFFS

6. Plaintiff, KAREN PEREZ, is a citizen of the State of Illinois, residing at 1732 Fulton Lane, Hanover Park, Illinois.

DEFENDANTS

7. Defendant, FPDDC, is an Illinois municipal corporation authorized to do business, and actually doing business, in the State of Illinois. FPDDC is the legal titleholder to the land upon which the Landfill sits.

8. Defendant, BFI, is a Delaware corporation authorized to do business, and actually doing business, in the State of Illinois. BFI Waste Systems of North America, Inc. acquired all of the assets and liabilities of E & E Hauling, Inc. in 1987 (the "Merger and Acquisition") and is currently operating the Landfill. Prior to the Merger and Acquisition, E&E Hauling, Inc., *inter alia*, operated the Landfill.

JURISDICTION AND VENUE

9. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because this case arises under the laws of the United States of America; specifically, because Count I is predicated upon and seeks relief pursuant to the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901, et seq.

10. This Court has supplemental jurisdiction over the Illinois state law claims set forth in Counts II through V pursuant to 28 U.S.C. § 1367. All claims arise out of the same wrongful conduct of the Defendants, and involve substantially overlapping evidence and witnesses. Plaintiff seeks substantially the same injunctive relief -- an order restraining and enjoining Defendants from allowing continued contamination of the Class area, and compelling Defendants to abate the contamination they have caused in the Class area -- under her common

law and her RCRA claims. Accordingly, pursuant to 28 U.S.C. §1367, Plaintiff's state law claims are so related to Plaintiff's federal question claim that they form part of the same case or controversy under Article III of the United States Constitution.

11. Pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), venue is proper in this Court because this case arises out of actions occurring at, and pertaining to property located in, DuPage County, Illinois, within this judicial district.

THE LANDFILL

12. The Landfill is located on approximately 534 acres of land in or near Hanover Park, Illinois. Approximately 250 acres are reported to contain various forms of waste.

13. Landfill operations are reported to have begun in 1975.

14. A portion of the Landfill was operated originally as a sanitary waste landfill.

15. Other portions of the Landfill received other forms of waste, including hazardous wastes, from various waste haulers, including companies affiliated with BFI.

16. Portions of the Landfill are un-lined. Only limited portions contain any form of composite liner system.

17. For years, Defendants have owned, operated, maintained and otherwise controlled the Landfill.

18. Hazardous substances and wastes, including methane, have been released from the Landfill and have migrated, in gas and vapor form, into the Class area. The entirety of the Class area is either contaminated or threatened by this very serious contamination.

CLASS ALLEGATIONS

19. Plaintiff brings each of the claims in this action in her own name and on behalf of a class of all persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure.

20. The Class consists of all persons and non-governmental entities that own residential property or reside on property located in the U.S. Homes and Mallard Lakes Estates subdivisions adjacent to the Landfill.

21. The Class consists of approximately 550 homes and more than one thousand people, and is accordingly so numerous that joinder of all members is impractical.

22. There are core questions of law and fact that are common to each member of the Class, such as: whether there have been releases of hazardous substances and wastes at and from the Landfill while under the Defendants' ownership, operation, maintenance and/or control; whether Defendants have acted reasonably to prevent releases from the Landfill of hazardous wastes so as to prevent their release into the Class area; whether contaminants have migrated in gas and/or vapor form from the Landfill and contaminated and/or threatened residential properties in the Class area; whether there currently exists an imminent and substantial endangerment as a result of the Defendants' wrongful handling, storage and disposal of hazardous wastes at and from the Landfill; and whether Defendants should be restrained and enjoined from allowing continued contamination of the Class area, and compelled to abate the contamination they have caused in the Class area.

23. Plaintiff's claims are typical of the claims of the Class. All claims seek recovery on the same legal theories and are based upon Defendants' common course of conduct.

24. Plaintiff will fairly and adequately represent and protect the interests of the Class.

25. Plaintiff has retained counsel who are competent and experienced in class action litigation, including environmental suits such as this one that involve both RCRA and common law claims.

COUNT I

RCRA § 6972(a)(1)(B)

26. Plaintiff, individually and on behalf of the Class defined herein, repeats, realleges and incorporates by reference paragraphs 1 through 25 above as paragraph 26 of this Count I, as though fully set forth herein.

27. Defendants, BFI and FPDDC are “persons” as defined in §6903(15) of RCRA.

28. The chemicals and substances stored, disposed of and released at the Landfill and into the Class area, including but not limited to ethyl chloride, vinyl chloride, 1,1-dichloroethylene, methylene chloride, 1,1-dichloroethane, methyl ethyl ketone, hexane, 1,2-dichloroethane, 1,1,1-trichloroethane, benzene, trichloroethene, methyl isobutyl ketone, toluene, tetrachloroethene, chlorobenzene, ethyl benzene, m+p-xylenes, o-xylene, and 1,4-dichlorobenzene, are hazardous wastes as defined in RCRA §§6903(5) and (27).

29. Defendants BFI and FPDDC engaged in the handling, storage, treatment, transportation or disposal of hazardous wastes in a manner which has contributed to and is contributing to the contamination of the Landfill, Plaintiff’s property, the properties of the Class.

30. Specifically, throughout the period of FPDDC’s ownership and BFI’s operation of the Landfill, various of the above referenced hazardous wastes have migrated off of the Landfill property and contaminated the surrounding environment. Those releases, in gas and vapor form, have recently been determined to have contaminated and/or threatened residential properties throughout the Class area. FPDDC and BFI are responsible for the subject contamination, by

failing to properly handle, dispose, and contain the hazardous wastes at and released from the Landfill, and by failing to abate the contamination that has migrated from the Landfill into the Class area. Due to the current disposal, release and migration of these hazardous waste contaminants, these releases from the Landfill present an imminent and substantial endangerment to health and the environment as defined in RCRA. As contributors to this hazardous condition, Defendants are subject to suit pursuant to §6972(a)(1)(B) of RCRA.

31. In accordance with §6972(b) and 40 C.F.R. 254, Plaintiff sent a letter by registered mail, return receipt requested, dated May 16, 2007 to Defendants BFI and FPDDC, providing them with prior notice of the violations alleged and the claims made in this Court. Copies of the letter were also sent in a like manner to the Administrator of the United States Environmental Protection Agency (“U.S. E.P.A.”), the Attorney General of the United States, the Regional Administrator for Region V of the U.S. E.P.A., and the Director of the Illinois Environmental Protection Agency. This letter was received by Defendants more than 90 days prior to the filing of this Complaint. No actions have been commenced by these federal or state environmental authorities during this 90-day period which would preclude Plaintiff from pursuing a claim herein under Section 7002(a)(1)(B).

32. Pursuant to RCRA §6972(b)(2)(F), Plaintiff will serve a copy of this Complaint on the Attorney General of the United States and the Administrator of the U.S. E.P.A.

33. This Court has jurisdiction pursuant to §6972(a) of RCRA to enter injunctive relief restraining and enjoining Defendants from allowing continued contamination of the Class area, and compelling Defendants to abate the contamination they have caused in the Class area. Under RCRA, this Court should also award Plaintiff her attorneys’ fees and expert costs, and impose any appropriate civil penalties.

COUNT II

NEGLIGENCE

34. Plaintiff, individually and on behalf of the Class defined herein, repeats, realleges and incorporates by reference paragraphs 1 through 33 of the Complaint as paragraph 34 of this Count II, as though fully set forth herein.

35. Defendants had a duty to Plaintiff and the Class not to permit or allow hazardous substances and wastes at the Landfill to invade, in gas and vapor form, residential properties in the Class area. Defendants also had a duty to promptly respond to known releases of contaminants in a manner which would prevent further contamination, and otherwise protect Class area properties and the Class.

36. Defendants have breached these duties by their negligent acts and omissions in owning, operating, maintaining, and controlling the Landfill and by their improper release and disposal of contaminants, their failure to properly handle, dispose of, contain and abate the hazardous wastes at, and released from, the Landfill, and their failure to promptly and effectively investigate and address the disposal and migration of contaminants off-site and into the Class area.

37. Defendants have also breached their duty to warn members of the Class of the threatened and actual contamination of their properties, and the risk of explosion due to the presence of gaseous contamination within the Class area.

38. Defendants' breaches of their duties to Plaintiff and the Class are continuing and have caused substantial injury and damage to Plaintiff and the Class, including, but not limited to, injury in the form of damages to their property. In addition to damages, Plaintiff also seeks injunctive relief pursuant to this Count, in the form of an injunctive order restraining and

enjoining Defendants from allowing continued contamination of the Class area, and compelling Defendants to abate the contamination they have caused in the Class area.

COUNT III

PRIVATE NUISANCE

39. Plaintiff, individually and on behalf of the Class defined herein, repeats, realleges and incorporates by reference paragraphs 1 through 38 of the Complaint as paragraph 39 of this Count III, as though fully set forth herein.

40. Defendants continue to own, maintain, operate and control the Landfill, a private nuisance to Plaintiff and the members of the Class.

41. Contaminants improperly disposed at and released from the Landfill continue to migrate, in gas and vapor form, into the Class area.

42. Defendants have failed to properly dispose of, contain and abate the hazardous wastes at, and released from, the Landfill. Defendants' continuing maintenance of the Landfill so as to cause and permit further contamination of the Class area constitutes an unreasonable, unwarranted and unlawful use of the Landfill. Defendants' maintenance of this nuisance has substantially interfered with Plaintiff's and the Class members' reasonable use and enjoyment of their properties.

43. Plaintiff is entitled to and seeks an injunction against Defendants' continued maintenance of this nuisance and immediate abatement of the substantial harm to Plaintiff's health and property caused by the contamination emanating from the Landfill.

44. Moreover, Plaintiff and members of the Class have incurred substantial damage as a result of Defendants' ongoing maintenance of the Landfill, a private nuisance. In addition to damages, Plaintiff also seeks injunctive relief pursuant to this Count, in the form of an injunctive

order restraining and enjoining Defendants from allowing continued contamination of the Class area, and compelling Defendants to abate the contamination they have caused in the Class area.

COUNT IV

TRESPASS

45. Plaintiff, individually and on behalf of the Class as defined herein, repeats, rec alleges and incorporates by reference paragraphs 1 through 44 of the Complaint as paragraph 45 of this Count IV, as though fully set forth herein.

46. Defendants continue to cause and permit contaminants to enter the Class area. This entry is unlawful and without the consent of Plaintiff and the members of the Class.

47. In addition, contaminants that originate from the Landfill are known, or should be known, by Defendants to be present at, on and/or in Plaintiff's and Class members' properties. In spite of this knowledge, Defendants have failed to remove or otherwise remediate these contaminants from Class members' properties.

48. Defendants have failed to properly dispose of, contain and abate the hazardous wastes at, and released from, the Landfill. Defendants' past and continuing wrongful acts and omissions have resulted, and continue to result in: releases of contaminants from the Landfill into the environment; migration of such contaminants to the Class area; and invasion of Class area properties, without the consent of Plaintiff or Class members.

49. The invasion of Plaintiff's and Class area properties is unreasonable and unlawful. As a result of Defendants' continuing trespasses, the lawful rights of Plaintiff and the Class to use and enjoy their property have been substantially interfered with, and Plaintiff and the Class have been damaged. In addition to damages, Plaintiff also seeks injunctive relief pursuant to this Count, in the form of an injunctive order restraining and enjoining Defendants from allowing

continued contamination of the Class area, and compelling Defendants to abate the contamination they have caused in the Class area.

COUNT V

WILLFUL AND WANTON MISCONDUCT

50. Plaintiff, individually and on behalf of the Class as defined herein, repeats, realleges and incorporates by reference paragraphs 1 through 49 as Paragraph 50 of this Count V, as though fully set forth herein.

51. Defendants have acted in a willful and wanton manner and in reckless indifference to the safety of Plaintiff's and other members of the Class' health and property, and to the safety of the general public.

52. Defendants knew that Plaintiff and the Class are exposed to and otherwise threatened by this contamination, yet have failed to investigate and mitigate the threat to Plaintiff and the Class.

53. Defendants have failed to properly dispose of, contain and abate the hazardous wastes at, and released from, the Landfill. Defendants failed to remediate the Landfill and thereby continued to contaminate the Class area. Defendants also failed to remediate gas and vapor contamination which Defendants knew or should have known to be contaminated with hazardous wastes from the Landfill, exposing Plaintiff and the Class to the risk of explosions on and adjacent to their residences.

54. As a direct and proximate result of the willful, wanton and reckless acts and/or omissions of Defendants, Plaintiff and the Class have sustained damages. In addition to damages, Plaintiff also seeks injunctive relief pursuant to this Count, in the form of an injunctive

order restraining and enjoining Defendants from allowing continued contamination of the Class area, and compelling Defendants to abate the contamination they have caused in the Class area.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests that this Court enter judgment in her favor and in favor of the Class and against Defendants, and pray:

A. that the Court certify Plaintiff's action as a class action on behalf of all others similarly situated, appoint Plaintiff's counsel as counsel for the Class, and order that Notice be given to the Class of this action;

B. that pursuant to Plaintiff's RCRA and common law claims the Court preliminarily and permanently restrain and enjoin Defendants from allowing continued contamination of the Class area, and compel Defendants to abate the contamination they have caused in the Class area;

C. that the Court award Plaintiff and the Class compensatory and other appropriate damages in an amount to be determined by the evidence at trial and allowed by law;

D. that the Court award Plaintiff and the Class punitive damages as allowed by law and in an amount sufficient to deter Defendants and other companies and/or individuals who are similarly situated from acting in a similar manner; and

E. that the Court award Plaintiff and the Class their attorneys' fees, expert costs, costs of suit and such other and further relief as the Court deems appropriate and just.

JURY TRIAL DEMANDED

Plaintiff requests trial by jury on all issues so triable.

Dated: September 6, 2007

KAREN PEREZ,
individually, and on behalf of all
persons similarly situated

By: 
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