

IN THE CIRCUIT COURT FOR THE FOURTH JUDICIAL CIRCUIT
CHRISTIAN COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,)
ex rel. LISA MADIGAN, Attorney)
General of the State of Illinois,)
)
Plaintiff,)
)
-vs-)
)
RLF PAWNEE PROPERTIES, LLC,)
a Colorado limited liability company,)
)
Defendant.)

FILED

JUL 15 2016

Julie J. Mayer
Circuit Clerk, Christian County

No. 16 CH 29

CONSENT ORDER

Plaintiff, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* LISA MADIGAN, Attorney General of the State of Illinois, the Illinois Department of Natural Resources (“Illinois DNR”), and Defendant, RLF Pawnee Properties, LLC (collectively, “Parties to the Consent Order”), have agreed to the making of this Consent Order and submit it to this Court for approval.

I. INTRODUCTION

This stipulation of facts is made and agreed upon for purposes of settlement only and as a factual basis for the Court’s entry of the Consent Order and issuance of any injunctive relief. None of the facts stipulated herein shall be introduced into evidence in any other proceeding regarding the violations of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/1 *et seq.* (2014), violations of the Illinois Fish and Aquatic Life Code (“Fish Code”), 515 ILCS 5/1-1 *et seq.* (2014), and claims of liability under the common law alleged in the Complaint, except as otherwise provided herein. It is the intent of the parties to this Consent Order that it be a final judgment on the merits of this matter.

A. Parties

1. Contemporaneously with the submission of this Consent Order, a Complaint was filed against Defendant on behalf of the People of the State of Illinois by Lisa Madigan, Attorney General of the State of Illinois, on her own motion and upon the request of the Illinois DNR, pursuant to Section 42(d) of the Act, 415 ILCS 5/42(d) (2014), and Sections 5/1-150 and 5/5-5 of the Fish Code, 515 ILCS 5/1-150 and 5/5-5 (2014).

2. The Illinois DNR is an administrative agency of the State of Illinois, created pursuant to Section 1-5 of the Illinois Department of Natural Resources Act, 20 ILCS 801/1-5 (2014).

3. At all times relevant to the Complaint, Defendant RLF Pawnee Properties, LLC was and is a Colorado limited liability company that is authorized to transact business in the State of Illinois and that owned and conducted reclamation operations on a portion of the site of the former Peabody #10 Mine, located near the intersection of Highway 104 and Zenobia Road, approximately four miles east of Pawnee, Christian County, Illinois (“the Site”).

B. Allegations of Non-Compliance

Plaintiff contends that Defendant has violated the following provisions of the Act and the Fish Code, and is liable under the common law for the following claims:

Count I: Defendant has violated Section 12(f) of the Act, 415 ILCS 5/12(f) (2014), and is liable for the resulting death of fish or aquatic life occurring in October 2014 in portions of the west arm of Sangchris Lake adjacent to and downstream of the Site, pursuant to Section 42(c) of the Act, 415 ILCS 5/42(c) (2014), and Sections 5/1-150 and 5/5-5 of the Fish Code, 515 ILCS 5/1-150 and 5/5-5 (2014).

Count II: Defendant has caused or contributed to the creation of a public nuisance by allowing the release of unneutralized acidic waters from Pond 001 at the Site into the west arm of Sangchris Lake, resulting in the death of fish or aquatic life in October 2014 in portions of the west arm of Sangchris Lake adjacent to and downstream from the Site. Defendant is liable for the damages resulting from the nuisance.

C. Non-Admission of Violations

Defendant represents that it has entered into this Consent Order for the purpose of settling and compromising disputed claims without having to incur the expense of contested litigation. By entering into this Consent Order and complying with its terms, Defendant does not affirmatively admit the allegations of violation or liability within the Complaint and referenced above, and this Consent Order shall not be interpreted as including such admission.

D. Compliance Activities to Date

Subsequent to the alleged release of unneutralized acidic waters from Pond 001 at the Site into the west arm of Sangchris Lake in October 2014, Defendant has taken preventive measures to avoid such releases in the future, by expanding the capacity of Pond 001 and providing additional means for neutralizing the acidic waters that may be contained in Pond 001. These preventive measures were started in the fall of 2014 and were completed by the summer of 2015.

II. APPLICABILITY

This Consent Order shall apply to and be binding upon the Parties to the Consent Order. Defendant waives as a defense to any enforcement action taken pursuant to this Consent Order the failure of any of its officers, directors, agents, employees or successors or assigns to take such action as shall be required to comply with the provisions of this Consent Order. This

Consent Order may be used against Defendant in any subsequent enforcement action or permit proceeding as proof of a past adjudication of violation of the Act for all violations alleged in the Complaint in this matter, for purposes of Sections 39 and 42 of the Act, 415 ILCS 5/39 and 42 (2014).

III. JUDGMENT ORDER

This Court has jurisdiction of the subject matter herein and of the Parties to the Consent Order and, having considered the stipulated facts and being advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

A. Payment of Lake Restoration Costs

1. Defendant shall pay, as provided below, lake restoration costs in the amount of Thirty Five Thousand and Forty Seven Dollars (\$35,047.00) for the benefit and use of Illinois DNR. Illinois DNR shall use these funds, together with any interest and earnings thereon (if applicable), for the purchase of necessary materials and payment of labor costs to implement a restoration project in Sangchris Lake, comprising the elements of planting aquatic vegetation and installing fish attractors (the "Lake Restoration Project"). Illinois DNR may use any remaining funds from Defendant's payment for the following purposes:

- a. Contingency funding for the Lake Restoration Project;
- b. Monitoring at Sangchris Lake, including monitoring of fish and other aquatic life and monitoring the effects of the Lake Restoration Project; and
- d. Any other purpose authorized by Section 10 of the Natural Resources Restoration Trust Fund Act, 20 ILCS 882/10 (2014).

2. Except as provided below in paragraph 3 of this Section III.A., payment shall be made by submitting a check, made payable to the Clerk of the Christian County Circuit Court, pursuant to the instructions provided by the Clerk upon the Court's entry of an order directing the deposit of funds with the Clerk in accordance with Section 2-1011 of the Illinois Code of Civil Procedure, 735 ILCS 5/2-1011 (2014). Plaintiff shall be responsible for preparing and filing a motion with the Court requesting entry of the order as just described. The case name and number shall appear on the face of the check to the Clerk.

3. If the Court does not enter an order directing the deposit of funds with the Clerk within ninety (90) days after entry of this Consent Order, then Defendant shall immediately tender the payment required above under paragraph 1 of this Section III.A. by certified check or money order payable to the Illinois DNR for deposit into the Natural Resources Restoration Trust Fund, to be used only for the purposes specified in paragraph 1 of this Section III.A. Payment pursuant to this paragraph shall be sent by first class mail and delivered to:

Illinois Department of Natural Resources
Office of Land Management
Attn: Contaminant Assessment Section
1 Natural Resources Way
Springfield, IL 62702

The case name and number shall appear on the face of the certified check or money order.

4. A copy of the check described above in paragraph 2 of this Section III.A., or, if applicable, the certified check or money order described above in paragraph 3 of this Section III.A, and any transmittal letter shall be sent to:

Eric Lohrenz, AAG
Environmental Bureau
Illinois Attorney General's Office
500 South Second Street
Springfield, Illinois 62706

B. Interest and Default

1. If Defendant fails to make any payment required by this Consent Order on or before the date upon which the payment is due, Defendant shall be in default and the remaining unpaid balance of the penalty, plus any accrued interest, shall be due and owing immediately. In the event of default, Plaintiff shall be entitled to reasonable costs of collection, including reasonable attorney's fees.

3. Interest shall accrue on any amount owed by Defendant not paid within the time prescribed herein, at the rate set forth in subsection (a) of Section 1003 of the Illinois Income Tax Act. Interest on unpaid amounts shall begin to accrue from the date such are due and continue to accrue to the date full payment is received. Where partial payment is made on any amount that is due, such partial payment shall be first applied to any interest on unpaid amounts then owing.

C. Future Compliance

1. This Consent Order in no way affects the responsibilities of Defendant to comply with any other federal, state or local laws, regulations or permits.

2. Defendant shall fully comply with the NPDES permit for the Site, NPDES Permit No. IL0026913.

3. Defendant shall cease and desist from future violations that were the subject matter of the Complaint.

D. Enforcement and Modification of Consent Order

1. This Consent Order is a binding and enforceable order of this Court. This Court shall retain jurisdiction of this matter and shall consider any motion by any party for the purposes of interpreting and enforcing the terms and conditions of this Consent Order. Defendant agrees

that notice of any subsequent proceeding to enforce this Consent Order may be made by mail and waives any requirement of service of process.

2. The Parties to the Consent Order may, by mutual written consent, extend any compliance dates or modify the terms of this Consent Order without leave of this Court. A request for any modification shall be made in writing and submitted to the designated representatives. Any such request shall be made by separate document, and shall not be submitted within any other report or submittal required by this Consent Order. Any such agreed modification shall be in writing and signed by authorized representatives of each party, for filing and incorporation by reference into this Consent Order.

E. Release from Liability

In consideration of Defendant's payment of \$35,047.00 for lake restoration costs, its commitment to cease and desist as contained in Section III.C.3. above, and completion of all activities required hereunder, Plaintiff releases, waives and discharges Defendant from any further liability or penalties for the violations of the Act, violations of the Fish Code, and the common law claim that were the subject matter of the Complaint herein. The release set forth above does not extend to (a) any matters other than those expressly specified in Plaintiff's Complaint filed in this case contemporaneously with the submission of this Consent Order, or (b) to any person, as defined by Section 3.315 of the Act, 415 ILCS 5/3.315 (2014), other than Defendant.

F. Execution and Entry of Consent Order

This Consent Order shall become effective only when executed by all Parties to the Consent Order and entered by the Court. This Consent Order may be executed by the parties in one or more counterparts, all of which taken together shall constitute one and the same

instrument. The undersigned representatives for each party certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Consent Order and to legally bind them to it.

WHEREFORE, the parties, by their representatives, enter into this Consent Order and submit it to this Court that it may be approved and entered.

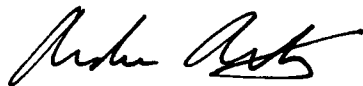
AGREED:

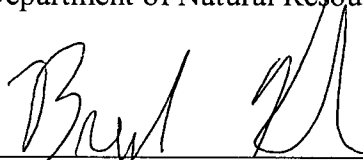
FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

ILLINOIS DEPARTMENT OF
NATURAL RESOURCES

WAYNE ROSENTHAL, Director
Illinois Department of Natural Resources

BY: 
ANDREW B. ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

BY: 
BRENT R. KREBS
General Counsel

DATE: 07/08/2016

DATE: 6/16/16

FOR THE DEFENDANT:

RLF PAWNEE PROPERTIES, LLC

ENTERED:

BY: _____
JAMES W. GEISZ
Its Authorized Representative

J U D G E

DATE: _____

DATE: _____

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AGREED:

FOR THE PLAINTIFF:

PEOPLE OF THE STATE OF ILLINOIS
ex rel. LISA MADIGAN,
Attorney General of the
State of Illinois

ILLINOIS DEPARTMENT OF
NATURAL RESOURCES

WAYNE ROSENTHAL, Director
Illinois Department of Natural Resources

BY: 
ANDREW B. ARMSTRONG, Chief
Environmental Bureau
Assistant Attorney General

BY: _____
BRENT R. KREBS
General Counsel

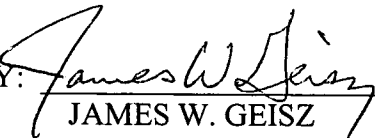
DATE: 07/08/2016

DATE: _____

FOR THE DEFENDANT:

RLF PAWNEE PROPERTIES, LLC

ENTERED:

BY: 
JAMES W. GEISZ
Its Authorized Representative


JUDGE

DATE: 6-20-2016

DATE: 7/15/16