

IN CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

GREG PARADAY, SARAH DEVALK,
PATRICIA MENDEZ, LEILA MENDEZ,
WALTER PODRAZIK, AND
ALL OTHERS SIMILARLY SITUATED,
A Proposed Class Action
Plaintiffs

v.

MIDWEST GENERATION, LLC,
FISK FACILITY,
Defendants.

Case No. **12CH01575**
Hon.

Jury Demand

PLAINTIFFS' CLASS ACTION COMPLAINT

NOW COME the Plaintiff Putative Class Representatives Greg Paraday, Sarah DeValk, Patricia Mendez, Leila Mendez, and Walter Podrazik, individually and on behalf of all others similarly situated, by and through their attorneys, Jauregui & Associates P.C., Arturo Jauregui, and Macuga, Liddle, Dubin, P.C., Peter W. Macuga, II, (hereinafter "Plaintiffs") and state in support of their Class Action Complaint against Defendant, MIDWEST GENERATION, LLC, (hereinafter "Midwest Generation" or "Defendant"), as follows:

NATURE OF THE ACTION

1. This is a class action brought pursuant to 735 ILCS 5/2-801. This action is necessary to protect the property rights of Plaintiffs, and all others similarly situated, which have been unreasonably interfered with resulting from the physical invasion of Plaintiffs' personal real property and property by fallout particulate and contaminants, thereby causing material injury to Plaintiffs' person and property through negligence, gross negligence, nuisance, trespass and strict liability.
2. Plaintiffs bring this action on behalf of themselves and all others who have similarly suffered from fallout particulate and air contaminants. The reason for not joining all potential class members as Plaintiffs is that, upon information and belief, there are thousands

of potential plaintiffs, thereby making it impractical to bring them before the Court. All Plaintiffs reside in the neighborhoods which are within one (1) mile of Defendant and which contain over 13,786 homes and approximately 43,347 residents.

3. There are many persons who have been similarly affected and the question to be determined is one of common and general interest to many persons constituting the class to which Plaintiffs belong, and the group is so numerous as to make it impracticable to bring them all before the Court, for which reason Plaintiffs initiate this litigation for all persons similarly situated pursuant to the Illinois Rules of Civil Procedure.

4. Issues and questions of law and fact common to the members of the Class predominate over questions affecting individual members and the claims of Plaintiffs, Greg Paraday, Sarah DeValk, Patricia Mendez, Sylvia Trejo, Walter Podrazik, and all others similarly named and those similarly situated, are typical of the claims of the Class.

5. The maintenance of this litigation as a Class Action will be superior to other methods of adjudication in promoting the convenient administration of justice.

6. Plaintiffs, Greg Paraday, Sarah DeValk, Patricia Mendez, Sylvia Trejo, Walter Podrazik, and all others similarly named and those similarly situated, and the law firms of Jauregui & Associates, P.C. and Macuga, Liddle, & Dubin, P.C., will fairly and adequately assert and protect the interests of the Class.

7. Defendant is a State of Delaware Limited Liability Company with its primary business address at One Financial Place, 440 South LaSalle Street, Suite 3500, Chicago, Illinois, 60605.

8. Defendant operates a coal fired electrical generation facility located at 111

Cermak Road, in the County of Cook, State of Illinois.

9. The Defendant's operation, maintenance, control, and use of the coal fired electrical generation facility has caused to the Plaintiff Class Representatives and all others similarly situated who live or own real residential property within the one (1) mile diameter described similar property damages, the invasion by and inhalation of similar odors, the deposit of similar particulate coal dust, including fly ash, and particulates formed by gases and chemicals emitted by Defendant, and thereby caused similar damages to the personal and real property of the Class Representatives and all others similarly situated within the one (1) mile radius of the Defendant's facility.

10. The operation of the Defendant of its coal fired electrical generation facility at 111 Cermak Road, Chicago, Illinois has been the subject of numerous and constant complaints of the residents of the surrounding neighborhood, by organizations in the surrounding neighborhood area, by protests of interested persons within the surrounding area, and by government action, all of which has failed to compel Defendant to cease the improper operation of its facility and to continue Defendant's invasion and trespass of Plaintiffs' properties by air contaminants, odors, chemicals, and particulates which thereby cause damage to Plaintiffs' properties.

11. The Fisk coal fired power station is owned and operated by Defendant, and is the only industrial facility in the Plaintiffs area which emits into the atmosphere coal combustion byproducts, fly ash, barium compounds, copper compounds, dioxin and dioxin-like compounds, hydrochloric acid (acid aerosols), hydrogen fluoride, lead compounds, manganese compounds, mercury compounds, sulfuric acid (acid aerosols), vanadium

compounds, and zinc compounds.

12. The burning of coal by Defendant has caused and will cause fly ash and unburned coal combustion byproducts to be emitted by Defendant into the ambient atmosphere which particulate will fall and has fallen upon Plaintiffs' properties. Coal combustion particulate is described by the Plaintiffs as black dust/film on property or white powder; in the black form the particulate is unburned coal particulate or unburned coal combustion byproduct and in the white form is fly ash, which is also a coal combustion byproduct.

13. All emissions from Defendant's coal fired facility, whether gaseous, chemical, or particulate, will immediately combine with each other, or with the atmosphere, or atmospheric dust, or water particles, to form industrial particulate which will fall and has fallen onto Plaintiffs' properties thereby causing damage to Plaintiffs' properties.

14. Defendant has installed no technology to reduce or eliminate emissions from the Fisk Power Plant. The Defendant has stated that any decisions for installation of air pollution control technology at Fisk (and other Midwest Generation facilities) remains subject to a number of factors, such as market conditions, regulatory and legislative developments, and forecasted commodity prices, capital and operating costs applicable at the time decisions are required to be made. The Defendant has also stated that any final decisions on whether to install controls, to install particular kinds of controls, and to actually expend capital that is budgeted may not occur until the year 2012 for some of the units and potentially later for others.

15. At all relevant times for this Complaint Defendant has knowingly allowed its

emissions to invade, trespass, and damage Plaintiffs' properties and Defendant's Permit to Operate does not allow Defendant's operations including emissions to damage private property.

JURISDICTION AND VENUE

16. Jurisdiction and venue in Cook are proper in this matter as all Plaintiffs named and unnamed are citizens and residents of Cook County, State of Illinois and Defendant is also a corporate resident of Cook County, State of Illinois. Damages in this case exceed the jurisdictional requirement.

Plaintiff Putative Class Representatives

17. At all times relevant hereto, Plaintiff, Greg Paraday, has resided at 960 W. 36th Street SE, County of Cook, State of Illinois.

18. At all times relevant hereto, Plaintiff, Sarah DeValk, has resided at 1900 S. Carpenter Street, City of Chicago, County of Cook, State of Illinois.

19. At all times relevant hereto, Plaintiff, Patricia Mendez, has resided at 1504 W. Cullerton Street, City of Chicago, County of Cook, State of Illinois.

20. At all times relevant hereto, Plaintiff, Leila Mendez, has resided at 1530 W. 21st Street, City of Chicago, County of Cook, State of Illinois.

21. At all times relevant hereto, Plaintiff, Walter Podrazik, has resided at 2714 S. Hillock Avenue, City of Chicago, County of Cook, State of Illinois.

22. All unnamed Plaintiff potential Class Members are residents or homeowners who live or own real estate within one (1) mile of the Fisk Facility who have suffered similar damages to their property by the invasion of particulates, chemicals, and gases from

Defendant's facility which thereby caused damages to their real property.

GENERAL ALLEGATIONS

23. On occasions too numerous to list, Plaintiffs' person and property including Plaintiffs' neighborhood, residences, and yards, were physically invaded by fallout, particulate, odor, and air contaminants.

24. The fallout particulate and air contaminants which invaded Plaintiffs' person and property originated from the Fisk Facility owned by Defendant, Midwest Generation, LLC, located in the City of Chicago, at 111 West Cermak Road, in the County of Cook, State of Illinois (hereinafter the "facility"). At the facility, Defendant operates a coal fired electrical generation plant.

25. The Defendant, as part of its normal business operations knowingly generates, utilizes, and discharges into the open atmosphere chemicals, gases, and particulates, including but not limited to, arsenic compounds, barium compounds, chromium compounds, copper compounds, dioxin and dioxin-like compounds, hydrochloric acid, hydrogen fluoride, lead compounds, manganese compounds, mercury compounds, nickel compounds, polycyclic aromatic compounds, sulfuric acid, vanadium compounds, and zinc compounds.

26. The Defendant knew or should have known that some of the chemicals Defendant generates, utilizes and discharges into the Plaintiffs' neighborhoods during Defendant's normal business operations, including but not limited to, arsenic compounds, chromium compounds, dioxin and dioxin-like compounds, and mercury compounds are extra hazardous and are known human carcinogens.

27. The Defendant as part of its normal business operations has admitted that it has

discharged into the atmosphere chemicals and particulates including, but not limited to, arsenic compounds, barium compounds, chromium compounds, copper compounds, dioxin and dioxin-like compounds, hydrochloric acid, hydrogen fluoride, lead compounds, manganese compounds, mercury compounds, nickel compounds, polycyclic aromatic compounds, sulfuric acid, vanadium compounds and zinc compounds.

28. The Defendant is within one (1) mile of Plaintiffs and Plaintiffs' properties and Defendant's gaseous, chemical, and particulate discharges have invaded and caused substantial damage to, substantial loss of use of, and substantial interference with Plaintiffs and Plaintiffs' properties.

29. The chemicals, gaseous and coal combustion particulates, utilized by Defendant into Plaintiffs' neighborhood, and discharged by Defendant, during normal industrial operations, are harmful and noxious and have caused substantial damage to, substantial loss of use of, and substantial interference with, Plaintiffs and Plaintiffs properties.

30. The fallout types emitted by the Defendant's facility, as a result of normal business operations into Plaintiffs' neighborhood, have been described by residents of the surrounding neighborhood as a very heavy black particulate or black powder, or white powder/ash/dust that requires constant cleaning and that makes Plaintiffs prisoners in their homes and has precluded them from full use and enjoyment of their properties.

31. It is Plaintiffs' information and belief that Defendant knew of the improper construction, and operation of the facility, which allows discharge of chemicals, odors, air pollutants, and particulates, or allowed the improper construction, or maintenance and operation of the facility, of the Fisk coal fired power plant, which allows discharge of chemicals,

odors, air pollutants, and particulates into Plaintiffs' neighborhood, and exercises exclusive control and or ownership over the facility.

32. The Defendant knew when that Defendant purchased the Fisk facility that the plant had been constructed in the year 1903 and had never been the subject of installation of air pollution control equipment to restrict, cease, or otherwise capture pollutants, chemicals, odors, and particulate emitted fallout by the facility into the ambient atmosphere within one (1) mile of the facility.

33. Defendant knowingly continues to operate at 111 West Cermak Road, in the County of Cook, State of Illinois, the Fisk coal fired electrical generation plant without proper or best available technology, or any proper air pollution control equipment, and thereby knowingly allows Plaintiffs properties within one (1) mile of the facility to be invaded and damaged by chemicals, air pollutants, odors, and particulates emitted by the facility thereby causing damage to the Plaintiffs properties.

34. As a direct and proximate result of Defendant's negligence in constructing and or engineering and or designing and or operation and or maintenance of the facility, Plaintiffs' person and or property have been invaded by particulates and contaminants.

35. The invasion of Plaintiffs' personal real property by particulates, odors, and air contaminants has caused Plaintiffs to suffer property damages.

36. The invasion of Plaintiffs' property by particulates, odors, and air contaminants has caused and will cause continuous diminution in the market value of Plaintiffs' property and has interfered with Plaintiffs' use and enjoyment of their property.

37. The invasion of Plaintiffs' property by particulates, odors, and air contaminants

has caused Plaintiffs to suffer property injuries including, but not limited to, exposure to horrific particulates and air contaminants. Defendant is vicariously liable for all damages suffered by Plaintiffs, caused by Defendant employees, representatives, and agents, who, during the course and scope of their employment, allowed or failed to correct the problem or problems with the Fisk Facility which knowingly causes and knowingly allows particulates, odors, and air contaminants to physically invade Plaintiffs' person and property.

38. Defendant, at its Fisk Facility, knowingly emits as a result of Defendant's normal industrial operations sulfur dioxide into Plaintiffs' neighborhood. The sulfur dioxide emitted by Defendant into Plaintiffs' neighborhood has been defined by the U.S. EPA AERMOD and has been mapped by the U.S. EPA AERMOD. Plaintiffs' neighborhood is directly within the Fisk sulfur dioxide air emission pattern.

NUISANCE

39. In the operation of its coal fired power plant facility, Defendant utilizes chemicals and chemical compounds to operate a coal fired electrical generation plant.

40. In the operation of its facility Defendant discharges fallout, odors, chemicals and chemical substances into the Plaintiffs' neighborhood which are invasive and have caused and continue to cause damage to Plaintiffs' personal and real property and some of which are extra hazardous. Defendant, by the very terms of its Operating Permit, is not allowed by its industrial operation to damage private property.

41. Defendant by and through current technological processes and current engineering standards could and should preclude the discharge of any particulates and extra hazardous substances onto Plaintiffs' properties.

42. A condition or activity which unreasonably interferes with the use of property is a nuisance.

43. Plaintiffs did not consent for particulates and air contaminants to physically invade their person and property.

44. By causing particulates and air contaminants accumulated and controlled by Defendant to physically invade Plaintiffs' personal and real property, Defendant substantially and unreasonably interfered with Plaintiffs' use and enjoyment of their property.

45. Defendant's substantial and unreasonable interference with Plaintiffs' use and enjoyment of their property constitutes a nuisance for which the Defendant is liable to Plaintiffs for all damages arising from such nuisance, including compensatory relief.

NEGLIGENCE AND OR GROSS NEGLIGENCE

46. In constructing, maintaining, operating, controlling, engineering and or designing the facility, Defendant have a duty to exercise ordinary care and diligence so that particulates and air contaminants do not invade Plaintiffs' person or property.

47. Defendant knowingly breached their duty to exercise ordinary care and diligence when they improperly constructed, maintained, operated, engineered and or designed the facility and knew, or should have known, that such actions would cause Plaintiffs' person and property to be invaded by particulates and air contaminants.

48. As a direct and proximate result of the failure of Defendant to exercise ordinary care, Plaintiffs' person and property are physically invaded by particulates and air contaminants.

49. As a direct and proximate result of Defendant negligence in operating and or

constructing and or engineering and or maintaining its facility, Plaintiffs' person and property are exposed to and invaded by particulates and air contaminants.

50. As a direct and proximate result of the invasion of Plaintiffs' person and property by particulates and air contaminants, Plaintiffs have suffered injuries.

51. As a direct and proximate result of Defendant's release of particulates and air contaminants, the Plaintiffs' have suffered mental anguish, suffering, anxiety, embarrassment, humiliation, distress, agony and other related nervous conditions and emotional sequelae.

52. The conduct of Defendant in knowingly allowing conditions to exist, which caused particulates and air contaminants to physically invade Plaintiffs' person and property, constitutes gross negligence as Defendant's conduct demonstrates a substantial lack of concern for whether an injury resulted to Plaintiffs.

53. Defendant is vicariously liable for the negligence and or gross negligence of their employees, representatives, and agents, who, during the course and scope of their employment, allowed or failed to correct the problem which caused particulates and air contaminants to physically invade Plaintiffs' person and property.

54. Defendant's gross negligence entitles Plaintiffs to an award of punitive damages.

TRESPASS

55. Defendant intentionally, recklessly, willfully, wantonly, maliciously and negligently failed to construct, maintain and or operate the Fisk facility which caused the invasion and damage of Plaintiffs' person and property by particulates, air contaminants, and other airborne pollutants on dates too numerous to mention by air emission during Defendant's normal industrial operations.

56. As a direct and proximate result of the foregoing conduct of Defendant, particulates, air contaminants, and airborne pollutants accumulated upon, entered upon, settled upon, physically invaded, and damaged Plaintiffs' person and property.

57. It was reasonably foreseeable that Defendant's failure to properly construct, maintain and or operate the facility could result in an invasion of Plaintiffs' possessory interests by normal industrial air emissions.

58. As a further direct and proximate result of the foregoing conduct of Defendant, Plaintiffs suffered substantial damages to their persons and property as alleged herein.

59. The particulates, air contaminants, and airborne pollutants which entered, settled, physically invaded, and damaged Plaintiffs' land and property interfered with and damaged Plaintiffs' interests in the exclusive possession of Plaintiffs' land and property and constituted a continuous trespass upon Plaintiffs' property.

60. Plaintiffs did not consent for particulates, air contaminants, and other airborne pollutants to physically invade their land and property.

61. The Defendant's actions, which resulted in the trespass upon Plaintiffs' land and property were, and continue to be, intentional, willful, and malicious and made with a conscious disregard for the rights and safety of Plaintiffs, entitling Plaintiffs to compensatory, and injunctive relief.

STRICT LIABILITY

62. Defendant intentionally, recklessly, willfully, wantonly, maliciously and negligently failed to construct, maintain and or operate the Fisk facility which caused the invasion of Plaintiffs' person and property by particulates, air contaminants, and other airborne pollutants

on dates too numerous to mention.

63. Defendant's failure to adequately construct, maintain and or operate the Fisk facility has contaminated Plaintiffs' property, chattels and persons by substances widely accepted and regulated as hazardous substances that create a high degree of risk of some harm.

64. The hazardous substances under Defendant's ownership and or control have contaminated Plaintiffs' property, chattels and persons creating a harm that is great.

65. There is no safe way to release the hazardous chemicals owned and or controlled by Defendant that simply results in dumping or allowing the chemicals or contaminants to settle onto Plaintiffs' property.

66. The release of hazardous chemicals of the types owned and or controlled by Defendant onto Plaintiffs' property is not a matter of common usage and or occurrence.

67. The release of hazardous chemicals of the type owned and or controlled by Defendant in the manner in which Defendant releases the air pollutants is inappropriate in any location, but especially inappropriate in close proximity to a residential neighborhood.

68. Defendant's method of releasing hazardous chemicals into Plaintiffs' residential neighborhood is not, and was not, essential to the continuing function of Defendant's activities. As such, the value of this type of release to the community is nonexistent.

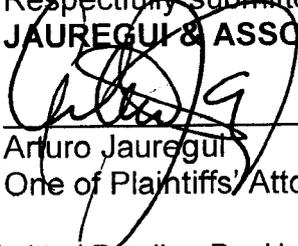
69. Defendant's release of hazardous chemicals into the Plaintiffs' residential neighborhood renders Defendant strictly liable to Plaintiffs for all damages arising from such conduct, including compensatory and injunctive relief.

WHEREFORE, named Plaintiffs on behalf of themselves and putative class members respectfully demand:

1. A determination that this action is a proper class action maintainable pursuant to 735 ILCS 5/2/-801, and that the named Plaintiffs are the appropriate class representatives; and
2. Judgment against the Defendant and in favor of the named Plaintiffs and putative class members for:
 - (a) Compensatory damages subject to proof;
 - (b) Interest until the date of judgment;
 - (c) Post-judgment interest at the rate of 12% per annum until paid;
 - (d) The "costs" and disbursements incurred by the plaintiffs in connection with connection with this action, including reasonable attorneys' fees.
 - (e) Any and all further relief, including equitable and injunctive relief, to which named Plaintiffs and putative class members may be entitled.

Dated: January 17, 2012

Respectfully submitted,
JAUREGUI & ASSOCIATIES, P.C.



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