

**IN THE UNITED STATES DISTRICT COURT
 FOR THE CENTRAL DISTRICT OF ILLINOIS
 ROCK ISLAND DIVISION**

QUAD CITIES WATERKEEPER, an Illinois)
 not for profit corporation,)
)
 Plaintiff,)

vs.)

DAVID G. BALLEGEER, an individual,)
BALLEGEER TRUCKING, Inc., an Illinois)
 corporation, **BALLEGEER EXCAVATING,**)
Inc., an Illinois corporation, **AND FRANCIS**)
BALLEGEER, an individual,)
)
 Defendants.)

Case No.

**COMPLAINT FOR DECLARATORY
 AND INJUNCTIVE RELIEF AND
 CIVIL PENALTIES**

(Federal Water Pollution Control Act,
 33 U.S.C. § 1251 *et seq*)

NATURE OF THE CASE

1. This is a complaint for declaratory and injunctive relief and the imposition of civil penalties under the Federal Water Pollution Control Act, more commonly referred to as the Clean Water Act (“CWA”), 33 U.S.C. § 1251 *et seq*.
2. The Quad Cities Waterkeeper (“Waterkeeper” or “Plaintiff”) brings this citizen suit under § 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), against David G. Ballegeer, an individual, Ballegeer Excavating, Inc., an Illinois corporation operating as “Ballegeer Trucking, Inc.,” and Francis Ballegeer, an individual, (collectively “Ballegeers” or “Defendants”) for past and continuing violations of the CWA.

3. Defendants have discharged and are continuing to discharge concrete, dirt, rock, sand, metal, and construction waste, onto the banks of approximately one mile of the lower Green River in Henry County, Illinois. Defendants have also discharged and are continuing to discharge concrete and related materials onto the riverbed and bottom of the Green River.
4. Defendants also have engaged in dredging of sand in the lower Green River that has resulted the unauthorized discharge and redeposit of dredged material into the Green River. Some of the Defendants' discharges of concrete, as described above, were undertaken for the purpose of manipulating the flow of the River in order to replenish the sand supply at Defendants' sand dredging sites.
5. Defendants have neither sought nor received the required CWA permits for any of their discharge activities described above.
6. Defendants' ongoing violations of the CWA have caused, and unless abated, will continue to cause significant damage to the Green River ecosystem and the Plaintiff and its members who use and enjoy the Green River and areas downstream of where the violations are occurring, including the Rock River. Specifically, the illegal discharges have degraded habitat for fish, birds and other wildlife, severely diminished aesthetic values associated with the Green River, and impaired boating and other recreational uses of the area by, among other impairments, creating public safety threats and navigational obstacles such as exposed metal rebar and underwater concrete piles.

JURISDICTION AND VENUE

7. Jurisdiction over this action is conferred by 28 U.S.C. § 1331 (federal question) and 33 U.S.C. § 1365(a) (Clean Water Act jurisdiction). An actual, justiciable controversy exists between Plaintiff and Defendants. The requested relief is proper under 28 U.S.C. §§ 2201 and 2202, and 33 U.S.C. §§ 1319(d) and 1365(a).
8. Pursuant to Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), Plaintiff notified Defendants of Defendants' violations of the CWA and of Plaintiff's intent to

sue under the CWA by letter dated and postmarked February 29, 2012 (“Notice Letter”). A copy of the Notice Letter is attached to this Complaint as Exhibit 1. The allegations in the Notice Letter are incorporated herein by this reference. Plaintiff notified the Defendants, Defendants’ Registered agents, the Administrator of the United States Environmental Protection Agency (“EPA”), the regional Administrator of EPA, and the Executive Director of the Illinois Environmental Protection Agency (“IEPA”) of its intent to sue Defendants by mailing copies of the Notice Letter to these officials on February 29, 2012.

9. More than 60 days have passed since Plaintiff sent the Notice Letter. Upon information and belief, neither the EPA nor IEPA has commenced and diligently prosecuted an action that would preclude this action under either 33 U.S.C. § 1319(g) or 1365(b)(1)(B).
10. The location of all violations complained of are in Henry County, Illinois, which is within the Rock Island Division of the Central District of Illinois. CDIL-LR 40.1. Venue in the Central District of Illinois is therefore proper pursuant to 33 U.S.C. § 1365(c).

PARTIES

11. David G. Ballegeer, is an individual who owns and operates Ballegeer Excavating, Inc. and Ballegeer Trucking, Inc. David G. Ballegeer has personally conducted, directed, approved, and/or authorized the illegal discharges at issue in this case. David G. Ballegeer and his businesses have substantially profited from the illegal activities alleged in this Complaint.
12. Ballegeer Excavating, Inc. working under the assumed name of Ballegeer Trucking, Inc., is an Illinois corporation located at 8901 N. 1800 Ave in Geneseo, Illinois that is engaged in the business of removing, hauling and disposing of concrete, rock, dirt, construction and building waste, and other related materials.

13. Francis Ballegeer has approved and/or authorized the violations alleged in this Complaint and owns the property adjacent to the Green River where the violations occurred and are continuing to occur.
14. Plaintiff Quad Cities Waterkeeper (“Waterkeeper”) is a 501(c)(3) non-profit, public interest conservation organization based in Davenport, Iowa and incorporated in the State of Illinois. Waterkeeper’s mission is to protect clean water and healthy aquatic habitats for humans and aquatic species in the Upper Mississippi watershed. This work includes protection of habitat, species, public recreation, and water quality in the Green and Rock Rivers.
15. Plaintiff uses education, advocacy and, when necessary, legal enforcement tools authorized under the federal CWA to achieve its goals.
16. Plaintiff has members, staff and supporters (collectively “members”) that regularly use and enjoy the Green and Rock Rivers, including the waters affected by the violations at issue in this case. Plaintiff’s members and supporters use and enjoy these areas for fishing, boating, kayaking, bird watching, walking, and other recreational, aesthetic, spiritual, environmental, scientific, and vocational activities and interests.
17. Defendants’ discharges negatively affect aquatic habitat values for fish and other aquatic wildlife and birds, decrease populations of these species and therefore decrease Plaintiff’s members’ ability to successfully fish, observe fish, bird watch, and recreate both in the area adjacent to the discharges as well as in upstream and downstream areas that are ecologically connected to the areas most directly affected by the Defendants’ discharges.
18. Defendants’ discharges are creating navigational hazards that adversely affect Plaintiff’s members’ ability to boat, fish and recreate in the area.
19. Defendants’ discharges of concrete with protruding metal rebar create a substantial threat to the health and safety of Plaintiff’s members who utilize the area for boating,

kayaking, swimming, and fishing. These safety threats also deter Plaintiff's members' use and enjoyment of the area.

20. Defendants' discharges have diminished and are seriously diminishing the aesthetic river values that are important to Plaintiff's members who use the area.
21. Defendants' discharges of dirt, sediment, rock, and other pollutants have adversely affected downstream water quality and clarity and thus negatively affected species, water quality and other attributes of the Green River important to Plaintiff's members.
22. Plaintiff's members use and enjoy and have used and enjoyed the areas adjacent to, downstream and upstream from the section of the Green River being affected directly by Defendants' discharges, including the Rock River, for the activities described above. Plaintiff's members intend to continue to use these same waters in the future and have specific and near-term plans to return to use such waters for the uses described above in the summer and fall of 2012 and throughout 2013.
23. The instant action would redress the harms faced by Plaintiff and its members by stopping the continued discharges complained of here and requiring the removal of illegally disposed of materials.
24. Further, the instant action would result in civil penalties that would deter future violations that would threaten Plaintiff's and its members' use and enjoyment of waters adjacent to, downstream and upstream from the locations where Defendants' violations have occurred.
25. Plaintiff has standing to bring this action because of the actual and concrete injuries Defendants have caused and are continuing to cause to Plaintiff and its members. These injuries are fairly traceable to Defendants' violations and are capable of redress by action of this Court. Plaintiff has no other adequate remedy at law.

BACKGROUND ON CITIZEN SUITS UNDER THE CLEAN WATER ACT

26. Congress enacted the CWA to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). In so doing,

Congress declared a national goal of eliminating discharges of pollutants to navigable waters by 1985.

27. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the point source discharge of pollutants to navigable waters of the United States unless the discharge is in compliance with a permit issued pursuant to Section 402 or Section 404 of the Clean Water Act, 33 U.S.C. §§ 1342 & 1344.
28. Under Section 505(a) of the CWA, 33 U.S.C. § 1365(a), a citizen may commence an enforcement action against any person who violates an “effluent standard or limitation” under the CWA. A violation of an effluent standard or limitation includes an unlawful act under Section 301(a) of the CWA, 33 U.S.C. § 1311(a).
29. The citizen suit provision of the CWA grants jurisdiction to the United States District Courts to impose an injunction requiring compliance with the CWA, to impose appropriate civil penalties for violations of the CWA, and to award costs of litigation (including expert witness costs and reasonable attorneys’ fees) to citizen plaintiffs.

FACTUAL BACKGROUND

30. David G. Ballegeer is the owner, operator and President of Ballegeer Excavating, Inc., an Illinois corporation doing business as Ballegeer Trucking, Inc.
31. Francis Ballegeer owns several hundred acres of property adjacent to the Green River from which the unauthorized discharges have occurred.
32. Defendants and others acting at their direction, on their behalf and with their approval have discharged and are continuing to discharge the pollutants at issue along a section of the Green River that starts approximately 3,000 feet upriver from the Green River’s confluence with the Rock River and extends upriver from this point for approximately one mile.
33. The Green River is a navigable water of the United States as those terms are defined under the CWA. 33 U.S.C. §§ 1362(7) & (14).

34. The pollutants Defendants have discharged and are continuing to discharge into the Green River include, but are not limited to concrete, asphalt, rock, sand, dirt, construction debris and materials, rebar and other metal. These materials are “pollutants,” as that term is defined by the CWA, 33 U.S.C. § 1362(6).
35. In discharging these pollutants, Defendants also have discharged and continue to discharge pollutants that are in, on or commonly associated with such materials, including but not limited to oil, grease and other hydrocarbons, pesticides, herbicides, paints, total suspended solids, turbidity, pH, heavy metals, and organic materials.
36. Defendants have discharged and are continuing to discharge the concrete and other pollutants at issue onto the banks of the Green River below the ordinary high water mark. The concrete and other pollutants discharged onto the banks of the Green River below the ordinary high water mark remain in the Green River as of the date of this Complaint.
37. Defendants also have discharged and are continuing to discharge concrete and other pollutants onto the bed and bottom of the Green River. The concrete and other pollutants discharged onto the bed and bottom of the Green River remain on the riverbed and bottom as of the date of this Complaint.
38. David G. Ballegeer has personally operated and continues to operate the heavy equipment, such as excavators, bulldozers and related heavy machinery that has physically discharged concrete and other pollutants into the Green River.
39. These types of heavy machinery the Defendants have used and continue to use to discharge concrete and other pollutants constitute “point sources” as the term is defined under the CWA, 33 U.S.C. § 1362(14).
40. Both David G. Ballegeer and Francis Ballegeer have approved, authorized, and directed others to discharge and to continue to discharge the same pollutants identified above into the Green River.

41. Defendants have gained significant financial profits as a result of avoiding disposal and dumping fees that they would otherwise have had to pay to dispose of the concrete and related pollutants that Defendants disposed of in the Green River.
42. None of the Defendants have authorization under a permit required by 301(a) of the CWA, 33 U.S.C. § 1311(a), for discharges of concrete and related pollutants as described above.
43. Defendants also have dredged and continue to dredge and remove significant quantities of sand and rock from the bed and bottom of the Green River adjacent to property owned by Francis Ballegeer. As a result of this dredging activity Defendants have discharged and redeposited and continue to discharge and redeposit pollutants, including sand, rock, dirt, and TSS into the River. The redeposited pollutants do not constitute mere incidental fallback from the dredging activities.
44. This dredging has occurred and is continuing to occur at least at Site 3 as identified in Plaintiff's 60-day notice letter, but may also have occurred elsewhere on the Green River.
45. In order to replenish the sand Defendants dredged from the River, Defendants discharged concrete into the Green River near Site 2, as identified in Plaintiff's 60-day notice letter, in such a way as to impede the flow of the River and cause sand and silt to back up to their dredging area, Site 3. The concrete was discharged into the Green River so that it was below the water level, and therefore would not be seen. The underwater concrete wall remains in the River near Site 2 and has had the effect of altering the flow of the Green River.
46. On information and belief, the same Defendants responsible for the current discharges and dredging were also responsible for clearing a fence line and trees and the excavation of a ditch in or about 1991 at the area corresponding to Site 6 as identified in Plaintiff's 60-day notice letter. The United States Army Corps of Engineers ("the Corps") determined the Defendants' actions at Site 6 constituted a violation, which the

Corps resolved when the Corps confirmed in 1992 that trees were replanted in the excavated area. However, the excavated area is still cleared and the ditch remains as of the date of this Complaint. On information and belief, the Defendants current discharges and dredging activities, in concert with the remaining cleared area and excavated ditch at Site 6 has the potential to harm the ecology of the Green River in that area and significantly alter the course of the River.

47. Defendants have gained significant profits from the sale of the dredged materials from Site 3, as identified in paragraphs 43-45.

48. The dredging at Site 3 has occurred since at least March 2007 and has continued regularly and consistently since that time up through the date of this Complaint, and there is a reasonable likelihood that Defendants' dredging violations will continue in the future.

49. None of the Defendants have authorization under a permit required by 301(a) of the CWA, 33 U.S.C. § 1311(a), for discharges associated with the dredging activities described above.

50. These violations are continuing and, absent injunctive relief from this Court, there is a reasonable likelihood that all of the violations will continue to occur into the future.

FIRST CLAIM FOR RELIEF

Discharge of Pollutants Without an Authorizing Permit

(Violations of 33 U.S.C. Sections 1311(a))

51. Plaintiff incorporates all preceding paragraphs.

52. Defendants' discharges of concrete and other pollutants as described above onto the banks of the Green River below the ordinary high water mark constitute violations of 301(a) of the CWA, 33 U.S.C. § 1311(a).

53. Pursuant to the definitions contained in the CWA, the Defendants are "persons" responsible for discharging "pollutants" from a "point source" into the "waters of the United States" and lack permit authority for such discharges as required by Section

301(a) of the CWA.

54. Defendants' violations have been occurring regularly and consistently since at least March of 2007 and are continuing to occur through the date of this Complaint. There is a reasonable likelihood that the violations will occur in the future absent redress from this Court.

55. Each day that the concrete, rebar, metal, rock, dirt and other pollutants are discharged or remain in place on the banks of the Green River below the ordinary high water constitutes a separate and distinct day of violation under the CWA.

SECOND CLAIM FOR RELIEF

Discharge of Pollutants Without an Authorizing Permit

(Violations of 33 U.S.C. Sections 1311(a))

56. Plaintiff incorporates all preceding paragraphs.

57. Defendants' discharges of pollutants as described above onto the bed and river bottom of the Green River constitute violations of 301(a) of the CWA, 33 U.S.C. § 1311(a).

58. Pursuant to the definitions contained in the CWA, the Defendants are "persons" responsible for discharging "pollutants" from a "point source" into the "waters of the United States" and lack permit authority for such discharges as required by Section 301(a) of the CWA.

59. Defendants' violations have been occurring regularly and consistently since at least March of 2007 and are continuing to occur through the date of this Complaint. There is a reasonable likelihood that the violations will occur in the future absent redress from this Court.

60. Each day that the concrete, rebar, metal, rock, dirt and other pollutants are discharged or remain in place on the bed and river bottom of the Green River constitutes a separate and distinct day of violation under the CWA.

THIRD CLAIM FOR RELIEF

Discharge of Dredging Related Pollutants Without an Authorizing Permit

(Violations of 33 U.S.C. Sections 1311(a))

61. Plaintiff incorporates all preceding paragraphs.
62. Defendants' discharges of pollutants related to the dredging and removal of sand, rock and related materials from bed and river bottom of the Green River constitute violations of 301(a) of the CWA, 33 U.S.C. § 1311(a).
63. Pursuant to the definitions contained in the CWA, the Defendants are "persons" responsible for discharging "pollutants" from a "point source" into the "waters of the United States" and lack permit authority for such discharges as required by Section 301(a) of the CWA.
64. Defendants' violations have been occurring regularly and consistently since at least March of 2007 and are continuing to occur through the date of this Complaint. There is a reasonable likelihood that the violations will occur in the future absent redress from this Court.
65. Each day that the Defendants conduct dredging operations, and thereby discharge sediment, soil, sand, and other pollutant byproducts of dredging, constitutes a separate and distinct violation of the CWA.

RELIEF REQUESTED

Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- A. Declare Defendants have violated and continue to violate the CWA;
- B. Issue an injunction ordering Defendants to stop violating the CWA;
- C. Order Defendants to remediate the harm caused by its CWA violations, to the extent possible;
- D. Order Defendants to pay civil penalties for each violation of the CWA occurring on or after February 29, 2007, in an appropriate amount, as provided by Sections 309(d) and 505(a) of the CWA, 33 U.S.C. § 1319(d), and 1365(a), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. Part 19;
- E. Retain jurisdiction over this matter until such time as Defendants have come into

compliance with the requirements of the CWA and fully complied with any remedial orders of this Court;

- F. Issue an order awarding Plaintiff its litigation expenses, including reasonable attorney fees, costs, and expert witness fees, as authorized by Section 505(d) of the CWA, 33 U.S.C. § 1365(d); and
- G. Award such other relief as this Court deems appropriate.

DATED this 19th day of July 2012.

Respectfully submitted,

s/ Albert Ettinger

Albert Ettinger (ARDC # 3125045)
Ettinger.Albert@gmail.com
53 W. Jackson #1664
Chicago, Illinois 60604
Tel: (773) 818 4825

Kevin M. Cassidy
Attorney Admission Application Pending
Email: cassidy@lclark.edu
Pacific Environmental Advocacy Center
Lewis & Clark Law School
P.O. Box 445
Norwell, MA 02061
Tel: (781) 659-1696

Attorneys for Quad Cities Waterkeeper