

DISTRICT COURT OF MINNESOTA

CIVIL OTHER

FOURTH JUDICIAL DISTRICT

HENNEPIN COUNTY

Court File No.

EAST PHILLIPS NEIGHBORHOOD INSTITUTE, INC.,

Plaintiff,

COMPLAINT

v.

THE CITY OF MINNEAPOLIS, and

MINNEAPOLIS PUBLIC WORKS DEPARTMENT,

Defendants.

Preliminary Statement

1. Plaintiffs bring these claims pursuant to the Fourteenth Amendment to the United States Constitution, Minnesota Environmental Policy Act (“MEPA”), Minnesota Environmental Right Act (“MERA”), Minn. R. 7007.0150, Minn. R. 7005.0100, and Minn. R. 7007.3000.
2. Plaintiff demands that Defendants obtain an Environmental Assessment Worksheet and have an Environmental Impact Statement completed for the Hiawatha Campus Expansion Project;
3. Plaintiff seeks an order enforcing Minn. Stat. 116.07 against Defendant and prohibiting Defendants from causing further pollution to the East Phillips Neighborhood by going forward with the Hiawatha Campus Expansion Project.

Jurisdiction and Venue

1. This case raises questions under the Constitution and laws of the State of Minnesota. Therefore, this Court has jurisdiction over all of the Plaintiffs' claims.
2. This Court has jurisdiction over this matter under Minnesota Environmental Policy Act ("MEPA"), Minn. Stat. § 116D.04, and Minnesota Environmental Right Act ("MERA"). Minn. Stat. § 116B.03, subds. 1 and 4.
3. This Court is authorized to grant declaratory relief pursuant to Minn. Stat. § 555.01, and grant injunctive relief pursuant to Rule 65 of the Minnesota Rules of Civil Procedure.
4. Venue is proper in Hennepin County, where the defendants actions at issue in this matter were taken pursuant to Minn. Stat. § 116D.04, subd. 10, Minn. Stat. § 116B.03, and Minn. Stat. § 542.09, because one or more of the Defendants reside in this county and the causes of action alleged herein, or some part thereof, arose in this county.

Parties

5. Plaintiff is the East Phillips Neighborhood Institute, Inc. (hereinafter EPNI) is a non-profit community organization comprised of people living in the East Phillips Neighborhood of Minneapolis, which includes Little Earth of the United Tribes Community.
6. Defendant, Minneapolis Public Works Department is a division of the City of Minneapolis.
7. Defendant, City of Minneapolis is a municipality in Hennepin County, Minnesota.

Facts

8. The Minneapolis Public Works Department is the organization responsible for the Hiawatha Campus Expansion Project. Attached hereto as Exhibit A.
9. The City of Minneapolis acquired part of the contested properties in 2016. Attached hereto as Exhibit B.
10. The Hiawatha Campus Expansion Project is the City of Minneapolis' plan to relocate its 2.43-Acre Minneapolis Public Works Water Distribution Maintenance Facility and Meter Shop ("East Side Yard"). Attached hereto as Exhibit A.
11. The Expansion Project entails relocating the Water Distribution Maintenance Facility to a 7.66-Acre site formerly owned by 1860 East 28th Street, L.L.C. Attached hereto as Exhibit A.
12. The City of Minneapolis plans to locate the Water Distribution Maintenance Facility at 2717 Longfellow Ave. S. (Parcel ID: 3602924320075) and 1860 28th St. E. (Parcel ID: 3602924320003) at the intersection of Longfellow Ave. S. and 28th St. E. Attached hereto as Exhibit C.
13. The Hiawatha Campus Expansion Project would abut and was planned to become a part of the existing 8.97-acre Public Works Maintenance Facility located at 1901 26th Street E. Attached hereto as Exhibit C.
14. The total land in the combined Hiawatha Campus site is 16.63-acres or 724,408.8 square feet.

15. The newly acquired properties now owned by the City of Minneapolis are located at 2717 Longfellow and 1860 28th Street E and are owned by the City of Minneapolis directly. Attached hereto as Exhibit B.
16. All property at issue is located within the residential East Phillips Neighborhood of South Minneapolis, Minnesota.
17. The East Phillips Neighborhood of South Minneapolis is located within Hennepin County.
18. The subject land in the proposed Expansion Project includes the former 230,000 square foot Sears Warehouse.
19. The subject land is included in the Arsenic Superfund Site MNN000509136. Attached hereto as Exhibit E.
20. While this Superfund Site was partially cleared, it has not been fully remediated. Attached hereto as Exhibit E.
21. The subject land is located immediately west of the epicenter of the Arsenic Triangle located at the North West corner of 28th St. E and Hiawatha Ave. Attached hereto as Exhibit D and Exhibit F.
22. The groundwater beneath the subject land has been contaminated with arsenic. Attached hereto as Exhibit G and Exhibit O.
23. The proposed project requires the demolition of the existing 230,000 square foot warehouse. Attached hereto as Exhibit H.
24. The proposed project then calls for the construction of 118 surface parking stalls, at least seven new building structures, including a hot mix asphalt storage facility, heavy equipment parking, a large training building which is planned to include a multi-story

“sandbox” for teaching the operation of diesel bulldozers, and storage for front-end loaders and other heavy equipment. Attached hereto as Exhibit H.

25. There are two 12,000-gallon oil tanks used along with natural gas for building heat buried under the building that will need to be removed for the construction. Attached hereto as Exhibit H.
26. The proposed project would dramatically increase the traffic in the area due to the introduction of a fleet of one hundred commercial vehicles, many diesel, and an additional 400 worker vehicles. Attached hereto as Exhibit A.
27. A four-story parking structure with an estimated capacity of 480 vehicles is planned for construction to accommodate the increased traffic. Attached hereto as Exhibit H.
28. The East Phillips Neighborhood, including the Little Earth of United Tribes Community, begin within one-half block of the new project. Attached hereto as Exhibit I.
29. The Little Earth of United Tribes Community is the largest urban Native American community in the Country.
30. The East Phillips Neighborhood is also home to large populations of African Americans, Somali's, and Latinx peoples. Attached hereto as Exhibit I.
31. The residents of the East Phillips Neighborhood and Little Earth have a marked tendency to suffer from a disproportionate number of health issues, including but not limited to, cancer, asthma and cardiovascular disease. Attached hereto as Exhibit H and Exhibit N.
32. Children are disproportionately impacted by these health risks, specifically, children of the Phillips Neighborhoods have the highest incidence of hospitalizations for elevated blood lead, arsenic, and asthma in Hennepin County. Attached hereto as Exhibit H.

33. These health effects are attributed to the past and present pollution of the area. Attached hereto as Exhibit H.
34. Members of EPNI are comprised of individuals who have suffered these adverse health effects due to the ongoing pollution in the East Phillips Neighborhood.
35. Minneapolis experienced numerous air quality alert days in 2007 and 2008. Attached hereto as Exhibit N.
36. The East Phillips Neighborhood is surrounded by heavily trafficked state and county highways.
37. In 2008, a law was passed to protect the East Phillips Neighborhood from further pollution and the negative health effects that accompany excessive pollution. Attached hereto as Exhibit H.
38. The law is listed in the Minnesota Statutes as Statute § 116.07 subd. 4(a). This law is known colloquially as the Clark/Berglin Environmental Justice Law.
39. Minnesota Statute § 116.07 subd. 4a. states that

The Pollution Control Agency may issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the emission of air contaminants, or for the installation or operation of any emission facility, air contaminant treatment facility, treatment facility, potential air contaminant storage facility, or storage facility, or any part thereof, or for the sources or emissions of noise pollution.

The Pollution Control Agency may also issue, continue in effect or deny permits, under such conditions as it may prescribe for the prevention of pollution, for the storage, collection, transportation, processing, or disposal of waste, or for the installation or operation of any system or facility, or any part thereof, related to the storage, collection, transportation, processing, or disposal of waste.

The agency may not issue a permit to a facility without analyzing and considering the cumulative levels and effects of past and current environmental pollution from all sources on the environment and residents

of the geographic area within which the facility's emissions are likely to be deposited, provided that the facility is located in a community in a city of the first class in Hennepin County that meets all of the following conditions:

- (1) is within a half mile of a site designated by the federal government as an EPA superfund site due to residential arsenic contamination;
- (2) a majority of the population are low-income persons of color and American Indians;
- (3) a disproportionate percent of the children have childhood lead poisoning, asthma, or other environmentally related health problems;
- (4) is located in a city that has experienced numerous air quality alert days of dangerous air quality for sensitive populations between February 2007 and February 2008; and
- (5) is located near the junctions of several heavily trafficked state and county highways and two one-way streets which carry both truck and auto traffic.

The Pollution Control Agency may revoke or modify any permit issued under this subdivision and section [116.081](#) whenever it is necessary, in the opinion of the agency, to prevent or abate pollution.

Minn. Stat. § 116.07 subd. 4a (2019). Additional information from Minnesota Pollution Control Agency (MPCA) attached hereto as Exhibit N.

40. Minn. Stat. § 116.07 subd. 4a was passed specifically for the East Phillips neighborhood and as demonstrated above and below, the Plaintiffs have shown that all five of the conditions are proven.

41. The Hiawatha Campus Expansion Project includes a Water Distribution Maintenance Facility which will produce increased emissions.

42. The demolition, construction, and operation of the Water Distribution Maintenance Plant will generate a substantial amount of pollution. Attached hereto as Exhibit H.

43. The increased pollution will dramatically reduce the overall health of the community. Attached hereto as Exhibit H.

44. The adverse health effects that will result from exposure to the pollution released by the Hiawatha Campus Expansion Project will effectively deprive the East Phillips residents their rights to life and liberty. Attached hereto as Exhibit H, Exhibit P, and Exhibit Q.
45. Members of EPNI are individuals who will suffer increased adverse health effects as a result of the Hiawatha Campus Expansion Project.
46. EPNI has attempted to purchase the land that is being used for the Hiawatha Campus Expansion Project. Attached hereto as Exhibit H.
47. EPNI planned to build a combination low income housing, community center, urban farm, and job training center (“Urban Farm”). Attached hereto as Exhibit K.
48. EPNI’s planned project would have repurposed the Roof Depot building and the entire site for a community-driven sustainable pollution-free development. Attached hereto as Exhibit K.
49. The environmental improvements that would result from the Urban Farm project should be analyzed and considered as part of the cumulative impacts analysis.
50. The land for the Hiawatha Campus Expansion project was purchased under the threat of eminent domain. Attached hereto as Exhibit H.
51. EPNI has not had the opportunity to effectively present their plan for the land to City representatives. Attached hereto as Exhibit H.
52. EPNI filed a petition for an Environmental Assessment Worksheet (hereinafter EAW). Attached hereto as Exhibit H.
53. The City of Minneapolis was declared the Responsible Governmental Unit (hereinafter RGU) in determining whether an EAW would be required. Attached hereto as Exhibit J.

54. The City of Minneapolis has a vested interest in the Hiawatha Campus Expansion Project.
55. An EAW is required whenever material evidence is presented by petitioners that a project may have the potential for significant environmental effects. *See* Minn. Stat. § 116D.04 subd. 2a (e) (2019). Attached hereto as Exhibit M.
56. The RGU must consider all of the material evidence that is presented to them when determining if an EAW is required.
57. As an EAW is a diagnostic tool to determine if an Environmental Impact Statement (hereinafter EIS) is necessary, the RGU may consider the same criteria that are considered when determining the need for an EIS.
58. The criteria for determining the necessity of an EIS are:
- A. the type, extent and reversibility of environmental effects;
 - B. cumulative potential effects of related or anticipated future projects;
 - C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and
 - D. the extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS's previously prepared on similar project.
- See* Minn. R. 4410.1700, subp. 7 (2018). Attached hereto as Exhibit L.
59. The City of Minneapolis has decided that an EAW is not required for the Hiawatha Campus Expansion Project, and the Public Works Department may go ahead with the project.
60. The City of Minneapolis has not applied for permits with the Minnesota Pollution Control Agency (hereinafter MPCA) for construction or operation of the Hiawatha Expansion Project, in violation of applicable State and Federal rules.

61. Under Minn. R. 7007.0150, “[n]o person may construct, modify, reconstruct, or operate an emissions unit, emission facility, or stationary source until plans for it have been submitted to the agency and a written permit for it has been granted by the agency.” Minn. R. 7007.0150, subp. 1 (A) (2019).
62. The City of Minneapolis must include in the potential emissions calculation, as part of the permit process under Minn. R. 7007.0150, the emissions from: the destruction of the Roof Depot Warehouse; the construction of new buildings and parking accommodations; and the ongoing usages for these facilities, which include storage facilities which will increase emissions related to vehicles, hot mix asphalt, and Water Distribution Maintenance Facility, among other potential emissions.
63. A detailed cumulative impacts analysis considering the cumulative levels and effects of past and current environmental pollution from all sources on the environment and residents of the East Phillips Neighborhood, must be completed under Minn. Stat. § 116.07 subd. 4a, before a permit can be issued for the Hiawatha Campus Expansion.
64. If the Hiawatha Campus Expansion Project is allowed to commence, significant amounts of pollution will be released.
65. Additionally, if the Hiawatha Campus Expansion Project is allowed to commence, it will cause irreparable harm to the East Phillips Community.

Claims for Relief

Count One Failure to Comply with MEPA

66. Plaintiffs realleges the allegations set forth in paragraphs 1 – 65.
67. MEPA requires that for major governmental action where there is a potential for significant environmental effects, the RGU must prepare a detailed environmental impact

statement before the action proceeds. The environmental impact statement must be an analytical document that describes the proposed action in detail, analyzes its significant environmental impacts, discusses appropriate alternatives to the proposed action and their impacts, and explores methods by which adverse environmental impacts of an action could be mitigated. Minn. Stat. § 116D.04, subd. 2a.

68. MEPA requires the preparation of an EAW for proposed action whenever material evidence accompanying a petition of not less than 100 individuals who reside in the state demonstrates that because of the nature or location of a proposed action there may be potential for significant environmental effects, when submitted prior to final approval by appropriate governmental units. A decision on the need for an EAW must be made by the RGU within 15 days after the petition is received by the RGU. MEPA, Minn. Stat. § 116D.04, subd. 2a (e).

69. EPNI submitted a petition on January 16, 2020 to the Environmental Quality Board, identifying the potential for significant environmental effects because of the nature and location of Hiawatha Campus Expansion Project with more than 200 individual signatories. No decision was communicated to EPNI as of this date.

70. No state action significantly affecting the quality of the environment shall be allowed and no permit for development shall be granted where such permit is likely to cause pollution so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare. Economic considerations alone shall not justify such conduct. MEPA, Minn. Stat. § 116D.04, subd. 6.

71. As demonstrated, the Hiawatha Campus Expansion Project is likely to cause pollution in an already polluted neighborhood and will likely be detrimental to the public health, safety, and welfare of those living in the East Phillips neighborhood.
72. EPNI is entitled to a judgment requiring the City of Minneapolis to prepare an environmental assessment worksheet to determine whether an environmental impact statement must also be prepared under MEPA, Minn. Stat. § 116D.04, subd. 13.

Count Two Action using MERA

73. Plaintiffs realleges the allegations set forth in paragraphs 1 – 72.
74. MERA authorizes any person to bring a civil action for declaratory or equitable relief in the name of the State of Minnesota against any person for the protection of natural resources located within the State from pollution, impairment, or destruction. MERA, Minn. Stat. § 116B.03
75. EPNI are “persons” under MERA, Minn. Stat. § 116B.02, subd. 2.
76. Pollution, impairment, or destruction is defined as any conduct by any person which violates, or is likely to violate, any environmental quality standard, limitation, rule, order, license, stipulation agreement, or permit of the state or any instrumentality or any conduct which materially adversely affects or is likely to materially adversely affect the environment. MERA, Minn. Stat. § 116B.02, subd. 5.
77. The Hiawatha Expansion Project is likely to violate an environmental quality standard and likely to materially adversely affect the environment in the East Phillips neighborhood.
78. EPNI is entitled to judgment imposing conditions necessary to ensure that the City of Minneapolis’ Hiawatha Campus Expansion Project will not violate an environmental

quality standard or have a material adverse effect on the environment of the East Phillips neighborhood.

Claim Three Failure to Comply with Permitting Processes

79. Plaintiffs realleges the allegations set forth in paragraphs 1 – 78.
80. The City of Minneapolis is not in compliance with Minn. R. 7007.0150 regarding construction and reconstruction restraints for the Hiawatha Campus Expansion Project prior to obtaining applicable permit(s) from MPCA for an emission facility or stationary source.
81. Under the permit process, the City of Minneapolis must calculate the potential emissions related to the Hiawatha Campus Expansion Project by including emissions related to both construction and future ongoing emissions at the site in accordance with Minn. R. 7005.0100, subp. 35a (2019).
82. The City of Minneapolis is not in compliance with Prevention of Significant Deterioration of Air Quality, 40 C.F.R. § 52.21, adopted and incorporated via Minn. R. 7007.3000, regarding construction and reconstruction restraints for a potential major stationary source of ongoing emissions without compliance with application processes.
83. This City of Minneapolis must apply for and obtain applicable permits prior to the commencement of the Hiawatha Campus Expansion Project.

Claim Four Violation of Constitutional Protections

84. Plaintiffs realleges the allegations set forth in paragraphs 1 – 83.
85. The Fourteenth Amendment holds that no state, or any agency acting under a state, shall “deprive any person of life, liberty, or property, without due process of law.” U.S. CONST. amend. XIV, s 1.

86. Plaintiffs have and continue to be deprived of life and liberty at the hands of the City of Minneapolis and the Minneapolis Public Works Department.
87. Plaintiffs have suffered from discriminatory treatment based on race, by the City of Minneapolis, whose actions have caused those in the East Philips Community, to suffer from heightened exposure to pollutants that have adverse effects on health.
88. The Fourteenth Amendment of the Constitution requires that persons similarly situated be treated similarly.
89. The East Phillips Community is suffering disproportionately more than those who live in other neighborhoods within the exterior boundaries of the City of Minneapolis.
90. The City's historical and ongoing actions disparately impact the East Philips Community, specifically Native Americans, African Americans, Somali's, and Latinx peoples, where roughly 83% of the community is comprised of minority populations.
91. The actions of the City bears more heavily on Little Earth of United Tribes Community, African Americans, Somali's, and Latinx peoples than on other races.
92. The State legislature passed Minn. Stat. § 116.07 subd. 4a in 2008 to curb the adverse effects on these groups of people, yet the actions on the part of the City continue to cause prolonged exposure to damaging pollutants.
93. The City of Minneapolis has departed from normal procedures by not completing an EAW to determine the environmental effects of the Hiawatha Campus Expansion Project, while they were also the responsible party to determine whether an EAW was necessary.
94. The City of Minneapolis must be prohibited from committing further environmental injustice on the citizens of the East Phillips neighborhood, in violation of the Equal Protection clause of the United States Constitution.

WHEREFORE Plaintiffs request the Court

1. Require Defendants to comply with Minn. Stat. 116.07 and obtain an EAW and have an EIS completed for the Hiawatha Campus Expansion Project;
2. Prohibit Defendants from going forward with the Hiawatha Campus Expansion Project as it causes substantial air and water pollution and has significant adverse health effects on Native Americans, Latinos, African Americans, and the Somali population.
3. Award Plaintiffs their attorney's fees and costs;
4. Award such other relief as the Court finds just and fitting.

ACKNOWLEDGEMENT

The party or parties on whose behalf the attached pleading is served acknowledge through their undersigned counsel that sanctions may be imposed pursuant to Minn. Stat. §549.211.

Date: 06/12/2020

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