

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH II

MONROE COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

HON. MICHAEL J. MCALPINE
BRANCH II

Plaintiff,

v.

Case No. 09-CX- 1

RAY MILLER
W3410 Dora Road
Lyndon Station, Wisconsin 53965,

Complex Forfeiture: 30109

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d).

COMPLAINT

The State of Wisconsin, by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Mary Batt, brings this complaint against Ray Miller, at the request of the Wisconsin Department of Natural Resources pursuant to Wis. Stat. §§ 299.95 and 281.98, and alleges as follows:

THE PARTIES

1. The plaintiff is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin. It has enacted in Wis. Stat. ch. 281 statutes intended to protect, maintain, and improve the quality and management

FILED
NOV 03 2009

Clerk of Circuit Court
Monroe County Wisconsin

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (608) 269-8745 AND ASK FOR THE MONROE COUNTY CIRCUIT COURT ADA COORDINATOR.

of all waters of the state. Its Department of Natural Resources (DNR) administers regulations and issues water quality certifications authorized by these statutes.

2. Defendant Ray Miller (Miller) is an adult resident of Wisconsin, residing at W3410 Dora Road, Lyndon Station, Wisconsin 53965.

3. Defendant Miller formerly operated M&M Ranch & Outfitters at a property he owns located at 4494 Jackpot Avenue, Sparta, Monroe County, Wisconsin 54656 ("the property").

FACTUAL BASIS

4. On May 2, 2007, DNR Water Supply Specialists Eric Brach and William Roberts conducted a routine sanitary survey inspection of the property, and made the following observations.

5. The well cap on the shop well (Well # 2) was not properly sealed; the well cap was sitting on top of the casing, but needed to be adjusted and tightened.

6. The conduit cable on Well # 2 was not properly threaded or sealed to the well cap. The conduit cable needed to be adjusted and tightened to the well cap.

7. The pit adjacent to Well # 2 contained a fiberglass pressure tank and was not watertight.

8. The casing on the auction house well (Well # 3) was cracked and therefore not watertight.

9. A smooth-end sample tap (or threaded sample tap with the threads filed off) was not installed on Well # 3.

FILED

NOV 03 2009

Clerk of Circuit Court
Monroe County Wisconsin

10. The casing on the residence well (Well # 4) did not extend at least twelve inches above grade. The casing depth of Well # 4 needs to be determined prior to extending the casing to ensure the minimum required casing depth of thirty feet in sandstone or forty feet in other bedrock. If minimum casing depth is not present, the well needs to be abandoned or reconstructed.

11. The valve pit adjacent to Well # 4 had a dirt floor and did not comply with the minimum construction requirements of either Wis. Admin. Code § NR 812.36(2)(b) or NR 812.42(2)(a).

12. A yard hydrant was located closer than eight feet from Well # 4.

13. Well # 5 was a sand point well contained below grade in a pit. Its drive pipe did not extend twelve inches above the established ground surface.

14. From May 2, 2007, to the present, defendant Miller has failed to maintain four wells and one valve pit at the property in compliance with Wis. Admin. Code ch. 812.

15. Despite receiving multiple Notices of Noncompliance and Notices of Violation from DNR, defendant Miller has failed to bring the wells and pits into compliance.

FILED

NOV 03 2009

Clerk of Circuit Court
Monroe County Wisconsin

FAILURE TO CORRECT WELL CAP

16. Wisconsin Admin. Code § NR 812.30(1) requires that "[n]ew wells shall be sealed or covered with an approved weather and vermin-proof compression type well cap or seal installed on or in the top of the well casing pipe."

17. Defendant Miller's failure to properly tighten and secure the cap on Well # 2, as described in ¶ 5, is a violation of Wis. Admin. Code § NR 812.30(1). This violation has lasted from May 2, 2007, to the present.

FAILURE TO PROPERLY INSTALL AND SEAL CONDUIT

18. Wisconsin Admin. Code § NR 812.30(5) requires that "[p]ump electrical cable shall be protected in a metal or plastic conduit. The conduit shall be threaded tightly into the well cap or seal or shall be sealed in an equivalent manner."

19. Defendant Miller's failure to properly maintain Well # 2, as described in ¶ 6, is a violation of Wis. Admin. Code § NR 812.30(5). This violation has lasted from May 2, 2007, to the present.

FAILURE TO REPLACE CRACKED CASING

20. Wisconsin Admin. Code § NR 812.18 requires that:

Welding procedures for plain end well casing pipe shall be made watertight in accordance with the specifications in the American Welding Society manual, AWS D10.12-89, "Recommended Practices and Procedures for Welding Low Carbon Steel Pipe." Well casing pipe to be welded shall conform to the specifications of s. NR 812.17(2). Welding procedures for pitless adapter connections to well casing pipe shall be made watertight in accordance with welding procedures in the AWS Structural Welding Code, AWS D1.1.

21. Defendant Miller's failure to maintain the casing on Well # 3 in a watertight condition, as described in ¶ 8, is a violation of Wis. Admin. Code § NR 812.18. This violation has lasted from May 2, 2007, until the present.

FAILURE TO INSTALL SMOOTH-END SAMPLE TAP

22. Wisconsin Admin. Code § NR 812.34 requires that:

In all pressure water systems, provisions shall be made for collection of water samples directly from the well by installation of a sampling faucet before the pressure tank and any water treatment equipment. The sampling faucet shall be installed at least 12 inches above the floor . . . shall have a smooth end, or if threaded faucets are used, the threads shall be filed off."

23. Despite numerous DNR contacts, the required corrective action has not been taken.

24. Defendant Miller's failure to install a smooth-end sample tap on Well # 3, as described in ¶ 9, is a violation of Wis. Admin. Code § NR 812.34. This violation has lasted from May 2, 2007, to the present.

FAILURE TO EXTEND CASING AT LEAST TWELVE INCHES ABOVE GRADE

25. Wisconsin Admin. Code § NR 812.29 requires that:

For wells constructed after February 1, 1991, the pump installation shall be completed such that the watertight well casing pipe for all wells, except those located in a floodplain, shall terminate at least 12 inches above the established ground surface, above a pumphouse or building floor or above any concrete or asphalt platform surrounding the well casing.

26. Defendant Miller's failure to extend the casing of Well # 4 at least twelve inches above grade, as described in ¶ 10, is a violation of Wis. Admin. Code § NR 812.29. This violation has lasted from May 2, 2007, to the present.

FILED

NOV 03 2009

Clerk of Circuit Court
Monroe County Wisconsin

FAILURE TO RELOCATE YARD HYDRANT

27. Wisconsin Admin. Code § NR 812.08(4)(a)13. requires that:

"Minimum separating distances between any new potable or nonpotable well, reservoir or spring and existing sources of contamination . . . are as follows . . . [e]ight feet between a well or reservoir and a . . . [y]ard hydrant."

28. Defendant Miller's failure to relocate the yard hydrant referred to in ¶ 12 at least eight feet from Well # 4 is a violation of Wis. Admin. Code § NR 812.08(4)(a)13. This violation has lasted from May 2, 2007, to the present.

FAILURE TO ABANDON OR UPGRADE VALVE PIT

29. Wisconsin Admin. Code § NR 812.42(2) requires that:

Existing well or pressure tank pits, alcoves and subsurface pumprooms constructed after April 10, 1953 shall be approved and shall either comply with the conditions of an approval to construct the pit or the minimum requirements of s. NR 812.36(2).

30. The pit referred to in ¶ 7 was constructed after April 10, 1953, and under Wis. Admin. Code § NR 812.42(2) is subject to the minimum construction requirements of § NR 812.36(2).

31. Wisconsin Admin. Code § NR 812.36(2)(b)2. requires that "[t]he junction of walls, floor and roof shall be made watertight by use of water stops or keyed joints." Because the pit adjacent to Well # 2 was not watertight, it is in violation of Wis. Admin. Code § NR 812.36(2)(b)2.

32. Due to the non-compliance referred to in ¶ 31, the pit adjacent to Well # 2 needs to be upgraded or abandoned pursuant to Wis. Admin. Code § NR 812.42(3).

FILED

NOV 03 2009

Clerk of Circuit Court
Monroe County Wisconsin

33. Defendant Miller has failed to upgrade or abandon the pit adjacent to Well # 2 and has been in violation of Wis. Admin. Code § NR 812.42(3) from May 2, 2007, to the present.

FAILURE TO ABANDON OR UPGRADE VALVE PIT

34. The construction date of the pit containing Well # 4 is unknown, but both pits built before April 10, 1953, and those built after that date are required to be watertight poured concrete under Wis. Admin. Code §§ NR 812.42(2)(a) and 812.36(2)(b), respectively.

35. Due to the noncompliance referred to in ¶ 11, the pit adjacent to Well # 4 needs to be upgraded or abandoned pursuant to Wis. Admin. Code § NR 812.42(3).

36. Defendant Miller's failure to upgrade or abandon the pit adjacent to Well # 4 is a violation of Wis. Admin. Code § NR 812.42(3). This violation has lasted from May 2, 2007, to the present.

FAILURE TO ABANDON OR UPGRADE SAND POINT WELL

37. Wisconsin Admin. Code § NR 812.23(3) contains construction requirements for sand point wells, as follows:

The well drive pipe shall extend 12 inches above the established ground surface, pump house or building floor, or above any concrete or asphalt platform surrounding the well at or above the established ground surface.

FILED

NOV 03 2009

Clerk of Circuit Court
Monroe County Wisconsin

38. Wisconsin Admin. Code § NR 812.26(2)(a)3. requires an owner to permanently abandon a well if "the well or drillhole construction does not comply with the minimum standards of this chapter."

39. Wisconsin Admin. Code § NR 812.26(7)(a)1.b. specifies the procedure for abandoning a sand point well and requires that:

Driven-point wells and drillholes less than or equal to 2-1/2 inches in diameter completed in unconsolidated formations shall be filled with neat cement grout which may be poured or pumped down the drive pipe or drillhole.

40. Because Well # 5 in the valve pit referred to in ¶ 13 is less than 2-1/2 inches in diameter and driven in an unconsolidated formation (sand), it must be filled and abandoned according to Wis. Admin. Code § NR 812.26(2).

41. Defendant Miller has failed to abandon Well # 5 according to Wis. Admin. Code § NR 812.26(7)(a)1.b., and has been in violation of Wis. Admin. Code § NR 812.26(2)(a)3. from May 2, 2007, to the present.

42. Under Wis. Stat. § 281.98(1), any person who violates any rule promulgated under Wis. Stat. ch. 281 shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense.

43. The rules contained in Wis. Admin Code ch. NR 812 were promulgated under Wis. Stat. ch. 281.

FILED

NOV 03 2009

Clerk of Circuit Court
Monroe County Wisconsin

44. Under Wis. Stat. § 281.98(2), in addition to the penalties provided under Wis. Stat. § 281.98(1), the Court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of a violation of Wis. Stat. ch. 281, including attorney fees.

45. Under Wis. Stat. § 291.98(3), the Court may also order the defendant to abate any nuisance, restore a natural resource or take, or refrain from taking, any other action as necessary to eliminate or minimize any environmental damage caused by the defendant.

46. The wells and associated features are potential sources of contamination to the area's aquifer and could present a health hazard to the public. Well # 4 has the potential to expose people living in the residence to unsafe water. Well #5 must be properly abandoned because of the potential for contamination to the groundwater or aquifer from this unsealed well.

RELIEF REQUESTED

WHEREFORE, plaintiff State of Wisconsin asks for judgment against the defendant Miller as follows:

1. An injunction issued by the Court, under Wis. Stat. §§ 281.98(3) and 299.95, requiring defendant Miller to comply fully with the Wis. Admin. Code ch. NR 812 provisions governing the maintenance of wells;
2. Forfeitures from defendant Miller pursuant to Wis. Stat. § 281.98(1), for each day of violation alleged in this complaint; plus the 26% penalty assessment pursuant

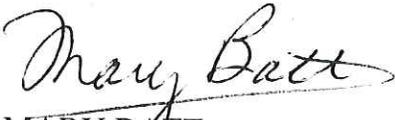
to Wis. Stat. § 814.75(18), the 10% environmental assessment pursuant to Wis. Stat. § 814.75(12), the \$25.00 in court costs under Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), the 1% jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15);

3. The reasonable and necessary costs and expenses of the investigation and prosecution of this case, including attorney fees, as provided for by Wis. Stat. § 281.98(2); and

4. Any other relief the Court may conclude is just and appropriate.

Dated this 2nd day of November, 2009.

J.B. VAN HOLLEN
Attorney General


MARY BATT
Assistant Attorney General
State Bar #1017859

Attorneys for Plaintiff State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-1001
(608) 267-2250 (Fax)
battmd@doj.state.wi.us

FILED

NOV 03 2009

Clerk of Circuit Court
Monroe County Wisconsin