Charter Township of Lansing v. Lansing Board of Water & Light
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For Immediate Release

Lansing Township Files Action in Federal Court
Against Lansing Board of Water & Light

Township seeks to hold Board of Water & Light
responsible for environmental contamination

Lansing, Michigan (May 29, 2014) - The Charter Township of Lansing and the Lansing Township Downtown Development Authority (DDA) filed suit on behalf of the residents of Lansing Township on May 8th in Federal Court, Western District of Michigan, against the Lansing Board of Water and Light (BWL).

The suit seeks to abate and recover costs and damages incurred, and that will be incurred, in response to damages caused by the BWL's release of hazardous substances, and contamination of ground water by its disposal of fly ash at the North Lansing Landfill.

"This is a complicated case, years in the making, and it's no exaggeration to suggest that its outcome will affect life in Lansing Township and its environs for generations to come" said Steve Hayward, the Township DDA Director.

Kathleen Rodgers, Township Supervisor offers, "This lawsuit has been filed to protect the residents of Lansing Township from having to pay money for BWL's environmental contamination."

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About Charter Township of Lansing

The Charter Township of Lansing (Lansing Township) is located within Ingham County, Michigan. According to the 2010 census, it had a population of 8,126. The township consists of five noncontiguous tracts of land: one on the west side of the City of Lansing, three on the east side between Lansing and the City of East Lansing, and one on the southeast side of Lansing. Lansing Township is responsible for Economic Development, Long Range Planning, Soil Erosion & Sedimentation Control and Brownfield Redevelopment Authority. Kathleen Rodgers is the Township Supervisor.

About Lansing Township Downtown Development Authority (DDA)

The DDA is involved in a broad range of activities that seeks to create healthy, prosperous, safe, and attractive communities where people can work, live and recreate. Steve Hayward is the DDA's Executive Director.

Timeline

Pre 1970 Sand and gravel is mined from the area creating a 20+ acre "Pit" with standing water in the bottom. This is the lowest point within a half-mile radius and the natural repository for more than 250 acres of Regional storm water generated within the City of Lansing and Lansing Township.

1971 to 1979 Development of property occurs and the owners of the Pit want to be compensated for increased storm water flow they are receiving. Nearly a dozen private contracts are entered into which obligate the Pit to receive existing and increased storm water flows. Examples of properties include the former Lansing Ice Arena, Dearborn Federal Credit Union, Lansing School District's bus garage, Court One Medical and Athletic buildings, First Merit, etc.

1973 Ingham County Road Commission wishes to increase road drainage into the Pit. State of Michigan geologists concur that increased storm water flows into the Pit is a crucial method of recharging the underlying aquifer and is encouraged.

1971 to 1978 The owners of the Pit wish to redevelop the land. Capital Consultants develops a mine remediation plan and the State and Ingham County allow them to fill portions of the Pit with clean inorganic materials. An area is identified and protected to continue to be the repository of Regional storm water while recharging the aquifer.

1979 The Lansing Board of Water & Light (LBWL) acquires ownership of the Pit and it becomes known as the North Lansing Landfill (NLL).

1980-1988 Area I of the NLL becomes full and the LBWL caps the area with 2 feet of soil. Area II is not used for coal ash (fly ash) disposal since it was originally intended to continue to be the repository for storm water.

1988-1997 Area III is used for fly ash disposal with some ash migration to Area II.

1991 Lansing Township petitions the Ingham County Drain Commissioner (ICDC) to construct a public drain to replace the Blue Ribbon Drain, a private drain system that has become overgrown and needs maintenance. The Blue Ribbon Drain was the mechanism for which the Regional storm water was conveyed to the original Pit (now known as the NLL).

1993 The Michigan Department of Environmental Quality (MDEQ) observes abrupt increases in sulfate & selenium concentrations in onsite monitoring wells.

1994 MDEQ informs LBWL that groundwater data has "confirmed elevated levels of selenium" (contamination).

1995 A public Drain Plan known as the Groesbeck Park Drain is designed that will move water through the area and to prevent water backup and flooding. Its cost is estimated at $600,000. The Ingham County Drain Commissioner (ICDC) cannot complete the storm drain as proposed because of the contamination by LBWL.

LBWL submits a Remedial Action Plan (RAP) to the MDEQ.

1996	In a separate communication, they deny approval of the LBWL's RAP. Even though contamination has been observed, the LBWL requests a renewal of their fly ash disposal license. MDEQ denies LBWL's application for renewal of the fly ash disposal license because of violations and the LBWL's failure to demonstrate compliance with landfill performance standards.
1997	LBWL submits a Remedial Investigation (RI) Work Plan performed by Soil Testing Services of Michigan Inc.
1998	In response, the State of Michigan files suit against LBWL to force the utility to address the contamination on the site and prepares a consent order that includes a financial penalty. The State of Michigan proposes a $1,300,000 penalty for the LBWL's contamination actions and for ignoring the terms of the consent order. LBWL settles with the State of Michigan by paying $104,000.
2005	New construction plans for the drain are created. The earlier plans are no longer considered feasible due to LBWL's releases, and threats of releases, of contaminants. These plans also need to be abandoned due to contamination discovered outside of the LBWL original remediation areas on the site.
2007	Through scientific investigation, the US Environmental Protection Agency classifies the NLL as a proven-damage case as a danger to human health and the environment.
2008	Construction begins on a slurry wall. The slurry wall interferes with the flow of water toward the NLL and reduces the volume of storm water (rainwater) that can be received by the NLL. Construction of the slurry wall is completed in 2010.
2008-Present	Drainage district flooding continues because there is no outlet for the Regional storm water that historically naturally flows toward the NLL.
2009-2013	The release of contaminants rendered previous Groesbeck Park Drain plans unworkable and the drain project is significantly redesigned.
2013	The Ingham County Drain Commissioner announces the cost for the redesigned drain project at $12.5 Million with less than 10% of the cost being apportioned to the LBWL. The Charter Township of Lansing appeals the apportionment to the Board of Review and then to the Michigan Court of Appeals arguing that the LBWL should be held accountable for the delays and the increase in the drain costs.
2014	On May 8, 2014 the Charter Township of Lansing and the Township DDA file suit against the LBWL in the Federal Court in the Western District of Michigan to protect the residents of Lansing Township and the City of Lansing and the Ingham County Department of Roads from having to pay money for LBWL's environmental contamination.

Additional Questions

Answers to legal and factual questions can be found in the Complaint filed on May 8, 2014 in the Federal Court for the Western District Michigan, Charter Township of Lansing v. Lansing Board of Water & Light, Case No. 1:14-CV-00514

Why did Lansing Township file the suit now?

The suit was filed now to protect Township citizens from unfair assessments. By seeking this ruling before assessments become effective, our residents are protected, and the Township can anticipate and plan for any future costs.

When did the contamination begin?

The BWL disposed of fly ash in the North Lansing Landfill (NLL) from 1979 until 1995.

When was the site declared contaminated?

In mid to late 1993, abrupt increases were observed in sulfate and selenium concentrations in an onsite monitoring well. The MDEQ informed the LBWL on July 7, 1994 that ground water data confirmed elevated levels of selenium. It further stated that during the first quarter of 1994 sampling, boron was also detected in four different monitoring wells.

How much is Lansing Township being asked to pay for the BWL's contamination?

The gross payment, which includes principal and interest, will be approximately $13,715,955. This amount is over and above the cost to every Lansing Township property owner in the Groesbeck Drainage District.

Where is the landfill located?

The landfill is located south of the Builder's Redi-Mix Concrete Company, north of the Groesbeck Golf Course and west of Affordable Self Storage (see Attached Map).

How are property values being affected?

It is unknown how the property values in the area are being impacted, however, the taxes collected on taxable values for every property in Lansing Township will increase if the Board of Water and Light does not pay for their actions.

What are the health implications?

The contamination at the site has been contained to prevent any further impact on public health.

If there are no further health implications, why is Lansing Township suing the BWL?

The BWL addressed its contamination through the construction of a slurry wall thirteen years after being ordered by MDEQ to remedy the hazard.

The BWL's delay in remediating the hazard resulted in the further contamination of the ground water surrounding the landfill.

Additionally, the construction of the slurry wall destroyed the natural outfall for storm water in the surrounding 250 acres. The Ingham County Drain Commissioner has now proposed the Groesbeck Park Drain to mitigate this. The LBWL's contamination caused the majority of the need for this Drain, and it is being asked to pay less than 10% of the Drain's $24,000,000 cost.

Lansing Township is being asked to bear the cost of a drain that will remedy the direct effects of the LBWL's contamination and incomplete containment efforts.

Glossary

Aquifer
An aquifer is an underground layer of water-bearing permeable rock or unconsolidated materials from which groundwater can be extracted by use of a water well.

Boron
Boron is a trace element found throughout the global environment. Boron is potentially toxic, although humans tend to rapidly excrete it, and boron does not usually accumulate in high levels. Large doses may result in acute poisoning.

Charter Township of Lansing
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Drinking Water
Drinking water or potable water is water safe enough to be consumed by humans or used with low risk of immediate or long-term harm.

Fly Ash
Fly ash, also known as flue-ash, is one of the residues generated in combustion of coal, and comprises the fine particles that rise with the flue gases.

Environmental Protection Agency
Born in the wake of elevated concern about environmental pollution, the Environmental Protection Agency (EPA) was established on December 2, 1970 to consolidate in one agency a variety of federal research, monitoring, standard-setting and enforcement activities to ensure environmental protection. Since its inception, EPA has been working for a cleaner, healthier environment.

Groundwater
Groundwater is the water located beneath the earth's surface in soil pore spaces and in the fractures of rock formations.

Ingham County Drain Commissioner
A drain commissioner is an elected official in county government responsible for planning, developing and maintaining surface water drainage systems. Pat Lindemann has served as the Ingham County Drain Commissioner since 1993.

Landfill
A landfill is a site for the disposal of waste materials by burial and is the oldest form of waste treatment.

Lansing Township DDA
The Planning Office is involved in a broad range of activities that seeks to create healthy, prosperous, safe, and attractive communities where people can work, live, and recreate. The DDA is responsible for Economic Development, Long Range Planning, Soil Erosion & Sedimentation Control and Brownfield Redevelopment Authority. Steve Hayward is the DDA’s Director.

Leachate
Landfill leachate is liquid that moves through or drains from a dump or organized trash collection site. Some leachate exists on its own, usually as a result of natural decomposition, liquids, and chemicals that have been discarded. The biggest source of leachate in most places is rainwater. When rain hits collected trash, it tends to pool up. If this runoff is not properly managed it is at risk for mixing with the groundwater near the site. This can have dire consequences for local communities, particularly in cases where the landfill leachate is toxic or contains harmful chemicals, and can potentially also impact the ecosystems of rivers, streams, and oceans.

Michigan Department of Environmental Quality
The stated Mission of the Michigan Department of Environmental Quality is to promote wise management of Michigan's air, land, and water resources to support a sustainable environment, healthy communities, and vibrant economy.

Proven Damage Case
Under the Bevill Amendment for the “special waste” categories of the Solid Waste Disposal Act, the Environmental Protection Agency (EPA) was statutorily required to examine “documented cases in which the danger to human health or the environment has been proved” from the disposal of coal combustion wastes.

Classifying damage to groundwater as a “proven damage case” requires the satisfaction of at least one of the following “tests of proof”:

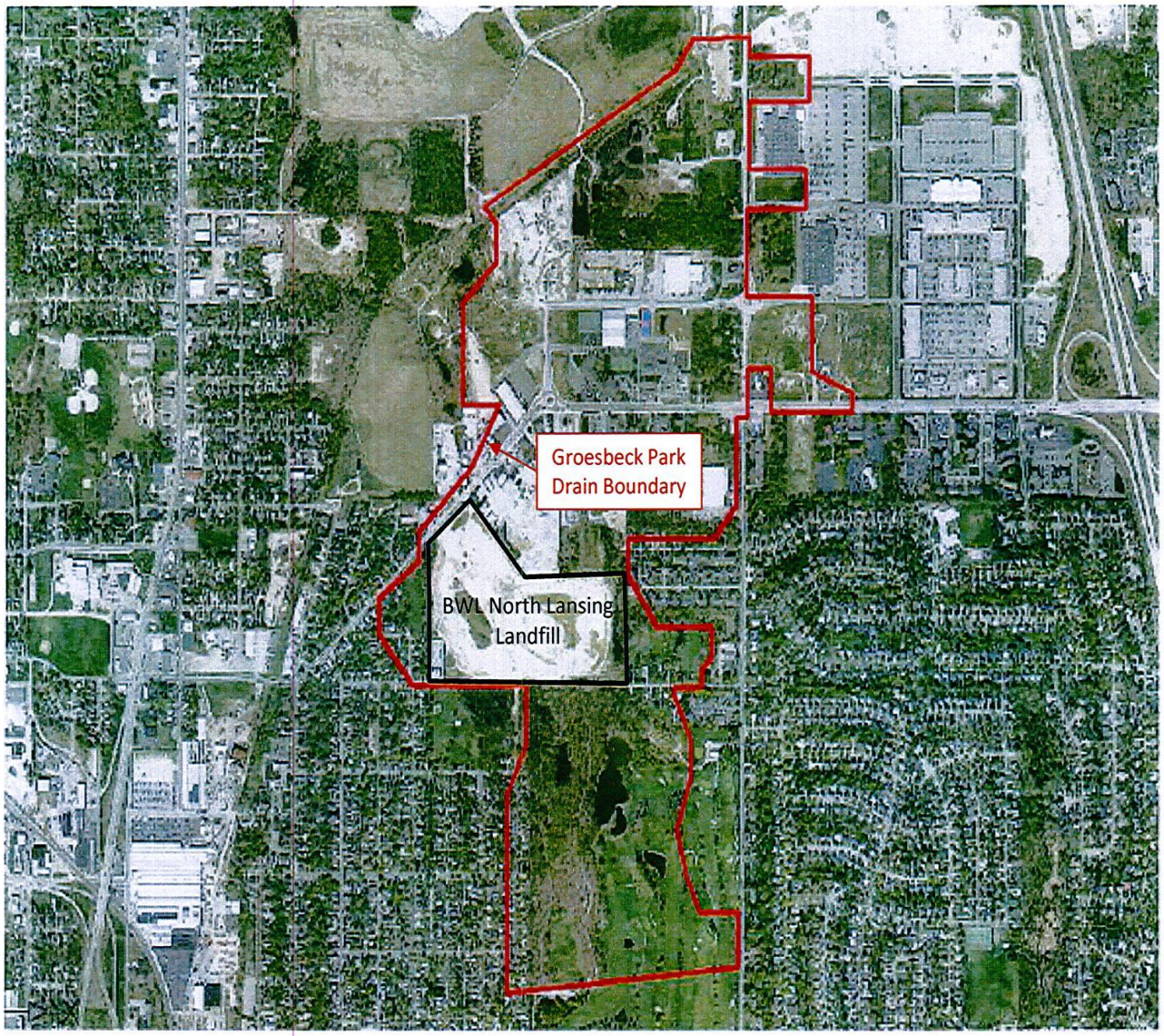
1) **Scientific investigation**: Damages that are found to exist as part of the findings of a scientific study.
2) Administrative ruling: Damages are found to exist through a formal administrative ruling, such as the conclusions of a site report by a field inspector, or through existence of an enforcement that cited specific health or environmental damages.
3) Court decision: Damages are found to exist through the ruling of a court or through an out-of-court settlement.
4) As a practical matter, the EPA employed a fourth criterion in determining whether damages are proven: available information needed to clearly implicate fossil fuel combustion wastes in the damages observed.

Slurry Wall
A slurry wall is a technique used to build reinforced concrete walls in areas of soft earth close to open water or with a high ground water table. This technique is typically used to build diaphragm (water-blocking) walls.

Selenium
Selenium is a trace element that is essential in small amounts, but like all essential elements, it is toxic at high levels.

Storm water
Storm water is water that originates during precipitation events. It may also be used to apply to water that originates with snowmelt that enters the storm water system.

2010 Aerial Photo



ACRONYM GUIDE

DDA
Lansing Township Downtown Development Authority

EPA
Environmental Protection Agency

GPDD
Groesbeck Park Drainage District

ICDC
Ingham County Drain Commissioner

LBWL
Lansing Board of Water & Light

MDEQ
Michigan Department of Environmental Quality

NLL
North Lansing Landfill

PDR
Preliminary Design Report

RAP
Remedial Action Plan

STMI
Soil Testing Services of Michigan, Inc.

WMD
Waste Management Division (MDEQ)