

Illinois Federal District Court Dismisses Village's Trespass and Nuisance Action

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On May 12, 2010, the U.S. District Court for the Central District of Illinois granted a motion to dismiss a village's nuisance and trespass claims in *Village of DePue v. Viacom International, Inc., Nos. 08-cv-1272 and 08-cv-1273*. This case dealt with a zinc smelting facility and a diammonium phosphate fertilizer plant within the Village of DePue, Illinois, which operated from 1903 until 1989. These operations left the site with elevated levels of cadmium, lead, and other metals.

The successors of the company that operated the facility (Viacom, CBS Operations, Inc., and Exxon Mobil Corp.) were sued by the Village of DePue based on theories of common law trespass and nuisance. More specifically, the village claimed that the defendants were liable to it for trespass, by allowing contaminants from the site to flow onto village land, and for both public and private nuisance relating to the contamination of village land.

The defendants filed a motion to dismiss based on the five-year statute of limitations on nuisance and trespass claims. The Court granted the motion, finding that the village's claim was "facially barred" by the statute of limitations, because the village's lawsuit was filed on August 10, 2008, and the village did not allege any tortious conduct by the defendants after 1989.

The Court also rejected the village's argument that several exceptions to the statute of limitations applied. For example, the Court held that the defendants' conduct did not amount to a "continuing tort," because the village did not allege that the defendants or their corporate predecessors engaged in any conduct aside from merely owning the site after 1989. The Court held that the "discovery rule" did not apply, because fact sheets from the Illinois EPA in 1992 and 1995 put the village "on inquiry to determine whether actionable conduct [was] involved." Finally, the Court held that the sovereign immunity exception did not apply, because the village's claims were "brought solely to recover damages allegedly incurred because of [the village's] interests as a private landowner. . . ."

However, the defendants are not off the hook completely. According to the opinion, the defendants were previously sued by the Illinois Attorney General and entered into an interim consent order which mandated a phased investigation of the site and implementation of certain interim remedies.

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