

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

PETER THORSON, MANAGED
INVESTMENTS INCORPORATED,
CONSTRUCTION MANAGEMENT
INC., and GERKE EXCAVATING, INC.,

Defendants.

ORDER

03-C-74-C

A final pretrial conference was held in this case on April 29, 2004, before United States District Judge Barbara B. Crabb. Plaintiff was represented by Leslie Herje and Heidi Luehring. Defendant Gerke Excavating was represented by Jay Carmichael. The remaining defendants were represented by Alexander Bullock.

Counsel anticipate that trial of Construction Management's liability and the damages of all defendants will take about three days. The case will be tried to the court. Trial will begin at 9:00 a.m. on each day and will conclude between 5:15 to 5:30.

One of the issues to be tried will be the number of days for which defendants should be held liable for penalties pursuant to 33 U.S.C. § 1319(d). Defendants believe that their liability ended when plaintiff filed this suit; plaintiff believes that the liability continues until the environmental damage has been repaired.

Plaintiff moved in limine for exclusion of evidence relating to a landfill in Tomah, Wisconsin. That motion is granted. The site's value as a means of filtering the water going into Deer Creek is not diminished by any pollution problems resulting from the landfill; it is enhanced. Any evidence that defendants would introduce about the landfill would tend to show that their actions in reducing the filtration capacity of the site have increased the threat to Deer Creek and the waters into which it flows.

The Thorson defendants' motion to exclude plaintiff's allegedly untimely expert reports is denied for defendants' failure to show that the reports are untimely. In fact, the reports are supplemental reports filed within the discovery period. They could have filed earlier only if defendants had produced discovery materials as requested.

Plaintiff's motion in limine to exclude evidence of offers of compromise is granted, except to the extent that such discussions are relevant to defendants' willingness to restore the wetlands voluntarily and stop the running of the violation.

Plaintiff's motion in limine to exclude alleged violations of the Clean Water Act at other sites in Monroe County, Wisconsin, is granted. Selective enforcement is not an issue

in this lawsuit. Defendants never raised it and it is irrelevant to the issue of damages.

Plaintiff objected to defendants' late addition of witnesses. Defendants argued that the witnesses are for character purposes only and would testify that defendants had never been charged or convicted of environmental violations until this lawsuit was brought. Counsel were asked to make a good faith effort to stipulate to this fact unless the government has evidence that it is not true with respect to any one or more of the defendants.

In addition, counsel are to meet to discuss any differences they have about exhibits the other side intends to offer.

All parties should plan their presentation of evidence so that they have enough witnesses on hand to fill the entire trial day.

Entered this 30th day of April, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge