

STATE OF MICHIGAN

29th CIRCUIT COURT

ROBIN H. BERRYHILL

Civil No. 02- _____-CZ

Plaintiff,

COMPLAINT

v.

**GRATIOT CONVERSATION
DISTRICT,**

Defendant.

SCOTT A. BROOKS (P35773)

GREGORY, MOORE, JEAKLE,

HEINEN & BROOKS, P.C.

65 CADILLAC SQUARE

SUITE 3727

DETROIT, MI 48226

(313) 964-5600

DANIEL P. MEYER (DC: 455369)

PEER, UPON MOTION PRO HAC VICE

2001 S STREET, NW – SUITE 570

WASHINGTON, D.C. 20009

(202) 265.7337

ATTORNEYS FOR PLAINTIFF

There is no other pending or resolved civil action arising
out of the transaction or occurrence alleged in the complaint.

COMPLAINT AND DEMAND FOR JURY

Plaintiff Robin H. Berryhill, by her attorneys, Gregory, Moore, Jeakle, Heinen & Brooks, P.C. and Daniel P. Meyer, Attorney-at-Law, Public Employees for Environmental Responsibility (PEER)(upon grant of motion, pro hac vice), for her Complaint against the Defendant Gratiot Conservation District states as follows:

1. This is an action arising from Defendant firing Plaintiff for her protected whistleblowing activity in a manner that violates the Open Meetings Act.
2. Plaintiff Robin H. Berryhill is a resident of the City of Alma, County of Gratiot, State of Michigan.
3. Defendant Gratiot Conservation District (hereafter "GCD") is a Conservation District organized pursuant to MCLA 324.9301 *et seq.* and is located in the County of Gratiot.
4. Jurisdiction is based upon the Whistle-Blowers Protection Act (hereinafter "WPA"), MCLA 15.361 *et seq.*, and the Open Meetings Act, MCLA 15.261 *et seq.*, and as the damages alleged are in excess of \$25,000.00.
5. Venue is appropriate as Plaintiff resides in and was employed to perform services for Defendant in Gratiot County.
6. Defendant is an employer within the meaning of the WPA, MCLA 15.361(b).
7. Defendant is a Public Body within the meaning of and subject to the requirements of the Open Meetings Act. MCLA 15.262(a); MCLA 324.9303(1).
8. Plaintiff commenced employment with Defendant as a Grant 319 Project Manager on or about July 23, 2001.
9. Plaintiff's duties and responsibilities required her to determine whether area farmers and land owners are in compliance with various State of Michigan statutes and regulations governing soil and water conservation.
10. While performing her job, Plaintiff discovered various instances of improper matters entering into Gratiot County soil and water, harming the natural resources and environment, and posing danger to the citizens of the State of Michigan.
11. On several occasions in the summer and fall, 2001, Plaintiff believed that violations of State of Michigan statutes, regulations or rules were taking place, including but not limited to the presence of cattle in a stream, dead fish in a stream and the regular

discharge of manure and silage leachate into Pine Creek, Gratiot County. Pursuant to her obligations as Project Manager, Plaintiff was required to report the above violations to the DEQ. Plaintiff was instructed by Defendant GCD Board members or staff employees not to report these violations and other findings to the State of Michigan Department of Environmental Quality (hereinafter "DEQ").

12. Plaintiff was a manager of a Section 319 grant authorized under the Clean Water Act to implement federal standards controlling nonpoint source (NPS) pollution. 33 U.S.C. § 1329(h) (1994). See Section XXIII ("Agreement Notices"), Michigan Department of Environmental Quality, Surface Water Quality Division (Gratiot Conservation District)(Pine Creek Watershed #2000-0140), dated November 1, 2001 through October 31, 2003 at 10 (hereinafter "Section 319 Grant")[Attached as Exhibit A]. In the foregoing Section 319 grant application, Plaintiff was the sole Gratiot Conservation District point of contact for the management of activity under the grant.

13. Under the Section 319 grant, assistance is provided pursuant to the goals, standards, and provisions of the Federal Clean Water Act. Section 319 Grant (Section 1, "Statement of Purpose"; Section XI (B), "Grantee Responsibilities") at 2, 4.

14. The State of Michigan, in accepting the Grant and allocating resources under it to the Gratiot Conservation District, agreed TO [WHAT TERMS OF THE PPG ARE TRIGGERED BY THE FACTS IN THIS CASE; ROBIN – CAN YOUR CONTACTS WITHIN THE STATE AGENCY GET US A COPY OF THE PERFORMANCE PARTNERSHIP GRANT COVERING SECTION 319? (IF THERE IS ONE); OR, IF NO PPG EXISTS, THE GRANT AGREEMENT BETWEEN EPA AND THE STATE FOR THE SAME. I THINK IT WOULD BE HELPFUL AT THIS POINT IN THE BRIEF TO ANALYZE THAT DOCUMENT – THOUGH IT IS NOT ESSENTIAL].

15. NPS pollution is defined by the State of Michigan as water pollution from diffuse sources, including any of the following: (i) Runoff from precipitation or snowmelt contaminated through contact with pollutants in the soil or on other surfaces and ... being discharged to surface waters of the State. (ii) Runoff or wind that causes the erosion of soil into surface waters of the State. (iii) Stream bank erosion resulting from unstable hydrologic flows. Mich. Comp. Laws § 324.8802(l)(i-iii) (1999).

16 The DEQ NPS pollution grant director may enter into project contracts for either or both of the following purposes: (a) To implement the physical improvement portion of an approved watershed management plan. (b) To reduce NPS pollution from sources as identified by the department. Mich. Comp. Laws § 324.8803(a-b) (1999).

17. Plaintiff was acting within the scope of the grant's purposes when reporting to the DEQ violations including, but not limited to, the presence of cattle in a stream, dead fish in a stream, and the regular discharge of manure and silage leach into Pine Creek. Section 319 Grant (Appendix A: Pine Creek Watershed, Tracking Code 2000-0140: Watershed Planning Tasks) at Tasks A(2), B(1)-(4), F(1)-(3))[hereinafter "Appendix A"].

18. Plaintiff reported, and was required to report, the above stated violations to the DEQ Project Manager. Section 319 Grant (Section XI (A), "Grantee Responsibilities") at 4; Appendix A at B(1)-(4), F(1)-(3).

19. As a result of Plaintiff reporting the above violations to the DEQ, the DEQ took action to remedy the violations. This was not only the required outcome of the Section 319 Grant, but entirely predicted by the written text of the Application signed by the Gratiot Conservation District. See Appendix A at Narrative Description, First and Second Pages, Paras. 2, 4 and 5.

20. As a result of Plaintiff reporting her findings, Defendant GCD received complaints from at least one resident required to remedy his violation of statutes, regulations or rules.

21. In the fall, 2001, Plaintiff discovered that Defendant GCD was improperly receiving payments from two sources (one of which is the State of Michigan) for the

same services provided. This required reporting under the terms of the Section 319 Grant. Section 319 Grant (Section XI(A), "Grantee Responsibilities") at 4.

22. Plaintiff reported this discovery to the DEQ Project Manager.

23. As a result of her report, the DEQ criticized Defendant GCD's Board of Directors for engaging in such practices.

24. During the fall 2001, and continuing to date, a Gratiot County Commissioner has engaged in fact finding regarding various County matters, including matters affecting Defendant GCD.

25. Defendant GCD instructed Plaintiff that she should not talk to this Commissioner.

26. On January 10, 2002, Defendant GCD fired Plaintiff.

27. Plaintiff was told she was fired because she reported various matters to the DEQ Project Manager, because she befriended the County Commissioner, because she asked too many questions, because she was too hyper and because she commented on suing an MSU Extension Agent who had hit her car with his.

COUNT I – WHISTLE-BLOWERS' PROTECTION ACT

28. Plaintiff realleges Paragraphs 1 – 27 as if fully restated herein.

29. Plaintiff's conduct as described above is protected by Section 2 of the WPA, MCLA 15.362.

30. As a direct result of Plaintiff's protected conduct, Defendant GCD discharged her.

31. Defendant GCD's actions in discharging Plaintiff violate Section 2 of the WPA, MCLA 15.362.

32. As a direct result of Defendant GCD's retaliatory conduct, Plaintiff has lost, and will continue to lose, her employment, including her wages, fringe benefits and seniority, and has and will continue to suffer pain and suffering, mental anguish, emotional distress, humiliation, loss of reputation, and embarrassment.

COUNT II – OPEN MEETINGS ACT

33. Plaintiff realleges Paragraphs 1 – 32 as if fully restated herein.

34. On January 9, 2002, Defendant GCD Board of Directors met in closed session and deliberated concerning matters of Plaintiff's employment with Defendant GCD.

35. On January 10, 2002, Defendant GCD's Board of Directors met in closed session and deliberated concerning matters of Plaintiff's employment with Defendant GCD.
36. Plaintiff did not request that the Defendant GCD Board of Directors meet in closed session to deliberate concerning her employment on either January 9 or 10, 2002.
37. Plaintiff was opposed to Defendant GCD's Board of Directors meeting in closed session on January 9 and 10, 2002.
38. In meeting in closed session on January 9, 2002, Defendant GCD's Board of Directors violated Section 3 of the Open Meetings Act, MCLA 15.263.
39. In meeting in closed session on January 10, 2002, Defendant GCD's Board of Directors violated Section 3 of the Open Meetings Act, MCLA 15.263.
40. Assuming that Defendant GCD's Board of Directors had the right to meet in closed session on either January 9 or 10, 2002, Section 7 of the Open Meetings Act requires that a 2/3 roll call vote of members serving on the Board is required to call for a closed session, with the roll call vote being recorded in the minutes of the meeting. MCLA 15.267
41. The minutes of the January 9, 2002 meeting do not reflect that a roll call vote was taken, or that the motion to go into closed session carried with 2/3 vote of serving members.
42. Defendant GCD's Board of Directors consists of five members.
43. A two-third's vote of Defendant GCD's Board of Directors requires at least four (4) members voting in the affirmative.
44. On January 9, 2002, only three (3) members of Defendant GCD's Board of Directors were present.
45. On January 9, 2002, absent the request of Plaintiff, Defendant GCD's Board of Directors were barred by Section 7 from going into closed session.
46. Defendant GCD violated Section 7 of the Open Meetings Act on January 9, 2002 by going into closed session without a two-thirds roll call vote of members serving.
47. The minutes of the January 10, 2002 meeting do not reflect that a roll call vote was taken, or that the motion to go into closed session carried with 2/3 vote of serving members.
48. Defendant GCD violated Section 7 of the Open Meetings Act on January 10, 2002 by going into closed session without a two-thirds roll call vote of members serving.

49. Defendant GCD violated Section 7 of the Open Meetings Act by preparing, publishing and approving minutes of the January 9, 2002 meeting that reflect a roll call vote to go into closed session on January 9, 2002.

50. Defendant GCD violated Section 7 of the Open Meetings Act by preparing, publishing and approving minutes of the January 10, 2002 meeting that reflect a roll call vote to go into closed session on January 10, 2002.

51. Defendant GCD's noncompliance with the provisions of the Open Meetings Act has impaired the rights of the public under the Act, inasmuch as the public was prevented from learning the reasons why Plaintiff was discharged, as Defendant GCD was attempting to hide the facts of its efforts to thwart Plaintiff's enforcement of environmental protection statutes, regulations and rules, and further prevented the members of the public from expressing their views to Board members.

52. Pursuant to Section 10 of the Open Meetings Act, Plaintiff is entitled to an order that the January 10, 2002 decision to discharge her is invalid as it was not taken in conformity with the requirements of the Act.

53. Pursuant to Section 11 of the Open Meetings Act, Plaintiff is entitled to an order directing Defendant GCD to comply with the provisions of the Act in the future, and enjoining further noncompliance of the Act, and directing the payment of costs and attorney fees

54. Defendant GCD's Board of Directors violation of the Open Meetings Act was intentional, and Plaintiff is entitled to actual and exemplary damages in an amount not to exceed \$500, plus costs and attorney fees.

Damages

Plaintiff seeks judgment against Defendant GCD, holding it liable for the above described acts, enjoining it from further inappropriate acts, directing it to reinstate Plaintiff to her employment without loss of seniority, directing it to perform such other acts as required by law, and awarding Plaintiff as appropriate for each improper act:

- A. Full back pay and compensation for lost fringe benefits;

- B. An award to Plaintiff in excess of \$25,000 to compensate her for her pain and suffering, loss of reputation, emotional distress, mental anguish, embarrassment, humiliation, outrage and other injuries;
- C. Exemplary and punitive damages as appropriate;
- D. Interest;
- E. Costs and attorney fees; and
- F. Any other relief justice requires.

DEMAND FOR JURY

Plaintiff demands a trial by jury.

Respectfully yours,

Gregory, Moore, Jeakle, Heinen & Brooks,

P.C.

By: _____

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Daniel P. Meyer, Attorney-at-Law, PEER