

A lead contractor for Waukesha's Lake Michigan pipeline project has been flooded with regulatory issues and problems



[Cary Spivak](#)

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At first glance, the \$286 million Lake Michigan-to-Waukesha water pipeline project appears to be moving along without a hitch.

Dig a little deeper, and you'll find that S.J. Louis Construction Inc., a lead contractor on the project, has been flooded with complaints of racial discrimination, unsafe work conditions and repeated violations of laws designed to protect the environment.

A Milwaukee Journal Sentinel review of hundreds of pages of records and dozens of interviews with current and former employees, industry safety experts, and government officials found that S.J. Louis, based in Rockville, Minn., has been the target of repeated complaints filed by the federal Occupational Safety and Health Administration and the state Department of Natural Resources. Complaints filed with the state Equal Rights Division include one from a Black now-former employee who charged that the N-word was frequently tossed around the worksite. The ex-employee said he was fired after just one week.

"In my 20 years of working I never had to deal with a contractor on this many issues," said Dan Duchniak, Waukesha Water Utility general manager. The utility is overseeing the project, which began in 2020 and is scheduled to be completed by Sept. 1.

The pipeline is being built to allow the city to replace its radium-contaminated ground water with Lake Michigan water. An equal amount of water that is pumped out of the lake will be returned via the Root River.

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Company with \$107 million contract fined, subject of complaints

The contract calls for S.J. Louis to receive about \$107 million — more than twice as much as the second largest contractor on the project, contracts show.

Since breaking ground, S.J. Louis has been:

- Cited 10 times by the state DNR for violating environmental laws, including those meant to control the amount of erosion.

- Fined \$146,000 by OSHA for 15 violations that the federal agency labeled as serious and four citations for repeat offenses. OSHA regulators repeatedly charged the company with exposing “employees to a cave-in and struck-by hazard,” records show.

- Subject to a half-dozen discrimination complaints filed by workers with state regulators.

- Penalized at a rate of \$7,400 a day for missing construction deadlines.

An S.J. Louis spokesman said in an email statement that those "penalties will be reversed" when changes in the project are fully considered.

Actually, the question of whether the penalties will be enforced could end up in litigation or mediation, officials said.

In addition, S.J. Louis sought more than \$81 million worth of changes, or claims, in the contract that were denied by the city's construction manager and the city, Duchniak said. Those claims could also end up in a legal proceeding.

"It's rare to have have that many claims filed," said Waukesha Mayor Shawn Reilly, who worked as a municipal attorney prior to being elected mayor in 2014. "Especially to have tens of million dollars worth of them."

Reilly said contractual disputes and litigation could go on long after S.J. Louis finishes its work.

"Claims are often precursors to litigation," he said.

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Officials confident project will be properly completed

Despite the disputes, fines and complaints filed by employees, both Duchniak and Reilly said they are confident the pipeline is being properly installed and will be completed on time.

Others say the city officials are overly optimistic.

"I do not know how they will be done on time and on budget," said Robb Kahl, a former Democratic state lawmaker who leads the Construction Business Group. The group, which consists of construction companies and labor unions, objected to the hiring of S.J. Louis — a non-union employer — and has been closely watching the company's work on the project.

"I can't recall a project where the performance (by a contractor) was so poor," said Kahl, who also criticized Waukesha officials for not setting a higher bar when it sought bids for the project.

Attempts to interview S.J. Louis officials in person or by phone were unsuccessful.

Two S.J. Louis employees declined to comment or to provide their full names when a reporter visited their office on West Avenue in Waukesha in March.

Asked about the OSHA complaints, a man who was sitting at a computer in the office said, "That is not information I will be sharing right now." Asked about other complaints filed against the company, the man — who identified himself as John and would not give his last name — said he would provide the same response to any question asked by the reporter.

Frank Wizner, S.J. Louis project manager, said in an email that "a spokesperson for our company is not available for an in-person or telephone interview."

He later emailed a statement that said the company would only answer questions submitted via email.

"We stress safety every day on all of our jobs, and we have a robust and ongoing safety training program," the statement said. "We have a track record of trying to provide a safe working environment, and we will continue to focus on that as a number one priority."

The statement concluded: "Stressing safety and respecting worker rights help us continue to be a company that maintains the utmost respect from those in our industry who know us as an ethical, hardworking and committed business that provides consistent, high quality and safe results."

In a later email, Wizner wrote that some deadlines that were not met were "due to excusable delays and matters beyond our control."

Wizner also wrote that "some of the most challenging issues we encountered were primarily related to having limited access to the site due to the highly involved permitting process."

OSHA, company tangle over multiple citations

The regulator that has hit S.J. Louis the hardest is OSHA — the federal agency charged with ensuring safe working conditions.

The company is contesting the citations, records show. But, experts say, the sheer volume of citations is a red flag.

From April through December 2021, the company was fined \$133,283 by OSHA for 21 violations of agency regulations, records show.

Most of the citations were for serious violations, which is just one level below OSHA's most egregious designation.

"Twenty-plus violations leading to almost \$150K in citations in less than nine months is indeed very significant," said Nola Hitchcock Cross, a veteran employment lawyer.

"We do not recall ever encountering an employer with a worse recent track record involving employees with retaliation allegations whom we have represented," Cross added in an email.

Among the citations issued by OSHA:

In April 2021, OSHA inspectors recommended a fine of \$5,969 for putting a worker at risk by having the employee directly below an excavator bucket carrying fill dirt in the area near Sentry and Sunset drives in Waukesha.

Meanwhile, a worker "was standing in the section of the trench located below the excavator bucket," OSHA inspectors wrote.

About eight months later, OSHA inspectors noted that SJ Louis employees in Muskego were "working in a trench approximately 17 feet deep without a safe means of egress" nearby. Inspectors recommended a fine of \$6,737, records show.

And in April 2022 inspectors charged that an employee was working in a 22-foot deep trench in Franklin "without eye protection to protect the employee from hazards such as falling or flying rocks, particles, dirt and related debris while removing an auger." The recommend fine was \$6,340.

In contrast, C.D. Smith, the second-largest contractor on the pipeline, has not been the subject of any OSHA enforcement actions for its work on the project.

Jim Stanley, who worked for OSHA for 25 years and was the agency's director for two years, said the number of charges leveled by his former agency is unusual.

“It’s not normal to have 15 serious violations over a two-year period,” said Stanley, who is currently the president of FDR Safety, a consulting firm. “It’s not normal over any period.”

Company chosen because it offered the low bid

Just the hiring of S.J. Louis sparked controversy, as the company is non-union firm. Officials from a group representing unions and companies that use union workers argued against hiring S.J. Louis. Reilly said the city had no choice but to hire the company because it was qualified, submitted the low bid, and the city did not see any red flags in its background.

"We did our diligence to see if they were a responsible bidder," Reilly said.

Duchniak noted the city was in uncharted waters when it sought bids for the pipeline project.

"We haven't ever dealt with a contract this large," he said.

Waukesha officials checked with Racine, which gave the company a good review. Mike Gitter, Racine's director of its water utility, said S.J. Louis installed numerous water mains a few years ago. Gitter said the project went well and there were no significant issues.

Waukesha officials, however, did not contact the Lewis & Clark Regional Water System in South Dakota, whose dealings with S.J. Louis ended up in court.

S.J. Louis sued the system in 2020 saying it was owed \$1.7 million for work done on a \$10.7 million pipeline project. S.J. Louis missed some deadlines on the project but argued that was because of weather issues — a claim the water system did not accept.

The suit was settled out of court.

Troy Larson, the Lewis & Clark executive director, said the pipeline was the most frustrating project he had dealt with in 18 years, according to a 2020 story in the Argus Leader, a Sioux Falls, South Dakota newspaper.

"No construction project has gone worse than this one, hands down," the newspaper quoted Larson as saying.

Contractor under close watch by union group

Regulators are not the only people keeping a close watch on S.J. Louis.

Jeff Hennen, a retired Waukesha police officer, is the Construction Business Group's eyes on the ground.

Hennen, an investigator for the group, frequently drives around the construction site in his 2020 Chevrolet Colorado pickup truck checking the progress of the work and making note of problems and issues.

The ex-cop isn't doing undercover work. In fact, he knows several workers and supervisors by name. When a reporter rode with him for about two hours in March, a couple of workers spotted his white truck and waved hello.

"I'm surprised they didn't give me the finger," Hennen said.

During the tour, Hennen pointed out several areas that attracted his attention, including a spot near Moorland and Westridge in New Berlin where he said a worker had to be dug out after a cave-in. He also noted a location where he said

where an OSHA inspector cited S.J. Louis for not providing workers with an adequate protective box at an excavation site.

Hennen also pointed to several areas that he said lacked adequate erosion control.

"You'll never get that top soil back," he said.

The Milwaukee and Waukesha county district attorney's offices each filed five forfeiture complaints saying S.J. Louis is not properly preventing erosion at its job sites.

In February 2022 the DNR said that at a job site in Franklin there was "sediment entering wetland areas and construction site sediment laden runoff entering storm drains with no inlet protection."

The complaints each resulted in a \$1,455 penalty, and the company has defaulted on each penalty, records show.

Employees file discrimination complaints

Employees have joined the parade of those complaining about S.J. Louis.

A half dozen former employees have filed discrimination complaints with the Equal Rights Division of the state Department of Workforce Development.

The first complaint was filed in March 2022 by Shawn McDuffie, a Black construction worker from Tennessee. McDuffie said worked on the pipeline for S.J. Louis for just one week — long enough he said to repeatedly hear the N-word frequently used on the job site.

"It was just thrown about," McDuffie said, adding "you know what's going on, especially when you're the only one."

McDuffie said he was used to hearing cursing on the job site — he has been in construction for more than 22 years, the last 17 as a heavy equipment operator.

But, McDuffie, who was paid \$40.41 an hour, said working on the Waukesha pipeline was different than his previous jobs.

Initially, he said, "I really didn't understand what was going on," but quickly realized his supervisors treated him differently than the white employees. "I started seeing a different way of acting ... they would holler and curse" at him.

He said he was fired after one week. Since the company stopped paying for his motel, McDuffie said he had to drive through a snow storm in the Chicago area to get home.

"I wouldn't have made that trip if I didn't have to," said McDuffie, who was contacted in Pennsylvania where he was working earlier this year. "I ran off the road more than once."

McDuffie said Frank Renteria, the supervisor who fired him, seemed uncomfortable when he delivered the news in January 2021.

Renteria, who is Hispanic, was terminated about eight months later and also filed a discrimination complaint with the state.

Renteria charged in the complaint that "S.J. Louis through its employees retaliated against Mr. Renteria for opposing racist behavior at the job site."

Heath Straka, a Madison attorney, is representing McDuffie and four Latino men who each charge they were subjected to racial slurs and unsafe conditions while working on the pipeline for S.J. Louis.

"This is a company [that] puts speed ahead of safety, and if you complain, you lose your job," Straka said.

Jeff Champion, construction manager for the pipeline project, said it is not unusual for a contractor to face various regulatory complaints and penalties while working on a major project.

But Champion said the number of issues and the range of problems on this project is out of the ordinary.

“Typically you don’t see a contractor with a trifecta of issues,” Champion said. “Safety, compliance and labor.”

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