

IN THE IOWA DISTRICT COURT FOR WOODBURY COUNTY

STATE OF IOWA, ex rel., IOWA)	
DEPARTMENT OF NATURAL)	NO. _____
RESOURCES,)	
)	
Plaintiff,)	
)	
vs.)	PETITION IN EQUITY
)	
JOHN GOLDSMITH,)	
)	
Defendant.)	

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (“DNR”) and for its claims against Defendant John Goldsmith states as follows:

INTRODUCTION

1. Improper disposal of solid waste creates nuisance conditions and the potential for soil and groundwater contamination. Open burning of solid waste results in the release of particulates, carbon monoxide, hydrocarbons, and toxins that pollute the air and pose a risk to human health and the environment.

2. Defendant illegally deposited and permitted the depositing of an estimated 30,000 railroad ties and other waste on property owned by John Goldsmith located at 1470 210th St, Sergeant Bluff, Woodbury County, Iowa. Furthermore, Defendant caused and allowed the illegal disposal of the solid waste on the property by open burning. The State of Iowa, therefore, seeks the assessment of civil penalties and the issuance of a permanent injunction against Defendant John Goldsmith for violations of Iowa law prohibiting the illegal dumping and open burning of solid waste.

PARTIES

3. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the DNR, a duly constituted agency of the State of Iowa pursuant to Iowa Code § 455A.2.

4. John Goldsmith is a resident of Woodbury County, Iowa, and owns the property in question located at 1470 210th St. Sergeant Bluff, Iowa.

DEFINITIONS

5. “‘Construction and demolition waste’ means waste building materials including wood, metals and rubble which result from construction or demolition of structures.” 567 Iowa Admin. Code 100.2.

6. “‘Opacity’ means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.” 567 Iowa Admin. Code 20.2.

7. “‘Open burning’ means any burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack.” 567 Iowa Admin. Code 100.2.

8. “‘Open dump’ means any exposed accumulation of solid waste at a site other than a sanitary disposal project operating under a permit from the department.” 567 Iowa Admin. Code 100.2.

9. “‘Open dumping’ means the depositing of solid wastes on the surface of the ground or into a body or stream of water.” 567 Iowa Admin. Code 100.2.

10. “‘Solid waste’ means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.” Iowa Code § 455B.301(23).

JURISDICTION

Solid Waste Regulations

11. The Iowa Environmental Protection Commission is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relative to the treatment and disposition of solid waste. Iowa Code § 455B.304. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 100–123 concerning solid waste management and disposal.

12. The dumping or depositing or permitting the dumping or depositing of solid waste at any place other than a facility permitted by the DNR is prohibited, unless otherwise permitted by rule. Iowa Code § 455B.307(1); 567 Iowa Admin. Code 100.4.

13. The Attorney General is authorized, on request of the DNR, to institute any legal proceedings necessary in obtaining compliance with an order of the director or prosecuting any person for a violation of Iowa Code chapter 455B, Division IV, Part 1, or the rules issued under that part. Iowa Code § 455B.307(2). Any person who violates any provision of Iowa Code chapter 455B, Division IV, Part 1, or any rule or any order adopted pursuant to that part is subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of the violation. Iowa Code § 455B.307(3).

Air Quality Regulations

14. The Iowa Environmental Protection Commission is required to adopt rules pertaining to the evaluation, abatement, control, and prevention of air pollution. Iowa Code § 455B.133(2). Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 20–35 concerning air quality.

15. Any person is prohibited from allowing, causing, or permitting open burning of combustible materials, unless a variance has been granted under 567 Iowa Admin. Code 23.2(2), or one of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies. 567 Iowa Admin. Code

23.2(1).

16. No person shall allow, cause or permit the emission of visible air contaminants into the atmosphere from any open fire equal to or in excess of 40 percent opacity. Iowa Admin. Code

23.3(2)(d).

17. The Attorney General is authorized, on request of the DNR, to institute a civil action in district court for injunctive relief to prevent any further violation of any order, permit, or rule of the department, or for the assessment of a civil penalty for each day of violation not to exceed Ten Thousand Dollars (\$10,000.00) for each day of violation, or for both injunctive relief and civil penalties. Iowa Code § 455B.146.

PRIOR ENFORCEMENT HISTORY AGAINST JOHN GOLDSMITH FOR SOLID WASTE AND OPEN BURNING VIOLATIONS

18. On June 5, 2000, the DNR issued a Notice of Violation to Goldsmith for violating 567 Iowa Admin. Code 23.3(2)(d) by having emissions equal to or in excess of 40 percent opacity coming from a homemade incinerator.

19. On September 11, 2001, the DNR issued a Notice of Violation for excess emissions over 40 percent opacity and ordered Goldsmith to stop using the incinerator immediately due to constant complaints and fire reports.

20. On February 14, 2002, the DNR issued Administrative Order No. 2002-AQ-03 for open burning, use of an unpermitted incinerator, and opacity violations in the amount of \$6,000. On June 19, 2002, a Consent Amendment was issued to Mr. Goldsmith in the amount of \$3,000.

21. On January 16, 2003, a Notice of Violation was issued to John Goldsmith for solid waste and open burning violations.

22. On May 6, 2003, Notice of Violations were issued to John Goldsmith for being in violation of operating a sanitary disposal project without a permit, for burning landscape waste at a location other than where it was generated, and for failing to submit the required demolition

notification prior to demolishing a regulated facility.

23. On December 12, 2012, A Notice of Violation was issued to John Goldsmith for illegal open dumping of miscellaneous solid waste in violation of Iowa Code § 455B.307.

24. On December 7, 2017, DNR Field Office #3 staff Tom Roos and Amber Wolf investigated a complaint and observed household garbage, wood, mattress springs, miscellaneous metal pieces, and railroad ties on Goldsmith's property.

FACTS

25. John Goldsmith owns and resides on property at 1470 210th St, Sergeant Bluff, Iowa. ("Goldsmith property").

26. The Goldsmith property is approximately 1.25 miles east of the city of Sergeant Bluff, Iowa.

27. On August 7, 2018, Goldsmith called DNR Field Office 3 employee Tom Roos and told Roos he had accumulated 30,000 railroad ties ("ties") on his property and intended to burn at least some of the ties.

28. Goldsmith stated he did not want to leave the ties to his son and that he believed the cost of proper disposal was \$160,000. Roos informed Goldsmith that burning the ties was illegal.

29. In the same conversation, Goldsmith asked that the DNR Field Office not come to his property for the next three days. Goldsmith also told Roos that he had barricaded his property to prevent the fire department from getting on site to put out the planned fire. Roos again informed Goldsmith that the burning would be in violation of the law.

30. After the conversation, Roos contacted Mark Huntley, Public Works Director for the City of Sergeant Bluff, and Sergeant Bluff Fire Chief Anthony Gaul to inform them of Goldsmith's plan.

31. On August 11, 2018, after barricading his property to prevent the fire department from getting onto the property, Goldsmith began burning the ties and other combustible solid waste.

32. The visible air contaminants from the open fire were equal to or in excess of 40 percent opacity.

33. Goldsmith threatened that he would let out his three pit bulls if anybody entered onto his property in an attempt to put out the fire.

34. On the afternoon of August 11, 2018, Fire Chief Gaul reported that the smoke of the fire was severe and had begun drifting towards town while people were congregating outside in the town for the local festival.

35. The next morning, on August 12, 2018, the flames from the burning ties and other solid waste had increased in severity and reached an estimated height of 50 feet. Later in the afternoon the fire remained smoldering.

36. On August 13, 2018, Goldsmith spoke with Roos and stated he had burned between 5,000 and 6,000 ties. Goldsmith claimed it would have costed him \$400,000 to dispose of the ties in a landfill.

37. Roos instructed Goldsmith to put out the fire and any smoldering debris, and Goldsmith said he would put out the remaining fire and smoldering debris that day.

38. From the evening of August 13 through the morning of August 14, 2018, there continued to be flames and smoldering from the burning combustible waste on the Goldsmith property.

39. Later in the day on August 14, 2108, Goldsmith represented that the fire had been put out and grading had begun.

40. On August 22, 2018, a Notice of Violation and Notice of Referral was sent to Goldsmith for solid waste and open burning violations.

41. On October 16, 2018, the Environmental Protection Commission requested that the Attorney General initiate legal proceedings against Goldsmith.

VIOLATIONS

Solid Waste Violations

42. Defendant deposited and permitted the depositing of solid waste on the Goldsmith property in violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4.

Air Quality Violations

43. Defendant caused and allowed the open burning of combustible materials on the Goldsmith property in violation of 567 Iowa Admin. Code 23.2(1).

44. Defendant caused and allowed the open burning of a fire exceeding 40% opacity in violation of 567 Iowa Admin. Code 23.3(2)(d).

WHEREFORE, Plaintiff State of Iowa ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant John Goldsmith pursuant to Iowa Code § 455B.307(3) for each day of violation of Iowa Code § 455B.307(1), 567 Iowa Admin. Code 100.4, not to exceed five thousand dollars (\$5,000.00) per day, per violation, for each day of such violation;
- b. assess a civil penalty against Defendant John Goldsmith pursuant to Iowa Code § 455B.146 for each day of violation of 567 Iowa Admin. Code 23.2(1) and 23.3(2)(d) not to exceed ten thousand dollars (\$10,000.00) per day, per violation, for each day of such violation;
- c. issue a permanent injunction enjoining Defendant John Goldsmith from any violation of Iowa Code § 455B.307(1), 567 Iowa Admin. Code 23.2(1), 23.3(2)(d), 100.4; require the removal of all ash and solid waste remaining on the property; and require proof of proper disposal through the submission of landfill receipts.

Plaintiff further requests such other relief the Court may deem just and proper, and that the Court tax the costs of this action to the Defendants.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

/s/ David S. Steward
DAVID S. STEWARD
Assistant Attorney General

/s/ Eric Dirth
ERIC M. DIRTH AT0013752
Assistant Attorney General
Environmental Law Division
Hoover State Office Building
1305 E. Walnut St., 2nd Floor
Des Moines, Iowa 50319
TEL: (515) 281-8153
FAX: (515) 242-6072
E-MAIL: eric.dirth@ag.iowa.gov

ATTORNEYS FOR PLAINTIFF