

IN THE IOWA DISTRICT COURT FOR POTTAWATTAMIE COUNTY

STATE OF IOWA, ex rel., IOWA)
DEPARTMENT OF NATURAL)
RESOURCES (99AG23542),)

Plaintiff,)

vs.)

K & L CUSTOM FARMS, INC., d/b/a)
K & L LANDSCAPE &)
CONSTRUCTION, INC.,)

Defendant.)

LAW NO. CVCV103738

PETITION AT LAW

FILED
2010 OCT 13 AM 11:53
CLERK DISTRICT COURT
POTTAWATTAMIE COUNTY
IOWA

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (“IDNR”) and for its claim against Defendant K & L Custom Farms, Inc., d/b/a K & L Landscape & Construction, Inc. (“K & L Landscape”) states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant K & L Landscape for the illegal disposal of solid waste and failure to submit a written report concerning a hazardous condition. Defendant K & L Landscape illegally disposed of solid waste from a Missouri River bridge project, and after being ordered by the IDNR to excavate and properly dispose of the solid waste, subsequently illegally disposed of 43 side dump truck loads of solid waste again. Defendant K & L also failed to submit a written report within thirty (30) days of a diesel fuel spill from one of Defendant’s vehicles.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. The Iowa Department of Natural Resources (“IDNR”) is a duly constituted

agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant K & L Landscape is an Iowa corporation located at 1396 220th Street, P.O. Box 1040, Sergeant Bluff, Iowa, 51054.

Definitions

5. "Construction and demolition waste" means "waste building materials including wood, metals and rubble which result from construction or demolition of structures. Such waste shall also include trees." 567 Iowa Admin. Code 100.2.

6. "Construction and demolition waste disposal site" means "a sanitary landfill which accepts only construction and demolition wastes." 567 Iowa Admin. Code 100.2.

7. "Hazardous condition" means "any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which, because of the quantity, strength and toxicity of the hazardous substance, its mobility in the environment and its persistence, creates an immediate or potential danger to the public health or safety or to the environment." Iowa Code § 455B.381(4); 567 Iowa Admin. Code 131.1.

8. "Hazardous substance" means "any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that, in confinement, generates pressure through decomposition, heat, or other means. The following are examples of substances which, in sufficient quantity, may be hazardous: acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals; paint thinners; paints; pesticides; petroleum products; poisons; radioactive materials; sludges; and organic solvents." Iowa Code § 455B.381(5); 567 Iowa Admin. Code 131.1.

9. “Release” means “a threatened or real emission, discharge, spillage, leakage, pumping, pouring, emptying, or dumping of a hazardous substance into or onto the land, air, or waters of the state . . .” Iowa Code § 455B.381(8).

10. “Rubble” means “dirt, stone, brick, or similar inorganic materials used for beneficial fill, landscaping, excavation, or grading at places other than a sanitary disposal project.” Iowa Code § 455B.301(20).

11. “Sanitary disposal project” means “all facilities and appurtenances including all real and personal property connected with such facilities which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.” Iowa Code § 455B.301(21).

12. “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. This definition does not prohibit the use of rubble at places other than a sanitary disposal project.” Iowa Code § 455B.301(23).

Jurisdiction

Solid Waste Regulations

13. The Environmental Protection Commission (“EPC”) of the IDNR 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. The EPC’s rules implementing these provisions are contained in 567 Iowa Admin. Code 100-119.

14. Iowa law prohibits the dumping or depositing or permitting dumping or depositing of solid waste at any place other than a sanitary disposal project approved by the

IDNR. Iowa Code § 455B.307(1) and 567 Iowa Admin. Code 100.4.

15. Any person who violates any provision of Iowa Code section 455B, Division IV, Part 1, or any order, permit, or rule issued thereunder shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$ 5,000.00) for each day of such violation. Iowa Code § 455B.307(3).

16. The Attorney General, at the request of the IDNR, may institute any legal proceeding necessary in obtaining compliance with an order of the director or prosecuting any person for a violation of Iowa Code section 455B, Division IV, Part 1, or any order, permit, or rule issued under that part. Iowa Code § 455B.307(2).

Hazardous Condition Regulations

17. The IDNR shall be the agency of the State to prevent, abate, and control the exposure of the citizens of the State to hazardous conditions. Iowa Code § 455B.382.

18. The IDNR is authorized to establish such rules as are necessary to protect the public from unnecessary exposure to hazardous substances, and to develop comprehensive plans for the prevention, abatement and control of hazardous conditions within the state. Iowa Code §§ 455B.383(1)-(2).

19. A written report of a hazardous condition shall be submitted to the IDNR within thirty (30) days and contain the following information:

- a. The exact location of the hazardous condition.
- b. The time and date of onset or discovery of the hazardous condition.
- c. The name of the material, the manufacturer's name and the volume of each material involved in the hazardous condition in addition to contaminants within the material if they by themselves could cause a hazardous condition.
- d. The medium (land, water or air) in which the hazardous condition occurred or exists.

- e. The name, address and telephone number of the party responsible for the hazardous condition.
- f. The time and date of the verbal report to the department of the hazardous condition.
- g. The weather conditions at the time of the hazardous condition onset or discovery.
- h. The name, mailing address and telephone number of the person reporting the hazardous condition.
- i. The name and telephone number of the person closest to the scene of the hazardous condition who can be contacted for further information and action.
- j. Any other information, such as the circumstances leading to the hazardous condition, visible effects and containment measures taken that may assist in proper evaluation by the department

567 Iowa Admin. Code 131.2(2).

20. The Attorney General shall, at the request of the IDNR, institute any legal proceedings, including an action for an injunction or temporary injunction, necessary to obtain compliance with the provisions of this part 4 of division IV. Iowa Code § 455B.391(1).

Facts

21. Defendant K & L Landscape is a company involved in trucking, construction, and other business activities. Defendant K & L Landscape contracted with the State of Nebraska to haul away materials related to the South Omaha Bridge Construction Project ("Bridge Project"), which involved the demolition of Highway 271/L Street Bridge over the Missouri River and the construction of a new bridge spanning the river.

22. On September 14, 2009, IDNR Field Office 4 received a complaint that stated K & L Landscape recently buried 52 truck loads of concrete, conduit, logs, and other material in the Federal Borrow pit located in Section 19, Township 74 North, Range 43 W in Pottawattamie

County, Iowa, and that the material came from a bridge project that was supervised by the Nebraska Department of Roads (“NDOR”). The complaint stated that a map with accompanying information would be sent to the IDNR. On September 16, 2009, the IDNR received an email with an attachment that included a three page written description of what was buried, when it was buried, and where it was buried. The attachment also included a hand drawn map depicting the locations of the alleged illegal burial activities.

23. On September 14, 2009, IDNR Field Office 4 received a second complaint. The complaint stated K&L Landscape recently buried 52 truck loads of metal, cable, wire, paper, & garbage at the Borrow Pit in Pottawattamie County, Iowa, and the material came from the South Omaha Bridge project.

24. On September 23, 2009, the IDNR visited the borrow pit facility at which the alleged dumping occurred, along with an Engineer II with the Nebraska Department of Roads (“NDOR”), and Engineers with the Iowa Department of Transportation (“IDOT”). During the investigation, the individuals observed one significant depression caused by soil settling at a previously thought to be undisturbed area. The depression matched one location of alleged burial activities submitted with one of the complaints. Photographs taken during the investigation show the aforementioned soil settling and debris, including chunks of concrete, at the borrow site.

25. On September 30, 2009, the NDOR sent a letter to Defendant K & L Landscape directing the company to begin removal of the buried material within two (2) weeks. The letter further informed K & L Landscape that removal operations shall be done at the direction of the NDOR in cooperation with the IDOT and IDNR.

26. On October 9, 2009, Kevin Alexander, President of Defendant K & L Landscape,

sent the NDOR a letter in response to the September 30, 2009 letter. Mr. Alexander's letter informed the NDOR that the Defendant had hauled all the construction debris from the Bridge Project to the landfill in Mills County, all the concrete was hauled to Negus' recycle pile north of the Casino, all the steel from the project was hauled to the scrap yard in Council Bluffs, and the root balls from the trees were taken out to a farm and buried. The letter alleged that the only material that would have been buried on site would have been "concrete, brick, steel, wood and tin that was dug out of the borrow pit from a building site that was buried some years back." The letter also admitted that several loads from the borrow site had to be dumped off to the side because they had too much garbage in them and were eventually pushed back in the slope of the borrow site, so the site around the area would be clear of garbage. Finally, the letter sought direction from the NDOR.

27. On October 14, 2009, the NDOR responded with another letter to Mr. Alexander, requesting more information from Defendant K & L Landscape to support its claims regarding solid waste disposal. The NDOR's letter specifically asked Defendant K & L Landscape for the following: 1) documentation to confirm the dates that the Defendant hauled debris to the Mills County Landfill, including scale tickets, records of dumping fees, etc., and what types of material were hauled to the dump on those days; 2) documentation to confirm the dates and amounts of concrete that were hauled to Negus recycle pile north of the casino; 3) documentation to confirm the dates and amounts of steel debris that was hauled to the scrap yard in Council Bluffs, including scale tickets, cash receipts, etc.; and 4) the name of the owner and location of the farm where the root balls were buried. The letter also advised Defendant that excavation of some exploratory trenches at the Borrow Pit would likely be required to verify what exactly had been buried at the site.

28. On October 23, 2009, Defendant K & L Landscape sent an email to the NDOR. The email contained numerous attachments purporting to be the tickets and bills for the solid waste disposal from the Bridge Project that the NDOR had requested in the October 14, 2009 letter.

29. The NDOR reviewed the documents Defendant K & L submitted and determined that the documents were invoices and tickets from the Bridge Project, but many of the dates on the documents were from 2007 and most did not contain sufficient information. The NDOR determined that these documents were not for the dates requested.

30. On October 30, 2009, the NDOR sent Defendant K & L a letter informing Defendant that the information submitted was not sufficient. The letter informed Defendant that it would be necessary to excavate exploratory trenches to determine if construction debris from the Bridge Project was buried at the Borrow Pit. The letter also informed Defendant that they could perform the excavation, but that Defendant had to respond by noon on Wednesday, November 4, 2009, otherwise NDOR would engage another contractor to perform the excavation.

31. On November 3, 2009, Defendant K & L Landscape sent the NDOR an email stating that the Defendant would do the excavation. The email stated that Defendant had thousands of records to review and could only come up with the documents provided in such a limited time frame. The email also claimed that the Mills County Landfill did not identify what K & L Landscape had hauled, the truck tickets did not identify what K & L Landscape had hauled, nor did the concrete recycler provide scale tickets for the concrete that was hauled in.

32. On November 6, 2009, the IDNR, the IDOT, and the NDOR, were all present at the Borrow Pit to observe Defendant K & L Landscape perform exploratory excavations.

Defendant was directed to begin excavating at the depression initially observed on September 23, 2009. Illegally buried material consisting of plastic conduit, tires, trees, garden hose, rebar, rubble, construction debris, and wire fencing were discovered. Photographs were taken for documentation. NDOR staff confirmed that the materials buried at this location originated from the Bridge Project and presented photographs of the Bridge Project taken prior to demolition.

33. Defendant was subsequently directed to excavate two (2) exploratory trenches west of the first excavation spot. These locations revealed nothing. Defendant was then directed to excavate two (2) exploratory trenches in the north bank of the disturbed portion of the borrow site, and illegally buried material was also discovered in the north bank. As a result of these discoveries, the IDNR directed Defendant to remove and properly dispose of all illegally buried material. Defendant was advised that disposal receipts must be provided for every load of material removed from the borrow facility. Defendant responded that they would begin removing and disposing of all illegally buried material beginning on Monday, November 9, 2009.

34. On November 9, 2009, the IDNR, IDOT, and NDOR all went to the Borrow Pit to observe Defendant K & L Landscape's excavation and clean up. Photographs were taken for documentation. The photographs show 3J Trucking's side dump trucks being loaded with debris removed from the site by Defendant K & L Landscape. The debris includes rebar, concrete, plastic conduit, trees, and tires. The IDNR observed that the Defendant was not separating the solid waste out from the excavated material. The IDNR informed the Defendant that they were required to separate all the solid waste from the concrete and dirt material and properly dispose of the solid waste. The Defendant informed the IDNR that it would be too expensive to separate out the solid waste, and, therefore, the Defendant was just going to dig it all up and haul it away

without separating the solid waste out. The NDOR staff was present on site virtually the entire time and counted eleven (11) loads of solid waste that were hauled away from the Borrow Pit that day.

35. On November 10, 2009, the IDNR and the NDOR were at the borrow site and observed the Defendant removing illegally buried material from the north bank of the disturbed portion of the borrow site. The material included plastic conduit, a metal culvert fared-end, fence t-posts and wooden posts, woven wire fence, cables, tire cover rod, truck rim, tires, lots of trees, concreted from the pump station, and some red bricks. Photographs were taken for documentation. The NDOR counted twenty two (22) loads of solid waste that were hauled away from the Borrow Pit that day.

36. On November 11, 2009, the NDOR was at the borrow site, and observed and oversaw Defendant's excavation and removal operation. While on site, the NDOR directed Defendant K & L Landscape to excavate two (2) additional exploratory trenches. The NDOR discovered illegally buried material consisting of fence T-posts, cans of starter fluid, a type II barricade, an inflatable flotation device, a Mazda bumper, car or truck parts, plastic soda containers, a one gallon milk container with siphoning tubes attached, multiple food wraps, grocery and garbage bags, and a McDonalds paper bag. Photographs were taken for documentation. The NDOR counted ten (10) loads of solid waste that were hauled away from the Borrow Pit that day.

37. On November 12, 2009, the NDOR was at the borrow site, and observed and oversaw Defendant's excavation and removal operation. NDOR observed Defendant backfilling much of the excavated site and grading the slopes at the site.

38. On November 13, 2009, the NDOR was at the borrow site, and observed and

oversaw Defendant's excavation and removal operation. The NDOR observed one (1) load of solid waste removed from the Borrow Pit that day and followed that load in order to observe where Defendant K & L Landscape was disposing of the material. The NDOR observed the 3J Trucking side dump truck take the load to the Oak Ridge Company ("ORC") dump site, located at 1900 River Road, Council Bluffs, Iowa, 51501. The NDOR observed that the trucks were not weighed or provided tickets at any time while at the facility.

39. On November 16, 2009, the NDOR contacted the IDNR and reported its observations from November 13, 2009.

40. On November 17, 2006, the IDNR investigated the ORC dump site, arriving on site at about 11:30 am. The IDNR observed that the site was not monitored. The material taken to the dump site by Defendant K & L Landscape was no longer visible. Fresh dirt work was observed from probable leveling at the site. Photographs were taken for documentation. The IDNR later discovered that the ORC site was permitted by the City of Council Bluffs as a rubble dump facility.

41. The ORC site was not an approved landfill site.

42. On November 20, 2009, the IDNR sent an e-mail to the IDOT and NDOR, informing them of the IDNR's observations from the November 17, 2009 site investigation of the ORC dump site. The e-mail noted that the material taken to the dump by Defendant K & L Landscape was no longer visible and that disposal receipts would be requested from Defendant K & L Landscape.

43. On November 24, 2009, IDNR sent Defendant K & L Landscape a NOV for improper disposal of solid waste at the Borrow Pit, which was discovered during the excavations on November 9-13, 2009. The NOV reminded Defendant K & L Landscape that they were

specifically instructed to dispose of all material at a permitted sanitary disposal project (landfill). The NOV set a deadline of December 15, 2009, for Defendant to submit copies of landfill receipts as evidence of proper disposal. Defendant has submitted a copy of one (1) receipt showing proper disposal of one (1) load of solid waste at a landfill that occurred on November 9, 2009. The NOV noted that the ORC dump site was not an approved landfill. The NOV also set a January 15, 2010, deadline for Defendant K & L Landscape to submit a Solid Waste Education Plan, which will educate all current and future K & L Landscape employees about the IDNR's solid waste regulations. The IDNR has not received a Solid Waste Education Plan from Defendant K & L Landscape.

44. On November 24, 2009, the NDOR sent an e-mail to Kevin Alexander, reminding Defendant K & L Landscape that on November 6, 2009, Defendant was advised to take the solid waste buried at the Borrow Pit and dispose of it at an approved dump site. The e-mail requested documentation of proper disposal of the solid waste removed from the Borrow Pit on November 9, 10, 11, 12, and 13, 2009.

45. On December 9, 2009, Defendant K & L Landscape faxed the NDOR a table that allegedly showed the following information for each load of solid waste that was disposed of at the ORC dump site: date, truck number, ticket number, time, description of load, and cost of disposal at the site. The table contained discrepancies in the number of loads of material that left the Borrow Pit, failed to mention all of the solid waste excavated from the Borrow Pit, and misstated the dumping fees at the ORC site. The fax cover letter that accompanied the table contained a statement that "[h]ard copies of truck tickets will follow." The NDOR has never received hard copies of any truck receipts to verify the information contained in the table.

46. On June 12, 2010, the City of Council Bluffs Fire Department reported a diesel

spill at 913 1st Avenue in Council Bluffs, Iowa. When the Fire Department arrived on site, diesel fuel was observed leaking out of a fuel tank on a K & L Landscape truck. No employee of Defendant K & L Landscape was present on site. The Fire Department observed that a rag had been stuffed into a hole in the fuel tank to plug it and fuel had soaked through the rag and was pooling on the ground and flowing towards a storm drain. The Fire Department built a dike around the area to prevent the fuel from leaking off site and informed the IDNR of the spill. The IDNR informed the Defendant of the spill and that K & L Landscape must clean up the spill and provide receipts to the IDNR demonstrating proper disposal of the contaminated soil.

47. On June 13, 2010, the Council Bluffs Fire Department drove by the site of the spill and observed that the contaminated soil had been removed.

48. On June 17, 2010, the IDNR sent the defendant a letter informing Mr. Alexander that the Defendant was required to submit a written report to the IDNR within thirty (30) days specifying the details of the hazardous condition. The letter included an attached form that must be completed and submitted to the IDNR by July 15, 2010. The letter also requested that the Defendant submit landfill receipts by July 15, 2010, documenting proper disposal of the petroleum-contaminated soil located on site.

49. The Defendant did not submit a written report by July 15, 2010, nor did the Defendant complete and submit the attached form to the June 17, 2010 letter by July 15, 2010. The Defendant also failed to submit receipts documenting proper disposal of the petroleum-contaminated soil by July 15, 2010.

Violations

Solid Waste Violations

50. The Defendant K & L Landscape improperly disposed of at least forty-four (44)

side dump truck loads of solid waste at the Borrow Pit in violation of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4.

51. The Defendant K & L Landscape improperly disposed of at least forty three (43) side dump truck loads of solid waste at the ORC dump site, in violation of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4.

Hazardous Condition Violations

52. The Defendant K& L Landscape failed to submit a written report to the IDNR within thirty (30) days of the diesel spill in violation of 567 Iowa Admin. Code 131.2(2).

Prayer for Relief

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

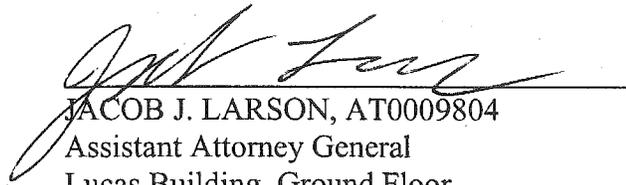
- a. assess a civil penalty against Defendant K & L Landscape, pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation;
- b. issue a permanent injunction, pursuant to Iowa Code section 455B.307(2), enjoining Defendant K & L Landscape from any further violations of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4 and 131.2(2);
- c. enter an injunction requiring the Defendant properly dispose of all solid waste disposed of at the ORC rubble dump facility within thirty (30) days of the entry of any final judgment;
- d. enter an injunction requiring the Defendant submit a written report to the IDNR about the hazardous condition that occurred on June 15, 2010, as required by 567 Iowa Admin. Code 131.2(2), within thirty (30) days of the entry of any final judgment; and
- e. enter an injunction requiring the Defendant submit disposal receipts to the IDNR documenting proper disposal of the petroleum-contaminated soil within thirty (30) days of the entry of any final judgment.

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

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General



JACOB J. LARSON, AT0009804

Assistant Attorney General

Lucas Building, Ground Floor

321 E. 12th St., Room 018

Des Moines, Iowa 50319

Phone: (515) 281-5351

Fax: (515) 242-6072

E-mail: jl Larson@ag.state.ia.us

ATTORNEYS FOR PLAINTIFF