

IN THE IOWA DISTRICT COURT FOR HARDIN COUNTY

STATE OF IOWA, ex rel., IOWA)
DEPARTMENT OF NATURAL)
RESOURCES,)
))
Plaintiff,)
))
vs.)
))
MCDOWELL & SONS CONTRACTORS,)
INC.,)
))
Defendant.)
)

NO. EQCV101282

PETITION IN EQUITY

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

INTRODUCTION

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

2. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant McDowell for open burning and solid waste violations. Defendant McDowell illegally disposed of solid waste by placing the solid waste in a pit located on the company’s property near the intersection of 160th Street and OO Avenue in rural Hardin County, and burning the 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. Defendant McDowell is an Iowa corporation located at 10214 HWY 65, Iowa Falls, Hardin County, Iowa 50126.

5. An affiliate company of Defendant McDowell, McDowell & Sons Lime Co., owns property, which is used as a borrow pit for fill material, located near the intersection of 160th Street and OO Avenue in rural Hardin County, legally described as follows: the Southwest Quarter of the Southeast Quarter of Section 34 in Hardin Township, Harding County, Iowa (“Borrow Pit”).

DEFINITIONS

6. “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.

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 20.2 and 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. “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).

11. “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

Air Quality Regulations

12. The DNR is the agency of the state responsible for the prevention, abatement or control of air pollution. Iowa Code § 455B.132.

13. Under Iowa Code section 455B.133(2), the Environmental Protection Commission (“EPC”) is required to adopt rules pertaining to the evaluation, abatement, control, and prevention of air pollution. Pursuant to that mandate, the EPC has adopted 567 Iowa Admin. Code 20-35 concerning air quality.

14. 567 Iowa Admin. Code 23.2(1) prohibits any person 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.

15. If any order, permit, or rule of the department is being violated, the Attorney General, at the request of the DNR or its director, may institute a civil action for injunctive relief to prevent any further violations or for the assessment of a civil penalty as determined by the

court not to exceed Ten Thousand Dollars (\$10,000.00) for each day of such violation. Iowa Code § 455B.146.

Solid Waste Regulations

16. The EPC is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relating 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 100-123.

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

18. 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).

19. The Attorney General, at the request of the DNR, 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).

FACTS

20. Defendant McDowell is engaged in the business of demolition and solid waste disposal in north-central Iowa.

21. Starting in October 2016, Aldridge Electric, Inc. ("Aldridge") contracted with Naxco LLC, d/b/a Same Day Dumpster Rental ("SDDR"), for the disposal of rail ties, timber

mats, and other solid waste created by a power line construction project conducted by Aldridge in north-central Iowa.

22. SDDR subcontracted the solid waste disposal responsibilities to McDowell.

23. On May 10, 2017, the DNR received an anonymous complaint that McDowell was bringing railroad ties to the Borrow Pit and burning them in a large pit on the property.

24. On May 16, 2017, the DNR investigated the complaint and observed a smoldering burn pile at the Borrow Pit, containing, among other items: timber mats and other wood; a power pole; plastic field tile; vinyl floor tile; and a hydraulic cylinder. The DNR staff also observed a McDowell bulldozer at the Borrow Pit.

25. The DNR staff left the Borrow Pit and returned later that same day. While onsite during the subsequent visit to the Borrow Pit on May 16, 2017, the DNR observed a McDowell bulldozer pushing newly deposited timber mats into the burn pile. The McDowell truck driver who deposited the timber mats stated that the material originated from the Aldridge construction project.

26. The DNR discussed the observations with Rick McDowell, co-owner of McDowell, and he admitted that McDowell utilized the Borrow Pit as a dumping point for solid waste collected during the course of its business with Aldridge and that railroad ties and crane mats were hauled to the Borrow Pit for burning.

27. The DNR subsequently determined that Aldridge and SDDR used McDowell almost exclusively for solid waste removal during the 2016-2017 power line construction project.

28. On June 1, 2017, the DNR issued a Notice of Violation (“NOV”) to McDowell for the illegal disposal of solid waste and open burning at the Borrow Pit. The NOV also

notified McDowell that all remaining illegally dumped and burned solid waste must be properly disposed of with accompanying documentation of said proper disposal.

29. On June 13, 2017, Aldridge provided records to the DNR, detailing the invoices SDDR submitted to Aldridge for disposal of solid waste from the construction project through May 26, 2017. The records indicate SDDR billed Aldridge \$147,486.30 for the disposal of approximately 158 loads of solid waste, totaling 1,475.65 tons of material as of that date.

30. For the time period from October 2016 through May 15, 2017—the day before the DNR’s inspection of McDowell’s Borrow Pit—McDowell submitted two receipts, both dated October 24, 2016, documenting the proper disposal of solid waste from the Aldridge construction project, totaling 12.26 tons of material.

31. McDowell provided additional receipts documenting the proper disposal of solid waste from the Aldridge Construction project from May 16—the day of the DNR’s inspection—through June 7, 2017, totaling 113.25 tons of material.

32. Based upon the invoices submitted by SDDR to Aldridge and the disposal receipts submitted by McDowell, the DNR estimates that McDowell improperly disposed of approximately 1,350.14 tons of material from the Aldridge Construction project from October 2016 through May 15, 2017.

VIOLATIONS

Air Quality Violations

33. From October 2016 through May 15, 2017, Defendant McDowell violated 567 Iowa Admin. Code 23.2(1) by allowing, causing, or permitting open burning of combustible materials at the Borrow Pit, despite the fact that no variance had been granted under 567 Iowa Admin. Code 23.2(2), and none of the exemptions listed in 567 Iowa Admin. Code 23.2(3)

applied.

Solid Waste Violations

34. From October 2016 through May 15, 2017, Defendant McDowell improperly disposed of solid waste by placing waste removed from the Aldridge Construction project in the Borrow Pit and burning the waste, rather than taking it to a permitted disposal site, in violation of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4.

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 McDowell, pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 23.2(1), not to exceed Ten Thousand Dollars (\$10,000.00) for each such violation;
- b. assess a civil penalty against Defendant McDowell, 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;
- c. issue a permanent injunction, pursuant to Iowa Code section 455B.146, enjoining Defendant McDowell from any further violation of 567 Iowa Admin. Code 23.2(1); and
- d. issue a permanent injunction, pursuant to Iowa Code section 455B.307(2), enjoining Defendant McDowell from any further violations of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4.

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
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/s/ Jacob Larson

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