

IN THE IOWA DISTRICT COURT FOR WEBSTER COUNTY

STATE OF IOWA ex rel. IOWA)	
DEPARTMENT OF NATURAL)	
RESOURCES,)	NO. _____
)	
Plaintiff,)	
)	
vs.)	
)	PETITION IN EQUITY
NORTH CENTRAL IOWA REGIONAL)	
SOLID WASTE AGENCY,)	
)	
Defendant.)	

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

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant North Central Iowa Regional Solid Waste Agency (“NCIRSWA”) arising from solid waste and water pollution control law violations involving the deposit of solid waste in landfill units that do not have an approved leachate collection system and liner, failure to maintain a continually operational leachate collection system, the discharge of pollutants into a water of the state without an NPDES permit, and other operational violations at the municipal solid waste landfill operated by NCIRSWA and located at 2150 South 22nd Street, Fort Dodge, Webster County, Iowa.

PARTIES

2. 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 section 455A.2.

3. NCIRSWA is a public body created by an intergovernmental agreement made pursuant to Iowa Code chapter 28E, and it operates a municipal solid waste landfill known as the North Central Iowa Regional Sanitary Landfill located at 2150 South 22nd Street, Fort Dodge, Webster County, Iowa.

DEFINITIONS

Solid Waste Definitions

4. “Active portion” means “that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with rule 113.12.” 567 Iowa Admin. Code 113.3.

5. “Leachate” means “a liquid that has percolated through or drained from a solid waste landfill.” 567 Iowa Admin. Code 100.2.

6. “Municipal solid waste landfill (MSWLF) unit” means “a discrete area of land or an excavation that receives household waste, and that is not a land application site, surface impoundment, injection well, or waste pile An MSWLF unit also may receive other types of . . . wastes, such as commercial solid waste, nonhazardous sludge, construction and demolition debris, and industrial solid waste. An MSWLF unit may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. . . .” 567 Iowa Admin. Code 113.3.

7. “Point of compliance” or “POC” means “the point at which the MSWLF owner or operator demonstrates compliance with the liner performance standard, if applicable, and with the groundwater protection standard. The point of compliance is a vertical surface located hydraulically downgradient of the waste management area that extends down into the uppermost aquifer underlying the regulated MSWLF unit(s) and where groundwater monitoring shall be conducted.” 567 Iowa Admin. Code 113.3.

8. “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).

9. “Vertical expansion” means “additional waste placement on top of or against the side slopes of a previously filled MSWLF unit, whether active, closed, or inactive.” 567 Iowa Admin. Code 113.3.

Water Pollution Control Definitions

10. “Discharge of a pollutant” means “any addition of any pollutant or combination of pollutants to navigable waters or waters of the state from any point source. ‘Discharge of a pollutant’ includes additions of pollutants into navigable waters or waters of the state from surface runoff which is collected or channeled by human activity; [and] discharges through pipes, sewers, or other conveyances owned by a state, municipality, or other person which do not lead to a treatment works” 567 Iowa Admin. Code 60.2.

11. “NPDES permit” means an operation permit, issued pursuant to the DNR National Pollutant Discharge Elimination System (NPDES) program that authorizes the discharge of any pollutant into a navigable water. 567 Iowa Admin. Code 60.2.

12. “Person” means “any agency of the state or federal government or institution thereof, any municipality, governmental subdivision, interstate body, public or private corporation, individual, partnership, or other entity and includes any officer or governing or managing body of any municipality, governmental subdivision, interstate body, or public or private corporation.” Iowa Code § 455B.171(18)(a).

13. “Point source” means “any discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure . . . from which

pollutants are or may be discharged.” Iowa Code § 455B.171(19).

14. “Pollutant” means “sewage, industrial waste, or other waste.” Iowa Code § 455B.171(20).

15. “Water of the state” means “any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.” Iowa Code § 455B.171(39); 567 Iowa Admin. Code § 60.2.

JURISDICTION

Solid Waste Regulations

16. The Iowa Environmental Protection Commission (“EPC”) 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(1). Pursuant thereto, the EPC has adopted 567 Iowa Admin. Code chapters 100-123 concerning solid waste management and disposal.

17. Pursuant to its authority, the EPC adopted 567 Iowa Admin. Code chapter 113 (“Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Nonhazardous Wastes”) on June 14, 2007. The effective date of this rule, October 1, 2007, was delayed 70 days to December 10, 2007, by the Administrative Rules Review Committee at its meeting held September 11, 2007. *See* 567 Iowa Admin. Code 113 editor comment.

18. By October 1, 2007, existing MSWLF units that did not have an approved leachate collection system and a composite liner or an alternative liner modeled at an approved point of compliance were to cease accepting solid waste. 567 Iowa Admin. Code 113.2(8)”b”.

19. A MSWLF unit must be constructed and operated according to 567 Iowa Admin. Code chapter 113, any plans and specifications approved by the DNR, and the conditions of its permit. Any plans and specifications approved by the DNR shall constitute a condition of the permit. 567 Iowa Admin. Code 113.4(2).

20. All MSWLF units shall have a leachate collection system that is designed and constructed to function for the entire active life of the facility and the postclosure period. 567 Iowa Admin. Code 113.7(5)“b”(1).

21. The holder of a sanitary disposal project permit shall annually submit a Leachate Control System Performance Evaluation Report. The report shall include an evaluation of the effectiveness of the system in controlling the leachate, leachate head levels and elevations, the volume of leachate collected and transported to the treatment works or discharged under any NPDES permits, records of leachate contaminants testing required by the treatment works, proposed additional leachate control measures, and an implementation schedule in the event that the constructed system is not performing effectively. 567 Iowa Admin. Code 113.7(5)“b”(14).

22. A vertical expansion of a MSWLF unit shall not be allowed if the MSWLF unit does not have an approved leachate collection system and a composite liner or an alternative liner modeled at an approved point of compliance. 567 Iowa Admin. Code 113.7(7)“b”(1).

23. Six inches of cover material or an approved depth or application of alternative cover material shall be placed and maintained over waste in the active portion at the end of each operating day, or at more frequent intervals if necessary, to control vectors, fires, odors, blowing litter, and scavenging. 567 Iowa Admin. Code 113.8(2)“f”(1).

24. Landfill operators shall take steps to minimize the production of litter and the release of windblown litter off site of the facility. All windblown litter off site of the facility shall be

collected daily unless prevented by unsafe working conditions. On-site litter shall be collected daily unless prevented by working conditions. A dated record of unsafe conditions that prevented litter collection activities shall be maintained by the facility. 567 Iowa Admin. Code 113.8(3)"f".

25. A MSWLF unit shall maintain a development and operations plan ("DOP") that, at a minimum, shall detail how the facility will operate and how compliance with the requirements of 567 Iowa Admin. Code 113.8 will be maintained, and contain the information required by 567 Iowa Admin. Code 113.8(4) "a"- "g". 567 Iowa Admin. Code 113.8(4).

26. 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).

Water Pollution Control Regulations

27. The DNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). The DNR maintains jurisdiction over and regulates the direct discharge of pollutants to a water of the state. Iowa Code § 455B.172(5)(a).

28. The EPC has authority to establish water quality standards, pretreatment standards, and effluent standards; and adopt rules relating to the location, construction, operation, and maintenance of disposal systems; permits for the operation, installation, construction, addition to, or modification of disposal systems, or for the discharge of any pollutant; and inspection, monitoring, record keeping, and reporting requirements for owners and operators of disposal systems. Iowa

Code §§ 455A.6(6)(a) and 455B.173(2), (3) and (6). The EPC's rules implementing these provisions are contained in 567 Iowa Admin. Code 60-69.

29. Operation of a wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the DNR, is prohibited. 567 Iowa Admin. Code 64.3(1).

30. The dumping, depositing, or discharging of pollutants into any water of the state is prohibited, except adequately treated sewage, industrial waste, or other waste pursuant to an NPDES permit issued by the DNR. Iowa Code § 455B.186(1); 567 Iowa Admin. Code 62.1(1).

31. A person who violates any provision of Iowa Code chapter 455B, Division III, Part 1 or any permit, rule, standard, or order 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.191(2).

32. The Attorney General is authorized, at the request of the DNR director with approval of the EPC, to initiate any legal proceedings, including an action for an injunction or temporary injunction, necessary to enforce the penalty provisions of Iowa Code chapter 455B, Division III, Part 1, or to obtain compliance with the provisions of said statutes or any rules promulgated or any provision of any permit issued thereunder. Iowa Code § 455B.191(5).

FACTS

33. In 1975, the Webster County Solid Waste Commission began operating a municipal solid waste landfill located at 2150 South 22nd Street, Fort Dodge, Webster County, Iowa.

34. In 1992, NCIRSWA was created pursuant to an intergovernmental agreement made pursuant to Iowa Code Chapter 28E and filed with the Iowa Secretary of State on December 21, 1992.

35. Effective January 1, 1993, operation of the landfill was transferred to NCIRSWA pursuant to an agreement with the Webster County Solid Waste Commission.

36. From January 1, 1993, to present, NCIRSWA has continuously operated the landfill.

37. In 1996, title to all assets of the landfill, both real and personal, transferred to NCIRSWA.

38. NCIRSWA operates the landfill pursuant to DNR Sanitary Disposal Project Permit No. 94-SDP-01-75P.

39. On April 3, 2003, the DNR issued NPDES General Permit No. 1 (Storm Water Discharge Associated with Industrial Activity) to NCIRSWA for storm water discharges associated with the landfill.

40. Part III, Section C, of the NPDES permit required NCIRSWA to implement the provisions of a storm water pollution prevention plan ("SWPPP").

41. Part III, Subsection C(3), of the NPDES permit requires NCIRSWA to amend the SWPPP whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants.

42. After October 1, 2007, NCIRSWA was prohibited from accepting solid waste in areas of the landfill that did not have a leachate collection system and a composite or alternative liner modeled at an approved point of compliance by the DNR.

43. On September 22, 2008, the DNR renewed Permit No. 94-SDP-01-75P allowing NCIRSWA to continue operating the landfill until January 31, 2011.

44. By November 30, 2008, NCIRSWA was required under Section X(2)(b) of Permit No. 94-SDP-01-75P to submit an updated DOP and an updated Hydrologic System Monitoring Plan. A DOP was not submitted for over five years, and a draft of the Hydrologic System Monitoring Plan was submitted on October 21, 2009, nearly 10 months late.

45. On June 17, 2009, DNR personnel inspected the landfill and observed solid waste

from June 15 did not have daily cover deposited over it. Furthermore, the DNR confirmed NCIRSWA was not maintaining inspection records for inspections of incoming loads for prohibited waste.

46. On June 29, 2009, the DNR issued a Notice of Violation to NCIRSWA for inadequate daily cover.

47. On September 14, 2009, the DNR issued a Notice of Violation to NCIRSWA for failing to collect required groundwater samples, and for failing to submit the Hydrologic System Monitoring Plan which was due November 30, 2008.

48. On December 22, 2009, DNR personnel inspected the landfill, and confirmed inspection records for inspections of incoming loads for prohibited waste were still not being maintained. The DNR also confirmed storm water samples were not taken in 2009, semi-annual engineer reports were not submitted in 2009, and an annual inspection of storm water controls was not documented.

49. On January 5, 2010, the DNR issued a Notice of Violation to NCIRSWA for the violations observed during the December 22, 2009 inspection.

50. On January 29, 2010, NCIRSWA submitted a Leachate Control System Performance Evaluation Report to the DNR. The report included leachate measurements in the leachate collection system above the 12-inch limit allowed by DNR regulations. *See* 567 IAC 113.7(5)“b”(3).

51. On March 18, 2010, NCIRSWA submitted a Revised Landfill Gas Monitoring Plan to the DNR.

52. On March 24, 2010, NCIRSWA submitted its 2009 Annual Water Quality Report to the DNR. The report included monitoring data showing statistically significant increases (“SSIs”)

in the levels of monitored waste constituents in twelve (12) monitoring wells adjacent to the landfill. NCIRSWA, however, failed to investigate the SSIs.

53. On November 1, 2010, NCIRSWA submitted a permit renewal application for Sanitary Disposal Project Permit No. 94-SDP-01-75P that has not been approved by the DNR. NCIRSWA, therefore, currently operates pursuant to the permit approved in 2008 until its renewal application is finally determined by the DNR. *See* Iowa Code § 17A.18(2).

54. On December 20, 2010, the DNR issued a letter to NCIRSWA citing numerous deficiencies in the Hydrologic System Monitoring Plan, the 2009 Annual Water Quality Report, the Revised Landfill Gas Monitoring Plan, and the Leachate Control System Performance Evaluation Report.

55. Also on December 20, 2010, the DNR issued a Notice of Violation to NCIRSWA for excessive leachate, and for failing to investigate the SSIs in the groundwater adjacent to the landfill.

56. On February 9, 2011, DNR personnel conducted an inspection of the NCIRSWA landfill. During the DNR inspection, DNR personnel observed some litter not contained in the landfill, and observed some exposed solid waste on top of an old fill area.

57. On April 27, 2011, DNR personnel performed another inspection of the NCIRSWA landfill. The DNR personnel observed two areas of uncovered solid waste, and excessive amounts of litter both on and off site.

58. On May 2, 2011, the DNR issued a Notice of Violation to NCIRSWA for insufficient daily cover, and for failure to utilize litter control devices resulting in excess blown litter.

59. On June 7, 2011, DNR personnel inspected the NCIRSWA landfill. During the inspection, DNR personnel observed some on-site litter, excessive dust, large amounts of uncovered spray insulation running off slopes and blowing in the wind, lack of vegetation on the final cover and cottonwood trees growing in other areas, a leachate seep and erosion channel, and unlabeled monitoring wells.

60. On June 14, 2011, the DNR issued a Notice of Violation to NCIRSWA for the deficiencies noted during the June 7 inspection.

61. On July 19, 2011, the DNR notified NCIRSWA that it had not received the Leachate Control System Performance Evaluation Report which was due January 31, 2011. McClure Engineering Company advised the DNR this requirement would be met by August 8, 2011. On August 9, 2011, the DNR received the 2010 Leachate Control System Performance Evaluation Report.

62. On March 23, 2012, the DNR sent NCIRSWA a letter noting the 2011 Leachate Control System Performance Evaluation Report that was due on January 31, 2012, pursuant to 567 IAC 113.7(5)“b”(14) and Special Provision 2(c) of its Sanitary Disposal Project Permit, was late. On April 30, 2012, the DNR received NCIRSWA’s 2011 Leachate Control System Performance Evaluation Report.

63. On March 23, 2012, DNR personnel inspected the NCIRSWA landfill. During the inspection, DNR personnel observed excessive amounts of litter both on-site and off-site. Furthermore, NCIRSWA records indicated that no litter had been collected since August 31, 2011; however, no records were kept documenting any unsafe conditions that prevented litter collection activities. DNR personnel also observed considerable waste materials visible through the daily cover.

64. On March 27, 2012, the DNR issued a Notice of Violation to NCIRSWA for excessive litter, failure to keep litter picking records, and failure to maintain daily cover.

65. On May 4, 2012, the DNR sent NCIRSWA a letter citing the deficiencies in the 2011 Leachate System Performance Evaluation Report, including the failure to report the leachate collected during the winter months of January-March, 2011, and October 2011-April 2012.

66. In a letter dated May 8, 2012, Terracon Consultants, Inc. informed the DNR that NCIRSWA did not collect leachate during cold weather conditions (October through March) due to concerns of freezing discharge lines. It is believed the landfill areas in question had been operational since 1996. This was the first time the DNR was aware NCIRSWA did not collect and convey leachate during the months of October through March.

67. On May 11, 2012, the DNR provided written notification to NCIRSWA that failure to collect leachate in the winter months is unacceptable, and a leachate conveyance system upgrade designed to ensure leachate can be collected in the winter months must be completed by October 1, 2012, and that a certified construction report of a new leachate conveyance pipe be provided. This deadline was not met, and the leachate conveyance system was out of compliance until improvements were completed on December 20, 2013.

68. On June 12, 2012, DNR personnel conducted an inspection of the landfill, and observed several violations including failure to update the Emergency Response and Remedial Action Plan (“ERRAP”), inadequate storm water controls, and inadequate labeling and identification of monitoring wells. The DNR directed NCIRSWA to correct these violations.

69. On September 20, 2012, DNR personnel conducted a follow-up visit to determine if the violations observed during the June 12, 2012 inspection were corrected. DNR personnel observed that no action had been taken on these items.

70. On September 25, 2012, the DNR issued a Notice of Deficiency for NCIRSWA’s failure to correct the violations noted in the June 12 inspection. NCIRSWA was given until October 31, 2012, to correct the deficiencies.

71. On January 7, 2013, the DNR issued a Notice of Enforcement Action to NCIRSWA informing it the DNR would begin an enforcement action against it for, inter alia, failing to operate its leachate conveyance system in compliance with DNR regulations, and over 4 years delinquency in submitting its Development and Operations Plan.

72. On February 7, 2013, DNR personnel inspected NCIRSWA's gypsum mine and landfill grading project, and found that much of the extensive excavation work had not been included in the Storm Water Pollution Prevention Plan (SWPPP), and the mine was trenched for direct discharge into Gypsum Creek with no permit or controls. DNR personnel observed ice filling the entire length of the trench from the mine to Gypsum Creek. The DNR personnel were informed the mine had been operating for approximately four years. DNR personnel also documented litter violations during this visit.

73. On February 14, 2013, the DNR issued a Notice of Violation to NCIRSWA for failure to control litter, an incomplete SWPPP, and unlawful discharges from the gypsum mine.

74. On March 20, 2013, DNR personnel traveled to the landfill and met with the NCIRSWA Board regarding ongoing violations. Based on personal observations of the landfill by DNR personnel during the visit, the DNR became concerned solid waste was being deposited in areas of the landfill not containing an approved liner and leachate collection system.

75. In a March 21, 2013 letter, the DNR requested NCIRSWA provide it with a statement certified by a professional engineer concerning whether solid waste had been deposited outside the approved areas of the landfill.

76. In an April 12, 2013 letter, Brent Johnson, a professional engineer with McClure Engineering Company, informed the DNR approximately 94,795 cubic yards of waste fill had been deposited outside the approved areas of the landfill.

77. On April 17, 2013, the DNR issued a Notice of Violation to NCIRSWA for depositing solid waste in areas of the landfill without a liner and leachate collection system. The letter also directed NCIRSWA to cease disposing of solid waste outside the approved areas.

VIOLATIONS

Solid Waste Violations

78. After October 1, 2007, NCIRSWA repeatedly deposited solid waste in areas of the landfill that do not have an approved leachate collection system and a composite liner or an alternative liner modeled at an approved point of compliance in violation of 567 Iowa Admin. Code 113.2(8)"b".

79. NCIRSWA violated the conditions of Sanitary Disposal Project Permit No. 94-SDP-01-75P by depositing solid waste in unapproved areas of the landfill in violation of 567 Iowa Admin. Code 113.4(2).

80. NCIRSWA failed to maintain an operational leachate collection system every year during the months of October through March from 1996 to December 20, 2013, in violation of 567 Iowa Admin. Code 113.7(5)"b" and Sanitary Disposal Project Permit No. 94-SDP-01-75P.

81. NCIRSWA vertically expanded MSWLF units after October 1, 2007, that do not have an approved leachate collection system and a composite liner or an alternative liner modeled at an approved point of compliance in violation of 567 Iowa Admin. Code 113.7(7)"b"(1) and Sanitary Disposal Project Permit No. 94-SDP-01-75P.

82. In 2012, NCIRSWA submitted its annual Leachate Control System Performance Evaluation approximately 90 days late in violation of 567 Iowa Admin. Code 113.7(5)"b"(14) and Sanitary Disposal Project Permit No. 94-SDP-01-75P.

83. NCIRSWA failed to place and maintain six inches of cover material over solid waste in the active portion of the landfill at the end of each operating day in violation of 567 Iowa Admin. Code 113.8(2)“f”(1).

84. NCIRSWA failed to take steps to minimize the production of litter and the release of windblown litter off site of the landfill, failed to daily collect all windblown litter off and on site, and failed to maintain records of unsafe conditions that prevented litter collection activities in violation of 567 Iowa Admin. Code 113.8(3)“f”.

85. After November 30, 2008, NCIRSWA operated the landfill without an approved development and operations plan (DOP) in violation of 567 Iowa Admin. Code 113.8(4).

Water Pollution Control Violations

86. NCIRSWA failed to amend its SWPPP to reflect an extensive area being cut, filled and graded including the gypsum mine and a proposed landfill cell which had a significant effect on the potential for the discharge of pollutants in violation of Part III, Subsection C(3), of NPDES General Permit No. 1.

87. NCIRSWA discharged wastewater from an active gypsum mine into the waters of the State of Iowa for approximately four years without an NPDES permit in violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 62.1(1), 64.3(1) and 113.10(1)“a”(1).

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

- a. assess a civil penalty against Defendant pursuant to Iowa Code section 455B.307(3) for each day of violation of 567 Iowa Admin. Code 113.2(8)“b”, 113.4(2), 113.7(5)“b”, 113.7(7)“b”(1), 113.7(5)“b”(14), 113.8(2)“f”(1), 113.8(3)“f”, 113.8(4), and Sanitary Disposal Project Permit No. 94-SDP-01-75P 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 pursuant to Iowa Code section 455B.191(2) for each day of violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 62.1(1) and 64.3(1), and NPDES General Permit No. 1 not to exceed five thousand dollars (\$5,000.00) per day, per violation, for each day of such violation; and
- c. issue a permanent injunction enjoining Defendant from any violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 62.1(1), 64.3(1), 113.2(8)"b", 113.4(2), 113.7(5)"b", 113.7(7)"b"(1), 113.7(5)"b"(14), 113.8(2)"f"(1), 113.8(3)"f", 113.8(4), and Sanitary Disposal Project Permit No. 94-SDP-01-75P.

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 Defendant.

Respectfully submitted,

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