

IN THE IOWA DISTRICT COURT IN AND FOR SIOUX COUNTY

<p>STATE OF IOWA ex rel. IOWA DEPARTMENT OF NATURAL RESOURCES,</p> <p>Plaintiff,</p> <p>v.</p> <p>NORTHWEST IOWA AREA SOLID WASTE AGENCY,</p> <p>Defendant/Third-Party Plaintiff,</p> <p>v.</p> <p>ELLIOT WADDELL and FIVE STATES ENGINEERING, P.L.C.</p> <p>Third-Party Defendants.</p>	<p>Case No. CVCV024553</p> <p>ORDER GRANTING DEFENDANT/THIRD-PARTY PLAINTIFF'S APPLICATION FOR ENTRY OF JUDGMENT BY DEFAULT AND <u>JUDGMENT ENTRY AGAINST THIRD-PARTY DEFENDANTS</u>, ELLIOT WADDELL AND FIVE STATES ENGINEERING, P.L.C.</p>
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On this 13th day of March, 2014, this matter comes before the Court pursuant to Defendant/Third-Party Plaintiff's Application for Default Judgment pursuant to Iowa Rule of Civil Procedure 1.972. Having reviewed the pleadings, proofs of service, and affidavits on file in the above-captioned matter, the Court finds as follows:

FINDINGS OF FACT

1. The Court has jurisdiction over the parties and the subject matter of the above-captioned action.
2. On October 11, 2013, Defendant/Third-Party Plaintiff, Northwest Iowa Area Solid Waste Agency (hereinafter "NWIASWA"), filed with this Court an Answer, Affirmative Defenses and Jury Demand to Petition and Third-Party Petition and Jury Demand.

3. Third-Party Defendant Elliot Waddell was properly served with the Original Notice; and Answer, Affirmative Defenses and Jury Demand to Petition and Third-Party Petition and Jury Demand on November 11, 2013.

4. NWIASWA filed proof of service upon Third-Party Defendant Elliot Waddell on November 19, 2013.

5. Third-Party Defendant Five States Engineering, P.L.C. was properly served with the Original Notice; and Answer, Affirmative Defenses and Jury Demand to Petition and Third-Party Petition and Jury Demand on November 11, 2013.

6. NWIASWA filed proof of service upon Third-Party Defendant Five States Engineering, P.L.C. on November 19, 2013.

7. Third-Party Defendants were to file, and within a reasonable time thereafter serve upon NWIASWA, an Answer in the above-captioned case on or before December 12, 2013. See Iowa R. Civ. P. 1.303(1).

8. On February 25, 2014, NWIASWA sent to Third-Party Defendant Elliot Waddell and his believed counsel a Notice of Intent to File Written Application for Default Judgment pursuant to Iowa Rule of Civil Procedure 1.972(3).

9. On February 25, 2014, NWIASWA sent to Third-Party Defendant Five States Engineering, P.L.C. and its believed counsel a Notice of Intent to File Written Application for Default Judgment pursuant to Iowa Rule of Civil Procedure 1.972(3).

10. Third-Party Defendants, Elliot Waddell and Five States Engineering, P.L.C., have not filed or served an Answer or other responsive pleading in the above-captioned matter.

11. Third-Party Plaintiff, NWIASWA, is an entity created pursuant to Iowa Code Chapter 28 and operates a municipal solid waste landfill known as the Northwest Iowa Area Sanitary Landfill in Sioux County, Iowa.

12. At all times material hereto, Third-Party Defendant Elliot Waddell was a professional engineer licensed to practice engineering in the State of Iowa and conducted business in Sioux County, Iowa.

13. Third-Party Defendant Elliot Waddell is the employee and owner of Third-Party Defendant Five States Engineering, P.L.C.

14. Third-Party Defendant Five States Engineering, P.L.C is an Iowa Code Chapter 489 Professional Limited Liability Company with a principal place of business in Sioux City, Sioux County, Iowa.

15. At all times material hereto, Third-Party Defendant Elliot Waddell held himself out to be duly licensed, skilled, and accomplished professional engineer capable of and duly authorized to perform professional engineering services for and on behalf of clients in the State of Iowa.

16. Plaintiff, State of Iowa ex rel. Iowa Department of Natural Resources, has alleged that NWIASWA has operated in violation of Iowa law and certain rules promulgated thereunder.

17. At all times material hereto, NWIASWA relied upon Third-Party Defendants, Elliot Waddell and Five States Engineering, P.L.C., to ensure that its operations are in compliance with all applicable law, rules, and regulations.

18. At all times material hereto, Third-Party Defendants, Elliot Waddell and Five States Engineering, P.L.C., have represented to and ensured NWIASWA that its operations are in compliance with all applicable law, rules, and regulations.

19. In the event that it is determined that NWIASWA operations have not been or are not in compliance with all applicable law, rules, and regulations, said noncompliance or violation are the result of the actions of Third-Party Defendants, Elliot Waddell and Five States Engineering, P.L.C.

20. In the event that it is determined that NWIASWA operations have not been or are not in compliance with all applicable law, rules, and regulations, Third-Party Defendants, Elliot Waddell and Five States Engineering, P.L.C., are the sole proximate cause of said violations and noncompliance and therefore, the sole proximate cause of any civil penalty against and injury and damage to NWIASWA.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Third-Party Plaintiff's Application for Default Judgment against Third-Party Defendants, Elliot Waddell and Five States Engineering, P.L.C., is GRANTED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in the event that it is determined that NWIASWA operations have not been or are not in compliance with applicable law, rules, and regulations, Judgment shall be, and hereby is, ENTERED in favor of NWIASWA, and against Third-Party Defendants, Elliot Waddell and Five States Engineering, P.L.C., jointly and severally, for compensatory damages equal in amount to the civil penalty assessed for said violations and noncompliance, together with all applicable costs plus reasonable attorney's fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of this matter shall be assessed against Third-Party Defendants, Elliot Waddell and Five States Engineering, P.L.C.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV024553
Case Title STATE OF IOWA EX REL. IOWA DEPARTMENT OF NATURAL RESOURCES V

So Ordered

Duane E. Hoffmeyer, Chief Judge,
Third Judicial District of Iowa