

IN THE IOWA DISTRICT COURT FOR CASS COUNTY

STATE OF IOWA ex rel. IOWA)	
DEPARTMENT OF NATURAL)	NO. EQCV025666
RESOURCES,)	
)	
Plaintiff,)	
)	
vs.)	FINDINGS OF FACT, CONCLUSIONS OF
)	LAW AND ORDER
RECYCLING SERVICES L.L.C. and)	
JASON WRIGHT,)	
)	
Defendants.)	

This matter came to trial before the Court on February 5, 2020, and was fully submitted on that date. Plaintiff was represented by Assistant Attorney General David S. Steward, and Defendant Jason Wright (“Wright”) was represented by Attorney Andrew J. Knuth. The Court, having heard the evidence, examined the exhibits and considered the applicable law, hereby enters its Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

A. Factual Background

In 2004, Wright began operating Recycling Services L.L.C. (“RS”) as a waste services and recycling operation with its principal office and location of business at 101 State Street, Atlantic, Cass County, Iowa 50022. On approximately 1.65 acres of land located at 102 State Street (just across the street and to the north of the RS office), RS operated an automobile and large machinery wrecking facility that recovered and recycled the reusable parts of vehicles. Wright ran the day-to-day operations of RS until it was administratively dissolved by the Iowa Secretary of State effective August 14, 2017. Wright has since abandoned the property and currently resides in Colorado.

Since 2006, RS's operations were covered by an NPDES General Permit issued by the Iowa Department of Natural Resources ("DNR") for storm water discharges associated with industrial activity. On June 16, 2015, DNR Field Office 4 received a complaint alleging contaminated storm water run-off was leaving the RS property at 102 State Street. On June 28, 2015, Thad Nanfito ("Nanfito"), an Environmental Specialist with the DNR, and other DNR personnel investigated the complaint and conducted an NPDES General Permit inspection. During the June 28 inspection, Nanfito observed what he believed were violations of storm water regulations and potential hazardous fluids discharge issues, including evidence of significant amounts of spilled fluids and large volumes of stored fluids without proper containment.

On October 2, 2015, the DNR issued a Notice of Violation (NOV) and provided an NPDES General Permit No.1 Inspection Report to RS. The documents described deficiencies and enumerated certain requirements including that spilled material and contaminated soil must be addressed immediately and that stockpiled solid waste soil/debris must be removed and properly disposed of by October 1, 2016.

On January 27 and April 7, 2016, Nanfito, along with other DNR personnel, visited the RS facility and observed it was not in operation and it appeared all equipment and most salvageable materials had been removed. They conducted soil sampling which confirmed petroleum contamination including benzene, toluene, ethylbenzene, xylene and motor oil above statewide standard action levels. DNR personnel also visually observed pieces of plastics, rubber, glass, wood and some salvageable metal remained on the property, and they saw evidence of contaminant spills that suggested multiple locations of petroleum-contaminated soil throughout the facility property.

On July 24, 2017, the DNR issued Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01 to RS for several environmental violations identified by the DNR at 102 State Street. The Administrative Order required RS to do the following: (a) conduct necessary preventative, investigatory, and remedial actions and submit a Site Assessment Plan to the DNR no later than October 1, 2017; (b) properly dispose of all solid waste and petroleum contaminated soil by October 1, 2017; (c) pay a penalty of \$7,000.00; and (d) complete remediation of its facility based on the results of the Site Assessment Plan and in accordance with 567 Iowa Admin. Code 133.

Defendant Jason Wright was the primary contact for RS when the DNR was investigating the violations alleged in the administrative order. RS did not appeal the administrative order, and it became a final agency action. RS failed to pay the \$7,000 administrative penalty, and it failed to perform any of the injunctive relief contained in the administrative order. Wright testified at trial that he has made no effort to comply with the order since it was issued.

On October 28, 2019, Nanfito and another DNR employee inspected 102 State Street to document the current conditions of the property. In addition to a visual inspection, Nanfito conducted soil sampling to detect for the presence of petroleum contamination. Nanfito observed and took photographs of solid waste comingled with soil throughout the property, including several automobile gas tanks. He confirmed that extensive piles of comingled waste approximately 15 feet high remained on the property. In his opinion, the property's condition remained essentially unchanged since the administrative order was issued in 2017. Furthermore, testing of the soil sample taken by Nanfito confirmed the presence of petroleum contamination exceeding DNR allowable standards.

B. Procedural Background

On February 1, 2019, Plaintiff filed a petition against Defendants RS and Wright for failing to comply with the provisions of the administrative order. Plaintiff sought the assessment of civil penalties and injunctive relief against Defendants pursuant to various provisions of the Iowa Code and DNR regulations.

On April 24, 2019, the Court entered default judgment against RS. The Order Granting Judgment on Default enforced the \$7,000 administrative penalty and injunctive provisions of the administrative order. The order also imposed an additional \$100,000 civil penalty against RS.

On October 3, 2019, the Court granted Plaintiff's motion for partial summary judgment against Wright, and, applying the Responsible Corporate Officer Doctrine, held that Wright is jointly and severally liable for the relief mandated in the administrative order—namely the \$7,000 administrative penalty and injunctive provisions.

Trial was held on February 5, 2020, to determine whether a civil penalty and additional injunctive relief should be imposed against Wright.

CONCLUSIONS OF LAW

The Court has already ruled Wright is responsible to comply with the terms of the administrative order, and the administrative penalty and injunctive provisions have already been enforced against him. Plaintiff requests the Court impose an additional civil penalty against Wright for his ongoing violation of the administrative order, and requests the Court impose injunctive relief permanently enjoining Wright from further violations of the law. Plaintiff's request for civil penalties and injunctive relief are based on three separate provisions of Iowa Code chapter 455B and DNR regulations.

A. Solid Waste Violations

The dumping or depositing or permitting 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. The Iowa Attorney General is authorized, on request of the DNR, to institute any legal proceedings necessary in obtaining compliance with an order of the DNR 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 such violation. Iowa Code § 455B.307(3).

Solid waste is defined as “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(29). Legitimately recycled material is excluded from this definition. Iowa Code § 455B.301(29)(f). Although RS was at one time a recycling facility that reclaimed and recycled much of the same material that remains on the property, there is no realistic expectation the remaining material will ever be recycled. RS has been out of operation since 2016, it was administratively dissolved by the Iowa Secretary of State in 2017, and Wright, the sole owner, has left the state and resides in Colorado. Substantial evidence supports the conclusion all remaining discarded material on the property is solid waste subject to the prohibitions contained in Iowa Code § 455B.307(1).

As the responsible corporate officer for RS, Wright is strictly liable for violations of the DNR’s administrative order. The initial compliance deadlines established in the order were set for October 1, 2017. Not only did Wright not comply with the October 1 deadline, he continues to

disregard the requirements of the administrative order. Accordingly, the Court concludes Wright is subject to injunctive relief and a civil penalty not to exceed five thousand dollars for each day he has failed to meet the compliance deadlines contained in the administrative order. *See* Iowa Code § 455B.307(3).

B. Storm Water Discharge Violations

The enforcement provisions of Iowa Code chapter 455B, Division III, Part 1, of Iowa Code chapter 455B, apply to general permits for storm water discharge. Iowa Code § 455B.103A(5). A person who violates any provision of Division III, Part 1, of Iowa Code chapter 455B or any permit, rule, standard, or order issued under Division III, Part 1, of chapter 455B 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). The Iowa Attorney General shall, at the request of the DNR director with approval of the EPC, institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of Part 1 of Division III of chapter 455B or any rules promulgated or any provision of any permit issued under Part 1 of Division III of chapter 455B. Iowa Code § 455B.191(5).

While the Court agrees with Plaintiff that evidence establishes Wright violated Iowa law and DNR regulations applicable to RS's storm water discharge permits, those violations were not subject to the injunctive relief contained in the 2017 administrative order. Therefore, the Court concludes Wright did not commit any violations of the administrative order with respect to RS's storm water discharge permit. No civil penalty will be assessed or injunctive relief granted pursuant to Iowa Code § 455B.191(2).

C. Hazardous Condition Violations

The Iowa Attorney General shall, at the request of the DNR, 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). A hazardous condition is defined as “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 creates an immediate or potential danger to the public health or safety or to the environment. . . .” Iowa Code § 455B.381(4).

Substantial evidence shows the operations of RS caused spillage of petroleum products and antifreeze on the property located at 102 State Street. Testing in October 2019 confirmed the presence of petroleum remains in the soil. Nanfito testified that the present condition at the property does present a potential danger to the public health or safety and to the environment. The Court concludes a hazardous condition exists at the former RS facility, and Plaintiff is entitled to injunctive and other relief providing for the remediation of hazardous conditions in the Iowa Code and DNR regulations.

D. Civil Penalty

The Court has discretion when determining the amount of civil penalties to impose in an environmental enforcement case brought pursuant to Iowa Code 455B. *State ex rel. Miller v. DeCoster*, 596 N.W.2d 898, 904 (Iowa 1999) (“Review of the district court's assessment of civil penalties is for abuse of discretion.”). The State requests the Court assess a substantial civil penalty against Wright for failing to comply with the DNR administrative order.

The Court refers to Iowa Code section 455B.109 as the statute governing civil penalties under the DNR. The first two subsections read in relevant part:

1. The commission shall establish, by rule, a schedule or range of civil penalties which may be administratively assessed. The schedule shall provide procedures and criteria for the administrative assessment of penalties of not more than ten thousand dollars for violations of this chapter or rules, permits or orders adopted or issued under this chapter. In adopting a schedule or range of penalties and in proposing or assessing a penalty, the commission and director shall consider among other relevant factors the following:

- a. The costs saved or likely to be saved by noncompliance by the violator.
- b. The gravity of the violation.
- c. The degree of culpability of the violator.
- d. The maximum penalty authorized for that violation under this chapter.

2. Penalties may be administratively assessed only after an opportunity for a contested case hearing which may be combined with a hearing on the merits of the alleged violation. Violation not fitting within the schedule, or violations which the commission determines should be referred to the attorney general for legal action shall not be governed by the schedule established under subsection 1.

Iowa Code § 455B.109 (1), (2).

The administrative code provides additional guidance to the bare bones of the statute, though the administrative code is not controlling in this case. The factor for costs saved or likely to be saved include the imposition of civil penalties which at least offset the economic benefit to the violator for noncompliance. 567 Iowa Admin. Code 10.2(1). The gravity of the violation factor gives consideration to, among others, the actual or threatened harm to the environment or the public health and safety, the involvement of toxic or hazardous substances or potential long-term effects of the violation, whether the violation is repeated and whether it violates an administrative or court order, whether the type of violation threatens the integrity of a regulatory program, and expenses or efforts by the government in detecting, documenting, or responding to a violation. 567 Iowa Admin. Code 10.2(2). The culpability factor includes the degree of intent or negligence by the violator and whether the violator has taken remedial measures or mitigated the harm caused by the violation. 567 Iowa Admin. Code 10.2(3). Also, the maximum penalty factor not only considers the maximum daily penalty, but the cumulative maximum penalty for

ongoing violations under consideration. 567 Iowa Admin. Code 10.2(4). In addition to the above factors, the DNR also considers whether the assessment of penalties appears to be the only or most appropriate way to deter future violations, either by the person involved or by others similarly situated, and any other relevant factors which arise from the circumstances of each case. 567 Iowa Admin. Code 10.2(5), (6).

This is an enforcement action brought directly by the Iowa Attorney General's office and not a judicial review action for agency conduct. The language of the statute does not preclude application of the general principals outlined in section 455B.109(1) to the action for civil penalties brought by the Attorney General. Therefore, the Court concludes that the factors outlined are relevant to its consideration of civil penalties, even if they are not applied in the same schedule format as developed for the administrative assessment as outlined at 567 Iowa Admin. Code 10.2. *See State ex rel. Iowa Dept. of Natural Resources v. Passehl*, 842 N.W.2d 679 (Iowa Ct. App. 2013) (unpublished) (applying the factors set forth in Iowa Code § 455B.109(1)(a)-(d) and 567 Iowa Admin. Code 10.2 to assess civil penalties for solid waste and storm water discharge violations). The evidence in this case warrants the imposition of a significant civil penalty.

1. Economic Benefit

Although it is unclear how much economic benefit Wright received by failing to comply with the requirements of the administrative order, what is clear to the Court is Wright received a significant economic benefit by failing to assess and remove the substantial solid waste and petroleum contamination on the property. The solid waste is comingled with the soil throughout the 1.65 acres, and the scope of petroleum contamination is unknown; however, photographs at trial demonstrated oil and antifreeze spills in multiple locations. Nanfito testified that removal of the large mounds of comingled material and an excavation of the top ten inches of soil on the

property is likely necessary to remediate the property. Such an undertaking is extensive, requires the use of heavy equipment and involves transportation and disposal costs. Wright economically benefited from the commercial enterprise that contaminated this property, and he again benefited by abandoning the property and avoiding the necessary clean up expenses. The court finds a significant civil penalty is necessary to offset the economic benefit Wright gained by violating the DNR administrative order.

2. Gravity of the Violations

The Court considers the gravity of Wright's violations relatively high due to the fact that his business released toxic or hazardous substances to the environment posing an actual or threatened harm public health and safety. These substances remain in the soil and present a potential long-term impact to the environment without their removal. Furthermore, Wright's conduct is in direct violation of an administrative order, and his complete disregard of the order threatens the integrity of DNR's regulatory programs. The DNR has demonstrated it has incurred expenses responding to the violations, and may likely incur more expenses in the future. Again, this factor warrants a significant civil penalty.

3. Culpability

The Court finds Wright to be solely culpable for violations of the DNR administrative order. Wright was the one person in charge of the day-to-day activities of RS, and he was directed by the DNR to remove the solid waste and petroleum contaminated soil at the property as early as 2015. Although it appears to the Court Wright had the means to meet the DNR's directives at the time, he chose instead to shut down the business and abandon the property. Furthermore, the DNRs' administrative order was issued in July 2017 and Wright testified at trial that he has done

nothing to comply with the administrative order's requirements to the present day. Wright's failure to comply appears calculated and intentional, rather than accidental or negligent.

4. Maximum Penalty

The DNR administrative order required compliance with its terms by October 1, 2017. It is undisputed Wright has not complied with the terms of the order at any time prior to trial. Pursuant to Iowa Code § 455B.307(3), the Court may impose up to a \$5,000.00 civil penalty against Wright for each day he has been in violation the administrative order. At the time of trial, Wright had been in violation of the administrative order for over 850 days—a maximum penalty of over \$4,250,000.

5. Deterrence

Wright repeatedly ignored the DNR's notifications, warnings, and an administrative order to remove the solid waste and contamination left behind by his company. At trial, Wright appeared unconcerned about the condition of the property, and demonstrated no inclination he intends to comply with the administrative order. Accordingly, the Court finds a significant penalty is warranted to deter future violations by Wright as well as others similarly situated who might contemplate committing similar violations.

E. Injunctive Relief

RS no longer operates the recycling facility in Atlantic, and Wright has abandoned the property in question. Pursuant to the Court's order granting partial summary judgment to Plaintiff, Wright is currently subject to the injunctive relief contained in the administrative order. Plaintiff has requested additional injunctive relief against Wright to ensure the contamination and solid waste is properly removed from the property and Wright does not commit additional violations.

The Iowa Code allows the Iowa Attorney General to seek injunctive relief to obtain compliance with the Iowa Code, an administrative order, or administrative rules. *See* Iowa Code §§ 455B.307(2), 455B.391(1). The Court finds additional injunctive relief is warranted under the circumstances.

F. Liability for Cleanup Costs

During the operation of RS, Wright had control over hazardous substances including but not limited to antifreeze and petroleum products such as gasoline, oil and diesel that continue to contaminate the land at 102 State Street, Atlantic, Iowa. In its current state, the property poses a potential hazard to the public and environment. It is possible the State of Iowa or a political subdivision of the state will incur future costs or damages associated with the hazardous condition left behind by Wright. In the event that occurs, Wright is strictly liable to the state or political subdivision for any such reasonable costs or damages. *See* Iowa Code § 455B.392.

CONCLUSION

The Court finds Plaintiff established a hazardous condition exists at 102 State Street, Atlantic, Iowa, and Wright is responsible for the contamination at the property. Wright has made no effort to comply with the injunctive provisions in the DNR's administrative order and is therefore subject to a civil penalty and additional injunctive relief as requested by Plaintiff. Furthermore, Wright is strictly liable to the state or a political subdivision of the state for reasonable costs or damages allowed by the Iowa Code.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. Defendant Jason Wright is assessed a civil penalty of \$50,000.00 for the violations alleged in the Petition. Wright shall pay the penalty within ten (10) days of entry of this Order. Wright shall pay interest pursuant to Iowa Code section 535.3(1) on any unpaid balance.

2. Payment of the civil penalty and interest shall be made payable to the State of Iowa and sent to Plaintiff's attorney, David S. Steward

3. Wright is hereby permanently enjoined from any further violations of Iowa Code §§ 455B.307(1), 455B.386, 567 Iowa Admin. Code 100.4, 131.2 and Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01.

4. In the event the State of Iowa or a political subdivision incurs cleanup costs as a result of Wright's failure to clean the former Recycling Services facility, Wright is strictly liable to the State of Iowa or political subdivision for all reasonable costs and damages incurred pursuant to Iowa Code section 455B.392.

5. Willful failure to comply with the terms of this Order may subject Wright to punishment for contempt of court as well as other penalties and sanctions provided by law. The Court, therefore, retains jurisdiction over this matter to ensure compliance with the terms of this Order.

6. The costs of this action are taxed to Wright in the amount of \$230.00.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
EQCV025666 STATE OF IOWA EX REL. IDNR V. RECYCLING SERVICES ET
AL.

So Ordered

A handwritten signature in black ink that reads "Jeffrey L. Larson". The signature is written in a cursive style. Below the signature is a horizontal line.

**Jeffrey L. Larson, Chief Judge,
Fourth Judicial District of Iowa**