

IN THE IOWA DISTRICT COURT FOR CASS COUNTY

STATE OF IOWA ex rel. IOWA)	
DEPARTMENT OF NATURAL)	NO. _____
RESOURCES,)	
)	
Plaintiff,)	
)	
vs.)	PETITION IN EQUITY
)	
RECYCLING SERVICES L.L.C., JASON)	
WRIGHT and DAVID WRIGHT,)	
)	
Defendants.)	

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

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendants for the illegal disposal of trade wastes at the Recycling Services facility in Atlantic, Iowa, including, but not limited to, waste oil, fuel, antifreeze and miscellaneous solid waste; noncompliance with Recycling Services’ National Pollutant Discharge Elimination System (“NPDES”) permit; and failure to comply with certain hazardous condition notification requirements.

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. Recycling Services L.L.C. was at all times relevant to this action a waste services and recycling operation located at 101 State St., Atlantic, Iowa.

4. Jason Wright was at all times relevant to this action a responsible corporate officer of Recycling Services L.L.C.

5. David Wright was at all times relevant to this action a responsible corporate officer of Recycling Services L.L.C.

JURISDICTION

Solid Waste Regulations

6. 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. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 100-123 concerning solid waste management and disposal.

7. 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 IAC100.4.

8. 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).

9. 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).

Storm Water Discharge Regulations

10. 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 a permit issued by the DNR. Iowa Code § 455B.186(1).

11. The DNR is authorized to issue, modify, deny or revoke a general permit for storm water discharges required by Iowa Code chapters 455B, 459 or 459A. Iowa Code § 455B.103A(1).

12. The DNR is authorized to issue NPDES permits including but not limited to storm water discharge permits issued pursuant to Iowa Code section 455B.103A. Iowa Code § 455B.197.

13. The EPC has authority to adopt rules necessary to implement Iowa Code chapters 455B, 459, and 459A, relating to permits, conditional permits, and general permits. Iowa Code § 455B.105(11)(a). Specifically, the EPC has authority to adopt rules for applications or permits related to the NPDES, described in Iowa Code section 455B.197. Iowa Code § 455B.105(11)(c). Implementing rules are contained in 567 IAC 60-69.

14. The director of the DNR is authorized to issue storm water discharge general permits for a class of facilities which could be described or conditioned by a single permit. Iowa Code § 455B.103A(1); 567 IAC 64.4(2)(a)(1).

15. The DNR has adopted a general permit for Storm Water Discharge Associated with Industrial Activity. 567 IAC 64.15(1). “Storm water discharge associated with industrial activity” includes discharges from facilities involved in the recycling of materials. NPDES General Permit No. 1, Part VIII.

16. A Storm Water Pollution Prevention Plan (“SWPPP”) shall be developed and completed for each facility subject to NPDES General Permit No. 1, Part III. C.

17. The facility must implement the provisions of the SWPPP as a condition of the permit. NPDES General Permit No. 1, Part III. C.

18. Any noncompliance with the permit is grounds for an enforcement action. NPDES General Permit No. 1, Part VI. A.

19. 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).

20. 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).

21. The 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).

Hazardous Condition Regulations

22. The DNR is the agency of the State responsible to prevent, abate, and control the exposure of the citizens of the State to hazardous conditions. Iowa Code § 455B.382.

23. The DNR 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).

24. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance shall notify the DNR and the local police department or the office of the sheriff of the affected county of the occurrence of a hazardous condition as soon as possible but not later than six hours after the onset of the hazardous condition or discovery of the hazardous condition. Iowa Code § 455B.386; 567 IAC 131.2.

25. A person violating Iowa Code section 455B.386 shall be subject to a civil penalty of not more than one thousand dollars (\$1,000.00). Iowa Code § 455B.386.

26. A person shall not refuse entry or access to, or harass or obstruct an authorized representative of the DNR who seeks entry or access for the purpose of investigating or responding to a hazardous condition. Iowa Code § 455B.394.

27. The 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).

Administrative Penalty Provisions

28. The Environmental Protection Commission (“EPC”) shall establish a schedule or range of civil penalties, which may be administratively assessed. Iowa Code § 455B.109(1).

29. Administrative penalties shall be assessed through the issuance of an administrative order by the director of the DNR for an amount not to exceed ten thousand dollars (\$10,000.00). 567 IAC 10.3.

30. A person who fails to timely pay a penalty assessed by a final order of the DNR shall pay, in addition, interest at the rate of one and one-half percent of the unpaid

balance of the assessed penalty for each month or part of a month that the penalty remains unpaid. Iowa Code § 455B.109(4).

FACTS

31. Recycling Services was at all times relevant to this action a waste services and recycling operation located at 101 State St., Atlantic, Iowa.

32. Since 2006, Recycling Services' operations have been covered by NPDES General Permit No. 1 for storm water discharges associated with industrial activity.

33. On June 16, 2015, DNR Field Office 4 received a complaint that contaminated storm water run-off was leaving the Recycling Services facility property.

34. On June 28, 2015, DNR staff investigated the complaint and conducted an NPDES General Permit No. 1 inspection.

35. During the June 28 inspection, DNR staff observed violations of storm water regulations and potential hazardous fluids discharge issues, including evidence of significant amounts of spilled fluids and large volumes of improperly-stored fluids without proper containment. A copy of the facility's Storm Water Pollution Prevention Plan (SWPPP) was required to be on-site but was not available during the inspection.

36. On July 30, 2015, the facility's SWPPP was received by the DNR. Recycling Services had failed to update the SWPPP since the initial draft was created for Recycling Services by the Iowa Waste Reduction Center in 2005. Additionally, the DNR identified other violations including inadequate basic inspection record-keeping.

37. On August 11, 2015, David Wright refused to allow a walk-through of the Recycling Services facility during a follow-up visit by DNR staff.

38. On September 17, 2015, Jason Wright allowed DNR staff to walk through the facility.

39. On October 2, 2015, the DNR issued a Notice of Violation (NOV) and provided an NPDES General Permit No.1 Inspection Report to Recycling Services via U.S. mail. 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.

40. On January 27, 2016, DNR staff visited the Recycling Services facility and observed the Recycling Services facility was not in operation and it appeared all equipment and most salvageable materials had been removed.

41. DNR staff conducted soil sampling which confirmed petroleum contamination including benzene, toluene, ethylbenzene, xylene and motor oil above statewide standard action levels.

42. Evidence of contaminant spills were also visually observed by DNR staff that suggested multiple locations of petroleum-contaminated soil throughout the facility property.

43. Furthermore, pieces of plastics, rubber, glass, wood and some salvageable metal remained on the property.

44. On July 24, 2017, the DNR issued Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01 to Recycling Services for the identified violations. (Exhibit 1).

45. The Administrative Order required Recycling Services 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 IAC 133.

46. Defendants did not comply with any of the required actions in Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01.

47. On August 14, 2017, Recycling Services was administratively dissolved by the Iowa Secretary of State.

VIOLATIONS

Solid Waste Regulations

48. Defendants allowed the dumping or depositing of solid waste at the Recycling Services facility in violation of Iowa Code § 455B.307(1); 567 IAC 100.4 and Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01.

Storm Water Discharge Violations

49. Defendants failed to properly amend the SWPPP in violation of NPDES General Permit No. 1.

50. Defendants failed to accurately describe flow directions and likely discharge locations in violation of NPDES General Permit No. 1.

51. Defendants failed to provide accurate information as to the processes to be used on site and potential pollutants in violation of NPDES General Permit No. 1.

52. Defendants failed to provide accurate information as to the storm water controls and practices that are implemented on the site in violation of NPDES General Permit No. 1.

53. Defendants failed to provide details on, and comply with, spill prevention and response procedures in violation of NPDES General Permit No. 1.

54. Defendants failed to keep adequate records in violation of NPDES General Permit No. 1.

55. Defendants failed to immediately clean up any spills and notify the DNR of the spills in violation of NPDES General Permit No. 1.

Hazardous Condition Violations

56. Defendants failed to conduct necessary preventative, investigatory, and remedial actions and submit a Site Assessment Plan to the DNR no later than October 1, 2017 in violation of Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01.

57. Defendants failed to properly dispose of all solid waste and petroleum contaminated soil by October 1, 2017 in violation of Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01.

58. Defendants failed to complete remediation at the Recycling Services facility in violation of Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01.

59. Defendants failed to notify the DNR of the occurrence of a hazardous condition within six hours after the onset of the hazardous condition or discovery of the hazardous condition in violation of Iowa Code section 455B.386 and 567 IAC 131.2.

Administrative Penalty

60. Defendants failed to pay the administrative penalty imposed by Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01.

PARYER FOR RELIEF

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

- a. assess a civil penalty against Defendants, jointly and severally, for each day of violation of Iowa Code § 455B.307(1), 567 IAC 100.4 and Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01 not to exceed five thousand dollars (\$5,000) per day, per violation, for each day of violations pursuant to Iowa Code § 455B.307(3);

- b. issue a permanent injunction pursuant to Iowa Code section 455B.307(3) enjoining Defendants from any violation of Iowa Code § 455B.307(1), 567 IAC 100.4 and Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01;
- c. assess a civil penalty against Defendants, jointly and severally, for each day of violation of 567 IAC 64.8(1), Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01, and NPDES General Permit No. 1 not to exceed five thousand dollars (\$5,000) per day, per violation, for each day of violations pursuant to Iowa Code section 455B.191(2);
- d. issue a permanent injunction pursuant to Iowa Code section 455B.191(5) enjoining Defendants from any violation of 567 IAC 64.8(1), Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01, and NPDES General Permit No. 1;
- e. assess a civil penalty against Defendants, jointly and severally, for each violation of Iowa Code section 455B.386 and 567 IAC 131.2 not exceed one thousand dollars (\$1,000) for each violation pursuant to Iowa Code section 455B.386;
- f. issue a permanent injunction pursuant to Iowa Code section 455B.391(1) enjoining Defendants from any violation of Iowa Code section 455B.386 and 567 IAC 131.2;
- g. order Defendants, jointly and severally, to pay the \$7,000 administrative penalty assessed in Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01, plus accrued interest, pursuant to Iowa Code section 455B.109(4);
- h. order Defendants to remove and legally dispose of all solid waste and hazardous substances (including all petroleum contaminated soils) located at the Recycling Services facility and provide all disposal receipts to the DNR; and
- i. order Defendants to prepare a site assessment plan for the Recycling services facility and complete environmental remediation of the facility pursuant to Administrative Order No. 2017-SW-11, 2017-WW-09, 2017-HC-01 and all other requirements required by the DNR.

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

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

/s/ David S. Steward
DAVID S. STEWARD
Assistant Attorney General

/s/ Jacob J. Larson
JACOB J. LARSON
Assistant Attorney General
Environmental Law Division
Hoover State Office Building
1305 E. Walnut St., 2nd Floor
Des Moines, Iowa 50319
Phone: (515) 281-5164
E-mail: david.steward@ag.iowa.gov
jacob.larson@ag.iowa.gov

ATTORNEYS FOR PLAINTIFF