

FILED
01-19-2021
Clerk of Circuit Court
Rock County, Wisconsin
2021CX000001

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

ROCK COUNTY

STATE OF WISCONSIN,
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857

Plaintiff,

v.

Case No. 21-CX-____
Complex Forfeiture: 30109

COUNTY MATERIALS CORP.,
205 North Street
Post Office Box 100
Marathon, Wisconsin 54448

Defendant.

THE AMOUNT CLAIMED IS
GREATER THAN THE AMOUNT
CLAIMED UNDER WIS. STAT.
§ 799.01(1)(d).

CIVIL COMPLAINT

The State of Wisconsin by its attorneys, Attorney General Joshua L. Kaul and Assistant Attorney General Emily M. Ertel, brings this action against County Materials Corp. at the request of the Wisconsin Department of Natural Resources (DNR) and alleges as follows:

ALLEGATIONS RELEVANT TO ALL VIOLATIONS

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America with its principal offices at the State Capitol in Madison, Wisconsin.

2. Defendant County Materials Corp. (County Materials) is a domestic business with its principal office located at 205 North Street, Post Office Box 100, Marathon, Wisconsin 54448. Its registered agent is Timothy J. Sonnentag located at the same address.

3. At all times relevant to the violations in this Complaint, County Materials owned property located at 1104 E. L T Townline Road, Janesville, Rock County, Wisconsin 53546 (the Janesville property).

4. County Materials constructed and operates a facility that manufactures concrete blocks and girders at the Janesville property (the concrete plant).

5. The concrete plant consists of three smaller plants: the block plant includes concrete batching and mixing and produces cement blocks; the process plant processes cement blocks to create different finishes on the blocks; and the girder plant produces cement girders.

**VIOLATION ONE: COMMENCING CONSTRUCTION OF A
STATIONARY SOURCE WITHOUT A PERMIT**

6. Wisconsin Stat. § 285.60(1)(a)1. states, “[N]o person may commence construction, reconstruction, replacement, or modification of a stationary source unless the person has a construction permit from [DNR],” subject to exceptions not applicable in this case.

7. Wisconsin Stat. § 285.01(41) defines “stationary source” as “any facility, building, structure or installation that directly or indirectly emits or may emit an air contaminant only from a fixed location. . . . A stationary source may consist of one or more pieces of process equipment, each of which is capable of emitting an air contaminant.”

8. Wisconsin Stat. § 285.01(1) defines “air contaminant” as “dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any other combination thereof.”

9. The concrete plant emits, among other air contaminants, particulate matter, volatile organic compounds, carbon monoxide, and nitrogen oxides.

10. The concrete plant is a stationary source as defined by Wis. Stat. § 285.01(41).

11. On October 16, 2015, Foth Infrastructure & Environment, LLC (Foth) on behalf of County Materials submitted to DNR an application for an

air pollution control construction and operation permit for the concrete plant (permit application).

12. The permit application stated County Materials began construction of the concrete plant on January 1, 2013.

13. On April 26, 2017, Foth on behalf of County Materials submitted a letter to DNR clarifying that County Materials began construction of parts of the concrete plant, specifically the block plant and process plant, in 2011.

14. On January 17, 2018, DNR issued after-the-fact air pollution control construction permit no. 15-RAB-150 and air pollution control operation permit no. 154165660-F01 to County Materials for the concrete plant.

15. In 2011, County Materials violated Wis. Stat. § 285.60(1)(a)1. by commencing construction of the concrete plant without first obtaining a construction permit from DNR.

VIOLATION TWO: OPERATING A STATIONARY SOURCE WITHOUT A PERMIT

16. Wisconsin Stat. § 285.60(1)(b)1. states, “[N]o person may operate a new source or a modified source unless the person has an operation permit under s. 285.62 from [DNR].”

17. Wisconsin Stat. § 285.01(29) defines “new source” as “a stationary source on which construction, reconstruction or replacement commences after November 15, 1992.”

18. The concrete plant is a new source as defined by Wis. Stat. § 285.01(29).

19. The permit application stated County Materials began operating the concrete plant on January 1, 2013.

20. On April 26, 2017, Foth on behalf of County Materials submitted a letter to DNR clarifying that County Materials began operation of the block plant in March 2013, the process plant in April 2013, and the girder plant in 2014.

21. From at least March 31, 2013 until January 16, 2018, County Materials continuously violated Wis. Stat. § 285.60(1)(b)1. by operating the concrete plant without an operation permit.

VIOLATION THREE: FAILURE TO SUBMIT ANNUAL EMISSION INVENTORY REPORT

22. Wisconsin Admin. Code § NR 438.03(1) states:

[A]ny person owning or operating a facility that emits an air contaminant in quantities above applicable reporting levels . . . shall annually submit to [DNR] an emission inventory report of annual, actual emissions or, for particulate matter, PM₁₀, sulfur dioxide, nitrogen oxides, carbon monoxide and volatile organic compounds, throughput information sufficient for [DNR] to calculate its annual, actual emissions.

23. Wisconsin Admin. Code ch. NR 438, Table 1 lists the reporting level for volatile organic compounds (also referred to as reactive organic gases) as 6,000 pounds per year.

24. Wisconsin Admin. Code § NR 438.03(2) requires annual emission inventory reports to be submitted by March 1 for air contaminants emitted during the prior year.

25. On April 26, 2017, Foth on behalf of County Materials estimated that the concrete plant emitted 22,878 pounds of reactive organic gases in 2014.

26. County Materials did not submit an annual emission inventory report by March 1, 2015 for reactive organic gases that the concrete plant emitted during 2014.

27. County Materials violated Wis. Admin. Code § NR 438.03 by failing to submit an annual emission inventory report by March 1, 2015 for its emissions of reactive organic gases in 2014.

VIOLATION FOUR: FAILURE TO PAY ANNUAL EMISSION AND FACILITY FEES

28. Wisconsin Stat. § 285.69 establishes annual emission and facility fees required to be paid by the owner or operator of a stationary source. The magnitude of some fees varies based on a facility's emissions.

29. County Materials failed to pay annual emission and facility fees required pursuant to Wis. Stat. § 285.69 in 2013, 2014, and 2015.

30. In 2013, County Materials failed to pay a total of \$2,400.00 in required fees. This consists of a \$900.00 base fee pursuant to Wis. Stat.

§ 285.69(2e)(b)1.a. and a \$1,500.00 fee for a federal construction permit source pursuant to Wis. Stat. § 285.69(2e)(b)4.

31. In 2014, County Materials failed to pay a total of \$3,208.49 in required fees. This amount consists of emission fees of \$408.49 pursuant to Wis. Stat. § 285.69(2)(a)12., a \$1,300.00 base fee pursuant to Wis. Stat. § 285.69(2e)(b)1.b., and a \$1,500.00 fee for a federal construction permit source pursuant to Wis. Stat. § 285.69(2e)(b)4.

32. In 2015, County Materials failed to pay a total of \$4,364.13 in required fees. This amount consists of emission fees of \$1,264.13 pursuant to Wis. Stat. § 285.69(2)(a)12., a \$1,600.00 base fee pursuant to Wis. Stat. § 285.69(2e)(b)1.c., and a \$1,500.00 fee for a federal construction permit source pursuant to Wis. Stat. § 285.69(2e)(b)4.

33. County Materials failed to pay \$9,972.62 in total in required fees for 2013, 2014, and 2015.

34. In 2013, 2014, and 2015, County Materials violated Wis. Stat. § 285.69 by failing to pay applicable emission and facility fees.

VIOLATION FIVE: EXCEEDANCE OF PARTICULATE MATTER EMISSION LIMIT

35. Air pollution control operation permit no. 154165660-F01 establishes limits on air emissions from the concrete plant.

36. Section I.E.1.a(1)(c) of air pollution control operation permit no. 154165660-F01 states, “PM [Particulate Matter] and PM₁₀ emissions from Stack S11 shall not exceed 0.20 pounds per hour.”

37. On July 10, 2018, County Materials conducted stack testing that monitored emissions from Stack S11.

38. On July 10, 2018, Stack S11 was emitting 0.37 pounds of PM and PM₁₀ per hour.

39. On July 10, 2018, County Materials violated section I.E.1.a(1)(c) of air pollution control operation permit no. 154165660-F01 when it emitted PM and PM₁₀ at a rate in excess of 0.20 pounds per hour.

PENALTIES AUTHORIZED

40. Wisconsin Stat. § 299.95 authorizes the Attorney General to enforce Wis. Stat. ch. 285 and all rules promulgated under that chapter, subject to exceptions not applicable in this case.

41. Pursuant to Wis. Stat. § 299.95, the circuit court for the county where the violation occurred has jurisdiction to enforce Wis. Stat. ch. 285 and all rules promulgated under that chapter “by injunctive and other relief appropriate for enforcement.”

42. Wisconsin Stat. § 285.87(1) states, “[A]ny person who violates this chapter or any rule promulgated, any permit issued or any special order issued

under this chapter shall forfeit not less than \$10 or more than \$25,000 for each violation. Each day of continued violation is a separate offense.”

RELIEF REQUESTED

WHEREFORE, the State asks for judgment as follows:

1. The emission and facility fees required pursuant to Wis. Stat. § 285.69 that County Materials failed to pay in 2013, 2014, and 2015;
2. Forfeitures pursuant to Wis. Stat. § 285.87(1);
3. The 26 percent penalty surcharge pursuant to Wis. Stat. § 814.75(18), the 20 percent environmental surcharge pursuant to Wis. Stat. § 814.75(12), the \$25.00 court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratory and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge pursuant to Wis. Stat. § 814.75(2), the 1 percent jail assessment pursuant to Wis. Stat. § 814.75(14), and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15);
4. The costs and disbursements of this action; and
5. Such other relief as the Court may deem appropriate.

Dated this 19th day of January, 2021.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Emily M. Ertel

EMILY M. ERTEL
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