

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

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

ROCK COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 21-CX-____

Complex Forfeiture: 30109

COUNTY MATERIALS CORP.,

Defendant.

STIPULATION FOR JUDGMENT

Plaintiff State of Wisconsin brought this civil action against defendant County Materials Corp. regarding violations of the state's air pollution laws. The State of Wisconsin and County Materials Corp. wish to settle this matter by agreement and avoid further litigation, and therefore, enter into this Stipulation.

IT IS STIPULATED AND AGREED by the State of Wisconsin and County Materials Corp. that this case shall be settled on the merits, with prejudice, on the following terms and conditions:

1. The parties to this Stipulation are the plaintiff State of Wisconsin and defendant County Materials Corp.
2. The Circuit Court for Rock County, Wisconsin (the Court) has jurisdiction over the parties and the subject matter of this action.

3. This Stipulation and the Order for Judgment as approved by the Court shall apply to and be binding on the parties and on the successors and assignees of the parties. No change in ownership, corporate, or partnership status shall in any way alter the responsibilities of County Materials Corp. under this Stipulation and the Order for Judgment.

4. Judgment shall be entered in favor of the State of Wisconsin and against County Materials Corp. in the amount of \$171,750.00. This sum is comprised of forfeitures, statutory surcharges, costs, and outstanding DNR fees as follows: forfeitures of \$61,156.38 under Wis. Stat. § 285.87(1), a 26 percent penalty surcharge of \$15,900.66 under Wis. Stat. § 814.75(18), a 20 percent environmental surcharge of \$12,231.28 under Wis. Stat. § 814.75(12), \$25.00 in court costs under Wis. Stat. § 814.63(1), a \$13.00 crime laboratories and drug law enforcement surcharge under Wis. Stat. 814.75(3), a \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), a 1 percent jail surcharge of \$611.56 under Wis. Stat. § 814.75(14), a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15), annual emission and facility fees of \$9,972.62 under Wis. Stat. § 285.69, and air pollution control permit fees of \$71,750.00 pursuant to DNR's February 14, 2018 Invoice No. 11111 to County Materials Corp.

5. County Materials Corp. will pay \$90,027.38 in total by check payable to the Rock County Circuit Court and delivered to Rock County Clerk

of Circuit Court, Rock County Courthouse, 51 South Main Street, Janesville, Wisconsin, 53545, along with a cover letter to the Court identifying this case by name and number. A copy of the cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Emily M. Ertel at the Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707-7857. Payment shall be made no later than 60 days from the date judgment is entered.

6. County Materials Corp. will pay \$9,972.62 in total by check payable to the Wisconsin Department of Natural Resources and delivered to Wisconsin DNR – Environmental Fees, Post Office Box 93192, Milwaukee, Wisconsin, 53293-0192, along with a cover letter to DNR identifying this case by name and number. A copy of the cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Emily M. Ertel at the address in paragraph 5. Payment shall be made no later than 60 days from the date judgment is entered.

7. County Materials Corp. will pay \$71,750.00 in total by check payable to the Wisconsin Department of Natural Resources and delivered to WI DNR, Post Office Box 78816, Milwaukee, Wisconsin, 53278-0816, along with a copy of DNR's February 14, 2018 Invoice No. 11111. It is hereby stipulated that County Materials Corp. has paid Invoice No. 11111 in the

amount of \$71,750.00 and no further payment is therefore required for this invoice under this Stipulation and the Order for Judgment.

8. County Materials Corp. agrees to release all claims and abandon and cease all litigation relating to all DNR actions taken prior to the date of the parties' execution of this Stipulation with respect to air pollution control construction permit no. 15-RAB-150 issued to County Materials Corp. on January 17, 2018; air pollution control operation permit no. 154165660-F01 issued to County Materials Corp. on January 17, 2018; and air pollution control permit fee invoice no. 11111 issued to County Materials Corp. on February 14, 2018. This release of claims and agreement to cease litigation includes, but is not limited to, the following:

- a. County Materials Corp. agrees to dismiss the Petitions for Judicial Review in *County Materials Corp. v. Wisconsin Department of Natural Resources*, Marathon County case no. 18-CV-0188, and *County Materials Corp. v. Wisconsin Department of Natural Resources*, Marathon County case no. 18-CV-0189. The parties agree to prepare, execute, and file all documents necessary to obtain dismissal of these cases by no later than 60 days from the date judgment is entered in this case.
- b. County Materials Corp. further agrees that it will not challenge or otherwise seek review, including judicial review, of Administrative

Law Judge Mark F. Kaiser's Findings of Fact, Conclusions of Law, and Orders issued on September 27, 2019 in *In the Matter of Air Pollution Control Permit Fees, Invoice No. 11111, dated February 14, 2018*, Division of Hearings and Appeals case no. DNR-18-0003, and *In the Matter of the Issuance of Air Pollution Control Construction Permit No. 15-RAB-150 and Operation Permit No. 154165660-F01*, Division of Hearings and Appeals case no. DNR-18-0004.

9. The parties acknowledge that this Stipulation and the Order for Judgment set forth the entire understanding of the parties with respect to resolution of the violations alleged in the Complaint.

10. County Materials Corp. waives the requirement for formal service of an authenticated Summons and Complaint.

11. Nothing contained in this Stipulation shall be construed as an admission of liability by County Materials Corp., or as a concession by the State regarding the veracity of the State's allegations.

12. Compliance by County Materials Corp. with its obligations under this Stipulation and the Order for Judgment shall constitute full release of its civil liability, and the civil liability of its officers, directors, and employees, for the violations alleged in the Complaint.

13. The Order for Judgment in this matter will be a final and appealable order. However, the parties hereby waive their right to appeal the order.

14. The Order for Judgment and Judgment in this matter may be entered incorporating the terms of this Stipulation without further notice, and the Judgment may be docketed pursuant to Wis. Stat. § 806.10(1).

Dated this 3rd day of September, 2020.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Emily M. Ertel

EMILY M. ERTEL
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Dated this 3rd day of September, 2020.

MICHAEL BEST & FRIEDRICH LLP

Electronically signed by Cameron F. Field

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