

AMY R. SMITH
CIRCUIT COURT, BR. 4

COPY

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

DANE COUNTY

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

FILED

OCT - 5 2015

DANE COUNTY CIRCUIT COURT

Plaintiff,

v.

Case No. 15-CX-55
Complex Forfeiture: 30109

FRANK GRIBBLE
218 Van Deusen Street
Madison, Wisconsin 53715,

Defendant.

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

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within twenty (20) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Dane County

Courthouse, 215 S. Hamilton Street, Madison, Wisconsin 53703, and to Plaintiff's attorney, Steven E. Tinker, Assistant Attorney General, whose address is Wisconsin Department of Justice, 17 West Main Street, Post Office Box 7857, Madison, Wisconsin 53707-7857.

You may have an attorney help or represent you.

If you do not provide a proper answer within twenty (20) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 29th day of September, 2015.

BRAD D. SCHIMEL
Attorney General



STEVEN E. TINKER
Assistant Attorney General
State Bar #1013319

Attorneys for Plaintiff State of Wisconsin

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COMPLAINT

The State of Wisconsin by its attorneys, Attorney General Brad D. Schimel and Assistant Attorney General Steven E. Tinker, brings this complaint against Frank Gribble, at the request of the Wisconsin Department of Natural Resources (DNR) and alleges and follows:

1. The plaintiff is a sovereign state of the United States with offices at the State Capitol in Madison, Wisconsin. The plaintiff has enacted, in Wis. Stat. ch. 292, laws governing remedial action for spills of hazardous substances, and its Department of Natural Resources (DNR) administers regulations authorized by those laws.

2. Defendant Frank Gribble (Mr. Gribble) is an adult resident of the State of Wisconsin, residing at 218 Van Deusen Street, Madison, Dane County, Wisconsin.

3. From March 17, 1986, through the present, Mr. Gribble has owned property located at W12362 and W12364 State Road 16 & 60, Town of Elba, Dodge County, Wisconsin. The legal description of the parcel is Lot 1 of Certified Survey Map No. 1792, Volume 12, Page 18 (hereinafter referred to as "the Property").

4. When he purchased the Property, Mr. Gribble leased a portion of the Property to the Columbus-Fall River Coop/Cenex (CFR) to use as a bulk petroleum storage facility by means of above ground storage tanks.

5. By May 8, 2001, all of the tanks, piping, and load out equipment had been removed by CFR from CFR's storage facility on defendant's Property.

6. On or before May 8, 2001, CFR hired BT² Inc. to conduct a site inspection of CFR's storage facility on the Property.

7. A May 8, 2001 inspection by BT² Inc. revealed soil contamination on the Property resulting from petroleum.

8. On May 16, 2001, Mr. Gribble contacted the DNR complaining that petroleum product had been spilled during the removal of CFR's equipment from the Property.

9. On May 24, 2001, DNR staff collected soil samples from the portion of the Property where CFR's facility was located.

10. On May 30, 2001, BT² Inc. notified the DNR that the results of BT² Inc.'s May 8 inspection had revealed petroleum contamination in the soil around CFR's storage facility on the Property.

11. On May 31, 2001, DNR sent a Responsible Party letter to CFR instructing CFR to take steps to clean up the petroleum contamination.

12. On June 6, 2001, DNR received lab testing results on the May 24 soil samples confirming soil contamination from petroleum at CFR's storage facility on the defendant's Property.

13. On June 11, 2001, Mr. Gribble sent a letter to "Cenex at Columbus, Wisconsin" stating his intentions to clean the petroleum spill on the Property and bill Cenex for the cost.

14. On July 17, 2001, Randall Andersen of the law offices of Kay & Andersen, S.C. sent a response letter to Mr. Gribble stating that their office represented Cottage Grove Cooperative, who had purchased CFR's assets after CFR ceased operation earlier in 2001, and that Cottage Grove Cooperative was willing to clean up the spill on the Property using funding from the Petroleum Environmental Cleanup Fund Act (PECFA).

15. In response to this letter, Mr. Gribble demanded that Cottage Grove Cooperative pay rent to him during the cleanup.

16. On October 2, 2001, DNR sent a letter to Mr. Gribble explaining that Cottage Grove Cooperative had offered to voluntarily clean up the spill on the Property, but that Mr. Gribble's demand that Cottage Grove Cooperative pay rent to him during the

cleanup would likely cause a retraction of the offer, and that Mr. Gribble would ultimately be held responsible for the cleanup as the owner of the Property.

17. On April 9, 2003, DNR sent a Responsible Party letter to Mr. Gribble stating that, as owner of the Property, Mr. Gribble was responsible for "investigating and restoring the environment" at his Property under Wis. Stat. § 292.11.

18. On November 24, 2008, DNR sent a follow-up letter to Mr. Gribble requiring a status update on cleanup activities at the Property within 45 days of receipt of the letter.

19. On January 8, 2009, DNR staff spoke with Mr. Gribble via telephone and requested a written timeline within two weeks outlining Mr. Gribble's plans to hire an attorney, an environmental consultant, and to have site investigation work done at the Property.

20. On September 30, 2009, DNR issued a Notice of Noncompliance to Mr. Gribble stating that the DNR had not received any correspondence from Mr. Gribble indicating that he had hired an environmental consultant, established a timeline, or started a site investigation on the Property and requiring Mr. Gribble to provide DNR with a site investigation work plan which complied with Wis. Admin. Code ch. NR 716 by November 6, 2009.

21. On November 12, 2009, Charles Sweeney of Axley Brynelson, LLP sent a letter to DNR stating that the Axley Brynelson firm represented Mr. Gribble, that Mr.

Gribble was in the process of hiring Tom Culp of BT² Inc. to assist in the cleanup of the Property, and inviting DNR staff to a site visit on December 1, 2009.

22. On December 1, 2009, DNR staff met with Mr. Gribble and Attorney Sweeney at the Property, at which time Mr. Gribble agreed to hire BT² Inc. and to begin the PECFA application process.

23. On July 26, 2012, DNR sent a letter to Mr. Gribble requiring, within 45 days, a written summary of all investigative and cleanup work that had been done at the Property which would also include a proposed timeline for completing any investigative and/or remedial actions that may still be necessary at the Property.

24. On July 10, 2013, DNR sent a Notice of Violation to Mr. Gribble alleging that Mr. Gribble was in violation of Wis. Stat. § 292.11 for failure to take remedial actions for petroleum contamination on his Property.

25. On August 2, 2013, DNR held an enforcement conference with Mr. Gribble, who stated that he had paid \$1,100 to BT² Inc. for remediation services and they had not done anything, and that he would not spend any more money to remediate the contamination.

26. At the August 2, 2013 enforcement conference, DNR stated that BT² Inc. had applied for PECFA funding on Mr. Gribble's behalf, that the Property was eligible for up to \$190,000 in funding and that Mr. Gribble would only be responsible for the \$10,000 deductible.

27. At the August 2, 2013 enforcement conference DNR informed Mr. Gribble that PECFA had an ability to pay process if Mr. Gribble was unable to afford the deductible.

28. Mr. Gribble and DNR were unable to come to a remediation agreement at the August 2, 2013 enforcement conference.

29. At all times relevant to this proceeding, Wis. Stat. § 292.11(3) has provided:

RESPONSIBILITY. A person who possesses or controls a hazardous substance which is discharged or who causes the discharge of a hazardous substance shall take the actions necessary to restore the environment to the extent practicable and minimize the harmful effects from the discharge to the air, lands, or waters of the state.

30. Wisconsin Stat. § 292.01(5) defines "hazardous substance" as:

Any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the [DNR].

31. Petroleum is a hazardous substance.

32. Wisconsin Stat. § 292.01(3) states that "[d]ischarge means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping." The term "discharge" has also been construed to include any ongoing seepage of a hazardous

substance into soils and groundwater beyond the location of the initial spill or leakage. *State v. Mauthe*, 123 Wis. 2d 288, 366 N.W.2d 871 (1985).

33. From at least May 2001 until the present, Mr. Gribble has possessed or controlled a hazardous substance which has been discharged within the meaning of Wis. Stat. § 292.11(3), namely petroleum which was released into the environment via spills.

34. From at least April 1, 2001 until the present, Mr. Gribble has failed to conduct investigative activities or implement remedial measures to address and remove any harmful effects to human health and the environment caused by the petroleum spill on the Property in violation of Wis. Stat. §§ 292.11(3) and 299.99(1).

35. Wisconsin Stat. § 299.95 authorizes the attorney general to enforce Wis. Stat. ch. 292 by injunction and other appropriate relief in Dane County and provides that "[f]or purposes of this proceeding where ... this chapter or the rule, special order, license, plan approval, permit or certification prohibits in whole or in part any pollution, a violation is considered a public nuisance."

36. Wisconsin Stat. § 292.99(1) provides that any person who violates Wis. Stat. ch. 292 "shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of a continued violation is a separate offense."

37. Wisconsin Stat. § 292.99(2) provides that, in addition to the penalties provided under Wis. Stat. § 292.99(1), the Court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney's fees.

WHEREFORE, Plaintiff State of Wisconsin asks for judgment as follows:

1. The forfeitures provided for in Wis. Stat. § 292.99(1) for violations described herein which occurred during the last ten years;

2. The 26% penalty surcharge provided for in Wis. Stat. § 814.75(18), the 10% environmental surcharge (for violations committed before July 1, 2009) and the 20% environmental surcharge (for violations committed on or after July 1, 2009) provided for in Wis. Stat. § 814.75(12), the \$25.00 court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories 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% jail surcharge pursuant to Wis. Stat. § 814.75(14), and the \$21.50 justice information system surcharge pursuant to Wis. Stat. § 814.75(15);

3. An injunction, pursuant to Wis. Stat. § 299.95, requiring Frank Gribble to conduct a complete site investigation for the Property to determine the extent of the environmental contamination, including, but not limited to, soil borings surrounding the area of contamination, installation of ground water monitoring wells and sampling of potable wells at the site.

4. An injunction, pursuant to Wis. Stat. § 299.95, requiring Frank Gribble to remediate the Property including, but not limited to, removing and properly disposing of the contaminated soil from the Property;

5. The reasonable and necessary expenses of the investigation and prosecution of this case, including attorney fees, under Wis. Stat. § 292.99(2); and

6. Any other relief the Court deems just and appropriate.

Dated this 29th day of September, 2015.

BRAD D. SCHIMEL
Attorney General



STEVEN E. TINKER
Assistant Attorney General
State Bar #1013319

Attorneys for Plaintiff State of Wisconsin

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