

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ____

EAU CLAIRE COUNTY

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

Plaintiff,

Case No. 12-CX-_____
Complex Forfeiture: 30109

v.

WRR ENVIRONMENTAL
SERVICES COMPANY, INC.
5200 Ryder Road
Eau Claire, Wisconsin 54701,

Defendant.

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

COMPLAINT

The State of Wisconsin, by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Cynthia R. Hirsch, brings this complaint against the above-named defendant at the request of the Wisconsin Department of Natural Resources, and alleges as follows:

1. The plaintiff is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin. It has enacted, in Wis. Stat. chs. 285 and 291, laws to protect the public from air pollution and hazardous waste. Its

Department of Natural Resources (DNR) administers regulations and issues permits authorized by these statutes.

2. Defendant WRR Environmental Services Company, Inc. (WRR) operates a solvent recycling and chemical manufacturing facility located at 5200 Ryder Road, Eau Claire, Eau Claire County, Wisconsin.

3. WRR is a licensed hazardous waste treatment and storage facility and has a facility air permit.

4. WRR operates a number of solvent management processes, including fuel blending. Fuel blending is a process that combines various waste streams to generate a hazardous waste fuel for the cement kiln industry. Fuel blending that changes the physical or chemical makeup of a waste is considered treatment of a hazardous waste, and requires a hazardous waste license to treat waste generated from off-site sources.

5. WRR operates pursuant to the conditions of the August 14, 2003, Feasibility and Plan of Operation Report (FPOR) approved by DNR. The FPOR was issued under the authority of Wis. Stat. ch. 291, and requires that all administrative code provisions be followed.

6. WDNR issued WRR air pollution permits 618026530-P01 and 08-SJZ-283 regulating the defendant's air emissions.

7. Wisconsin Admin. Code chs. NR 662, 664, 668, and 670 are promulgated by DNR under the authority set forth in Wis. Stat. § 291.05.

CLAIM ONE

8. Wisconsin Stat. § 285.60(1)(a)1. states that no person may commence construction, reconstruction, replacement, or modification of a stationary source of air pollution unless the person has a construction permit from the DNR.

9. On June 22, 2007, a fire destroyed much of WRR's fuel blending process. DNR staff discussed with WRR the need for an air construction permit application prior to constructing any emission source such as the fuel blending process.

10. In September of 2008 DNR staff observed that WRR had constructed a tent to protect a fuel blending process from the elements. DNR staff learned that drums with solvent residues were emptied into a slurry pump unit that transferred the waste into an agitated tanker trailer in which the light solvent and heavy slurry were agitated. The resulting mixed material was pumped into over-the-road tankers for off site shipment.

11. This process constitutes a fuel blending process. Since WRR received hazardous air pollutant-containing waste from off site, all equipment and processing used for management of the waste is subject to a construction permit, before construction takes place.

12. The fuel blending area was constructed without a construction permit, in violation of Wis. Stat. § 285.60(1)(a)1.

CLAIM TWO

13. Wisconsin Stat. § 285.60(1)(b)1. states that no person may operate a new source or a modified source of air pollution unless the person has an operation permit from the DNR.

14. Paragraphs 8 to 10 are herein incorporated in support of claim two.

15. By operating the above-described fuel blending process, WRR operated a source of air pollution without a permit, in violation of Wis. Stat. § 285.60(1)(b)1.

CLAIM THREE

16. Wisconsin Stat. § 291.25(2)(b) states that no person may operate a hazardous waste facility without an interim or operating license.

17. WRR used a slurry pump to get a viscous material into a stationary robbie roller which already contained light liquid solvent. The robbie roller was being agitated during the process to mix the liquid and solid fractions to generate a pumpable suspension. The robbie roller was an additional step that was added specifically to change the physical state of the waste to make a higher quality, more valuable fuel that was more amenable for recovery and storage. This process did not meet applicable hazardous waste management standards.

18. In operating the slurry pump and robbie roller system, defendant WRR operated without the required hazardous waste license, in violation of Wis. Stat. § 291.25(2)(b).

CLAIM FOUR

19. Wisconsin Admin. Code § NR 664.0193(5)(a)3. states that secondary containment systems must be free of cracks and gaps.

20. On September 23, 2008, DNR staff observed and photographed cracked and pitted concrete at the sump within the secondary containment of the E1 tank farm, and at a sump in the tanker loading area at the WRR facility. Numerous pitted and cracked areas of concern were identified. In addition, spillage on the equipment and walls of the process tent were observed.

21. By operating with cracked and pitted secondary containment systems, WRR operated in violation of Wis. Admin. Code § NR 664.0193(5)(a)3.

CLAIM FIVE

22. Wisconsin Admin. Code § NR 664.0031 states that facilities shall be maintained and operated to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air flow or surface water which could threaten human health or the environment.

23. On October 1, 2008, DNR staff inspected the secondary containment tanks system and noted that it was not free of cracks and gaps. Staff noted that failure to maintain the tank system could lead to environmental or human health hazards, in violation of Wis. Admin. Code § NR 664.0031.

CLAIM SIX

24. Wisconsin Admin. Code § NR 670.032 and conditions 6 and 13 of the defendant's August 14, 2003 FPOR limits storage of containers of hazardous waste to specifically defined storage units and requires hazardous waste storage areas to be clearly marked and delineated from transfer areas. Condition 3 of the FPOR prohibits the defendant from treating, storing, or disposing of hazardous waste in a modified or expanded portion of the facility until the defendant receives written approval from the DNR.

25. Wisconsin Admin. Code § NR 670.032 and the defendant's FPOR were issued under the authority of Wis. Stat. § 291.25.

26. On August 17, 25, and September 2, 2010, DNR staff visited the defendant's facility located at 5200 Ryder Road, Eau Claire, Wisconsin for the purpose of conducting an inspection to determine the facility's compliance with hazardous waste requirements in the Administrative Code and their FPOR.

27. On each inspection date, three trailers holding off-site generated hazardous waste were observed in unlicensed storage areas, in violation of Wis. Admin. Code § NR 670.032 and the defendant's FPOR.

28. Condition 12 of the defendant's FPOR limits the quantity of waste stored onsite in containers at any one time to specific storage units and requires the amount of waste onsite at any given time to be recorded as part of the facility operating record.

29. Records indicating the amount of waste in various storage areas, including the semitrailers referenced in paragraph 26, were not readily available during or after inspection, in violation of the defendant's FPOR.

CLAIM SEVEN

30. Wisconsin Admin. Code § NR 668.50(2) allows an owner or operator to store waste for up to one year.

31. On August 17, 2010, DNR staff observed one 55-gallon container holding tanker cleanout waste in the DOT room which had a start accumulation date of October 17, 2008, exceeding the one year storage limit, in violation of Wis. Admin. Code § NR 668.50(2).

CLAIM EIGHT

32. Wisconsin Admin. Code § NR 662.034(1), promulgated under Wis. Stat. ch. 291 allows a generator to accumulate hazardous waste on site for 90 days or less.

33. On August 17, 2010, DNR staff observed two 55-gallon containers holding lab sample waste in the EII building. These containers did not meet the definition of satellite accumulation as the waste containers were not located near the point of generation, the lab.

34. The waste containers mentioned in the above paragraph were labeled with start accumulation dates of August 24, 2009 and January 7, 2010, in violation of the 90 day accumulation waste requirement per Wis. Admin. Code § NR 662.034(1).

CLAIM NINE

35. Wisconsin Admin. Code § NR 664.0175(2)(e) requires that spilled or leaked waste and accumulated precipitation shall be removed from the sump or collection area in as timely a manner as necessary to prevent overflow of the collection system.

36. On August 17, 2010, DNR staff observed sumps in the waste sheds contained water. DNR staff further observed that sumps in the DOT 6 room were full of residue and standing water was observed in the warehouse container storage area. This condition was in violation of Wis. Admin. Code § NR 664.0175(2)(e).

CLAIM TEN

37. Wisconsin Admin. Code §§ NR 664.0193(2)(a), 664.0193(5)(a), and condition 30 of the FPOR, require the defendant to maintain the integrity of secondary containment systems and external line systems.

38. On August 17, 2010, DNR staff observed significant cracks and multiple holes observed in the containment wall of the E1 south sludge tank farm secondary containment area and the holes were apparently where a previous building had been attached. At least one of the observed holes completely penetrated the wall. This condition was in violation of Wis. Admin. Code §§ NR 664.0193(2)(a), 664.0193(5)(a), and condition 30 of the FPOR.

CLAIM ELEVEN

39. Wisconsin Admin. Code §§ NR 664.0195 requires the defendant to inspect tank systems and identify and document all as of potential leaks.

40. On August 24, 2010, the defendant provided facility inspection records to DNR staff. The cracks and holes penetrating the E1 south sludge tank farm secondary containment wall noted in paragraph 37 were not included in the records, in violation of Wis. Admin. Code §§ NR 664.0195.

CLAIM TWELVE

41. Wisconsin Admin. Code §§ NR 664.0175 and condition 30 of the FPOR require the defendant to provide secondary containment in its warehouse that is sloped, or otherwise designed to drain liquids resulting from leaks, spills, or precipitation.

42. On August 17, 2010, DNR staff observed cracked and broken concrete in the warehouse storage area and drums of hazardous waste stored in standing water. A portion of the warehouse floor area held pooled water indicative of improper sloping. This condition is in violation of Wis. Admin. Code § NR 664.0175(2)(a) and condition 30 of the FPOR.

CLAIM THIRTEEN

43. Wisconsin Admin. Code § NR 664.0015 requires the defendant to document secondary containment deficiencies.

44. On August 24, 2010, the defendant provided facility inspection records to DNR staff. The cracked concrete and improper sloping in the warehouse noted in paragraph 41 were not included, in violation of Wis. Admin. Code § NR 664.0015.

CLAIM FOURTEEN

45. Wisconsin Admin. Code § NR 670.032 authorizes DNR to establish license conditions on a case-by-case basis. Condition 9 of defendant's FPOR as modified and approved on November 5, 2008, sets forth a limit of storage in the EII warehouse.

46. On August 17, 2010, the defendant exceeded its storage limits in the EII warehouse, in violation of Wis. Admin. Code § NR 670.032 and Condition 9 of defendant's FPOR.

CLAIM FIFTEEN

47. Condition I.B.1.b.(3) of the defendant's air pollution permit requires that the defendant maintain and calibrate the boilers to peak performance on an annual basis. Condition I.B.1.c.(3) further states that the defendant must record information on the annual boiler tune-up and emission calibrations and have the records available at the site during inspections by WDNR personnel. This information is to include CO emission rates before and after the calibration as well as itemizing any repair of boilers.

48. On May 3 and 4, 2011, WDNR staff conducted an inspection of the air pollution control activities at the defendant's facility. WDNR staff reviewed the records and determined that the records did not indicate CO emissions prior to tune-up

calibrations for boilers B20 and B21 done in the year 2010, in violation of condition I.B.1.b.(3) of the defendant's air pollution permit.

CLAIM SIXTEEN

49. Condition I.A.7.a.(1) of the defendant's air pollution permit sets forth limits for certain hazardous air contaminants. Condition I.A.7.b.(3) of the defendant's air pollution permit requires emission rates to be quantified in hourly 24-hour and annual rates.

50. On May 3 and 4, 2011, WDNR staff conducted an inspection of the air pollution control activities at the defendant's facility. Review of the defendant's records indicate that the defendant failed to provide the emissions within the one hour or 24-hour basis in order to compare to the applicable hazardous air contaminant emission threshold limits, in violation of condition I.A.7. of defendant's air pollution permit.

CLAIM SEVENTEEN

51. Condition I.A.7.a.(2) of the defendant's air pollution permit prohibits the defendant from emitting more than 4.17 tons of volatile hazardous air pollutants (vHAPs) per month on a 12 month rolling average at their facility.

52. On May 3 and 4, 2011, WDNR staff conducted an inspection of the air pollution control activities at the defendant's facility. Records indicate that the defendant had not calculated these 12 month rolling average emissions for the previous two year period and could not provide records of the 12 month averages demonstrating compliance in violation of condition I.A.7.a.(2) of the defendant's air pollution permit.

CLAIM EIGHTEEN

53. Condition I.ZZZ.2.c.(1) of the defendant's air pollution permit requires the defendant to record the following: (a) when the inspections required in I.ZZZ.2.b.(1) were completed, (b) the concentration measure at all flanges, valves and other connectors and pressure release valves, (c) any leaks detected, (d) what was done to repair the leak, and (e) when the leak was repaired.

54. On May 3 and 4, 2011, WDNR staff conducted an inspection of the air pollution control activities at the defendant's facility. The monitoring reports provided to WDNR did not indicate the concentration measured at all locations, in violation of condition I.ZZZ.2.c.(1) of defendant's air pollution permit.

CLAIM NINETEEN

55. Condition I.A.8. of the defendant's air pollution permit requires compliance with the leak detection methods prescribed under 40 C.F.R., part 63, subpart H or V. The federal regulations require the instrument to be calibrated before use on each day of its use by the specified procedures in method 21 of 40 C.F.R. part 60, Appendix A.

56. On May 3 and 4, 2011, WDNR staff conducted an inspection of the air pollution control activities at the defendant's facility. Calibration logs for the photo ionization detector (PID) show non-calibration for the month of November 2010 through March 2011. The federal regulation specifically state that failure to use a calibrated instrument is not considered a minor departure and is therefore a violation of the leak

detection method. In failing to calibrate for the months of November 2010 through March 2011 the defendant has violated condition I.A.8. of its air pollution permit.

PENALTIES

57. Violations of Wis. Stat. ch. 285 are subject to forfeitures of no less than \$10 and no more than \$25,000 per daily violation pursuant to Wis. Stat. § 285.87(1).

58. Violations of Wis. Stat. ch. 291, and/or any rule promulgated under Wis. Stat. ch. 291 or any plan approval issued under Wis. Stat. ch. 291 are subject to daily forfeitures of no less than \$100 and no more than \$25,000 per violation pursuant to Wis. Stat. § 291.97(1).

WHEREFORE, plaintiff asks the Court to enter judgment as follows:

1. Forfeitures as provided in Wis. Stat. §§ 285.87(1) and 291.97(1);
2. The 26% penalty surcharge pursuant to Wis. Stat. § 814.75(18), the 10% environmental surcharge pursuant to Wis. Stat. § 814.75(12), the 1% jail surcharge pursuant to Wis. Stat. § 814.75(14), the \$25.00 in 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 under Wis. Stat. § 814.75(2), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15); and

3. Any relief the Court deems appropriate.

Dated this 10th day of July 2012.

J.B. VAN HOLLEN
Attorney General

A handwritten signature in cursive script, appearing to read "Cynthia R. Hirsch".

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