FILED
07-25-2024
Clerk of Circuit Court
Outagamie County
2024CX000002

STATE OF WISCONSIN CIRCUIT COURT BRANCH ___ OUTAGAMIE COUNTY

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

Plaintiff,

v.

Case No. 23-CX-_____
Complex Forfeiture: 30109

DONALDSON'S ONE HOUR CLEANERS, INC.
(formerly at 5365 W. Clairemont Drive,
Appleton, Wisconsin 54913-8837);

and

BRETT DONALDSON
561 Chatham Court
Neenah, Wisconsin 54956-4225;

Defendants.

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 Zachary B. Corrigan, brings this action against the above-named Defendants upon referral by the Wisconsin Department of Natural Resources (DNR), pursuant to Wis. Stat. chs. 291 and 292, and alleges as follows:

IF YOU REQUIRE THE ASSISTANCE OF AUXILIARY AIDS OR SERVICES BECAUSE OF A DISABILITY, CALL (920) 236-4848 AND ASK FOR THE WINNEBAGO COUNTY CIRCUIT COURT ADA COORDINATOR.

PARTIES

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

2. The Plaintiff State of Wisconsin has enacted in Wis. Stat. ch. 291, relating to hazardous waste management. DNR administers regulations promulgated pursuant to those statutes to prevent and reduce hazardous waste mismanagement and the risks that mismanagement present to the environment, public health, and safety in the State.

3. The Plaintiff State of Wisconsin has enacted in Wis. Stat. ch. 292, which requires notice and remediation of discharges of hazardous substances into the environment. DNR administers regulations and issues orders authorized by these statutes.

4. Defendant Donaldson's One Hour Cleaners, Inc. (DOHC, Inc.) is a dissolved domestic business corporation whose principal office was at 5365 W. Clairemont Drive, Appleton, in Outagamie County, Wisconsin. Its registered agent is Brett M. Donaldson (Brett Donaldson). Brett Donaldson incorporated DOHC, Inc. on June 5, 2001. In the fiscal year immediately before July 27, 2020, DOHC, Inc. had issued 100 shares of stock. DOHC, Inc. was dissolved effective November 18, 2020.

5. Defendant Brett Donaldson is an adult resident of Winnebago County, Wisconsin, who resides at 561 Chatham Court, in Neenah, Wisconsin.

6. Harvey Donaldson operated a drycleaning business (Donaldson's One Hour Cleaners) at 110 West Cecil Street, in Neenah, Wisconsin (the Neenah Site) since 1972.

7. DOHC, Inc. operated Donaldson's One Hour Cleaners and leased the Neenah Site real estate from no earlier than June 15, 2001, through May 31, 2015.

8. Brett Donaldson signed a lease on behalf of DOHC, Inc. with M & E Rentals, LLC (M & E Rentals), to operate a second drycleaning business at 1835 East Edgewood Drive, Suite 101, Appleton, Wisconsin (the Appleton Site), from 2004 to June of 2020.

9. DOHC, Inc. was the operator of the Appleton Site drycleaning business from at least September 7, 2004, to June of 2020.

10. Upon information and belief, DOHC, Inc. was not in compliance with Wis Stat. ch. 180 prior to dissolving.

11. Brett Donaldson was the sole officer and manager of DOHC, Inc. In this capacity, he personally authorized, supervised, directed, performed, and failed to perform the actions and inactions, and otherwise completely controlled the actions and inactions resulting in all violations alleged against DOHC, Inc. in this Complaint.

12. Brett Donaldson and DOHC, Inc. are judicially estopped from challenging his and DOHC, Inc.'s liability because of filings and statements made in his June 2021 personal bankruptcy case.

13. M & E Rentals owns the Appleton Site.

VIOLATION ONE: FAILURE TO TAKE ACTIONS NECESSARY TO RESTORE THE ENVIRONMENT AT THE APPLETON SITE

14. Wisconsin Stat. § 292.11(3) states that "[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 this state."

15. To "cause" a discharge means to both bring about the discharge and "fail[] to remediate any and all discharge" of hazardous waste generated. *State v. Chrysler Outboard Corp.*, 219 Wis. 2d 130, 169, 580 N.W.2d 203 (1998).

16. 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 [DNR].

17. Wisconsin Stat. § 292.01(3) states that "'[d]ischarge' means, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping."

18. The term "discharge" also includes 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, 299, 366 N.W.2d 871 (1985).

19. Wis. Admin. Code § NR 720.05(2)[1] states that "remedial actions conducted by responsible parties to address soil contamination shall be designed and implemented to restore the contaminated soil to levels that, at a minimum, meet the

[1] Unless otherwise indicated, all citations are to the current code provisions, which were the same at the time of the violations.

residual contaminant levels [(RCL)] or performance standards for the site or facility determined in accordance with this chapter."

20. Wis. Admin. Code § NR 708.11(1)(b) states that DNR "may require the use of a vapor mitigation system, or other engineering control, when vapor concentrations beneath a slab, foundation, or building exceed a Vapor Risk Screening Level [(VRSL)]."

21. On December 14, 2020, EnviroForensics, LLC, notified DNR that a hazardous substance was detected at the Appleton Site.

22. A site assessment by EnviroForensics, LLC, on December 11, 2020 (the 2020 Site Assessment) revealed discharges of volatile organic compounds (VOCs), including, Tetrachloroethylene, Trichloroethylene, trans-1,2-Dichloroethylene, cis-1,2-Dichloroethylene and others at the Appleton Site.

23. A sub-slab vapor sample taken during the 2020 Site Assessment had Tetrachloroethylene concentrations of 440,000 micrograms per cubic meter (µg/m^3).

24. Tetrachloroethylene (also referred to as Tetrachloroethene, Perchloroethylene, Perchloroethene, PERC, or PCE) is a chemical commonly used in drycleaning facilities.

25. Tetrachloroethylene is a hazardous substance.

26. The DNR has set the small commercial sub-slab VRSL for Tetrachloroethylene at 5,800 µg/m^3 and the large commercial and industrial sub-slab VRSL at 18,000 µg/m^3.

27. A sub-slab vapor sample taken during the 2020 Site Assessment had higher Tetrachloroethylene concentrations than the small commercial and large commercial and industrial VRSLs.

28. A soil sample from the 2020 Site Assessment had Tetrachloroethylene concentrations of 0.9 ppm.

29. The DNR has set the RCL for Tetrachloroethylene at 0.0045 ppm for the soil-to-groundwater pathway.

30. A soil sample taken during the 2020 Site Assessment contained Tetrachloroethylene at levels exceeding the RCL standard for the soil-to-groundwater pathway.

31. A sub-slab vapor sample taken during the 2020 Site Assessment had Trichloroethylene concentrations of 78,000 $\mu g/m^3$.

32. Trichloroethylene (also referred to as Trichloroethene or TCE) is a breakdown or "daughter" product of Tetrachloroethylene.

33. Trichloroethylene is a hazardous substance.

34. The DNR has set the small commercial sub-slab VRSL for Trichloroethylene at 290 $\mu g/m^3$ and the large commercial and industrial sub-slab VRSL at 880 $\mu g/m^3$.

35. A sub-slab vapor sample taken during the 2020 Site Assessment had higher Trichloroethylene concentrations than the small commercial and large commercial and industrial sub-slab VRSLs.

36. A sub-slab vapor sample taken during the 2020 Site Assessment had trans-1,2-Dichloroethylene concentrations of 6,900 µg/m^3.

37. Trans-1,2-Dichloroethylene is a toxic pollutant according to Wis. Admin. Code § NR 215.03(1)(o).

38. Trans-1,2-Dichloroethylene is a hazardous substance.

39. The DNR has set the small commercial sub-slab VRSL for trans-1,2-Dichloroethylene at 5,800 µg/m^3.

40. A sub-slab vapor sample taken during the 2020 Site Assessment had a higher concentration of trans-1,2-Dichloroethylene than the small commercial sub-slab VRSL.

41. A sub-slab vapor sample taken during the 2020 Site Assessment had a concentration of cis-1,2-Dichloroethylene of 9,500 µg/m^3.

42. Cis-1,2-Dichloroethylene (also referred to as cis-1,2-Dichloroethene or cis-1,2-DCE) is a breakdown or "daughter" product of Trichloroethylene.

43. Cis-1,2-Dichloroethylene is a hazardous substance.

44. The DNR has set the small commercial sub-slab VRSL for cis-1,2-Dichloroethylene at 5,800 µg/m^3.

45. A sub-slab vapor sample taken during the 2020 Site Assessment had a higher concentration of cis-1,2-Dichloroethylene than the small commercial sub-slab VRSL.

46. The Appleton Site is in a strip mall.

47. DOHC, Inc. was the sole drycleaning operation at Appleton Site at the time of its closure in June of 2020.

48. On December 23, 2020, DNR sent DOHC, Inc. and Brett Donaldson a responsible party letter requiring that they address solvent contamination that they caused at the Appleton Site.

49. At a March 25, 2022 Enforcement Conference (EC), Brett Donaldson said that DOHC, Inc, had one dry cleaning machine utilizing PERC at the Appleton Site.

50. On May 17, 2021, DNR issued a NOV alleging that DOHC, Inc. violated Wis. Stat. § 292.11(3) because "[it] has not moved forward with the required site investigation. The [DNR] believes [it] has failed to take required actions to restore the environment to the extent practicable."

51. On June 10, 2021, Brett Donaldson and his wife Patricia Donaldson filed a petition for personal bankruptcy with the U.S. Bankruptcy Court of the Eastern District of Wisconsin (the Petition).

52. The Petition listed $190,000 debt in non-disputed and non-contingent claims from DNR for fines and cleanup costs and listed DOHC, Inc. as a co-debtor.

53. The Petition failed to indicate that Brett Donaldson was an officer, director, or managing executive and owner of at least 5% of the voting shares of DOHC, Inc.

54. To date, no one has completed an investigation of the Appleton Site to determine the degree and extent of the contamination at the Appleton Site.

55. To date, no one has restored the environment at the Appleton Site to the extent practicable.

56. To date, neither DOHC, Inc. nor Brett Donaldson has done anything to minimize the harmful effects of contamination at the Appleton Site.

57. Pursuant to Wis. Stat. § 292.11, DOHC, Inc. and Brett Donaldson caused the discharge of hazardous substances at the Appleton Site.

58. Pursuant to Wis. Stat. § 292.11, DOHC, Inc. and Brett Donaldson controlled the discharge of hazardous substances at the Appleton Site.

59. Since at least December 23, 2020, Brett Donaldson, and DOHC, Inc. have continuously violated Wis. Stat. § 292.11(3) by failing to take the actions necessary at the Appleton Site to restore the environment to the extent practicable and minimize the harmful effects from the discharge of a hazardous substance.

VIOLATION TWO: UNLICENSED OPERATION OF A HAZARDOUS WASTE STORAGE FACILITY AT THE APPLETON SITE

60. Wisconsin Stat. § 291.25(2)(b), states that no person may "[o]perate a hazardous waste facility without an interim or operating license issued under this section."

61. Wisconsin Stat. § 291.25(1)(a) only exempts from Wis. Stat. § 291.25(2)(b), those facilities that "store hazardous waste at the generation site . . . for a period of less than 90 days . . ." or "10 days . . . if the storage is in connection with the transporting or movement of the hazardous waste."

62. Wisconsin Stat. § 291.01(8) states that a "hazardous waste facility" is "a site or structure for the treatment, storage or disposal of hazardous waste . . . ."

63. Wisconsin Stat. § 291.01(7) states that "hazardous waste" is "any solid waste identified by [DNR] as hazardous under [Wis. Stat. §] 291.05(1), (2) or (4)."

64. Subject to exceptions not applicable in this case, Wis. Admin. Code § NR 661.02(1)(a) (Aug. 2017) states that "[s]olid waste" is "any discarded material . . . ."

65. Wisconsin Admin. Code § NR 661.02(1)(b)1. (Aug. 2017) states that "[d]iscarded material is "any material that is . . . abandoned, as specified in [Wis. Admin. Code § NR 661.02(2) (Aug. 2017)] . . . . "

66. Wis. Admin. Code § NR 661.02(2) (Aug. 2017) states that **"**[m]aterials are solid wastes if they are abandoned by being . . . (a) [d]isposed of . . . [or] (c) [a]ccumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned or incinerated."

67. Pursuant to Wis. Stat. § 291.05(1), (2), and (4), DNR has promulgated a list of hazardous wastes at Wis. Admin. Code subch. D NR 661.

68. Subject to exceptions and exclusions not applicable here, Wis. Admin. Code § NR 661.03(1)(b)4. (Aug. 2017) states that a "solid waste," is a "hazardous waste" if "it is a mixture of solid waste and one or more hazardous wastes listed in subch. D . . . . "

69. Under Wis. Admin. Code subch. D NR 661 (Aug. 2017), § NR 661.31(1) (Aug. 2017) lists the following as hazardous wastes under hazardous category F002:

> The following spent halogenated solvents used in degreasing: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures or blends containing, before use, a total of 10 percent or more, by volume, of one or more of the above halogenated solvents or those listed in

F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

70. Spent drycleaner filters are a hazardous waste because they are a mixture of solid waste and one or more of the hazardous wastes listed under Wis. Admin. Code § NR 661.31(1) (Aug. 2017) under hazardous waste category F002.

71. On January 7, 2013, DNR sent Brett Donaldson, the registered agent for DOHC, Inc., a Responsible Party Letter notifying DOHC, Inc. that, as the owner of the drycleaning business, it was responsible for continuing the investigation and restoration of the environment of the Neenah Site pursuant to Wis. Stat. § 292.11.

72. The Responsible Party Letter required DOHC, Inc. to submit written verification that they hired an environmental consultant to continue investigation and remediation efforts at the Neenah Site.

73. In 2015, DNR prepared a Superfund Preliminary Assessment for the Neenah Site (Preliminary Assessment).

74. The Preliminary Assessment detailed further remediation necessary for DOHC, Inc. to bring the Neenah Site into compliance with Wis. Stat. ch. 292.

75. On June 20, 2017, DNR denied a request to close the investigation and cease remedial action at the Neenah Site (the Closure Denial Letter).

76. The Closure Denial Letter was sent to DOHC, Inc. and cited various outstanding groundwater, soil, and vapor contamination conditions at the Neenah Site that violated Wis. Admin. Code chs. NR 716 and 726.

77. The Closure Denial Letter required DOHC, Inc. to submit a written schedule of plans to address additional investigation and cleanup actions needed at the Neenah Site by August 19, 2017.

78. SCS Engineers submitted a remediation timeline to DNR on September 5, 2017 (the Remediation Timeline).

79. The Remediation Timeline detailed eleven "tasks" that were necessary to submit a site closure report to DNR by November of 2020.

80. The first four tasks involved removing drums of what was believed to be contaminated soil generated from the investigation of the site (investigative waste).

81. On June 16, 2021, M & E Rentals informed DNR that it had previously witnessed several drums stored at the Appleton Site. M & E Rentals sent pictures of the nine 55-gallon drums (the nine drums) that it suspected contained hazardous waste.

82. On September 3, 2021, Brett Donaldson sent a letter to DNR admitting that the pictures taken by M & E Rentals were 55-gallon drums of spent drycleaner filters generated at the Neenah Site. Brett Donaldson stated that the nine drums were taken to the Appleton Site to be "stored and prepared for proper disposal" with a licensed hazardous waste disposal company.

83. Brett Donaldson's September 3, 2021 letter indicated that the nine drums were then being stored in a trailer at the Neenah Site.

84. On October 18, 2021, DNR inspected the nine drums at the Neenah Site (the October 18, 2021 Inspection) and identified them as containing more than

2,200 pounds of spent drycleaning filters based on the conversation with Brett Donaldson.

85. On October 18, 2021, Brett Donaldson admitted that the nine drums were at least partially filled between 2015 and 2020 at the Neenah Site prior to being transported to the Appleton Site.

86. On December 1, 2021, Brett Donaldson made a hazardous waste determination on the nine drums when he signed a waste profile sheet with Enviro-safe Resource Recovery.

87. On February 24, 2022, DNR issued Brett Donaldson and DOHC, Inc. a Notice of Violation (NOV) for, among other things, operating a hazardous waste facility and transporting and disposing of hazardous waste without a license.

88. At a March 15, 2022 Enforcement Conference (EC), Brett Donaldson admitted that the Appleton Site was not a licensed hazardous waste storage facility.

89. On April 10, 2022, Brett Donaldson sent an EC response letter to DNR stating that the nine drums were transported to the Appleton Site in February of 2020 and were transported back to the Neenah Site in June of 2020.

90. Brett Donaldson and DOHC, Inc. violated Wis. Stat. § 291.25(2)(b) from at least March 1, 2020, through June 1, 2020, by operating the Appleton Site as a hazardous waste facility by storing the nine drums with hazardous waste generated at the Neenah Site for more than 90 days without an interim or operating license.

VIOLATION THREE: FAILURE TO MARK EACH CONTAINER

91. Subject to exceptions not applicable to this case, Wis. Admin. Code § NR 668.50(1) (July 2017) states that, "the storage of hazardous wastes restricted from land disposal under this chapter or 42 [U.S.C. §] 6924 is prohibited, unless all of the following conditions are met:

> (b) An owner or operator of a hazardous waste treatment, storage or disposal facility stores the wastes in tanks, containers or containment buildings solely for the purpose of the accumulation of quantities of hazardous waste necessary to facilitate proper recovery, treatment or disposal, and all of the following additional conditions are met:
>
> > 1. Each container is clearly marked to identify its contents and the date each period of accumulation begins.
> >
> > 2. Each tank is clearly marked with a description of its contents, the quantity of each hazardous waste received and the date each period of accumulation begins, or the information for each tank is recorded and maintained in the operating record at that facility. . . .

92. Brett Donaldson and DOHC, Inc. stored the nine drums at the Appleton Site from before March 1, 2020, until at least June 1, 2020.

93. Brett Donaldson and DOHC, Inc. operated the Appleton Site as hazardous waste facility from before March 1, 2020, until on or after June 1, 2020.

94. At the October 18, 2021 Inspection, none of the nine drums had any labels.

95. Brett Donaldson and DOHC, Inc. violated Wis. Admin. Code § NR 668.50(1)(b) (July 2017) nine times for each day from at least March 1, 2020, through June 1, 2020, by storing hazardous waste at the Appleton Site in containers that were not clearly marked to identify their contents and the date each period of accumulation began.

PENALTY PROVISIONS: HAZARDOUS SUBSTANCE SPILLS

96. Wisconsin Stat. § 299.95 authorizes the Attorney General to enforce Wis. Stat. ch. 292 and all rules promulgated and orders issued under that chapter, subject to exceptions not applicable to this case. Under Wis. Stat. § 299.95, the circuit court for Dane County or the county where the violation occurred has jurisdiction to enforce Wis. Stat. ch. 292 and all rules promulgated and orders issued under that chapter "by injunctional and other relief appropriate for enforcement."

97. Wisconsin Stat. § 292.99(1) states that "any person who violates this chapter or any rule promulgated or any plan approval, license or special order issued under this chapter shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of continued violation is a separate offense."

98. Wisconsin Stat. § 292.99(2) states that "[i]n addition to the penalties under subs. (1) and (1m), the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees."

99. Wisconsin Stat. § 292.94 states that DNR "may assess and collect fees from a person who is subject to an . . . enforcement action for a violation of [Wis. Stat. § 292.11] to cover the costs incurred by the [DNR] to review the planning and implementation of any environmental investigation or environmental cleanup that the person is required to conduct."

PENALTY PROVISIONS: HAZARDOUS WASTE

100. Wisconsin Stat. § 299.95 authorizes the Attorney General to enforce Wis. Stat. ch. 291 and all rules promulgated and permits and plan approvals issued under the authority of those chapters. Under Wis. Stat. § 299.95, the circuit court for Dane County or the county where the violation occurred has jurisdiction to enforce Wis. Stat. ch. 291 and all rules promulgated and permits issued under that chapter "by injunctional and other relief appropriate for enforcement."

101. Wisconsin Stat. § 291.97(1) states that "[a]ny person who violates any provision of [Wis. Stat. ch. 291] or any rule promulgated or special order, plan approval or term or condition of a license or variance issued under this chapter shall forfeit not less than $100 nor more than $25,000 for each violation. Each day of a continuing violation is a separate offense."

102. Wisconsin Stat. § 291.97(3) states that "the court may award the department of justice the reasonable and necessary expenses of the investigation and prosecution of the violation, including attorney fees and the costs of performing monitoring."

RELIEF REQUESTED

WHEREFORE, the State asks the Court to enter judgment against the Defendants as follows:

1. Pursuant to Wis. Stat. §§ 292.11(3) and 299.95, an order requiring Defendants to take the actions necessary to restore the Appleton Site to the extent practicable and minimize the harmful effects from the discharge, as supervised by

DNR. All funds for the remediation shall be placed by Defendants in an escrow fund established to finance the costs of investigation and remediation of the Appleton Site.

2. Pursuant to Wis. Stat. § 292.94, an order requiring Defendants to pay any and all fees assessed by DNR to cover the costs incurred by DNR to review the planning and implementation of the environmental investigation and remediation of the Appleton Site.

3. Forfeitures as to each Defendant as provided in Wis. Stat. §§ 291.97(1) and 292.99(1);

4. 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 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), $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);

5. The reasonable and necessary expenses of the investigation and prosecution of this case, including attorney fees, under Wis. Stat. §§ 291.97(3) and 292.99(2); and

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

Dated this 25th day of July, 2024.

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by Zachary B. Corrigan

ZACHARY B. CORRIGAN
Assistant Attorney General
State Bar #1116596

Attorneys for Plaintiff the State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-1677 (Corrigan)
(608) 267-2778 (Fax)
corriganzb@doj.state.wi.us