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Department of Environmental Protection

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO. C -

NEW JERSEY DEPARTMENT	:	
OF ENVIRONMENTAL PROTECTION,	:	
	:	
Plaintiff,	:	<u>CIVIL ACTION</u>
	:	
v.	:	
	:	
AUTO SCRAP INC.,	:	VERIFIED COMPLAINT TO ENFORCE
	:	FINAL AGENCY ORDER
	:	
Defendant.	:	

Plaintiff, State of New Jersey, Department of Environmental Protection ("DEP" or "Department") by way of Verified Complaint against Defendant, Auto Scrap, Inc., alleges as follows:

NATURE OF THE ACTION

1. Defendant Auto Scrap, Inc., an auto recycling facility, receives vehicles at its site and dismantles them to sell auto parts and scrap metal. As described in more detail below,

inspections by Department of Environmental Protection (DEP or Department) officials revealed that Auto Scrap failed to prevent the release of oil and other fluids from vehicles and other scrap materials into the surrounding stormwater or ground surface.

2. Since 2002, DEP has issued orders requiring the company to comply with the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. ("WPCA"), as well as the terms of the company's New Jersey Pollutant Discharge Elimination System ("NJPDDES") Stormwater Discharge General Permit ("Permit"). Auto Scrap has failed to comply with the prior DEP orders, and so DEP ultimately entered a final order demanding compliance and payment of \$55,000 in penalties,
4. This is a civil action brought to enforce the provisions of that final administrative order for violations of the Permit, the WPCA, and the rules promulgated pursuant thereto, N.J.A.C. 7:14A-1 et seq., and for penalties and costs under each statute. Pursuant to the WPCA, the Department is authorized to institute a civil action in Superior Court for injunctive relief and penalties for violations. N.J.S.A. 58:10A-10c and d. Furthermore, the statute authorizes the Court to proceed in a summary manner. N.J.S.A. 58:10A-10d(6)(a). See also R. 4:67-6.

PARTIES

5. Plaintiff DEP is a principal department in the executive branch of the State of New Jersey with offices at 401 East State Street, Trenton, New Jersey 08625. Pursuant to the authority vested in the Department by N.J.S.A. 13:1D-9, and the WPCA the Department is required to conserve the natural resources of the State, promote environmental protection, and prevent pollution of the environment of the State.
6. Auto Scrap, Inc. is a closely held New Jersey corporation that operates an auto recycling facility in Kearny, New Jersey. Auto Scrap receives motor vehicles at its site and dismantles the vehicles to sell the auto parts and scrap metal. See Ex. A, September 10, 2015 Summary Decision of Michael Antoniewicz, ALJ, p. 3.¹

PROPERTY AND PROCEDURAL HISTORY

7. Defendant Auto Scrap, Inc. currently owns the property at issue in this case. The business address of Auto Scrap Inc. is 34-38 Stover Avenue, Kearny, New Jersey ("Kearny Facility").
8. Since 1999, Auto Scrap has been authorized to discharge stormwater from that facility under certain conditions

¹ The undisputed Findings of Material Facts contained in ALJ Antoniewicz's Summary Decision were adopted by DEP Commissioner Bob Martin in his December 1, 2015 Final Decision. See Ex. B.

through a NJPDES permit. See, Ex. B, December 1, 2015 Final Decision, p. 2.

9. Among other conditions set forth in the NJPDES permit, Auto Scrap is required to implement Best Management Practices (BMPs), including paving the facility, in order to prevent exposure of pervious ground to stormwater contaminated with motor oils from Auto Scrap's recycling operations, and to prevent oily materials from flowing towards the street or the Passaic River. Id.
10. From May 1, 2002 through March 21, 2012, the Department conducted numerous inspections of the Kearny facility. Based on its inspections, the Department issued Notices of Violation ("NOVs") to Auto Scrap in May 2002, April 2003, December 2004, and March 2012 for failing to implement BMPs, including failing to pave areas of the facility to prevent the exposure of pollutants to stormwater, in violation of its NJPDES permit. Id. at p. 3.
11. The Department subsequently issued an Administrative Order and Notice of Civil Administrative Penalty Assessment ("AONOCAPA") to Auto Scrap on April 17, 2012 for permit violations observed during the Department's February 17, 2011 and March 21, 2012 inspections and assessing \$55,000 in civil administrative penalties. Id. See also, Ex. C, April 17, 2012 AONOCAPA.

12. Specifically, during the February 2011 inspection, the Department observed that Auto Scrap had violated Part IV, Section E.2.d.v., and Part IV, Section E.2.k.i and ii of the Permit when it:

- a. Failed to implement BMPs to drain fluids from vehicles and other scrap materials in a manner that prevents exposure of such fluids to stormwater or the ground surface; and
- b. Failed to place engine blocks on a concrete pad that drains to an oil/water separator.

13. Based on its March 21, 2012 inspection, the Department found that the two above-noted violations continued to exist, and that Auto Scrap had additionally failed to provide a containment system under the hydraulic systems of stationary scrap processing equipment that drain to an oil/water separator, in violation of Part IV, Section E.2.2.iii of the permit. Id.

14. The Department assessed Auto Scrap the following civil administrative penalties, totaling \$55,000:

- a. A \$20,000 penalty for failing to implement BMPs to drain fluids from vehicles and other scrap materials in a manner that prevents exposure of such fluids to stormwater or the ground surface;
- b. A \$20,000 penalty for failing to place engine blocks on a concrete pad that drains to an oil/water separator; and

c. A \$15,000 penalty for failing to provide a containment system under the hydraulic systems of stationary scrap processing equipment that drain to an oil/water separator. Id.

15. The AONOCAPA also ordered Auto Scrap to immediately comply with the WPCA and the conditions of its NJPDES Permit.

16. Auto Scrap requested a contested case hearing on the AONOCAPA on May 18, 2012, and the Department granted the hearing request on July 17, 2012, transferring the case to the Office of Administrative Law ("OAL").

17. To gain compliance, Auto Scrap developed a plan in June 2013 to pave the facility. The Department and Auto Scrap agreed to a completion deadline of April 2014. See, Ex. B., p. 4.

18. However, upon inspections of the facility in April, May, June, and October 2014, the Department found that, although some of the agreed upon areas had been paved, the paving remained incomplete. As a result, the Department subsequently issued Auto Scrap another Notice of Violation for failure to comply with Permit conditions. Id.

19. On July 24, 2015, the Department filed a motion for summary decision in the OAL; Auto Scrap did not submit any opposition. Id.

20. The Administrative Law Judge ("ALJ") issued an Initial Decision on September 10, 2015, granting the Department's

motion, and finding Auto Scrap liable for the violations cited in the AONOCAPA. The ALJ also affirmed the \$55,000 penalty. See, Ex. A.

21. On September 22, 2015, the Department filed minor exceptions to correct certain dates referenced in the Initial Decision but otherwise concurred therewith. Auto Scrap did not respond or file any exceptions. See, Ex. B, p. 4.
22. On December 1, 2015, DEP Commissioner Bob Martin entered his Final Decision, adopting the ALJ's Initial Decision affirming the Department's determination that Auto Scrap violated its NJPDES permit, the Water Pollution Control Act, and the Department's rules, and affirming the \$55,000 penalty. Id. at p. 8.
23. The Commissioner ordered Auto Scrap to pay the civil administrative penalty of \$55,000 within 20 days from the date of the Final Decision, or by December 21, 2015. Id.
24. Pursuant to N.J.S.A. 2A:58-10 and R. 4:101 et seq., the Commissioner's final administrative order was entered as a judgment against Auto Scrap, Inc. on the Judgement and Order Docket of the Clerk of the Superior Court. See, Ex. D. December 28, 2015, Correspondence from Helen A. Owens.
25. Auto Scrap did not appeal the Commissioner's final administrative order.

26. On September 9, 2016, DEP Environmental Specialist 3, Maria Coppola, conducted a Compliance Evaluation and Assistance Inspection ("Inspection") of the Auto Scrap facility and subsequently issued an NOV to Auto Scrap for continued violations of its NJPDES permit, the WPCA, and the Department's rules; specifically, its failure to complete the construction of a concrete pad that drains to an oil/water separator, and its failure to prevent the exposure of oil and grease to stormwater. See, Ex. E. Maria Coppola Certification at ¶¶ 9-10.
27. Coppola conducted additional inspections of the Auto Scrap facility on May 24, 2018, and March 20, 2019. Coppola issued NOVs to Auto Scrap after each inspection for Auto Scrap's continued failure to comply with the requirements of its NJPDES permit, the WPCA, and the Department's rules. Auto Scrap again failed to complete the construction of a concrete pad and prevent the exposure of oil and grease to stormwater. Id. at ¶¶ 11-15.
28. To date, Auto Scrap has failed to comply with the requirements of its NJPDES permit, the WPCA, and the Department's rules as ordered in the 2012 AONOCAPA and 2015 Final Administrative Order; it has failed to complete the construction of a concrete pad that connects to an oil water separator, and failed to prevent the exposure of oil and grease to

stormwater. In addition, Auto Scrap, Inc. has not paid the outstanding penalty assessment of \$55,000 for the violations set forth in the 2012 AONOCAPA and the Final Administrative Order.

FIRST COUNT

FAILURE TO COMPLY WITH A FINAL ADMINISTRATIVE ORDER AND THE
WATER POLLUTION CONTROL ACT, N.J.S.A. 58:10A-1 ET SEQ.

29. Plaintiff incorporates paragraphs 1 - 28 of this Verified Complaint as if fully set forth, herein.
30. Pursuant to N.J.S.A. 13:1D-9 and WPCA, N.J.S.A. 58:10A-1 et seq., the Department is required to conserve the natural resources of the State, promote environmental protection, and prevent pollution of the environment of the State.
31. The Department, in furtherance of this requirement, issued Auto Scrap a NJPDES Permit.
32. Auto Scrap violated its Permit and the WPCA when it failed to prevent the exposure of fluids from vehicles and other scrap materials to stormwater or ground surface, and failed to place used engine blocks on a concrete pad that drains to an oil/water separator.
33. To date, Auto Scrap has failed to comply with the requirements of its NJPDES permit, the WPCA, and the Department's rules as ordered in the 2012 AONOCAPA and 2015 Final Administrative Order; it has failed to complete the construction of a

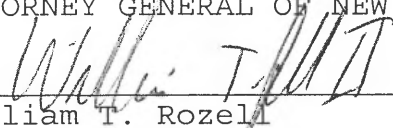
concrete pad that connects to an oil water separator, and failed to prevent the exposure of oil and grease to stormwater.

34. Additionally, to date, Auto Scrap has not complied with the requirement of the Final Order to pay the \$55,000 civil administrative penalty.

WHEREFORE, Plaintiff, Department of Environmental Protection, requests an order:

- a. Finding Defendant in violation of the WPCA;
- b. Requiring Defendant to comply with the 2015 Final Decision;
- c. Requiring Defendant, within 30 days, to submit payment of penalties of \$55,000 as provided for in the 2015 Final Administrative Order, with interest calculated pursuant to R. 4:42-11(a);
- d. Requiring Defendant to pay penalties pursuant to N.J.S.A. 58:10A-10.e. for Defendant's continuing failure to comply with the requirements set forth in the NJPDES permit and 2015 Final Decision;
- e. Requiring Defendant to pay all costs associated with this action; and
- f. Such other relief as the court deems just and proper.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY



William T. Rozell
Deputy Attorney General

DATED: 10/24/19

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that William T. Rozell, Deputy Attorney General, is hereby designated as trial counsel for plaintiff DEP in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding known to plaintiff DEP at this time, nor is any non-party known to plaintiff DEP at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party later becomes known to plaintiff DEP, an amended certification shall be filed and served on all other parties and with this Court in accordance with R. 4:5-1(b)(2).

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY




William T. Rozell
Deputy Attorney General

DATED: 10/24/19

CERTIFICATION OF COMPLIANCE WITH RULE 1:38-7(C)

Undersigned counsel further certifies that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1.38-7(b).

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DATED: 10/24/19