

IN THE DISTRICT COURT OF PIERCE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
THADDEUS D. FINERAN,) **Case No. _____**
INTERIM DIRECTOR, NEBRASKA)
DEPARTMENT OF)
ENVIRONMENT AND ENERGY,)
)
Plaintiff,)
)
v.)
)
DICKIE VENTURES, LLC and)
POWER SPORTS NATION, LLC,)
)
Defendants.

COMPLAINT

COMES NOW Thaddeus D. Fineran, Interim Director of the Nebraska Department of Environment and Energy (“NDEE” or “Department”), who institutes this action through Michael T. Hilgers, Attorney General, on behalf of the State of Nebraska as plaintiff and alleges as follows:

PARTIES

1. NDEE is the agency of the State of Nebraska charged with exercising exclusive supervision, administration and enforcement of the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et. seq.*, the Integrated Solid Waste Management Act (“ISWMA”), Neb. Rev. Stat. § 13-2001 *et seq.*, and the regulations promulgated thereunder.
2. Power Sports Nation, LLC (“PSN”) is an inactive domestic limited liability company that, at all times relevant, conducted

business in Pierce County, Nebraska. Upon information and belief, PSN is still in business.

3. Dickie Ventures, LLC (“Dickie Ventures”) is an active domestic limited liability company that owns the property on which PSN operates.

4. Upon information and belief, both PSN and Dickie Ventures are owned and/or controlled by Todd Dickie.

JURISDICTION AND VENUE

5. The District Court has subject matter jurisdiction over this matter pursuant to Neb. Rev. Stat. § 24-302.

6. Venue is proper in Pierce County pursuant to Neb. Rev. Stat. § 25-403.01 as the actions at issue in this proceeding arose in Pierce County.

FACTUAL ALLEGATIONS

7. PSN operates a salvage and resale business that salvages all-terrain vehicles (“ATVs”) and utility terrain vehicles (“UTVs”), resells parts that have value, and scraps the remainder of the vehicles.

8. Dickie Ventures owns the property on which PSN operates its salvage and resale business.

9. PSN, in the course of its business at its Pierce County location, stored scrapped ATV and UTV tires on its property for extended periods of time in a large tire pile.

10. There were approximately 10,000 tires in the pile on June 16, 2020.

11. Upon information and belief, the tires had been stored for more than a year and only approximately 20% had been reused or recycled.

12. Neither PSN nor Dickie Ventures had a permit to store scrap tires, as required by state law, and did not store the tires in a manner that complied with state law.

13. PSN, in the course of its business at its Pierce County location, burned cardboard in a metal structure on the property. PSN did not have a permit to burn cardboard in a metal structure on site, as required by state law, and did not burn the material in a manner that complied with state law.

14. On June 16, 2020, employees of PSN were burning waste cardboard in a metal structure located near the scrap tire pile. The tire pile caught fire, sending smoke and ash into the air and onto the ground.

15. Chief Gary Schuett of the Hadar Fire Department acted as the incident commander in response to the tire fire. He assessed that the radiative heat from burning cardboard in the metal structure ignited the nearby tire pile.

16. On June 16, 2020, two NDEE employees responded to a report of the tire fire and spoke with Mr. Todd Dickie, the registered agent and self-identified owner of PSN. Mr. Dickie estimated the pile that had caught fire contained approximately 10,000 tires.

17. Neither PSN nor Dickie Ventures had an open burn permit for the fires on June 16, 2020.

18. On June 30, 2020, an NDEE inspector performed an inspection of the PSN facility. The NDEE inspector met with Mr. Ben Sukup, General Manager of PSN, and Mr. Dickie. The NDEE inspector was told that PSN receives approximately thirty vehicles per week, which generates approximately 120 ATV/UTV tires, and only an estimated 20 percent of the tires are resold. The NDEE inspector observed the tire pile, which PSN had covered in sand to help extinguish the fire.

19. Remnants of the tire fire remained on site until approximately April 27, 2021.

CAUSES OF ACTION

FIRST CAUSE OF ACTION – POLLUTION OF THE AIR AND LAND OF THE STATE

20. The allegations contained in paragraphs 1-19 above are incorporated herein by reference.

21. Under NEPA, it is unlawful for any person to “cause pollution of any air, waters, land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state.” Neb. Rev. Stat. § 81-1506(1)(a).

22. Waste tires, smoke, ash, and other remnants of a tire fire are all pollutants for the purpose of Neb. Rev. Stat. § 81-1506.

23. PSN stored waste tires in a pile on its property without a permit, which constitutes causing pollution of land of the state or placing wastes in a location where they are likely to cause pollution of land of the state.

24. PSN burned cardboard without a permit and was responsible for the tire pile catching fire, both of which constitute pollution of the air of the state.

25. The remnants of the tire fire remained on the property until approximately April 27, 2021, constituting pollution of land of the state.

26. Dickie Ventures allowed the tires to be stored on the property in violation of state law without a permit.

27. PSN and Dickie Ventures violated the Nebraska Environmental Protection Act by polluting land and air of the state.

28. Under Neb. Rev. Stat. § 81-1508.02, each violation of Neb. Rev. Stat. § 81-1506 “shall subject a person to a civil penalty of no

more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.”

**SECOND CAUSE OF ACTION – ILLEGAL DISPOSAL OF
WASTE TIRES WITHOUT A PERMIT**

29. The allegations contained in paragraphs 1-19 above are hereby incorporated by reference.

30. Pursuant to ISWMA, “no person shall dump or deposit any solid waste at any place other than a landfill approved by the director unless the department has granted a permit which allows the dumping or depositing of solid waste at any other facility.” Neb. Rev. Stat. § 13-2033(1).

31. Under Neb. Rev. Stat. § 13-2033(3), “Storage of passenger tire equivalents of waste tires for more than one year without reuse, recycling, or shipment out of state is presumed to constitute disposal of solid waste.”

32. Neb. Rev. Stat. § 13-2033(3) allows for the storage of five hundred or fewer passenger tire equivalents, so long as they are not accumulated speculatively. Tires are not accumulated speculatively “if, in a calendar year beginning on January 1, the amount of tire material that is reused or recycled by weight equals at least seventy-five percent of such material at the beginning of the year.”

33. 132 Neb. Admin. Code §14-001 states that, “Land disposal of recyclable waste tires in any form is prohibited.”

34. PSN accumulated and stored significantly more than five hundred passenger tire equivalents on its property prior to the tire fire on June 16, 2020, in violation of Neb. Rev. Stat. § 13-2033.

35. The storage of waste tires was for longer than one year.

36. PSN, by its own admission, reused or recycled approximately 20% of its tires, far below the 75% required by Neb. Rev. Stat. § 13-2033 and therefore was speculatively accumulating solid waste in violation of state law.

37. Neither PSN nor Dickie Ventures had a permit to store waste tires.

38. Dickie Ventures allowed the tires to be stored on the property in violation in state law.

39. PSN and Dickie Ventures violated the Integrated Solid Waste Management Act by illegally storing tires in amounts and for lengths of time prohibited by state law.

40. Neb. Rev. Stat. § 81-1508.02 states that violations of ISWMA are unlawful and “subject a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.”

THIRD CAUSE OF ACTION – ILLEGAL BURNING OF MATERIAL OR ALLOWING OPEN FIRES

41. The allegations contained in paragraphs 1-19 above are hereby incorporated by reference.

42. 120 Neb. Admin. Code § 15-002 states that, “No person will cause or allow any open fires” unless an exception applies.

43. PRN burned cardboard without a permit in a metal structure, constituting an illegal open fire.

44. The burning of the cardboard caused the tire pile to ignite.

45. The tire fire constituted an illegal open fire.

46. No exception in 120 Neb. Admin. Code § 15-002 applied to these fires.

47. PSN violated NEPA and NDEE regulations by burning cardboard and allowing a tire pile to burn without a permit or without falling under a statutory exception.

48. Neb. Rev. Stat. § 81-1508.02 states that violations of NDEE regulations are unlawful and “subject a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.”

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests this Court to enter judgment on this Complaint in its favor and grant the following relief:

- A. Declare that PSN and Dickie Ventures violated the Nebraska Environmental Protection Act, the Integrated Solid Waste Management Act, and the regulations promulgated thereto;
- B. Enter the statutory maximum civil penalty against PSN and Dickie Ventures, as provided in Neb. Rev. Stat. § 81-1508.02;
- C. Tax all costs herein to PSN and Dickie Ventures; and
- D. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 25th day of April, 2024.

STATE OF NEBRASKA, ex rel.,
THADDEUS D. FINERAN,
Interim Director of the
NEBRASKA DEPARTMENT
OF ENVIRONMENT AND
ENERGY, Plaintiff

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