

Judge Hits Illegal Defendants With Largest-Ever Environmental Civil Fine in Michigan

A Macomb County Circuit Court judge has imposed over \$36 million in civil fines, likely the largest environmental civil fine ever imposed in Michigan, against several persons and companies who were convicted of illegal dumping and the unlicensed operation of waste disposal facilities.

Several persons and companies (the Defendants) were convicted in May 2001 of illegally dumping construction wastes including insulation, broken concrete, roofing materials, used mattresses, and other trash at numerous sites in Michigan over the course of twelve years, in violation of several provisions of NREPA. In addition to the waste, hazardous substances in excess of Part 201 limits were found at all of the sites. The court's order instructed the parties to clean up the sites, "directed the parties to establish a timetable for conducting the appropriate response activities and remedial actions at the sites, and reserved imposition of the mandatory fines permitted by NREPA." The court later entered separate orders establishing timetables for response activities and remedial actions at the sites.

Rejection of cleanup proposals. The court had given the Defendants an opportunity to submit plans to clean up the sites, but explained that some Defendants had failed to submit any plans, and all proposals actually submitted were "gravely inadequate." One proposal was to "essentially bury the problem" by covering the sites and building houses there, at a loss of \$420,000 per home. The court scoffed at this idea, observing that it was "hardly self-financing." Another proposal involved the removal of 211,851 cubic yards of waste from one of the dumping

sites. However, this proposal overlooked the facts that at least 15,000 more cubic yards of waste existed at the site and hazardous substances needed to be removed from soil at the site.

Other issues. The court rejected various legal issues that were raised by the Defendants. One Defendant claimed that he had been denied access to a site that was being cleaned up by the Michigan Department of Environmental Quality (MDEQ.) Because the Defendant had not submitted any remediation plans to the court, however, the court deemed his contention “not relevant.” Other Defendants noted that in remediating contamination at their site, MDEQ had demolished a building on the property; the Defendants claimed that the value of this building should be offset against any fines imposed. The court noted that “solid waste... ‘had been packed so tightly inside the building that windows broke and walls collapsed from the pressure.’ ...Accordingly, the building has no value to offset.” Another argument was that solid waste at some sites was “accumulated as an improvement to farmland,” which the court deemed “sufficiently absurd as to require no further comment.” Other arguments were summarily dismissed by the court because they were not properly preserved for appeal.

The court also repeatedly indicated that the Defendants’ long history of intentional violations worked strongly in their disfavor: “[i]n light of his past actions, his credibility is, charitably speaking, less than sterling;” “the figures are clearly suspect;” “[his] past practices at the sites present sufficient justification to disregard his request to continue work at the sites.”

Remedies. The court instituted the following remedies:

- MDEQ was authorized to conduct response activities at each site;
- The Defendants would be “jointly and severally liable for all costs to be or actually incurred for the response activities and remedial actions at each site” performed by MDEQ;

- Any proceeds from the sale of the sites would be held in escrow and used first to reimburse MDEQ's response costs, then to offset fines levied against the Defendants;
- Civil fines were imposed in the amount of \$250,000 for each violation by each dumper at each site, which would total over \$36 million; and
- An earlier court order against further dumping was made permanent, and expanded to preclude the Defendants from interfering with MDEQ's activities at the sites.

***Granholm v. Stramaglia*, No. 1996-5468-CZ (Macomb Co. Cir. Ct. Mich. Apr. 9, 2002)**

H. Kirk Meadows

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