

IN THE IOWA DISTRICT COURT FOR JASPER COUNTY

STATE OF IOWA, ex rel., IOWA)
 DEPARTMENT OF NATURAL)
 RESOURCES,)
)
 Plaintiff,)
)
 vs.)
)
 GLOBAL FIBERGLASS SOLUTIONS,)
 INC., GFS HOLDING GROUP, LLC, GFS)
 TRUST HOLDINGS, LLC, GLOBAL)
 FIBERGLASS SOLUTIONS OF TEXAS,)
 LLC, GFSI-MHE MANUFACTURING OF)
 TEXAS, LLC, DONALD LILLY, and)
 RONALD ALBRECHT,)
)
 Defendant.)
)
)
)
)

NO. EQCV123876

PETITION IN EQUITY

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources and for its claim against Defendants, states as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendants for violations of Iowa’s solid waste laws. Defendants illegally disposed of solid waste by speculatively accumulating decommissioned wind turbine blades at several locations in Iowa beginning as early as November 2017, and made no effort to recycle or otherwise legally dispose of the blades.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America.

3. The Iowa Department of Natural Resources (“IDNR”) is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant Global Fiberglass Solutions, Inc. (“GFS”), is a Washington corporation previously engaged in the business of recycling and solid waste disposal in Iowa. GFS’ principal office was previously located at 21222 30th Drive SE, Suite 130, Building C, Bothell, Washington 98021, and 15833 Mill Creek Blvd., Mill Creek, Washington 98082-0019, but is now listed at 11335 NE 122nd Way, Suite 105, Kirkland, Washington 98034.

5. Defendant Global Fiberglass Solutions of Texas, LLC (“GFS Texas”), is a Texas limited liability company previously engaged in the business of recycling and solid waste disposal in Iowa. GFS Texas’ principal office is located at 13 Industrial Drive, Sweetwater, Texas 79556, and its registered address on file with the Texas Secretary of State’s Office is 11335 NE 122nd Way, Suite 105, Kirkland, Washington 98034.

6. Defendant GFSI-MHE Manufacturing of Texas, LLC (“GFSI-MHE”), is a Texas limited liability company previously engaged in the business of recycling and solid waste disposal in Iowa. GFSI-MHE’s principal office is located at 16212 Bothell Everett HWY, Suite F362, Mill Creek, Washington 98012.

7. Defendant GFS Trust Holdings, LLC (“GFS Trust Holdings”), is a Delaware limited liability company previously engaged in the business of recycling and solid waste disposal in Iowa and is a manager for GFSI-MHE.

8. Defendant GFS Holding Group, LLC (“GFS Holding Group”), is a Delaware limited liability company previously engaged in the business of recycling and solid waste disposal in Iowa and is a manager for GFSI-MHE and registered agent for GFS Texas.

9. Defendant Donald Lilly is a resident of Snohomish County, Washington. Lilly is

the Chief Executive Officer of GFS and GFS Texas, and is a manager for GFS Trust Holdings, GFS Holding Group and GFSI-MHE.

10. Defendant Donald Lilly was at all times relevant to this action a responsible corporate officer of GFS, GFS Texas, GFS Trust Holdings, GFS Holding Group, and GFSI-MHE.

11. Defendant Ronald Albrecht is a resident of King County, Washington. Albrecht is the Chief Operating Officer of GFS and GFS Texas, and is a manager for GFS Trust Holdings, GFS Holding Group and GFSI-MHE.

12. Defendant Ronald Albrecht was at all times relevant to this action a responsible corporate officer of GFS, GFS Texas, GFS Trust Holdings, GFS Holding Group, and GFSI-MHE.

DEFINITIONS

13. “Open dump” means “any exposed accumulation of solid waste at a site other than a sanitary disposal project operating under a permit from the department.” 567 Iowa Admin. Code 100.2.

14. “Open dumping” means “the depositing of solid wastes on the surface of the ground or into a body or stream of water.” 567 Iowa Admin. Code 100.2.

15. “Recycling facility” means “any facility, business, or operation that has the stated primary purpose of facilitating the recycling of materials that would otherwise be solid waste.” Iowa Code § 455D.4A(1).

16. “Sanitary disposal project” means “all facilities and appurtenances including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate

the final disposition of solid waste without creating a significant hazard to the public health or safety, and which are approved by the executive director.” Iowa Code § 455B.301(27).

17. “Solid waste” means “garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.” Iowa Code § 455B.301(29).

18. “Solid waste” does not include “[m]aterial that is legitimately recycled pursuant to [Iowa Code] section 455D.4A.” Iowa Code § 455B.301(29)(f).

JURISDICTION

Solid Waste Regulations

19. The Environmental Protection Commission (“EPC”) of the IDNR is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relating to the treatment and disposition of solid waste. Iowa Code § 455B.304(1). The EPC’s rules implementing these provisions are contained in 567 Iowa Admin. Code 100-123.

20. Iowa law prohibits the dumping or depositing or permitting dumping or depositing of solid waste at any place other than a sanitary disposal project approved by the IDNR. Iowa Code § 455B.307(1) and 567 Iowa Admin. Code 100.4.

21. To be excluded from the solid waste provisions of Iowa Code chapter 455B, Division IV, part I (“Solid Waste”), recycling of materials must be legitimate. Iowa Code § 455D.4A(2). A material that is not legitimately recycled is discarded material and is a solid waste. *Id.*

22. In determining if recycling is legitimate, a recycling facility must establish all of the following: a) the material is potentially recyclable and has a feasible means of being recycled into a valuable product; b) the material is being managed as a valuable commodity while under

the facility's control; and c) the material is not being accumulated speculatively pursuant to section 455D.4A(7). *Id.* at § 455D.4A(2)(a)-(c).

23. The criteria in Iowa Code § 455D.4A(2) are intended to mitigate the risk posed by facilities that accumulate materials speculatively prior to recycling by preventing materials that are not otherwise regulated as "solid waste", from being stored indefinitely and potentially causing a public health nuisance or adverse environmental impact. Iowa Code § 455D.4A(4).

24. In response to enforcement action initiated by the IDNR for alleged violations of this section, the burden of proof falls on the recycling facility owner or operator to establish that materials are being legitimately recycled. *Id.*

25. To establish that a material is potentially recyclable and has a feasible means of being recycled into a valuable product, a recycling facility owner or operator shall maintain with an end user at least one purchase contract, a letter of understanding, or other formal agreement, and such documentation must be provided to the IDNR upon request. Iowa Code § 455D.4A(5). If the material is going to be recycled in an unusual manner, the owner or operator may use technical specifications from the end user or other documentation to prove recycling the material in such manner will result in a valuable product. *Id.*

26. Recycling facility owners or operators shall ensure that stockpiled material is not speculatively accumulated. Iowa Code § 455D.4A(6).

27. To establish that a material is not being accumulated speculatively, the recycling facility owner or operator must document that, during a given calendar year, the amount of material that is recycled, or transferred to a different site for recycling, equals at least seventy-five percent by weight or volume of the amount of material accumulated at the beginning of the period. Iowa Code § 455D.4A(7). Recycling facility owners and operators must label material

in a manner that indicates the first date it began to be accumulated, or if that is not feasible, the accumulation period must be documented through an inventory log or other appropriate method.

Id.

28. The IDNR director may issue any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455D or any rule adopted or permit or order issued pursuant thereto, and any order issued to enforce section 455D.4A may include a requirement to remove and properly dispose of materials being accumulated speculatively from a property and impose costs and penalties. Iowa Code § 455D.23.

29. A person who violates any provision of Iowa Code section 455D.4A, or any rule, permit, or order issued pursuant thereto shall be subject to a civil penalty which shall be established, assessed, and collected in the same manner as provided in Iowa Code section 455B.109. Iowa Code § 455D.22.

30. Iowa Code section 455B.109(2) provides that any schedule for civil penalties established by the EPC, including any maximum civil penalty, does not govern enforcement matters referred to the Attorney General's Office.

31. Any person who violates any provision of Iowa Code section 455B, Division IV, Part 1, or any order, permit, or rule issued thereunder shall be subject to a civil penalty not to exceed Five Thousand and no/100 Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.307(3).

32. The Attorney General, at the request of the IDNR, may institute any legal proceeding necessary in obtaining compliance with an order of the director or prosecuting any person for a violation of Iowa Code section 455B, Division IV, Part 1, or any order or rule issued under that part. Iowa Code § 455B.307(2).

FACTS

33. GFS, GFS Texas, GFSI-MHE, GFS Trust Holdings, and GFS Holding Group (hereafter collectively referred to as “GFS”), advertise that they are fiberglass waste recycling companies and offer their services to different industries including wind energy, aerospace, maritime and manufacturing sectors.

34. General Electric (“GE”) provides parts and equipment for wind turbines in Iowa, including wind turbine blades, and MidAmerican Energy Company (“Company”) owns and operates wind turbines in Iowa. GE and MidAmerican each separately contracted with GFS in 2017 to perform the service of recycling decommissioned wind turbine blades from multiple wind turbine installations each company either owns or is involved with in Iowa.

35. GFS removed approximately 1,300 wind turbine blades pursuant to agreements with GE and MidAmerican and deposited the blades at three locations in Iowa (Newton, Atlantic, and Ellsworth), beginning as early as 2017.

Newton Site

36. The Newton site is located on three parcels at 927 North 19 Avenue East, Newton, Iowa (“Newton site”), in what used to be the Maytag appliance production facility. The property is now owned by Phoenix Newton Industrial Investors, LLC (“Phoenix”).

37. The blades were located in former parking lots at the Newton site.

38. There were approximately 868 blades stored at the Newton site.

39. GFS deposited the first wind turbine blade at the Newton site on or about November 10, 2017.

Ellsworth (Formerly Fort Dodge) Site

40. GFS deposited the first wind turbine blade at 2315 235th Street, Fort Dodge, Iowa

(“Fort Dodge site”), on or about June 7, 2018.

41. On or about June 15, 2019, GFS deposited the last wind turbine blade at the Fort Dodge site.

42. In September 2020, GFS moved the wind turbine blades at the Fort Dodge site to 3082 330th Street, Ellsworth, Iowa (“Ellsworth site”).

43. There were approximately 400 blades stored at the Ellsworth site. The blades were located in a field, directly on the ground.

Atlantic Site

44. GFS deposited the first wind turbine blades at 607 Sunnyside Lane, Atlantic, Iowa (“Atlantic site”), on or about June 2020.

45. There were approximately 22 blades located at the Atlantic site. The blades were located in a field, directly on the ground.

IDNR Investigation

46. On August 28, 2018, IDNR received its first complaint about the Newton site. IDNR visited the Newton site on August 31, 2018, and again on December 4, 2018. During the December visit, IDNR staff raised a concern about speculative accumulation with GFS.

47. IDNR visited the Fort Dodge site on August 13, 2019, and took photographs.

48. On December 10, 2019, IDNR sent GFS and the Fort Dodge site property owner a Letter of Inquiry requesting information about their plans for processing the wind turbine blades and whether the blades were being legitimately recycled pursuant to Iowa Code section 455D.4A. The letter requested responses by January 30, 2020.

49. On January 16, 2020, IDNR received a response from the Fort Dodge site property owner indicating the owner was trying to get the blades removed but was having

difficulty in contacting GFS or getting a response in the event contact had been made.

50. On January 17, 2020, IDNR received a response from GFS. GFS' response included some answers to IDNR's specific questions in its December 10, 2019 letter, and provided some documents that purported to provide support for some of these answers. One of GFS' responses to IDNR's request for an example of a purchase contract for an end user of the recycled product was a contract between a redacted entity and GFSI-MHE and listed "managers" of GFSI-MHE as GFS Holding Group, GFS Trust Holdings, Donald Lilly and Ronald Albrecht.

51. IDNR staff visited the Fort Dodge site on February 7, 2020, to conduct an inspection. IDNR spoke with the property owner who stated that GFS had not been making rent payments and had not removed the blades by the deadline specified in the contract between GFS and the property owner.

52. On March 3, 2020, IDNR issued a Notice of Violation ("NOV") to GFS and the Fort Dodge site property owner. The NOV to GFS stated that the IDNR had determined the wind turbine blades stored at both the Newton site and Fort Dodge site were not being legitimately recycled pursuant to Iowa Code section 455D.4A, and consequently, the blades had been deemed discarded material subject to Iowa's solid waste laws.

53. The NOV further stated that dumping solid waste anywhere other than a sanitary disposal project approved by the IDNR is prohibited unless a permit is obtained from the IDNR. The NOV noted that neither the Newton site nor the Fort Dodge site were a permitted sanitary disposal project, and GFS had not received a permit from the IDNR for dumping the blades at either site. The NOV concluded by notifying GFS that the matter was being referred to IDNR's Legal Services Bureau for further enforcement action.

54. On September 2, 2020, IDNR issued a NOV to Phoenix, as the property owner of

the Newton site, for the illegal disposal of the wind turbine blades.

55. As previously noted, in September 2020, the wind turbine blades at the Fort Dodge site were removed and transferred to the Ellsworth site. On October 12, 2020, the IDNR issued a NOV to the property owner of the Ellsworth site for the illegal disposal of the wind turbine blades.

56. On October 15, 2020, Phoenix sent a letter to the IDNR identifying Phoenix's efforts to get GFS to remove the blades from the Newton site. The letter also identified the outstanding rent that GFS owed to Phoenix.

57. IDNR inspected the Atlantic site on or about November 23, 2020, and observed that there were approximately 22 blades located at the site.

58. On November 20, 2020, IDNR received a follow up letter from Phoenix related to its continued efforts to get GFS to remove the blades at the Newton site. Phoenix had terminated the lease agreement it had with GFS, and Phoenix had issued a second demand letter to GFS to remove the blades. Phoenix indicated it wished to be cooperative in efforts to remove the blades.

IDNR Administrative Orders

59. After GFS was referred to IDNR's Legal Services Bureau for enforcement in March 2020, IDNR worked with GFS to develop a compliance plan for processing the blades in compliance with Iowa's recycling and solid waste laws. The compliance plan was memorialized in Administrative Consent Order No. 2020-SW-09 ("Consent Order"), and was signed by both GFS and IDNR and fully executed on December 7, 2020, and a follow-up Amendment was also agreed to by the parties, dated and signed February 17, 2021. (Exhibit 1).

60. The Consent Order and Amendment (collectively referred to hereafter as "Consent Order") required GFS to take a number of concrete steps to purchase, install, and

commence using recycling equipment and process a certain percentage of blades by set deadlines. The Consent Order also required GFS to provide a financial assurance mechanism in the form of a surety bond in the amount of \$2,000,000.00 by March 5, 2021. The surety bond would have been used by the IDNR in the event the agency had to remove, transport, and dispose of the blades because GFS was unable or unwilling to comply with the requirements in the Consent Order.

61. The IDNR granted several extension requests to GFS for obtaining the surety bond. On March 15, 2021, the IDNR received an email from GFS with an attached letter from Gulfland Industries, LLC (“Gulfland”). The letter stated that Gulfland, at the request of GFS Holding Group, was writing the letter to the IDNR to notify them of Gulfland’s intent to invest \$5,000,000.00 in GFS Holding Group and requested an additional extension from the IDNR for GFS, a subsidiary of GFS Holding Group.

62. The IDNR eventually provided a hard deadline of April 1, 2021, for the bond. IDNR notified GFS that if GFS was unable to obtain the surety bond, then IDNR would require GFS to remove or dispose of the remaining stockpile of blades in Iowa.

63. GFS was unable to obtain the surety bond by the April 1, 2021 deadline, and has not provided any surety bond as of the date of this filing.

64. IDNR issued Administrative Order No. 2021-SW-06 (“Administrative Order”) to GFS on April 12, 2021, for failing to comply with the prior Consent Order. The Administrative Order required GFS to immediately cease speculative accumulation of all wind turbine blades in Iowa and remove and properly dispose of all wind turbine blades located in Iowa within sixty (60) days. (Exhibit 2).

65. GFS did not appeal the Administrative Order, and it became final agency action

on June 12, 2021.

66. GFS did not comply with the requirements of the Administrative Order. On July 7, 2021, the EPC voted to refer GFS to the Iowa Attorney Generals' Office for enforcement.

67. MidAmerican removed and properly disposed of the blades located at the Ellsworth site. MidAmerican confirmed that the removal of the blades located at the Ellsworth Site had been completed by March 14, 2022. The blades were sent to a recycling facility outside of Iowa.

68. GE removed and properly disposed of the blades located at the Newton and Atlantic sites. GE confirmed that the removal of the blades located at the Newton and Atlantic sites had been completed by June 28, 2024. The blades were sent to a recycling facility outside of Iowa.

VIOLATIONS

69. From November 17, 2017, until June 28, 2024, Defendants improperly disposed of solid waste by placing decommissioned wind turbine blades at the Atlantic and Newton sites, rather than taking the blades to a permitted disposal site or recycling facility, in violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, Administrative Consent Order No. 2020-SW-09, and Administrative Order No. 2021-SW-06.

70. From November 17, 2017, until June 28, 2024, Defendants speculatively accumulated decommissioned wind turbine blades at the Atlantic and Newton sites, in violation of Iowa Code section 455D.4A(6), Administrative Consent Order No. 2020-SW-09, and Administrative Order No. 2021-SW-06.

71. From June 7, 2018, until March 14, 2022, Defendants improperly disposed of solid waste by placing decommissioned wind turbine blades at the Ellsworth site, rather than

taking the blades to a permitted disposal site or recycling facility, in violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, Administrative Consent Order No. 2020-SW-09, and Administrative Order No. 2021-SW-06.

72. From June 7, 2018, until March 14, 2022, Defendants speculatively accumulated decommissioned wind turbine blades at the Ellsworth site, in violation of Iowa Code section 455D.4A(6), Administrative Consent Order No. 2020-SW-09, and Administrative Order No. 2021-SW-06.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendants, jointly and severally, for each day of violation of Iowa Code sections 455B.307(1) and 455D.4A(6), 567 Iowa Admin. Code 100.4, and Administrative Consent Order No. 2020-SW-09 and Administrative Order No. 2021-SW-06, not to exceed Five Thousand Dollars (\$5,000.00) per day, per violation, for each day of violation pursuant to Iowa Code section 455B.307(3); and
- b. issue a permanent injunction, pursuant to Iowa Code section 455B.307(2), enjoining Defendants from any further violations of Iowa Code sections 455B.307(1) and 455D.4A(6) and 567 Iowa Admin. Code 100.4, and Administrative Consent Order No. 2020-SW-09 and Administrative Order No. 2021-SW-06.

Plaintiff further requests that the Court tax the costs of this action to the Defendants and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

BRENNA BIRD
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/s/ Jacob J. Larson

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