

ENVIRONMENTAL CONTROL HEARING BOARD

The Indian River County (IRC) Environmental Control Hearing Board (the Board) held a meeting at the County Administration Building, Commission Chambers, 1801 27th Street, Vero Beach, Florida on Thursday, February 3, 2022 at 12:30 pm.

Present were members: **Chairman Mr. Kevin Rollin**, Attorney Appointee; **Dr. Norman Meyer**, Medical Doctor Appointee; **Mr. Patrick Walther**, Engineer Appointee; **Dr. Richard Baker** and **Ms. Anna Kirkland**, Members-at-Large.

Also, present were IRC staff members: Susan Prado, IRC Assistant County Attorney; Jennifer Peshke, Attorney for the Board; IRC Environmental Control Officer: Julianne Price; Charles Vogt, Environmental Health; Todd Tardiff, Environmental Health; and Recording Secretary, Lisa Plesnarski, Commissioner Assistant.

Call to Order

Chairman Kevin Rollin called the meeting to order at 12:30 pm.

Roll Call by Secretary

The secretary called the roll and advised the Board a quorum was present.

Consideration of December 2, 2021 Minutes

ON MOTION BY Patrick Walther, SECONDED BY Anna Kirkland, the members voted unanimously (5-0) to approve the minutes of December 2, 2021 as amended.

Introduction of New Member

Chairman Rollin introduced new committee member, Dr. Norman Meyer.

Additions-Deletions to Agenda

There were none. Chairman Rollin questioned if the cases of Yates and Piscatelli should be heard first because they should be brief. Mr. Pete Sweeney, counsel for Mr. Marine Boatworks, asked if they could be heard first because his client had another obligation to attend. Respondents were not present for the Yates or Piscatelli cases, therefore, it was decided they would be heard last in the event respondents appeared.

Swearing In of Those Who Intend to Testify

The secretary administered the testimonial oath to those present who wished to testify at the meeting.

Attorney's Overview of Board Purpose and Procedures

Chairman Kevin Rollin gave a brief overview of the Board's procedures and purpose.

HEARINGS

Case #589-21 – Mr. Marine Boatworks, LLC

Indian River County Assistant County Attorney Susan Prado explained that Mr. Marine Boatworks, a boat repair company, is the tenant of the subject property located at 1510 Old Dixie Highway Southwest. The owner is Glendale Storage. In February 2021 the department received an email from a former employee alleging violations. This person, David Martin, was subpoenaed to appear at this hearing, but called a short while ago to report he was sick and unable to appear. Ms. Prado presented an Affidavit of David Martin's statement. Mr. Pete Sweeney, counsel for Mr. Marine Boatworks, objected to the Affidavit claiming it is a violation of due process. Ms. Prado responded that in code and environmental cases due process is allotted as Notice and that Respondents are able to submit a public records request for copies of documents. Ms. Prado went on to explain that the rules of evidence do not apply here, hearsay is allowed and there are no rules governing discovery. A discussion ensued regarding the admission of the Affidavit. Mr. Sweeney explained the employee who made the complaint was not an employee but an independent contractor and that a dispute occurred between the owner and contractor regarding payment and the timeline shows the violations were subsequently reported to the agency.

Mr. Rollin said that although the Affidavit contains the allegations that triggered the investigation, the Environmental Control officers site visit confirmed the issues. Mr. Rollin asked that the Affidavit be disregarded as it is not needed and will serve only to cloud the issues.

Ms. Prado reviewed information contained in the backup documents relating to this case. A complaint was received alleging the Respondent allowed the dumping of oil/gasoline from a boat onto the ground surface and failed to properly maintain containment tanks on the property allowing used oil to saturate the ground surface. On February 4, 2021 Todd Tardiff and Charles Vogt of IRC visited the site property and verified the violations. On February 9, 2021 Respondent was issued a Notice of Violation. In correspondence dated February 15, 2021, Respondent notified the department they hired a contractor for the testing and

removal of the oil. The Respondents also retained counsel and requested two continuances of prior scheduled hearings. Ms. Prado explained just now in February of 2022 the department received a report derived from testing done at the site and noted that at this time Respondents have failed to take the corrective actions required in the Notice of Violation.

Ms. Prado called Todd Tardiff of IRC. Mr. Tardiff showed an incident report that was sent to the Respondent on February 4, 2021. Mr. Rollin asked Mr. Tardiff to explain what he found at the site. Mr. Tardiff said he noticed oil leaking through a brick containment wall as well as used oil filters and debris discarded in the containment area. Mr. Tardiff described this was a secondary containment area which served to prevent spills from leaking into the soil and he observed cracks in the wall which allowed oil to seep through into the ground. He went on to explain that he also found oil six inches into the dirt under asphalt millings where oil had leaked from the containment area. Mr. Tardiff explained he proceeded to check the rest of the site and observed some oil staining on a boat ramp. He was concerned that runoff could possibly affect personal water wells. A Notice was sent to Respondent asking them to conduct testing. The testing was done and results received. The report showed any chemicals found were in reasonable amounts. Mr. Tardiff explained on the site visit he found open containers without lids. For industrial use, an Environmental Resource Program (ERP) permit is required and quarterly monitoring required on all containers. This report is to be sent to the ERP every three years. Mr. Tardiff did not find any reports on site or filed with the ERP. Mr. Tardiff also noted he did not find any MSDS posted as required. Mr. Sweeney objected stating that the original Notice did not mention the MSDS requirements. Mr. Rollin noted that MSDS posting is the law. Mr. Rollin asked for the scope of evidence and comments to be kept to the violations in the Notice. Mr. Tardiff noted it is the owners responsibility to acquire these permits.

Mr. Sweeney asked Mr. Tardiff to review his observations from the site visit February 4, 2021. Mr. Tardiff noted he was there for two hours and observed the leaking containment area and that the container was not covered. He also observed the oil staining on the boat ramp. On February 4, 2021 Mr. Tardiff took photos to verify the compliant. Mr. Tardiff returned to the site February 9, 2021 with Mr. Charles Vogt. The further testing was requested based upon his observations. Mr. Sweeney noted the respondent sent a letter dated February 15, 2021 outlining corrective measures that had been taken.

Ms. Prado called Mr. Charles Vogt. Mr. Vogt showed an aerial image of the site located at 1510 Old Dixie Highway. Mr. Vogt noted the business is required to follow the rules of hazardous waste generators and showed applicable Florida statutes. Mr. Vogt showed photos and provided details of the violations found. Mr. Vogt summarized the key points are storage tanks, disposal of waste, and storage of pails of oil products. Photos of the primary and secondary oil tanks were shown showing the tanks were filled with oil and oil and debris in between the tanks. Mr. Vogt explained the containers were uncovered which allows oil to overflow after a

rain event. Mr. Vogt also showed photos of the concrete wall that had been permeated by oil indicating long term abuse. Mr. Vogt outlined that gasoline as well as petroleum contact water must be treated as hazardous waste and that oil needs to be managed so as to not damage the environment. Mr. Vogt showed the timelines given for immediate corrective action. Mr. Marine initially responded to the requests for cleanup in their correspondence dated February 15, 2021. Mr. Vogt noted if it's determined that discharges have affected soil and ground water it must be reported to FL state divisions.

Ms. Prado asked Mr. Vogt what is still in violation and what now needs to take place. Mr. Rollin asked to stay within the scope of the initial Notice of Violation and asked for clarification of outstanding issues.

At this time Dr. Norman Meyer was excused from the meeting (1:47pm).

Ms. Prado explained the initial Notice was sent February 9, 2021. Ms. Prado explained that to avoid miscommunication she put the needed corrective actions in writing and showed email correspondence that was sent September 17, 2021 to Attorney Kissner which outlined the work needing to be done and how the storage containment area needed to be handled. There was a prior email of the same subject sent August 11, 2021. Ms. Prado asked Mr. Vogt what still needed to be done. Mr. Vogt responded that the report submitted from Sierra Piedmont indicated lead levels in groundwater were exceeded, therefore, a discharge report is required to be submitted to the Southeast District within 24 hours. To date it has not been submitted. Mr. Vogt went on to say the contaminated millings and contaminated concrete structure have not been addressed. Ms. Prado asked Mr. Vogt how he knew the discharge report had not been submitted. Mr. Vogt responded that he called the Southeast District this morning and the document had not been received. The Respondent was notified this needed to be done January 26, 2022. Ms. Prado asked Mr. Vogt if the respondent has spoken to him about the issue of paint chips. Mr. Vogt said they have not been asked for assistance. Mr. Rollin asked if the paint chips were part of the initial violation. Ms. Prado explained it was listed in the initial Notice of Violation..

Mr. Sweeney noted the Respondent provided a response to the Notice of Violation on February 15, 2021. Mr. Sweeney explained Respondent retained Sierra Piedmont and submitted a report from them dated August 10, 2021. Mr. Sweeney asked if the department sent anything to FDEP after the report was received. Mr. Vogt responded they did not. Mr. Vogt went on to say the report they initially received could have been used but was not specific to the violations. Mr. Vogt explained it was then that the needed actions were put in writing in order to avoid miscommunication.

Mr. Sweeney discussed Ms. Prado's email dated September 21, 2021 which outlined additional things that needed to be included in the scope of work. The email noted that the scope of Sierra Piedmont's report was in line with the

recommendations made for the area, but that additional information was needed from Sierra Piedmont regarding clarity in the location of the proposed soil borings and groundwater sampling locations. Mr. Sweeney explained he believed the remaining issues noted in the initial Notice of Violation are as follows: A report needs to be submitted to FDEP Southeast based on the most recent report from Sierra Piedmont; millings surrounding the concrete containment area need to be removed; and the concrete containment structure needs to be remediated. Mr. Sweeney asked if there was anything else. Mr. Vogt responded that the area where there was an obvious discharge is required to be assessed. Mr. Sweeney asked Mr. Vogt if that means his office would no longer have jurisdiction. Mr. Vogt explained that because the target levels were exceeded, the only requirement is to notify the DEP and they would do their own investigation and assessment regarding the issue of cleanup. A discussion ensued regarding Sierra Piedmont's report and the adequacy of soil and groundwater sampling locations. Ms. Prado clarified that the issue of the alleged discharge area for lead has been referred to the DEP. Mr. Rollins stated it is his understanding that the outstanding issues governed by the jurisdiction of the Board are the concrete containment unit and the cleanup of contaminated millings. Ms. Prado responded yes, and also technically the fact they have not reported to the DEP yet as noticed in the Notice of Violation. The Notice of Violation stipulates if excessive levels of contaminants are discovered, the respondent is required to report to the DEP within 24 hours. Ms. Prado contended that contaminants were discovered as evidenced in Sierra Piedmont's report and respondent has not yet reported to the DEP.

Mr. Sweeney called the Respondent Ron D'Haesseleer, Jr., owner of Mr. Marine Boatworks, LLC. Mr. D'Haesseleer explained they have been in business at the subject location for three years. He went on to explain that staining on the boat ramp was present when they purchased the property and that multiple businesses conducted business at the location before they acquired the property. Mr. D'Haesseleer stated they intend to cooperate with the county but they are not sure if storage tanks need to be removed or just sealed. Mr. D'Haesseleer said he was unsure if they were required to remove the tanks, but they have been cleaned out and are not being used. Mr. Sweeney asked Mr. D'Haesseleer about the FDEP reporting. Mr. D'Haesseleer explained he has been relying on their contractor, Sierra Piedmont.

Ms. Prado asked Mr. D'Haesseleer when he purchased the property. Mr. D'Haesseleer responded February 2019. Ms. Prado asked him how often oil waste products were picked up from the site. Mr. D'Haesseleer responded that it depends. Ms. Prado said a receipt for cleanout was received dated July 2020. Ms. Prado noted this was months after they acquired the property. Ms. Prado asked Mr. D'Haesseleer about the soil sampling in the containment area and noted specific locations were given as to exactly where to take samples. Mr. D'Haesseleer replied he was not aware but he relied on Sierra Piedmont who was in contact with Mr. Vogt on the day they were there for testing and that Mr. Vogt

instructed them where to take the sample. Mr. D'Haesseleer stated the first test by Sierra Piedmont came back negative so he was unsure how to proceed. Ms. Prado asked Mr. D'Haesseleer if he was aware of the written instruction from the department which instructed samples be taken from at least four locations. Ms. Prado showed a photo of spillage in the containment area and Mr. D'Haesseleer confirmed he owned the property at that time. Mr. D'Haesseleer went on to explain the containers are no longer used and they are empty. Ms. Prado asked Mr. D'Haesseleer if any provisions were made for disposal of paint chips. Mr. D'Haesseleer replied that plastic is put under the boats to catch any paint chips. Ms. Prado asked the Respondent if he has asked the appropriate entities how to dispose of the paint chips. He replied no but they have tried to cease such activity that created the paint chips. Ms. Prado showed a photo of a storage barrel still at the location on Monday. Mr. D'Haesseleer responded it had been moved. Ms. Prado asked if the Respondent understood it has to be labeled to which he replied he was unaware of who was responsible for labeling.

Chairman Rollin asked about the metal storage tanks. Mr. D'Haesseleer confirmed the tanks are now empty. Mr. Vogt explained the tanks are one inside of another, and that the purpose of the secondary containment wall is to contain and reduce impact in the event of spillage. Mr. Vogt explained the storage tanks could be reused but the problem is now the leak in the secondary containment wall. Mr. D'Haesseleer said they are willing to remove the tanks if deemed necessary, but his issue is the soil samples taken by Sierra Piedmont came back negative, therefore, he doesn't understand why all would need to be remediated. Mr. Sweeney showed the photos of the tanks. Ms. Prado explained the problem is the soil sample was not taken from the proper locations. The Board discussed the location of soil samples and assessment. Mr. D'Haesseleer expressed his frustration about the confusion over soil sample locations because Mr. Vogt was on site when the sampling was done and therefore he doesn't understand why sampling wasn't done in the correct areas. Mr. Rollin asked Mr. D'Haesseleer the purpose of the containment wall. Mr. Rollin went on to note that being the purpose is to contain overflow, it seems egregious that it was filled to overflowing and remained that way for some time. Mr. Rollin asked how long the containment area had been leaking. Mr. D'Haesseleer responded it was that way when they purchased the property but they were remis in the disposing of the oil filters.

There being no further questions, Respondent Ron D'Haesseleer was excused from the hearing at this time.

Mr. Rollin asked if there were any questions from the Board. Mr. Sweeney asked to submit case law pertaining to the standard of evidence and provided a copy of South Florida Water Management District v. RLI Live Oak, LLC, 139 So. 3d 869 (Fla. 2014). The Board took a moment to read through the case. The Board and Mr. Sweeney discussed the burden of proof relating to the case. Ms. Prado

responded to the case law provided and noted it was an administrative case, but that we are governed by enforcement for county code, therefore, any fines imposed would be civil penalties and not administrative fees. Ms. Prado concluded the ECHB has the authority to issue civil penalties and that the burden of proof is not by clear and convincing evidence but by the preponderance of the evidence.

Mr. Rollins asked the Respondent for his proposal. In reference to the Order, Mr. Sweeney responded they are in agreement to refrain from committing any more violations listed in the Notice of Violation or a \$500.00 per day suspended penalty be imposed. Respondent requests to pay staff time costs of no more than \$500.00. They are in agreement that the Board retains jurisdiction and that this matter may be set for further hearing by either side. Respondent would add that the millings will be removed and requested 90 days for removal. Ms. Prado noted further testing is needed to test the correct area to ensure there is not further contamination. Mr. Rollin asked for clarity as to the purpose of testing if the site has to be remediated and the storage containers removed. Mr. Vogt responded that the containment area has been being used as a tank and thus that protocol needs to be followed for closure and removal. Ms. Prado recommended using language in the Order that they are to remove and/or remediate as required by Florida statute. Mr. Rollin noted it is not the department's job to inform respondents how to comply with the law. Ms. Prado spoke to the \$3,000 cost of staff time. She explained there was considerable staff time spent due to miscommunication and two separate emails were sent to respondent outlining corrective actions as well as two continuances of prior scheduled hearings. Ms. Prado noted that after the last hearing nobody reached out to the department to ask what issues were still outstanding.

Mr. Rollin noted that the Respondent could be penalized at a very high amount as it has taken over six months to remediate the problems. Mr. Rollin noted a few corrections to dates in the proposed Order. Mr. Rollin also suggested changing the language "within a timeframe dictated in the Notice of Violation" to "within a reasonable time notwithstanding their ability to do so within the timeframes dictated within the Notice of Violation". In the Order portion Mr. Rollin stated that he felt \$3,000.00 in staff time was reasonable. The Board discussed penalties and timeframes to be assessed. Chairman Rollin made a motion to amend the Order as discussed up to B. Conclusions of Law.

ON MOTION BY Mr. Kevin Rollin, SECONDED BY Dr. Richard Baker, the members voted unanimously (4-0) to adopt the proposed Order, as amended, up to section B. Conclusions of Law.

Chairman Rollin proposed the following changes to paragraph 1 of the Order: The Board finds by clear and convincing evidence that respondent has failed to timely remediate the violations set forth in the February 9, 2021 Notice of

Violation for discharge of pollutants and the creation of a sanitary nuisance in respect to the containment wall that has in effect been used as an above ground storage tank for hazardous materials. That those materials have seeped through the wall and contaminated the surrounding area of asphalt millings and possibly contaminated surrounding soil and groundwater. This violation alone has persisted for nearly a year after the February 9, 2021 Notice of Violation and by Respondents own testimony persisted for several years prior to the February 9, 2021 Notice of Violation.

Respondent shall pay \$10,000.00 to the County general fund within 60 days. This civil penalty shall be suspended and purged if the respondent remediates the containment area and surrounding asphalt millings consistent with Sect. 62.762 of the Florida Administrative Code, the applicable law cited in the February 9, 2021 Notice, and any other applicable law.

ON MOTION BY Mr. Kevin Rollin, SECONDED BY Ms. Anna Kirkland, the members voted unanimously (4-0) to adopt amendments to paragraph 1 of the Order.

Dr. Baker was excused at this time.

Chairman Rollin proposed the following changes to paragraph 2 of the Order: The respondents are ordered to pay administrative costs in the amount of \$3,000.00 to the Indian River County general fund within 30 days.

Mr. Rollin proposed to move paragraphs 3 and 4 to 4 and 5 and insert a new paragraph 3 as follows: The respondent shall come into compliance with all violations cited in the February 9, 2021 Notice of Violation and refrain from any repeated similar violations in perpetuity. The Board retains jurisdiction to levy additional civil penalties in an amount up to \$500.00 per day per violation for other similar subsequent violations to those cited in the February 9, 2021 Notice.

ON MOTION BY Mr. Kevin Rollin, SECONDED BY Ms. Anna Kirkland, the members voted unanimously (3-0) to adopt a new paragraph 3 of the proposed Order, and the proposed Order as amended.

Chairman Rollin stated this concluded the ruling with noted revisions and asked if there were any questions. There were none.

It is noted for the record that Respondent, Ron D'Haesseleer, was present at this hearing.

Case #588-21 – Piscatelli, Angela

Ms. Prado explained this case has been brought into compliance, the septic was repaired and has passed inspection. Ms. Prado is asking that the filing fees and service costs of \$942.00 be leaned against the Respondent and the respondent's property.

ON MOTION BY Mr. Kevin Rollin, SECONDED BY Ms. Anna Kirkland, the members voted unanimously (3-0) that filing fees and service costs in the amount of \$942.00 be leaned against the Respondent and respondent's property.

Case #565-18 – Yates, Estate of Dallas and Jane

Ms. Susan Prado gave an update on this case. Ms. Prado explained there have been no changes and an Order for Continuance can be issued. Case continued to the next Board hearing.

Board Matters/Discussion

There were none.

Adjournment

There being no further business, the meeting was adjourned at 3:47pm.