

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF ENVIRONMENTAL
PROTECTION,

Petitioner,

vs.

Case No. 14-2451EF

JOSHUA L. PUTNAM,

Respondent.

_____ /

FINAL ORDER

The final hearing in this case was held by telephone on September 9, 2014, before Bram D.E. Canter, Administrative Law Judge of the Division of Administrative Hearings ("DOAH").

APPEARANCES

For Petitioner: Janet M. Tashner, Esquire
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000

For Respondent: Joshua L. Putnam #D89045; pro se
c/o Columbia County Correctional
Institution
216 Southeast Corrections Way
Lake City, Florida 32025-2013

STATEMENT OF THE ISSUES

The issues to be determined in this case are whether Respondent should pay the administrative penalty, investigative costs, and attorney's fees, and undertake the corrective actions

that are demanded by the Florida Department of Environmental Protection ("Department") in its Notice of Violation, Orders for Corrective Action, and Administrative Penalty Assessment ("NOV").

PRELIMINARY STATEMENT

On February 25, 2014, the Department issued an NOV against Richard H. Cubbedge, Tammy C. Putnam, and Joshua L. Putnam, charging them with violations of state law related to a discharge of diesel fuel. The record does not reflect whether Richard Cubbedge timely requested a hearing to contest the charges against him, but no request for hearing from him was referred to DOAH by the Department. Tammy Putnam requested a hearing and the Department referred her request to DOAH where it was assigned Case No. 14-2452EF. Ms. Putnam's case was subsequently closed when she and the Department entered into a Consent Order. Joshua Putnam requested a hearing and the Department referred his request to DOAH where it was assigned Case No. 14-2451EF.

On August 1, 2014, Mr. Putnam filed a letter with DOAH requesting legal aid. The request was denied.

At the final hearing, the Department presented the testimony of Timothy Dohaney. Mr. Putnam testified on his own behalf.

The one-volume Transcript of the final hearing was filed with DOAH. The Department submitted a proposed final order, which was considered in the preparation of this Final Order. Mr. Putnam did not submit any post-hearing writing.

FINDINGS OF FACT

1. The Department is the administrative agency of the state of Florida with the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of chapters 376 and 403, Florida Statutes, and the rules promulgated thereunder in Florida Administrative Code Title 62.

2. Joshua Putnam is a natural person who is currently incarcerated in the Columbia County Correctional Institution. Mr. Putnam has been incarcerated since February 16, 2012, for the theft of diesel fuel.

3. On or about January 20, 2012, Mr. Putnam discharged 25 to 50 gallons of diesel fuel onto the ground in the backyard of a residence located at 433 Lena Street, St. Augustine, Florida ("the property").

4. The discharge resulted in "contamination," as defined in rule 62-780.200(9).

5. Mr. Putnam has not initiated a site assessment or remediated the contamination.

6. The property is owned by Tammy Putnam. She and the Department entered into a Consent Order. The Consent Order was not filed with DOAH, but it is reasonable to assume that the Consent Order addresses assessment and remediation of the contamination on her property.

7. The Department states that it provided Mr. Putnam an opportunity to demonstrate that he is financially unable to assess and remediate the contamination, but the Department did not receive all the documentation it requested from Mr. Putnam. Mr. Putnam has not been employed for six or seven years and is currently unable to pay to clean up the contamination or to pay the administrative penalties.

8. Mr. Putnam admitted liability and expressed his intent to remedy the situation as soon as he is released from prison. His current release date is May 5, 2015.

9. While investigating this matter, the Department incurred \$1,000 in costs.

CONCLUSIONS OF LAW

10. If the Department has reason to believe a violation of the law it administers has occurred, it may institute an administrative proceeding to establish liability, recover damages, impose administrative penalties that do not exceed \$10,000, and order the prevention, abatement, or control of the conditions creating the violation. See § 403.121(2)(a) and (b), Fla. Stat. (2014).

11. Because the Department seeks to impose administrative penalties, the Administrative Law Judge is to issue a final order on all matters. See § 403.121(2)(d), Fla. Stat.

12. The Department has the burden to prove by a preponderance of the evidence that Mr. Putnam violated the law as charged in the NOV. See § 403.121(2)(d), Fla. Stat.

13. Mr. Putnam is a "Person Responsible for Site Rehabilitation" as defined in rule 62-780.200(31), because he discharged the diesel fuel on the property.

14. Count I of the NOV charges Mr. Putnam with a violation of rule 62-780.600, which requires responsible parties to initiate a site assessment within 60 days of discovering petroleum and to submit a site assessment report to the Department within 270 days. Mr. Putnam is liable under Count I.

15. Section 403.121(3)(g) provides that for failure to timely assess or remediate petroleum contamination, the Department shall assess a penalty of \$2,000.

16. Pursuant to section 403.121(6), the Department may assess an additional penalty of \$2,000 per day of each day during which a violation occurred. Because the Department may only assess administrative penalties totaling \$10,000 in an administrative action, the Department assesses the penalty for five days.

17. The Administrative Law Judge may reduce a penalty up to 50 percent for mitigating factors. § 403.121(1), Fla. Stat. A 50 percent reduction in the penalty is appropriate here because

Mr. Putnam has been unable to take corrective action due to his incarceration and lack of financial assets.

18. In Count II of the NOV the Department seeks to recover its investigative costs. The Department is entitled to recover \$1,000 from Mr. Putnam for the Department's investigative costs.

DISPOSITION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. Within one year of the date of this Order, Joshua Putnam shall initiate a site assessment and submit a site assessment report in accordance with rule 62-780.600. He shall assess and clean up all petroleum contamination at the Property in accordance with chapter 62-780 and the timeframes therein.

2. Within one year of the date of this Order, Joshua Putnam shall pay \$5,000 to the Department for the administrative penalty imposed above. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. 13-1321" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida 32256.

3. Within one year from the date of this Order, Joshua Putnam shall pay \$1,000 to the Department for its investigative costs unless these costs have already been paid by Tammy Putnam. Payment shall be made by cashier's check or money order payable to the "State of Florida Department of Environmental Protection" and shall include thereon the notations "OGC Case No. 13-1321" and "Ecosystem Management and Restoration Trust Fund." The payment shall be sent to the State of Florida Department of Environmental Protection, 8800 Baymeadows Way West, Suite 100, Jacksonville, Florida 32256.

DONE AND ORDERED this 31st day of October, 2014, in Tallahassee, Leon County, Florida.



BRAM D. E. CANTER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 31st day of October, 2014.

COPIES FURNISHED:

Janet M. Tashner, Esquire
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
(eServed)

Joshua L. Putnam
c/o Columbia Correctional Institution
D89045
216 Southeast Corrections Way
Lake City, Florida 32025-2013

Herschel T. Vinyard, Jr., Secretary
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
(eServed)

Matthew Z. Leopold, General Counsel
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
(eServed)

Lea Crandall, Agency Clerk
Department of Environmental Protection
Mail Station 35
3900 Commonwealth Boulevard
Tallahassee, Florida 32399-3000
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing the original notice of administrative appeal with the agency clerk of the Division of Administrative Hearings within 30 days of rendition of the order to be reviewed, and a copy of the notice, accompanied by any filing fees prescribed by law, with the clerk of the District Court of Appeal in the appellate district where the agency maintains its headquarters or where a party resides or as otherwise provided by law.