OAH 5-2200-39714

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE POLLUTION CONTROL AGENCY

In the Matter of the Administrative Penalty Orders issued to Kuechle Underground, Inc., and the City of Maple Grove	**ORDER DENYING MOTIONS FOR SUMMARY DISPOSITION**

This matter came before Administrative Law Judge Jim Mortenson on the cross motions for summary disposition filed by the Minnesota Pollution Control Agency (MPCA) and the City of Maple Grove (City).

Christina Brown, Assistant Attorney General, represent the MPCA. Justin L. Templin, Hoff Barry, P.A., represents the City. Aaron A. Dean, Madeline E. Davis, and Aaron P. Minster, Moss & Barnett, P.A., represent Kuechle Underground, Inc. (Kuechle).

The motions were filed on August 1, 2024. The MPCA and the City filed memoranda in opposition to each other's motions on August 28, 2024. Kuechle also filed a memorandum in opposition to the MPCA's motion on August 28, 2024. On September 6, 2024, the MPCA and the City filed reply memoranda in support of their own motions, and the motion record closed that day.

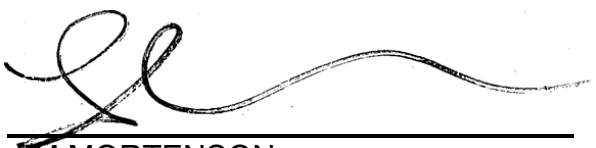
Based upon the administrative record and for the reasons explained in the accompanying memorandum,

IT IS HEREBY ORDERED,

1. Both motions for summary disposition are **DENIED**.

2. This matter will proceed to an evidentiary hearing, as scheduled in the Second Prehearing Order, dated February 12, 2024.

Dated: September 23, 2024



JIM MORTENSON
Administrative Law Judge

MEMORANDUM

I. Introduction

This case concerns an administrative penalty order (APO) that the MPCA issued jointly to the City and Kuechle on September 19, 2023. The APO imposed a $15,990 penalty, split evenly between the City and Kuechle. The APO stemmed from an alleged discharge of sediment into a state waterway in June 2023. The MPCA and City claim the facts are undisputed. Kuechle claims there are material facts in dispute. The Judge agrees that there are material facts in dispute. Because there are genuine disputes of material facts, summary disposition is not appropriate.

II. Summary Disposition Standard

Summary disposition is the administrative equivalent of summary judgment.[1] The Office of Administrative Hearings generally follows the summary judgment standards developed in judicial courts in considering motions for summary disposition.[2] A motion for summary disposition may be granted when no genuine issue of material fact exists.[3] A genuine issue is one that is not a sham or frivolous, and a fact is material if resolving it will affect the result or outcome of the case.[4] Generally, on cross-motions for summary judgement, the parties have some agreement that the material facts are not in dispute.[5]

In a unilateral motion for summary judgment, however, the moving party must initially show the absence of a genuine issue of material fact.[6] To successfully resist a motion for summary disposition, the responding party must show that there are specific facts in dispute which have a bearing on the outcome of the case.[7] Facts at issue must be established by substantial evidence, and the parties may not rest upon general averments or denials.[8] Evidence offered to support or defeat summary judgment must be such evidence as would be admissible at trial,[9] though the evidence presented need not be in a form that would be admissible.[10] "Speculation, general assertions, and promises to produce evidence at trial are not sufficient to create a genuine issue of material fact for trial."[11]

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[1] *Pietsch v. Minn. Bd. of Chiropractic Exam'rs*, 683 N.W.2d 303, 306 (Minn. 2004); *see also* Minn. R. 1400.5500(K) (2023).
[2] *See* Minn. R. 1400.6600 (2023); Minn. R. Civ. P. 56.
[3] *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 785 (Minn. 2016).
[4] *Highland Chateau, Inc. v. Minn. Dep't of Pub. Welfare,* 356 N.W.2d 804, 808 (Minn. Ct. App. 1984), *review denied* (Minn. Feb. 6, 1985).
[5] *See*, *American Family Mut. Ins. Co. v. Thiem*, 503 N.W.2d 789, 791 (Minn. 1993)
[6] Minn. R. Civ. P. 56.01; *Anderson v. Dep't of Natural Res.*, 693 N.W.2d 181, 191 (Minn. 2005).
[7] *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).
[8] *Id.* at 70-71.
[9] *Hopkins v. Empire Fire & Marine Ins., Co.*, 474 N.W.2d 209, 212 (Minn. Ct. App. 1991).
[10] *Carlisle v. City of Minneapolis*, 437 N.W.2d 712, 715 (Minn. Ct. App. 1989).
[11] *Nicollet Restoration, Inc. v. City of St. Paul*, 533 N.W.2d 845, 848 (Minn. 1995).

When considering a motion for summary disposition, the evidence must be viewed in the light most favorable to the nonmoving party, and doubts and factual inferences must be resolved against the moving party.[12] The trial court's function is not to decide the facts at issue, but to determine whether a genuine dispute of material fact exists.[13]

III. Analysis

When reviewing an APO, the court must determine whether a preponderance of the evidence shows that the violations cited in the APO occurred and whether the violations warrant the penalty assessed.[14] In this case, the MPCA and the City filed motions for summary disposition and listed out facts each side believes are not in dispute. Many of those facts are superficial, such as dates of events and people involved. The nature of this case rests on details which are material to the APO and are in dispute. The disputed facts related to the claimed violations are stark. Thus, an analysis of whether there were violations and, if so, whether the violations warranted the penalty is premature. Moreover, Kuechle also challenges the MPCA's version of many material facts in its argument against summary disposition.

Because this matter will proceed to hearing for factual findings to be made, a detailed statement of facts is not appropriate here. The following list of questions underscores the facts in dispute, which must be decided before a recommendation can be made in this case. This list is derived from the motion record:[15]

- Was the sediment discharge within permit parameters?
- Was a nuisance condition created by the discharge?
- Did the sediment discharge come from the project for which the City and Kuechle were jointly responsible?
- Was the sediment discharge recovered as quickly as possible?
- Was recovery a reasonable option?
- Was the stockpile protection compliant with the permit requirements?
- Were vehicle tracking best management practices (BMPs) compliant with the permit, including the repair of failing BMPs?
- Were inspection and maintenance records compliant with permit requirements?
- Was inspector training in compliance with the permit?
- Was the City's or Kuechle's conduct willful?
- Who was the City required to contact about the discharge and did the City timely contact that person?
- Is it appropriate to divide the penalty equally between the City and Kuechle, and why does it matter?

[12] *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015).
[13] *See id.* at 664 (citing *DLH*, 566 N.W.2d at 70).
[14] *BFI Waste Systems*, 927 N.W.2d at, 321 (Minn. Ct. App. 2019); Arrowhead, 550 N.W.2d at 888, *citing* Minn. Stat. § 116.072 (1994).
[15] Some questions are mixed questions of law and fact.

While the MPCA and the City argue that the material facts in the motion record support their respective legal positions, their different views of many of those facts creates the need to make specific findings of fact before the law can be applied. The list above demonstrates that point. Given the comprehensiveness of the disputes, even partial summary disposition is not appropriate in this case.

There is still time, however, for the parties to prepare a list of stipulated facts prior to hearing. A list of stipulated facts will create efficiency in the process.

IV. Conclusion

Based upon the MPCA and the City's motions, there are material facts in dispute, which the Administrative Law Judge cannot determine without an evidentiary hearing. Summary disposition is inappropriate for either movant without first making findings on those material facts. Thus, both MPCA's and the City's motions for summary disposition are **DENIED**.

Absent a voluntary resolution, this matter must proceed to hearing. If the parties stipulate to facts prior to the hearing, the Judge will permit the parties to proceed with legal arguments and briefing in lieu of an evidentiary hearing. The Judge will incorporate into his findings of fact any factual stipulations agreed upon by all parties.

J. R. M.