

Docket No. HHD-CV-13-6040312-S

DANIEL ESTY	:	SUPERIOR COURT
COMMISSIONER OF ENERGY OF	:	
ENVIRONMENTAL PROTECTION	:	
	:	JUDICIAL DISTRICT
v.	:	OF HARTFORD
	:	
JAMES PERO	:	NOVEMBER 13, 2019

MOTION FOR CONTEMPT

The Plaintiff, Commissioner of Energy and Environmental Protection (“the Commissioner”) respectfully requests that the Court hold Defendant JAMES PERO in contempt of court, and impose appropriate sanctions. In support of this motion, the Commissioner represents as follows:

1. On June 11, 2014, Judge Sheila Huddleston entered judgment in favor of Plaintiff Commissioner against Defendant James Pero after a Hearing in Damages. (See Memorandum of Decision Dkt. No 109.10; Judgment Dkt. No. 109.20.)
2. Defendant Pero attended and participated in the Hearing in Damages and was duly served with a copy of the judgment. See Notice of Judgment Certified/Served, Dkt. No. 110).
3. Defendant Pero failed to comply with the judgement in the following ways:
 - (a). Defendant Pero did not promptly comply with the terms of Consent Order #WSWDS11007.

(b.) Defendant Pero did not remove all asbestos waste, solid waste, and used oil on the site, properly dispose of same, and provide proof of proper disposal to the department.

(c) Defendant Pero did not retain a qualified professional, licensed pursuant to General Statute 22a-133v, acceptable to the plaintiff, to investigate the nature, extent, and degree of any soil, groundwater, and surface pollution resulting from the activities described in the complaint. The defendant shall promptly implement any necessary remediation.

(d) Since June 11, 2014, Defendant Pero has violated General Statutes § 22a-208a, which governs the construction, alteration, and operation of a transfer station without a permit from the Commissioner of Energy and Environmental Protection.

(e) Since June 11, 2014, Defendant Pero has operated a transfer station without a permit from the Commissioner of Energy and Environmental Protection.

(f) Defendant Pero has failed to make any payments of the \$32,000 civil penalty as Order by the Court

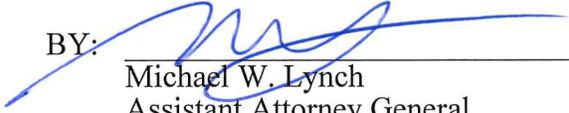
WHEREFORE, in light of the Defendant Pero's continuing failure to comply with this Court's judgment and continuing violations of certain of the State's statutes governing solid waste and water pollution control, including, but without limitation Conn. Gen. Stat. §§ 22a-208a (b), 22a-208c, 22a-252, and 22a-430, the Commissioner of Energy and Environmental Protection respectfully moves that the Court find Defendant James Pero in contempt of court, and that the

Court fashion an appropriate remedy which will compel compliance with the terms of the judgment as previously rendered by this Court. A proposed order is included with this motion.

PLAINTIFF

KATHERINE S. DYKES
COMMISSIONER OF ENERGY AND
ENVIRONMENTAL PROTECTION

WILLIAM TONG
ATTORNEY GENERAL

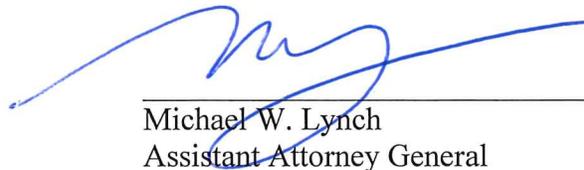
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CERTIFICATION

I certify that a copy of this document was or will immediately be mailed or delivered electronically or non-electronically on November 13, 2019 to all attorneys and self-represented parties of record and to all parties who have not appeared in this matter and that written consent for electronic delivery was received from all attorneys and self-represented parties receiving electronic delivery.

James Pero
113 Dorset Lane
Madison, CT 06442



Michael W. Lynch
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November 13, 2019
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860-808-5250

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(PROPOSED) ORDER ON PLAINTIFF'S MOTION FOR CONTEMPT

Plaintiff's Motion for Contempt having been heard, it is hereby GRANTED.

- (1) The Court finds the Defendant James Pero is in contempt of its June 11, 2014 judgment.
- (2) The Defendant shall within ten (10) calendar days of the entry of this Order fully comply with the requirements of the Court's June 11, 2014 judgment.
- (3) The Defendant shall pay a civil penalty of not more than \$_____ per day for each day of non-compliance beginning from the date of this Order of Contempt and continuing thence until full compliance with the Court's Order is determined by the Court.
- (4) The Court will hold a hearing on _____ at Hartford Superior Court at _____ in the forenoon/afternoon to determine compliance with its prior judgment.
- (5) The Court commits the Defendant, James Pero, to the care and custody of the Commissioner of Correction at whatever facility or institution the Commissioner of Correction, or his designee, determines to be appropriate. The Court recommends that said Defendant be housed at _____. Defendant James Pero shall initially report to the _____ Correctional Center, at _____, no later

than _____, and remain in the care and custody of the Commissioner of Correction until such time as this Court by Order determines that the Defendant, James Pero, has complied with the Court's June 11, 2014 judgment.

(6) The Court stays the coercive incarceration of Defendant Pero set forth in paragraph five (5) above for a period of ten (10) calendar days from the date of the entry of this Order to allow Defendant Pero to purge this finding of Contempt and comply with this and the Court's June 11, 2014 judgment.

Judge of the Superior Court

Dated

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MITTIMUS ORDER

TO THE COMMISSIONER OF CORRECTION, GREETING:

At a civil term of the Superior Court for the Judicial District of Hartford, in said court, Defendant James Pero was on _____ adjudged by the court to be in CONTEMPT and remanded to your custody, until further order of the court or until purged of CONTEMPT, as follows:

1. Defendant, James Pero, is committed to the care and custody of the Commissioner of Correction, effective immediately, at whatever facility or institution the Commissioner of Correction, or his designees, determines to be appropriate. It being the Court's intention that James Pero not be released at all under this mittimus until such time as a bond has been posted, the said James Pero shall remain in custody until such time as he has posted a bond in cash or by a surety company authorized to post bonds in the State of Connecticut in the amount of _____, the condition of the bond being that James Pero shall report to the custody of the Commissioner of Correction under the terms of this mittimus until such time as the court determines that the Court's Order, dated _____, in this action have been fully complied with, or until such time as the court vacates the mittimus. The court recommends that the Defendant be housed at _____.

2. Thereafter, Defendant James Pero is committed to the care and custody of the Commissioner of Correction, effective _____, 2019 at 2:00 p.m. at whatever

facility or institution the Commissioner of Correction, or designee, determines to be appropriate.

The court recommends that said Defendant be house at _____.

3. Thereafter, Defendant James Pero shall report to the _____, Connecticut, no later than 2:00 p.m. on _____, 2019, and remain in the care and custody of the Commissioner of Correction until such time as this court by order determines that the Defendant, James Pero, has complied with the terms of the Court's Order.

4. Nothing in this order shall be construed so as to limit the custodial or housing decisions made by the Commissioner of Correction, or designee, pursuant to statute.

Dated at Hartford this _____ day of _____, 2019.

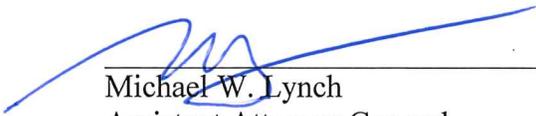
Judge of the Superior Court

Dated

CERTIFICATION

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James Pero
113 Dorset Lane
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MEMORANDUM IN SUPPORT OF MOTION FOR CONTEMPT

I. INTRODUCTION

The Commissioner of Energy and Environmental Protection ("Commissioner") brought this environmental enforcement action against Defendant James Pero ("Defendant Pero") on March 25, 2013 for failure to comply with a consent order, violations of a number of the state's statutes governing solid waste management, for illegally discarding asbestos without a permit, and for unpermitted discharge to the waters of the state. The Defendant was defaulted for failure to plead and the case was the subject of a Hearing in Damages. The Court (Huddleston, *J.*) rendered judgment for the Commissioner on June 11, 2014. The judgment required Defendant Pero to, among other things, fully comply with a Consent Order that he had previously entered with the Department of Energy and Environmental Protection ("DEEP"), to remove all waste from his site, and to pay a civil penalty of \$32,000 in installments as set by the Court. The judgment also permanently enjoined Defendant Pero from operating an unpermitted transfer station or committing any violations of Connecticut General Statutes § 22a-208a. Defendant Pero has entirely failed to do any of the things that he was ordered by the Court to do and recent inspections of the site by DEEP revealed that he has continued to do the things he is expressly

prohibited from doing—namely operating an unpermitted solid waste transfer station and illegally disposing of asbestos at the site.

Defendant Pero's blatant and willful violations of the terms of the Court's Order, coupled with the persistent and egregious conditions at the site, warrant a finding of contempt. Accordingly, the Commissioner seeks a remedy to coerce Defendant Pero into compliance, including coercive incarceration.

II. BACKGROUND

Defendant Pero does business as an asbestos remediation contractor and operates and maintains a property at 18 Helm Street in West Haven, Ct. (the “Site”). The Site is an unpaved lot that houses various containers, ranging in size from small dumpsters to 100 cubic yard tractor trailers, which hold a variety of solid waste that Defendant Pero has either brought to the Site or has received there.¹ The solid waste at the Site is far in excess of 10 cubic yards, and, most concerning, much of it consists of friable and non-friable asbestos, asbestos containing material, and used oil stored in containers. Asbestos is a known carcinogen and poses a serious threat to the environment.

For almost the past decade DEEP has engaged with Defendant Pero in a concerted attempt to get him to comply with the State's environmental laws and regulations and to remediate the environmental situation at the Site. Prior to the Commissioner filing this action in 2013, DEEP issued Defendant Pero several notices of violation, but he failed to comply with any of these notices and the illegal Site conditions persisted. In April of 2011, Defendant Pero and DEEP entered into a Consent Order (#WSWDS11007) in which Defendant Pero agreed, among

¹ The Site was previously owned by the city, which used it as a landfill incinerator and for the storage of abandoned vehicles. Although Mr. Pero operates the site, the land records of West Haven confirm that the property is now wholly owned by his wife, Cynthia Pero.

other things, to conduct no unpermitted solid waste activity at the Site and, importantly, to remove and properly dispose of all asbestos waste and used oil from the Site within 60 days. Defendant Pero failed to comply with his obligations under the Consent Order and this court action followed.

The Court found that Defendant Pero "failed to comply with numerous provisions of the Consent Order" and that as of the date of the hearing in damages (Feb. 14, 2014) there remained on Site certain solid waste, including a 100 cubic yard trailer of asbestos waste. *Esty v. Pero*, Memorandum of Decision: Re Motion for Judgment, at 5 (Superior Court, Jud. Dis. of Hartford, No. CV-13-6040312-S, Huddleston, J., June 11, 2014) (Dkt. No. 109.10)(hereinafter "MOD"). The Court ordered extensive injunctive relief to compel Defendant Pero to meet the obligations of the Consent Order and to prohibit him from causing further environmental harm. Specifically, the Court ordered that:

- (1) The defendant shall promptly comply with the terms of the Consent Order #WSWDS11007.
- (2) The defendant shall remove all asbestos waste, solid waste, and used oil on the site, properly dispose of same, and provide proof of proper disposal to the department.
- (3) The defendant shall retain a qualified professional, licensed pursuant to General Statute 22a-133v, acceptable to the plaintiff, to investigate the nature, extent, and degree of any soil, groundwater, and surface pollution resulting from the activities described in the complaint. The defendant shall promptly implement any necessary remediation.
- (4) The defendant is enjoined from violating General Statutes § 22a-208a, which governs the construction, alteration, and operation of a transfer station without a permit from the Commissioner of Energy and Environmental Protection.
- (5) The defendant is enjoined from operating a transfer station without a permit from the Commissioner of Energy and Environmental Protection.

MOD at 11, footnote omitted. The Court also assessed a \$32,000 civil penalty against Defendant Pero for violations of Conn. Gen. Stat. §§ 22a-208a (b), 22a-208c, 22a-252, and 22a-430. The Court ordered Defendant Pero to pay the penalty in quarterly installments over the course of fifteen years because Defendant Pero's "...financial focus should be compliance with the orders requiring removal of the waste and investigation and remediation of any pollution resulting from the prohibited activities at the site." MOD at 10.²

Defendant Pero has wholly failed to comply with the Court's order to clean up the Site: he has failed to remove all of the waste from the Site, he has not retained a licensed environmental professional to investigate the Site, and he has failed to perform any remediation of the Site. Moreover, recent DEEP inspections of the Site confirm that Defendant Pero continues to transport, store and receive solid waste at the Site, and that the Site remains littered with large amounts of friable and non-friable asbestos and used oil in cans. The 100 cubic yard trailer filled with asbestos that was specifically mentioned in the Court's 2014 MOD remains on Site, it is deteriorating and it is still filled with asbestos waste. MOD at 3. In short, Defendant Pero continues to operate at the Site as if this Court's 2014 judgement had never been entered. Defendant Pero's actions show a complete disrespect for the orders of this Court, the state's environmental laws, and the health and safety of the public. Therefore, the Commissioner, asks this Court to find Defendant Pero in Contempt of its 2014 judgement and to fashion a remedy, including incarceration, to coerce compliance with the requirements of that judgement.

² The Defendant has not paid a single one of the scheduled \$533.53 installments and the entire \$32,000 civil penalty remains outstanding.

III. ARGUMENT

1. Defendant Pero Has Willfully Violated This Court's June 11, 2014 Order and Thus Should Be Found In Contempt of Court

Our case law "...classifies civil contempt as conduct directed against the rights of the opposing party ... while criminal contempt consists of conduct that is directed against the dignity and authority of the court." *Ullmann v. State*, 230 Conn. 698, 707 (1994). Contempt is considered civil, as opposed to criminal, "when the punishment is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public." *Mays v. Mays*, 193 Conn. 261, 265-66 (1984). "Contempts of court may also be classified as either direct or indirect, the test being whether the contempt is offered within or outside the presence of the court.... A refusal to comply with an injunctive decree is an indirect contempt of court because it occurs outside the presence of the trial court." *Brody v. Brody*, 315 Conn. 300, 317 (2015). "Under Connecticut law, such proceedings should be proven by clear and convincing evidence." *Id.* at 319. "In a civil contempt proceeding, the movant has the burden of establishing ... the existence of a court order and noncompliance with that order...." *Norberg-Hurlburt v. Hurlburt*, 162 Conn. App. 661, 671 (2016). "In addition, the court must find that the party acted willfully in disobeying the court's order." *Sablonsky v. Sablonsky*, 258 Conn. 713, 718 (2001).³ The Plaintiff will meet this standard.

The Court's June 11, 2014 judgment is a matter of record and its requirements were unequivocal. The Commissioner will establish that DEEP's recent site inspections indicate that

³ It is the party against who contempt is sought that must also demonstrate that their non-compliance with the court's order was not willful. *Id.* "Inability to pay is a defense to a contempt motion. However, the *burden of proving inability to pay rests upon the obligor.*" *Norberg-Hurlburt v. Hurlburt*, 162 Conn. App. 661, 671 (2016) (emphasis added).

the Defendant Pero has engaged in persistent and wholesale lack of compliance with the Court's order. The Commissioner will show that not only has Defendant Pero failed to comply with the affirmative requirements of the injunctive relief ordered by the Court by failing to clean, investigate and remediate the Site, but that he also blatantly violated the prohibitory injunctions issued by the Court by continuing to operate an unpermitted solid waste facility at the Site-- including bringing new asbestos waste to the Site after he was specifically enjoined from doing so by this Court.

Finally, the Commissioner contends that these violations are willful. Defendant Pero attended and fully participated at the Hearing in Damage. He was and is aware of the Court's order. (See Dkt. No. 110, "Notice of Judgment Certified/Served" June 16, 2014). In its MOD, the Court acknowledged that it crafted the civil penalty provisions of the judgment in part because of "...defendant's testimony that his first financial priority should be compliance with the orders requiring removal of waste and investigation and remediation of any pollution resulting from the prohibited activities on the site." MOD at 10. It is beyond dispute that Defendant was aware of the requirement of the Court's order to clean and remediate the unpermitted solid waste transfer station that he created. Although the Court ordered Defendant Pero to "promptly" comply with the cleanup requirements, over five years has passed and nothing has happened at the Site except for further violations and more pollution caused by Defendant's acts or omissions.

2. Plaintiff Seeks Further Relief to Ensure Future Compliance with the Judgment

This Court has continuing jurisdiction to vindicate judgments and to ensure compliance with its orders. See *Rocque v. Design Land Developers of Milford, Inc.*, 82 Conn. App. 361

(2004). “The interest of orderly government demand that respect and compliance be given to orders issued by courts possessed of jurisdiction of persons and subject matter. One who defies the public authority and willfully refuses his obedience does so at his peril.” *Id.* at 366 citing *United States v. United Mine Workers*, 330 U.S. 258, 303, 67 S. Ct. 677 (1947). Here, the Commissioner seeks declaratory relief and coercive orders until Defendant Pero complies with this Court's judgement, the harm to the environment and the public is abated, and the Site is fully remediated.

The first element of relief sought by the Commissioner is a declaration that the Defendant Pero has committed contempt of court. A finding of contempt itself, for purposes of coercing strict future compliance with the terms of a judgment, is clearly an appropriate remedy. *Rocque v. Design Land Developers of Milford, Inc.*, 82 Conn. App. 361, 368-69 (2004).

Secondly, the Commissioner requests that the Defendant Pero be coerced into complying with the judgement. The Court should either subject the Defendant Pero to daily fines for each day of continuing violations at the site until the judgement is complied with, or, in the alternative, subject Defendant Pero to coercive incarceration. Given that Defendant Pero has previously represented to the Court his claimed financial hardships, Plaintiff anticipates Defendant Pero will raise those very same claims in response to this Motion for Contempt.⁴

Because Defendant Pero will likely attribute the ongoing violations at the Site to his financial condition, it is most likely that levying a penalty would have little practical effect to coerce his compliance. Also, Pero has already been assessed a \$32,000 civil penalty by this

⁴ Plaintiff does not concede any 'inability to pay' argument that Defendant Pero may raise. Plaintiff has not conducted any financial discovery and maintains that Defendant Pero fully bears the burden of establishing his financial condition with actual evidence. *See, e.g., Norberg-Hurlburt v. Hurlburt*, 162 Conn. App. 661, 669 (2016).

Court and has not paid any of that penalty.⁵ Given this, the Commissioner suggests that the Court commit Defendant Pero to the Commissioner of Corrections for a period of time and stay the execution of such incarceration allowing Defendant Pero the opportunity to achieve compliance with the Court's 2014 Judgment. Such an Order would allow Defendant Pero the opportunity to purge himself of the incarceration by achieving compliance. See attached Proposed Order to Plaintiff's Motion for Contempt.

IV. CONCLUSION

The Commissioner respectfully requests, after the presentation of evidence, that this court find Defendant Pero in Contempt and fashion a remedy that coerces Defendant Pero into compliance.

⁵ While Plaintiff expressly contends that failure to pay the Court ordered civil penalty also constitutes contempt of court by Pero, the remediation of the environmental conditions at the Site has always been, and continues to be, the Commissioner's first priority.

PLAINTIFF,

KATHERINE S. DYKES
COMMISSIONER OF ENERGY AND
ENVIRONMENTAL PROTECTION

WILLIAM TONG
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BY: 

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