STATE OF MICHIGAN
IN THE 30TH JUDICIAL CIRCUIT FOR INGHAM COUNTY

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY,

Plaintiff,

v

DEMOLITION CONTRACTORS, INC., a Michigan corporation,

Defendant.

OPINION & ORDER

CASE NO. 18-820-CE

HON. JAMES S. JAMO

At a session of said Court
held in the city of Lansing, county of Ingham,
this January 17, 2025.

This matter comes before the Court following an evidentiary hearing for a determination of damages. Liability was determined in an earlier proceeding in this case before Judge Clinton Canady, who has since retired. Judge James S. Jamo now sits as the successor judge for this continued trial court action. This Court held an evidentiary hearing regarding the assessment of fines on May 3, 2024, as well as oral argument on the matter of attorney fees.

FACTS

In 2014, Defendant was hired to take down several stories of a magnesia precipitator at a magnesium plant, Martin Marietta, in Manistee, Michigan. Although Martin Marietta had its own in-house team for asbestos mitigation, the precipitator was a six-story structure made of steel and enclosed with transite siding, an asbestos-infused concrete product, which required equipment the in-house team did not have access to in order to demolish the structure. Transcript, pg 198 ln 20-24; Order, 12/15/2022, pg 2. Defendant subcontracted with Asbestos Contractors, a related group, to remove the transite siding, while Defendant demolished the precipitator structure. Work on the project began in early October.

On October 29, 2014, the Michigan Department of Environmental Quality (MDEQ)[1] conducted a jobsite visit to the Martin Marietta plant on an anonymous tip that the work was being done in violation of National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations as it relates to asbestos, 40 CFR Part 61.140-157. Inspectors LeBlanc and Langworthy conducted the inspection and noted that Defendant had not filed the appropriate notices with the MDEQ for asbestos-related work. Order, 12/15/2022, pg 2. The inspectors noticed hundreds of fragments of what appeared to be transite siding strewn around the worksite, though Inspector LeBlanc was unable to scratch, crumble, pulverize, or reduce a sample fragment to powder by hand pressure—in other words, the fragment Inspector LeBlanc picked up from the ground was not friable. *Id.* Inspector LeBlanc took a sample of these fragments for lab analysis.

The inspectors also examined the on-site dumpster, noting that the cardboard drums inside the dumpster were not labeled with asbestos information. However, the garbage bags inside the dumpster were pre-printed with asbestos information, and the dumpster was lined. *Id.*, 2-3. A fragment sample of what appeared to be transite siding was also taken from the dumpster. Later lab analysis showed that both samples retrieved by the inspectors were indeed transite siding containing greater than 1% asbestos. *Id.* On October 30, 2014, Defendant filed its first requisite notice with the MDEQ for asbestos-related work.

The MDEQ sent a notice of violations concerning conditions at the Martin Marietta plant to Defendant in December of 2014. At the same time, the MDEQ sent an identical set of allegations to Martin Marietta, the owner of the plant. Martin Marietta settled during negotiations and ultimately paid a fine of somewhere between $5,000 and $8,000. Transcript, pg 172 ln 14-23; pg 198 ln 1-3; pg 201 ln

[1] Now the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

6-10. The MDEQ and Defendant were unable to come to a resolution, and the MDEQ filed a 10-count complaint against Defendant in November of 2018.

The trial court held a bench trial in December of 2022 and found Defendant liable for three violations of the Asbestos NESHAP under Sections 61.145(b), 61.145(b)(4)(vi), and 61.150(a)(1)(v).

ANALYSIS

The question before this Court now is the determination of civil fines.[2] Under the Michigan Natural Resources and Environmental Protection Act (NREPA), which incorporates the federal Asbestos NESHAP and which provides the State of Michigan with the authority to promulgate rules and enforce compliance with the NESHAP, Defendant may be subject to fines up to $10,000 per violation, per day. MCL 324.5530(2). Civil fines assessed under the NREPA must "be appropriate to the violation." MCL 324.3332(1). Under MCL 324.5532(2), the Court considers eight factors in assessing civil fines:

a) The size of the business;

b) The economic impact of the penalty on the business;

c) The violator's full compliance history and good faith efforts to comply;

d) The duration of the violation as established by any credible evidence, including evidence other than the applicable test method;

e) Payment by the violator of penalties previously assessed for the same violation;

f) The economic benefit of noncompliance;

g) The seriousness of the violation;

h) Such other factors as justice may require.

Section 61.145(b) requires an owner or operator of a demolition activity must "inspect the affected facility or part of the facility where the demolition...operation will occur for the presence of

[2] Defendant argued, both in its briefing and at oral argument, that this Court should reconsider or otherwise disregard the predecessor judge's previous findings of liability for various factual and statutory reasons. The Court notes that Defendant has preserved its arguments but declines to revisit the predecessor judge's prior rulings at this time.

asbestos," determine how much asbestos is present at the facility, and, pursuant to Section 61.145(b)(1), provide written notice to the MDEQ of the intention to demolish or renovate. Section 61.145(b)(3)(i) requires this notice to be filed at least ten working days before any such project is to begin. This Court found Defendant liable for a violation of Section 61.145(b) where it failed to file the required notice. The MDEQ requests a civil fine of $7,000 per day for a period of 16 days, totaling $112,000. Defendant requests no civil fine be assessed.

Section 61.145(b)(4)(vi) requires the demolition notice as required in Section 61.145(b)(1) to include estimates of the approximate amounts of RACM to be removed from the facility or other non-friable ACM that will not be removed before demolition. This Court found Defendant liable for failing to comply with the requirement to estimate RACM and/or other non-friable ACM affected by the project where the notice, when finally filed by Defendant, simply said no asbestos was present. The MDEQ requests a civil fine of $5,000 per day for a period of 16 days, totaling $80,000. Defendant requests no civil fine be assessed.

Section 61.150(a)(1)(v) requires asbestos-containing waste material to be transported with labels on the material containers that state the name of the waste generator and the location at which the waste was generated. This Court found Defendant liable for failing to comply with the label requirements where the MDEQ Inspectors found drums in a dumpster that were not labeled at the time the inspection was conducted and "at the time it was set to be moved from the facility." Order, 12/15/22, pg 12. The inspectors did note the dumpster was lined. The MDEQ requests a civil fine of $5,000 per day for one day, totaling $5,000. Defendant requests no civil fine be assessed.

The total amount requested by the MDEQ in civil fines amounts to $197,000. Defendant requests no civil fine be assessed, and Defendant be awarded its attorney fees as the substantially prevailing party.

I. Size of the Business

Defendant had approximately 40 employees at the time of the violations. Malcolm Mead-O'Brien, an enforcement specialist in the air quality division of the MDEQ, testified that when considering size, the MDEQ considers whether the size of the business may translate to the sophistication of the business when it comes to asbestos abatement and removal: "[A] large percentage of the facilities that we work with in the asbestos realm where we are trying to achieve resolution are sole proprietors or small facilities that are by no means as astute on the regulations and don't have the wherewithal to address them." Transcript, p 78-79, ln 25-5. Mead-O'Brien further testified that size is not definitive—that the inquiry is more subjective than concluding "that XYZ company is this size and, therefore, has this penalty." *Id.,* pg 133 ln 11-12. He further testified that the determination of fines generally involves some comparison with other companies and the relative size and experience of a violator, but could not provide examples of comparisons made in relation to this case. Mead-O'Brien initially testified that Defendant was a large business, *Id.*, pg 79 ln 11-14, but later conceded that Defendant was a medium-sized business and indicated his recommendation for civil fine amounts reflected that Defendant was of medium size. *Id.*, 106 ln 12-15. The MDEQ, in its Response to Defendant's Brief in Support of Evidentiary Hearing, "asserts that [Defendant] is a medium-sized company."

The Court finds, as to all Defendant's violations, Defendant could best be characterized as a medium-sized company at the time the violations occurred, though a sophisticated company with experience in demolition and asbestos abatement.

II. Economic Impact of the Penalty on the Business

The MDEQ failed to consider the economic impact of the recommended penalties on Defendant's business as statutorily required. The MDEQ's witness, Mead-O'Brien, testified: "We don't

have economics with regard to the facility, so we don't know anything about the corporation's values. That part did not have any bearing on my assessment." Transcript, pg 78, ln 8-11. He further conceded that the MDEQ did not request any financial information from Defendant after the finding of liability. *Id.*, pg 169 ln 3-23. Defendant noted that the subject project was bid for $134,000, and that after labor and equipment costs, Defendant stood to realize a small profit of around 10%, or $13,400. Defendant's Brief in Support of Evidentiary Hearing, pg 8 (citing Plaintiff's Trial Exhibit 19 at MDEQ p 0352). The MDEQ argues that nothing in the NREPA requires a civil fine to be less than a company's profit on a subject project. While the Court agrees the NREPA does not tie a civil fine to a company's profit on a given project, the NREPA does require a civil fine to be proportionate to the violations.

The MDEQ's total requested fine on the three violations amounts to $197,000. The Court recognizes this to be a substantial fine that would likely have a significant impact on Defendant's business.

III. The Violator's Full Compliance History, Good Faith Efforts to Comply, and Payment of Previous Penalties Assessed for the Same Violations

The MDEQ concedes that Defendant has no prior history of violations or noncompliance and has never before been fined by the MDEQ, for these or any other violations. Defendant filed the requisite notice under Section 61.145(b)(1) the day following the MDEQ's inspection, showing a good faith effort to comply with the regulatory requirements. Furthermore, even without the filing of the notice, Defendant did comply with all regulatory requirements on the subject project site, with the sole exception of affixing generator labels to individual drums of waste material prior to "burrito wrapping," showing Defendant's good faith effort to comply with its statutory and regulatory obligations as a demolitions operation.

Mead-O'Brien testified that he did not consider Defendant's compliance history or previous penalty payments—or lack thereof—as a factor in making his recommendation for a civil fine amount,

but that he did "with regard to the ability to work with the facility to bring to a close the alleged violations that we presented." Transcript, pg 77. When asked to clarify, Mead-O'Brien clarified that "[o]ur negotiations were not fruitful from the get-go," *Id.*, and characterized discussions as "adversarial." *Id.* pg 108 ln 3-4. In other words, Mead-O'Brien did not consider Defendant's excellent history of complying with environmental regulations, but did consider that Defendant was unwilling to settle with the MDEQ during negotiations prior to the commencement of this action. The issue of Defendant's unwillingness to settle this matter short of litigation arose several times during the evidentiary hearing; this matter will be addressed in full later in this Opinion.[3] As to consideration of this factor, there is no basis for the Court to find that "full compliance history," as referenced in MCL 324.5532(c), refers to a violator's willingness to negotiate or settle an action with the MDEQ prior to litigation as opposed to the violator's general disposition in complying with its regulatory requirements.

As to this factor, the Court therefore finds that the MDEQ failed to consider Defendant's full compliance history, good faith efforts to comply with its regulatory and statutory obligations, and lack of any prior violations or penalty assessments, as statutorily required, in making its recommendations for civil fines. The Court further finds consideration of these factors weighs heavily in Defendant's favor.

IV. Duration of the Violations

At trial, the parties stipulated to a period of 16 days as being the relevant time frame—the period from which the demolition first started on October 14, 2014, to the date Defendant filed the notice required under Section 61.145(b), on October 30, 2014. This calculation is also the calculation Defendant relied upon in its Brief in Support of Evidentiary Hearing, see page 8. At oral argument, Defendant argued extensively regarding the definitions of a demolition in contrast to a renovation as it relates to the number of days the violations occurred; the Court does not find these arguments

[3] See Section VII(ii).

persuasive. Rather, the Court clarifies that the subject project is appropriately considered a single demolition project conducted in stages, rather than a renovation of the precipitator's transite siding followed by a subsequent demolition of the steel structure, as was understood by this Court in its December 15, 2022 Order. The Court therefore finds that the 16 day period between the date the demolition project started on October 14, 2014, and the date the required notice was filed, October 30, 2014, appropriately constitutes the period during which violations of Section 61.145(b) and 61.145(b)(4)(vi) occurred.

The Court further finds a one-day violation of Section 61.150(a)(1)(v). Although the drums of waste materials were not labeled in the on-site dumpster, testimony established that the dumpster was lined with the intention of "burrito wrapping" the contents, the process by which contents are poly-wrapped, tears are repaired, and the wrapper is transported as a single container regardless of its contents. A "burrito wrap" is an appropriate container under the NESHAP. Transcript, pg 143 ln 7-9. The Court's December 15, 2022 Order acknowledged the dumpster was not ready for transport. See page 12. Testimony at trial indicated the drums were "burrito wrapped" approximately four days after the inspection and labeled prior to transport, but on the day of the inspection, the wrapping was not sealed and the drums were unlabeled and staged for transport. The Court therefore limits liability on this violation to the day of the inspection.

V. Economic Benefits of Noncompliance

The MDEQ argues the potential economic benefits of noncompliance contribute to the seriousness of the violations. Where a company does not provide notice, "the demolition owner/operator could save time in not being subject to on-site inspections and responding to potential violation notices." MDEQ's Brief in Response, pg 7. Similarly, Mead-O'Brien testified that economic benefit "can be accrued" by avoiding a waiting period, where the requisite notice is required to be filed ten working

days in advance of the start of any project and where worker safety might be compromised. As to the violation under Section 61.150(a)(1)(v), which found a violation of a labeling requirement on waste materials, Mead-O'Brien noted an economic benefit could be had when disposing of materials at a landfill; materials labelled as containing asbestos cost more to dispose of than other materials.

Significantly, the MDEQ does not allege any economic benefit actually realized by Defendant, only potential benefits that might be accrued. In contrast, Defendant argues the economic benefit was, actually, zero. "Defendant derived no profit, savings or other economic benefit from non-compliance." Defendant's Brief in Support, pg 9. Lewis Pitsch, the owner of Defendant, testified there was "no economic benefits for us" and that the failure to file the notice was merely an administrative oversight. "[I]t was nothing intentional on our part." Transcript, pg 221, ln 23, ln 17-18. Pitsch further testified Defendant saved no time by failing for file the required notice timely and saved no "dump fees" in relation to the lack of a generator label—first, because the generator label was applied at the time the waste materials were transferred to a landfill, and second, because the generator label required under Section 61.150(a)(1)(v) contains no information regarding asbestos-containing waste that would result in a higher charge for disposal. *Id.*, pg 224. There is no additional charge by a landfill dependent on whether waste material has a generator label affixed to it. *Id.,* see discussion on pages 145-146.

MCL 324.5532(f) does not make reference to potential benefits that may be accrued and no case law exists discussing the application of this factor. However, read in context of §5532 as a whole, the statute is clearly intended to be tied specifically to the violations at hand: civil fines must be proportionate to the violations, and factors consider the size of the specific business involved, the economic impact to the specific business, that business's specific history, the duration of the specific violations, payment of penalties for "the same violation" previously assessed to the specific business, and seriousness of the specific violations at issue. The Court therefore interprets MCL 324.5532(f) to

refer to specific economic benefits accrued as a result of the specific violations at issue. The MDEQ has pointed to none. Defendant presented testimony that it received none. The Court therefore finds that Defendant received no economic benefit through its noncompliance.

VI. Seriousness of the Violations

The MDEQ argues the violations Defendant has been found liable for are all serious violations. Under Section 61.145(b), the MDEQ argues, through Mead O'Brien's testimony, the violation is serious as the required notice "is the linchpin of the regulatory program." *Id.,* pg 80 ln 6-8. "[I]t's serious... because absent the notice we don't know that the activity is going to take place and we don't have an opportunity to witness whether or not that activity has been planned out appropriately." *Id.*, pg 12 ln 21-25. In short, if the MDEQ doesn't know the activity is happening, the MDEQ can't regulate it. Under Section 61.145(b)(4)(vi), the MDEQ argues the violation is serious because "the regulation will rise and fall upon the amount of material that is at the job site that needs to be addressed." *Id.,* pg 82 ln 9-11. Finally, under Section 61.150(a)(1)(v), the MDEQ argues the violation is serious because the waste in question was "being staged for removal." *Id.*, pg 87 ln 17. In response, Defendant argues that the violations are "technical," as characterized by this Court in the December 15, 2022 Order, that the violations were clerical errors, and that the violations had no adverse effect on air quality, worker safety, or the environment. The Court agrees that in context of this case, the violations constitute technical violations, although the violation of Section 61.145(b) is the most significant violation at issue here.

VII. Such Other Factors as Justice May Require for Consideration

Although not specifically addressed as separate factors by the parties, the following considerations arose during oral arguments.

i. The MDEQ's Recommendations

The MDEQ's recommended fines, as previously stated, amount to a total of $197,000, attributed as following:

- Section 61.145(b): $7,000 per day for 16 days, totaling $112,000
- Section 61.145(b)(4)(vi): $5,000 per day for 16 days, totaling $80,000
- Section 61.150(a)(1)(v): $5,000 for a single day violation, totaling $5,000

In discussing how these recommendations were made, Mead-O'Brien testified that he considered the eight requisite factors and drew upon the breadth of his experience with the MDEQ. He testified that he "looked at the bodies of experience in our enforcement unit" and the general size, knowledge base, and ability of violators to respond to violations, and "tried to be fair and equivalent to competitors and objective as to how we come up with a penalty calculation based upon that body of information." Transcript, page 131. "[I]t is the big picture approach of trying to be fair and equitable in our calculations, but we don't have a checkbox or approach that says we go through all these factors and this will reduce or inflate by X percent." *Id*, pg 141 ln 14-19. The Court notes, however, as it has found above, that the MDEQ failed to consider several requisite factors and introduced no testimony regarding proportionality of the recommended fines to the violations at hand.

The MDEQ did elicit testimony from Mead-O'Brien regarding mitigating factors or "reductions" made in the civil fines recommended. As to the $7,000 fine per day recommended for the violation of Section 61.145(b), Mead-O'Brien testified that his recommendation was reduced from the $10,000 statutory maximum to $7,000 based on "[t]he weight of the evidence" and "a balance of equities." Transcript, pg 79-80 ln 21-5. Mead-O'Brien further testified that the MDEQ reduced the proposed fine because although the violation was considered to be serious, "it is something that it seemed like it was appropriate to nominally reduce." *Id.*, ln 6-10.

As to the $5,000 fine per day recommended for the violation of Section 61.145(b)(4)(vi), Mead-O'Brien testified that his recommendation reduced the $10,000 statutory maximum to $5,000 based on the balance of equities and the overlap between the two Section 16.145 violations. "[I]t made sense to reduce it so that we are not double-counting." Transcript, pg 82 ln 17-19.

As to the $5,000 fine recommended for the violation of Section 61.150(a)(1)(v), Mead-O'Brien testified the recommendation reduced the $10,000 statutory maximum to $5,000 "based upon the fact that the material is in a poly-lined material (sic). It is being staged for removal. And so although it is serious, at least it was being handled within the confines of a lined dumpster. So it made sense to consider reduction from the statutory max." Transcript, pg 87 ln 14-21.

The Court will also note the differentiation between a generator label and an asbestos-waste warning label came up repeatedly during the evidentiary hearing, with both the MDEQ's counsel and Mead-O'Brien referencing the significant importance of the asbestos-waste warning label at several different times. As Defendant's counsel pointed out, however, these considerations are irrelevant to the violations currently before the Court; the generator label Defendant has been found liable for failing to properly affix does not include information about what material is contained in a waste container or whether the material is RACM or non-friable ACM. The generator label is only required to state the location where the waste was generated and who the generator can be identified as. Both the MDEQ's counsel's questioning and the testimony elicited from Mead-O'Brien indicated the MDEQ's recommendation was more likely than not affected by some confusion regarding the label violation Defendant was actually found liable for, and the Court also considers this apparent confusion as a mitigating factor in Defendant's favor.

ii. Retaliation

Defendant argued at the evidentiary hearing that the MDEQ's recommended civil fines are retaliatory against Defendant for the refusal to settle this matter administratively. Mead-O'Brien testified that he "could see how" that conclusion could be reached but denied any retaliation as having factored into his recommendations. Transcript pg 111, ln 8-9. However, he further stated: "And so I'm not trying to inflate it based upon history, but, nonetheless, we do have a history" of trying to resolve these matters pre-suit. *Id.*, pg 111-112 ln 23-2. He also discussed Defendant's unwillingness to settle with the MDEQ multiple times during testimony in relation to considering Defendant's history of compliance and good faith efforts to comply.

Defendant further brought attention to the disparity between the fines assessed to Martin Marietta as the plant owner, who settled during negotiations with the MDEQ, and fines recommended to Defendant. Mead-O'Brien agreed that Martin Marietta had its own asbestos abatement team with significant experience, though he noted that the fact that Martin Marietta had put a bid out and hired Defendant shifted the bulk of responsibility for the job to Defendant. *Id.*, pg 119-200. However, when questioned specifically about the disparity between the fines assessed, Mead-O'Brien continually referred to the fact that Martin Marietta settled, conceded that Martin Marietta was fined even for the RACM violations Defendant was later found not liable for, and conceded that at the start of the administrative processes, the fines recommended were very similar:

> Q: So you think it is fair that Martin Marietta, who has the equivalent or more experience with that plant, should pay $8,000, but the Defendant that they hired to help them should pay $197,000? How is that fair?
>
> A: The settlement we had with Martin Marietta was an administrative settlement where we worked with them cooperatively to come to a resolution, and we believed that they had the knowledge to refute or accept the proposed

settlement. So we relied in large part on what they presented.

Id. pg 201 ln 1-10.

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Q: Okay. So for the full ten violations, included on the RACM, Martin Marietta paid $5,000 whereas you want Demolition Contractors, who is only paying on three -- who would only pay on three technical violations should pay $197,000. Is that what you are saying?

A: I can see what you mean by that. I'm not sure exactly how we can split that up for Martin Marietta because they were liable for the whole package, all the violations; right?

Q: Right.

A: I think we are saying the same thing.

Q: And you don't think that's arbitrary? You think that's being consistent, as you said your goal was in enforcement?

A: I think I explained the difference as to why at the time we were looking -- that liability could be assigned differently between the two parties.

We also started a discussion that you started down that path on what we were proposing at settlement.

The thing is that what you have brought out through the course of this trial is what the liability would be under maybe a different approach or understanding of what the regulations are. So the number that we were negotiating for both parties was very similar at the same time.

I don't think it was that divergent. It certainly wasn't by the end of our administrative negotiations and into the early parts of our civil discussions with assistance of counsel, and yet the company rejected it because of the principle.

And I understand the principle. I'm not saying anything differently, but you ended up at a different place on the calculation.

Q: So that's the difference. You're trying to punish Demolition Contractors for bringing this to trial. You're saying they didn't have a right to defend the allegations that they were creating RACM.

A: No.

Id., pg 210-212.

It is not uncommon for parties to negotiate settlement amounts in numbers much lower than those sought at trial; indeed, the difference in amounts sought in these two processes is a major reason settlement negotiations are excluded as inadmissible during trial. However, the Court notes two major takeaways from the forgoing exchange: first, although Defendant prevailed over eight of the ten violations brought against it, the MDEQ has recommended a civil fine in amount $192,000 higher than a negotiated settlement on all ten violations. Second, Mead-O'Brien's discussion about "the principle" and "what liability would be under maybe a different approach or understanding of what the regulations are" as contributing to the difference in recommending fines were precisely the arguments Defendant prevailed upon.

It is therefore difficult to discern a different interpretation of Mead-O'Brien's testimony other than what it says on its face: because Defendant pursued litigation, and because Defendant prevailed at litigation, the MDEQ has recalculated the recommended fines to an amount $192,000 higher than a company charged with the exact same violations who accepted liability on all ten violations and settled with the Department. However, the Court recognizes this is not a dispositive consideration; it is merely one factor for the Court to consider alongside the factors listed in MCL 324.5532.

VIII. Civil Fine Assessment

Having considered the violations for which Defendant has been found liable, the proportionality of potential civil fines to those violations, and the factors listed in MCL 324.5532, including other such factors as justice may be required, this Court assesses the following civil fines pursuant to MCL 324.5530(2).

- For the violations of Section 61.145(b), this Court assesses a fine of $500 per day for 16 days, for a total amount of $8,000.

- For the violations of Section 61.145(b)(4)(vi), this Court assesses a fine of $500 per day for 16 days, for a total amount of $8,000.

- For the violation of Section 61.150(a)(1)(v), this Court assesses a fine of $250 per day for one day, for a total amount of $250.

The total civil fine assessed by this Court therefore amounts to $16,250.

IX. Attorney Fees

Defendant seeks attorney fees as the prevailing party in the present case pursuant to MCL 324.5530(4), which allows a court the discretion to award costs of litigation, including, but not limited to, reasonable attorney and expert witness fees, for the prevailing or substantially prevailing party. The MDEQ objects, asking this Court to follow the general "American rule" such that parties bear their own costs of litigation. In the alternative, the MDEQ requests that it be awarded costs of litigation on the three alleged violations it prevailed upon, and Defendant be awarded costs only related to the six violations it prevailed upon. Defendant objects to proportionate division, arguing that MCL 324.5530(4) does not contemplate proportional attorney costs and that the MDEQ relies only on an unpublished opinion in support of its position, *Adams v Maurer,* unpublished per curiam opinion of the Court of Appeals, issued August 19, 2004 (Docket No 250133). However, *Adams* relies entirely on the plain text of MCR 2.625(2), which states: "[T]he party prevailing on each issue or count may be allowed costs for that issue or count." MCL 324.5530(4) must be read in context with the Michigan Court Rules, including MCR 2.625(2).

The Court therefore awards attorney fees to Defendant with regard to the six counts upon which Defendant prevailed. The Court also awards attorney fees to the MDEQ with regard to the three counts upon which the MDEQ prevailed. Attorney fees are subject to the standards set forth in *Smith v Khouri*, 481 Mich 519, 530-531; 751 NW2d 472 (2008), *Wood v Detroit Auto Inter-Ins Exchange*, 413 Mich

573, 588; 321 NW2d 653 (1982), and MRPC 1.5(a). Parties may resubmit their documentation in support of their requested attorney fees, consistent with this Opinion & Order.

IT IS SO ORDERED.

Hon. James S. Jamo
Circuit Court Judge

PROOF OF SERVICE

I hereby certify that I mailed a copy of the above ORDER to each attorney of record, or upon the parties, by placing the true copy in a sealed envelope, addressed to each, with full postage prepaid and placing said envelope in the United States mail in Lansing, Michigan, on 1/17, 2025.

Kacie Smith (P78903)
Law Clerk to the Hon. James S. Jamo

30TH JUDICIAL CIRCUIT COURT
INGHAM COUNTY VETERANS MEMORIAL COURTHOUSE
P. O. BOX 40771
LANSING, MICHIGAN 48901

TO:

Andrew Prins
PO Box 30755
Lansing MI 48909

First Class Mail
First Class Mail