

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH ___

COLUMBIA COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 10-CX-
Complex Forfeiture: 30109

DIDION MILLING, INC.
520 Hartwig Blvd.
P.O. Box 400
Johnson Creek, WI 53038

and

DIDION ETHANOL, LLC
520 Hartwig Blvd.
P.O. Box 400
Johnson Creek, WI 53038,

Defendants.

STIPULATION AND ORDER FOR JUDGMENT
AS TO CLAIMS SIX THROUGH TWENTY-THREE

The State of Wisconsin brought this civil action against the Defendants Didion Milling, Inc. and Didion Ethanol, LLC seeking forfeitures, costs, and injunctive relief for Defendants' violations of Wisconsin's environmental laws governing sources of air contaminant emissions so as to prevent and reduce air pollution, and the discharge of pollutants into the waters of the state to enhance the quality, management and protection

of the state's water resources. The parties now wish to settle this matter by agreement and therefore enter into this Stipulation.

IT IS STIPULATED AND AGREED by the parties that this case be settled on the merits, with prejudice, on the following terms and conditions:

1. The parties to this stipulation are the State of Wisconsin, Didion Milling, Inc. and Didion Ethanol, Inc.
2. The Court has jurisdiction over the parties and the subject matter of this action.
3. Judgment as to Claims Six through Twenty-Three in the Complaint shall be entered in favor of the State of Wisconsin and jointly and severally against the Defendants Didion Milling, Inc. and Didion Ethanol, LLC in the amount of \$525,000.00. This sum is comprised of forfeitures, statutory surcharges, and costs as follows: \$357,206.21 in forfeitures pursuant to Wis. Stat. § 281.98(1), \$92,873.61 for the 26% penalty surcharge under Wis. Stat. § 814.75(18), \$35,720.62 for the 10% environmental surcharge under Wis. Stat. § 814.75(12), \$25 in court costs under Wis. Stat. § 814.63(1), \$13 for the crime laboratories and drug law enforcement surcharge required by Wis. Stat. § 814.75(3), the \$68 court support services surcharge required by Wis. Stat. § 814.75(2), \$3,572.06 for the 1% jail surcharge under Wis. Stat. § 814.75(14), and the \$21.50 justice information system surcharge required by Wis. Stat. § 814.75(15) and \$35,500 to the Wisconsin Department of Justice for its reasonable and necessary expenses of prosecution under Wis. Stat. § 283.91(5).

4. Payment by Didion Milling, Inc., and Didion Ethanol, LLC, of the amount specified in ¶ 3, above, shall be made in the following installments. Subject to ¶ 6, below, payment of these installments shall not be subject to interest.

- a) \$300,000.00 within thirty (30) days of the date of the entry of judgment. Of this amount, \$264,500 shall be paid by check to the Columbia County Clerk of Courts and \$35,500.00 for attorneys fees identified in ¶ 3 shall be paid by check payable to the Wisconsin Department of Justice and delivered to Assistant Attorney General Steven Tinker at the Wisconsin Department of Justice;
- b) \$112,500.00 shall be paid by check to the Columbia County Clerk of Courts within one (1) year of the date of the entry of judgment; and
- c) \$112,500.00 shall be paid by check to the Columbia County Clerk of Courts within two (2) years of the date of the entry of judgment.

5. The State agrees that upon payment by Didion Milling, Inc. and Didion Ethanol, LLC of each of the installment payments set forth in ¶ 4, above, it shall file with the Court a partial satisfaction of judgment reflecting the amount of such payment.

6. In the event Defendant Didion Milling, Inc., and Didion Ethanol, LLC, fail to timely pay any of the installment payments set forth in ¶ 4, above, the State may provide written notice to counsel for Defendants of such default. If such default is not cured within fifteen days of the date of such notice, the State shall be entitled to interest in the amount of 12% pursuant to Wis. Stat. § 815.05(8) on the past-due installment payment, which shall accrue from the date of the immediately preceding installment payment through the date on which the past-due installment payment is made.

7. Environmental Compliance Audit.
- a) Within 60 days of entry of this Stipulation and Order for Judgment, Didion shall provide to the designated representative of the Wisconsin Department of Natural Resources ("WDNR") a list of three qualified independent environmental consultants whose staff shall have expertise in the development and conduct of full facility environmental compliance audits as that term is defined in sec. 299.85(1), Stats.
 - b) WDNR's designated representative shall provide whatever input he or she desires regarding the retention and scope of services to be provided by such consultant and after such consultation approve the proposed list of qualified independent environmental consultants.
 - c) Within 30 days after receipt of such approval, Didion shall retain such independent third-party consultant from among the list of three provided pursuant to Paragraph 7(b), above, and direct the consultant to develop a scope of services for Didion.
 - d) Didion shall provide WDNR's designated representative with the scope of services for review and comment within 30 days of retaining the independent consultant.
 - e) Within 60 days of receipt of WDNR comment and review of the scope of services, Didion shall authorize the independent third-party consultant to implement the final scope of services.

- f) Consistent with the schedule provided in Paragraph 7(g), below, Didion shall submit to WDNR's designated representative Environmental Compliance Audit Reports, as described in sec. 299.85 (3), Stats. The first Environmental Compliance Audit Report shall be completed no later than the first anniversary date of the Stipulation and Order for Judgment.
- g) The obligation to submit annual Environmental Compliance Audit Reports shall terminate on the fifth anniversary hereof.

8. This Stipulation, as approved by the Court, shall apply to and be binding on the parties and their successors and assigns.

9. Except as between the parties to this action, nothing contained in this stipulation and order for judgment shall be construed as an admission of liability by the defendants in any proceeding now pending or hereafter commenced.

10. Compliance by Didion Milling, Inc. and Didion Ethanol, LLC with the Stipulation and Order for Judgment shall constitute full satisfaction and release of Defendants' liability, and the liability of Defendants' employees and agents, for all violations described in or arising out of facts alleged in the complaint, as well as any claims that could have been alleged against the Defendants based on facts or information contained in files of the Wisconsin Department of Natural Resources as of the date of full execution of this Stipulation except for claims related to the definition of a "major stationary source" as that definition applies to ethanol production facilities after December 1, 2008.

11. The Court shall retain supervisory jurisdiction over the parties for the purpose of enforcing the provisions of this Stipulation and Order for Judgment.

12. The accompanying Order for Judgment and judgment may be entered incorporating the terms of this Stipulation without further notice, and the judgment may be docketed pursuant to Wis. Stat. § 806.10(1).

13. This Order is a final and appealable Order. However, the parties hereby waive their right to appeal the Order.

14. This Stipulation and Order for Judgment constitutes the complete agreement by and between the parties and no other document, agreement or understanding shall be used in construing its terms except as may be expressly referred to in this Stipulation and Order for Judgment.

Dated: March 26, 2010

Dated: March 26, 2010

WISCONSIN DEPARTMENT OF JUSTICE
Attorneys for Plaintiff

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ORDER FOR JUDGMENT

The Court approves the terms of the foregoing Stipulation in *State v. Didion Milling, Inc. and Didion Ethanol, LLC*, Case No. 10-CX-~~402~~, providing for the payment by Didion Milling, Inc. and Didion Ethanol, LLC of forfeitures, surcharges, and costs totaling \$525,000.00, and directs the clerk to enter and docket the judgment against Didion Milling, Inc. and Didion Ethanol, LLC incorporating the terms of this Stipulation, this ~~27th~~ day of April, 2010. This is a final Order between the State, Didion Milling, Inc. and Didion Ethanol, LLC for purposes of appeal under Wis. Stat. § 808.03(1).

BY THE COURT:

~~/s/ Gregory J. Pottel~~

4/23/10

THE HONORABLE GREGORY J. POTTTEL
~~Columbia~~ County Circuit Court, Branch F
Wood