MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SULTANY TRUCKING, LLC AND SULTANY FARMS, LLC, APPELLANTS,
v.
MISSOURI CLEAN WATER COMMISSION AND MISSOURI DEPARTMENT OF NATURAL RESOURCES, RESPONDENTS.

DOCKET NUMBER WD85445

DATE: March 21, 2023

Appeal From:

Platte County Circuit Court
The Honorable Thomas Clark Fincham, Judge

Appellate Judges:

Division Three: Thomas N. Chapman, Presiding Judge, Mark D. Pfeiffer, Judge, Cynthia L. Martin, Judge

---

Attorneys:

Rustin James Kimmell, Burlington, KS for appellants.

Richard Norman Groeneman, St. Louis, MO for respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

SULTANY TRUCKING, LLC AND SULTANY FARMS, LLC, APPELLANTS,
v.
MISSOURI CLEAN WATER COMMISSION AND MISSOURI DEPARTMENT OF NATURAL RESOURCES, RESPONDENTS.

WD85445 Platte County

Before Division Three: Thomas N. Chapman, Presiding Judge, Mark D. Pfeiffer, Judge, Cynthia L. Martin, Judge

Sultany Trucking, LLC and Sultany Farms, LLC appeal from the circuit court's judgment affirming a decision issued by the Missouri Clean Water Commission which imposed an administrative penalty of $31,865 against Appellants for violations of the Missouri Clean Water Law. Appellants argue that the CWC committed legal error in the manner in which it assessed the administrative penalty and when it ordered Appellants to take abatement action.

AFFIRM.

Division Three holds:

1. The CWC did not err when it imposed a multiple violation penalty because each violation was independent of or substantially different from any other violation.

2. The CWC did not err in assessing twenty-five points under the Facility Compliance Status category of 10 CSR 20-3.010(3)(A)2 because DNR established that the Site was in noncompliance from September 20, 2018 until May 6, 2019.

3. The CWC did not err in assessing ten points under the Facility Responsiveness category of 10 CSR 20-3.010(3)(A)2 because the violations found on September 20 and October 3, 2018 continued despite notice of the violations and the need to correct the violations on those dates and multiple dates thereafter.

4. Section 644.079.3's two-year statute of limitations began to run on September 20, 2018, the date DNR first determined that the Site was a water contaminant source, and therefore the administrative penalty, assessed on September 18, 2020, was within the two-year statute of limitations.

5. Appellants have not demonstrated that the CWC's order directing Appellants to obtain a permit was in error because even if section 644.056 limits the authority to issue an abatement order to unresolved violations (which we do not find), the record does not demonstrate or establish that Appellants no longer operated a water contaminant or point source at the time the abatement order was issued.

Opinion by: Cynthia L. Martin, Judge March 21, 2023

This summary is UNOFFICIAL and should not be quoted or cited.