

IN THE IOWA DISTRICT COURT FOR POLK COUNTY**ENTERPRISE PRODUCTS
OPERATING, LLC,**

Petitioner,

v.

**IOWA UTILITIES BOARD, A
DIVISION OF THE IOWA
DEPARTMENT OF COMMERCE,
STATE OF IOWA,**

Respondent.

Case No. CVCV065780**RULING ON PETITION FOR
JUDICIAL REVIEW**

On July 1, 2024, the above captioned matter came before this Court for hearing. The Petitioner, Enterprise Products Operating, LLC (“Enterprise”), was represented by Amanda James and Dennis Puckett. Michelle Rabe and Jon Tack appeared for the Respondent, the Iowa Utilities Board (“the Board”). Jennifer Johnson appeared for the Office of Consumer Advocate as an intervenor. After hearing the arguments of counsel and reviewing the court file, including the briefs filed by the parties and the Certified Administrative Record, the Court now enters the following ruling.

I. COURSE OF PROCEEDINGS AND BACKGROUND FACTS.

Enterprise operates a hazardous liquid pipeline in Iowa regulated by the Board. Pet. 1. The pipeline was constructed, installed, operated, and first permitted beginning in the 1960s by companies who are not parties to this action. *Id.* at 3. The original owners of the pipeline, MAPCO, acquired the initial permits for the pipeline from the State of Iowa under prior Iowa Code chapter 479. *Id.* at 4. In 1993, the Eighth Circuit Court of Appeals in *Kinley Corp. v. Iowa Utilities Board*, invalidated Iowa’s state-issued permits for interstate hazardous liquid pipelines under Iowa Code

Chapter 479 on federal preemption grounds. *See Kinley Corp. v. Iowa Utils. Bd.*, 999 F.2d 354, 360 (8th Cir. 1993). The current version of the statute, Iowa Code chapter 479B, was enacted by the Iowa legislature in 1995; invalidating previous permits and requiring pipeline owners and operators to apply for new hazardous liquid pipeline permits. Iowa Code Ch. 479B. MAPCO then sold the pipeline to Williams Natural Gas Liquids, Ltd. (“Williams”) and Mid-America Pipeline Company, LLC (“MAPL”) who acquired the pipeline in 1997. Pet. 5. Enterprise became the new owner of the pipeline in 2002 when it acquired a majority stake in Williams and MAPL. *Id.* In early 2022, the Board conducted research regarding the hazardous liquid pipelines in Iowa and discovered that Enterprise’s 750 miles of hazardous liquid pipeline in Iowa was being operated without permits. Cert. Rec. 1-2.

On February 6, 2023, the Board issued an order requiring a response and setting a show cause hearing which required Enterprise to file a response detailing the location, length, diameter, and product it is transporting in its pipelines; a history of the hazardous liquid pipeline owners for each line from construction until present; and an explanation as to why the company has been operating pipelines without the required hazardous liquid pipeline permits in the state. *Id.* at 1-3. The Board’s notice asked Enterprise to respond within fourteen days of the order with the show cause hearing set for March 17, 2023. *Id.* at 3-4. Upon the receipt of this order, Enterprise requested a two-week extension to file its response, which the Board granted. *Id.* at 6-7. After submitting a response, Enterprise then filed a motion to continue the hearing, which the Board denied. *Id.* at 19-22. Five weeks later at the show cause hearing, Enterprise submitted a petition for a permit and a map of their pipeline system in Iowa as evidence and admitted to not knowing it needed to have permits to operate its hazardous liquid pipelines and underground storage facilities in the state. Cert. Rec. 56. They further argued that when they bought the pipelines from the previous owner,

Williams, he had assured them that all the necessary permits were in place. At the show cause hearing, the Board discussed the nine segments of Enterprise's pipeline that were subject to the civil penalty.¹ The Board found that the permits issued to MAPCO under each segment originally had permits as of March 1961 and then the renewal permits were to be in effect in the ranges of June 1998 - July 2016. *Id.* at 56-59. Ultimately, the Board found that Enterprise had been in violation of Iowa Code chapter 479B since July 31, 2002, when they purchased the pipelines and issued a combined civil penalty in the amount of \$1.8 million - \$200,000 cap for each segment of the pipeline that was issued a permit. *Id.* at 60, 64-65. When making their decision, the Board considered the size of Enterprise's company, the amount of time they were out of compliance, and the good faith efforts by Enterprise to come into compliance pursuant to Iowa Code section 479B.21(2). *Id.* at 60-61. Additionally, the Board found that Enterprise's lack of knowledge of the permit requirements did not constitute a defense for non-compliance. *Id.* at 61.

On July 7, 2023, Enterprise filed a Petition for Judicial Review with the district court alleging that the Board's \$1.8 million civil penalty was nine times the amount statutorily authorized under Iowa Code. They also assert that the Board's decision violates their due process and equal protection rights. The Board rejected each contention raised by Enterprise.

II. SCOPE AND STANDARD OF REVIEW.

Iowa Code section 17A.19(10) governs judicial review of administrative agency decisions. *NextEra Energy Res. LLC v. Iowa Utils. Bd.*, 815 N.W.2d 30, 36 (Iowa 2012). "In exercising its judicial review power, the district court acts in an appellate capacity." *Nance v. Iowa Dep't of Revenue*, 908 N.W.2d 261, 267 (Iowa 2018) (quoting *Mycogen Seeds v. Sands*, 686 N.W.2d 457,

¹ The pipeline previously had nine permits for nine segments of pipeline under Iowa Code Chapter 479. Cert. Rec. 56-59. They are numbered in the Board's ruling as Docket Nos. P-0453, P-0454, P-0477, P-0502, P-0527, P-0531, P-0572, P-0610, and P-0735.

463 (Iowa 2004)). This enables the court to correct errors of law on the part of the agency. *See IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 627 (Iowa 2000). When an agency has vested statutory discretion, the district court can only interfere if the decision is based upon an irrational, illogical, or wholly unjustifiable interpretation of the law or is otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. *See* Iowa Code §§ 17A.19(10)(f)(3)(m-n). The agency's record is reviewed by the court as a whole to determine whether substantial evidence supports the agency's actions. Iowa Code § 17A.19(10)(f). Evidence is substantial when a reasonable mind could reach the same findings. *IBP*, 604 N.W.2d at 632. The evidence must also support the conclusion actually made by the agency. *Munson v. Iowa Dep't of Transp.*, 513 N.W.2d 722, 723 (Iowa 1994). Thus, the court may not interfere with an agency's finding when reasonable minds might disagree about the interference drawn from the evidence. *Organic Tech. Corp. v. State ex rel. Iowa Dep't of Nat. Res.*, 609 N.W.2d 809, 815 (Iowa 2000).

III. MERITS.

A. Iowa Code Chapter 479B.

The issue this Court must decide is whether the Board's civil penalty assessed against Enterprise is more than statutorily allowed under Iowa Code chapter 479B. Iowa Code chapter 479B grants the Board authority over certain aspects of hazardous liquid pipelines that may result in damage from the construction, operation, or maintenance of a hazardous liquid pipeline or underground storage facility within the state. Iowa Code section 479B.21(1) authorizes the Board to assess civil penalties. Iowa Code section 479B.21(1) in pertinent part states:

A person who violates this chapter or any rule or order issued pursuant to this chapter shall be subject to a civil penalty levied by the board in an amount not to exceed one thousand dollars for each violation. Each day that the violation continues shall constitute a separate offense. However, the maximum civil penalty shall not exceed two hundred thousand dollars for any related series of violations.

The question therefore is defining the phrase: “any related series of violations” to determine what the maximum civil penalty at law authorizes. “When determining the meaning of a statute, a core canon of statutory interpretation requires us to construe the statute as a whole.” *Mid Am. Constr. LLC v. Sandlin*, 2 N.W.3d 838, 849 (Iowa 2024). Enterprise argues that the phrase “any related series of violations” encompasses any violations that arise from section 479B.21(1). The Board argues that the phrasing of the statute caps any single series of related violations at \$200,000, therefore capping the nine permit violations at \$200,000 total.

Here, the plain language of chapter 479B clearly grants the Board authority over hazardous liquid pipelines within the state. Enterprise also concedes this point. Given that Enterprise operates nine pipelines and underground storage facilities within the state of Iowa, the Board charged Enterprise at the statutory cap of \$200,000 per pipeline and underground storage facility. The Court finds the legislature intended for the words “any related series of violations” to encompass the previous sentences in the statute. It would not make logical sense for the legislature to address a singular violation and the offenses for each violation and then end by addressing a maximum penalty for numerous violations total. The Court agrees with the Board and finds the legislature clearly meant for a “related series of violations” to apply to the number of days a singular violation constitutes a separate offense. Since Enterprise was deemed to not comply for 7,535 days, the civil penalty could have been \$7.535 million for one pipeline or underground storage facility or \$67.815 million for nine separate offenses. The maximum put in place by the legislature caps the penalty at \$200,000 so civil penalties do not amount to infinite and outrageous sums. The legislature intended for the statute to apply to each violation charged in particular, not for the whole of multiple charged violations.

When determining the amount of the civil penalty, the Board shall consider “the appropriateness of the penalty to the size of the pipeline company charged, the gravity of the violation, and the good faith of the person charged in attempting to achieve compliance, after notification of a violation...” Iowa Code § 479B.21(2). “[K]nowledge of the law is generally presumed...particularly when the activity challenged is regularly conducted...in the course of business.” *Sullivan v. Iowa Dep’t Hr’g Bd. v. Iowa Beer and Liquor Control Dep’t*, 325 N.W.2d 923, 926 (Iowa Ct. App. 1982) (internal citations omitted); *see also State v. Barry*, 125 N.W.2d, 833, 835 (Iowa 1964) (“[T]he fact that the violator was unaware of the violation will not be available as a defense.”). In this case, the Board determined that Enterprise is a multibillion-dollar company operating throughout the United States and has operated hazardous liquid pipelines and underground storage facilities in Iowa for nearly twenty-one years without the proper permits. The Board did not find Enterprise’s assertion that their predecessors warranted the proper permits were in place persuasive or their recent attempt to come into compliance given their noncompliance for the previous years. Since Iowa Code section 479B.21(1) gives the Board authority to issue civil penalties for permitting non-compliance and the factors weighed by the Board are authorized under Iowa Code section 479B.21(2), the Court finds the Board’s determinations concerning the amount of the civil penalty are not illogical, irrational, unreasonable, nor are they arbitrary, capricious, or an abuse of discretion.

B. Enterprise’s Due Process Claim.

Enterprise also argues that the Board’s actions against them violate their Due Process rights under the Iowa Constitution because they were not given adequate notice that detailed the penalties they may be subjected to or a final dispositive proceeding outside of the show cause hearing.

While full procedural due process rights are not necessary for an administrative hearing, they must include the fundamental elements of notice and an opportunity to defend. *Carr v. Iowa Emp. Sec. Comm'n*, 256 N.W.2d 211, 214 (Iowa 1977).

Due process prescribes that all administrative hearings under Iowa Code Section 17A.12 include a notice of a contested case, which provides the following:

- (b) A statement of the legal authority and jurisdiction under which the hearing is to be held.
- (c) A reference to the particular sections of the statutes and rules involved.
- (d) A short and plain statement of the matters asserted.

AT&T Commc'ns of The Midwest, Inc. v. Iowa Utils. Bd., 687 N.W.2d 554, 559 (Iowa 2004). The procedures should be tailored to ensure a meaningful opportunity to present a case, including an evidentiary hearing and subsequent judicial review. *See Mathews v. Eldridge*, 424 U.S. 319, 349 (1976).

Here, the Board provided Enterprise with sufficient notice prior to the show cause hearing. The Board sent Enterprise a notice of non-compliance on February 6, 2023 that detailed the allegations, the Board's authority under Iowa Code chapter 479B, and references to Iowa Code sections 479B.20-21 in particular that were the subject of Enterprises violations. The Board's notice also included the date, time, and location in which the hearing is to be held and deadlines and the specifics the Board required from Enterprise to put them on notice of what to present at the hearing. Enterprise even requested additional time to respond twice before the show cause hearing to which the Board granted once. At the show cause hearing, Enterprise presented evidence that included their petition for a permit that was filed March 17, 2023 (the day of the show cause hearing) and a map of Enterprise's pipeline system in Iowa. Additionally, Enterprise petitioned for judicial review to this district court for further inquiry. The Court finds that Enterprise has been granted sufficient due process throughout this case and denies their claim of a due process violation.

Enterprise further argues that the imposition of a large fine violates their due process rights by burdening Enterprise more than the State of Iowa and that there have been no adverse or dangerous incidents while Enterprise was operating without a permit. The Court finds this argument lacks merit. Iowa Code section 479B.1 provides that the purpose of chapter 479B is for the Board to have the authority to implement controls over hazardous liquid pipelines to minimize the risk of damages to the environment and property within the State of Iowa. The importance in regulating hazardous liquid pipelines is to primarily protect landowners and tenants from potential environmental and economic damages that could arise from construction, operation, or maintenance of these pipelines. *Puntenney v. Iowa Utils. Bd.*, 928 N.W.2d 829, 840 (Iowa 2019) (citing Iowa Code § 479B.1). The Board's finding that Enterprise had been operating without the proper permits for about twenty-one years is significant. Even if there were no adverse or dangerous consequences from operating without permits, this does not change the importance of the determination. The Court finds that the Board acted within its discretion to impose the maximum civil penalty, as allowed by its authority under Iowa Code chapter 479B.

C. Enterprise's Equal Protection Claim

Enterprise additionally argues that the Board's actions against them violate their equal protection rights under the Iowa Constitution because the civil penalty is the highest assessed by the Board against similarly situated companies in similar circumstances. To support their argument, Enterprise cites to other decisions by the Board where other companies were assessed smaller fines to which the Board argues are not similar to Enterprise's situation or circumstances. Enterprise and the Board assert that the Board's Sinclair decision in April 2023 is the most similar to Enterprise's situation. Both companies had violations of Iowa Code section 479B.21, were compelled by the Board to a show cause hearing, and fined the maximum civil penalty. At issue

was a singular 11.8 mile pipeline acquired by Sinclair in March 2022. Sinclair Transp. Co., Docket No. SPU-2023-0003 (Iowa Utils. Bd. Apr. 21, 2023). Sinclair also argued that they were unaware of Iowa's permitting requirements and that the previous owners of the pipeline represented that the necessary permits were in place. *Id.* at 3. Sinclair also did not obtain a permit until they were compelled to a show-cause hearing by the Board. *Id.* at 8. The Board found the lack of a permit to be a serious violation and Sinclair's failure to self-report warranted a maximum fine under Iowa Code section 479B.21. *Id.* Sinclair was ultimately fined \$200,000 for the single pipeline permitting violation. *Id.* at 9.

The Equal Protection Clause of the Iowa Constitution demands that laws treat all people who are similarly situated with respect to the legitimate purpose of the law. *McQuisition v. City of Clinton*, 872 N.W.2d 817, 830 (Iowa 2015). The purpose of the Equal Protection Clause is to secure every person against intentional and arbitrary discrimination to ensure plaintiffs are not intentionally treated differently from others similarly situated and that there is no rational basis for a difference in treatment. *See Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam).² Equal Protection principles also apply to administrative proceedings and use the same standards for claims against statutes and administrative regulations. *Davoren v. Iowa Emp. Sec. Comm.*, 277 N.W.2d 602, 604 (Iowa 1979).

Here, Enterprise has not shown that the Board intentionally and arbitrarily discriminated against them when issuing the civil penalty when compared to other similarly situated companies in similar circumstances. The Court finds that the Board's Sinclair decision most mirrors Enterprise's situation and circumstances to properly assess Enterprise's equal protection claim. The Board assessed both Enterprise and Sinclair based on the same enumerated factors in Iowa

² The Equal Protection Clause is applicable to the states through the Fourteenth Amendment of the U.S. Constitution. U.S. Const. amend. XIV, § 1.

Code section 479B.21(2). The Board's findings show that Enterprise had been operating without multiple permits for twenty-one years while Sinclair had only been operating for two years without a single permit. Essentially, the Board made the same findings as to Enterprise and Sinclair. It is only the fact that Enterprise had nine permit violations is why Enterprise's penalty is much higher than Sinclair's one permit violation. Both penalties were fined the maximum civil penalty authorized at law. The Board has subjective discretion when issuing penalties and found that Enterprise's situation constituted a higher penalty than Sinclair's situation. The Court finds the Board's decision is based on the law and facts in the record, is not irrational, illogical, or unreasonable, nor is it an abuse of discretion. Additionally, the Board's decision is neither arbitrary nor capricious. The Board is tasked with applying enumerated factors under Iowa Code section 479B.21(2). The Board assesses each situation individually to determine the appropriate penalty. Accordingly, the penalties will vary based on the Board's findings for each individual situation. The Board applied their factors from section 479B.21(2) to make an individual determination against Enterprise that was supported by the evidence. This does not amount to a violation of section 479B.21(2) or equal protection law against Enterprise. Therefore, the Board's findings do not constitute a violation of equal protection.

IV. CONCLUSION AND DISPOSITION.

For all the reasons set forth above, the Court concludes the Board did not err in issuing a civil penalty to Enterprise in the amount of \$1.8 million pursuant to Iowa Code section 479B.21. The Court also concludes that the Board's findings do not violate Enterprise's due process or equal protection rights.

IT IS THE ORDER OF THE COURT that the Board's Order Assessing Civil Penalties is **AFFIRMED**.



State of Iowa Courts

Case Number
CVCV065780

Case Title
ENTERPRISE PRODUCTS OPERATING VS IOWA UTILITIES
BOARD
Type: ORDER FOR JUDGMENT

So Ordered

**Scott D. Rosenberg, District Court Judge,
Fifth Judicial District of Iowa**

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