

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-027249

12/18/2015

HON. RANDALL H. WARNER

CLERK OF THE COURT  
K. Ballard  
Deputy

STATE OF ARIZONA, et al.

JEFFREY D CANTRELL

v.

WILLIAM W ARNETT

ROBERT L GREER

JUDGMENT SIGNED

Before the court and fully briefed is the State's November 5, 2015 Application for Direct Costs/Costs of Ligation. Oral argument is unnecessary.

The court previously awarded remediation costs to the State under A.R.S. § 49-1017(C). The State now seeks \$272,152.74 in litigation costs under that statute, which states:

If direct costs are incurred by the director for undertaking corrective action with respect to a release of a regulated substance that is petroleum, the owner and operator are liable to this state for these direct costs. Liability imposed pursuant to this subsection is strict. For the purposes of this subsection, "direct costs" means the cost of the corrective actions, investigations, enforcement and litigation except for those amounts that are not allocated to the owner or operator pursuant to subsection D of this section.

The State argues that it is entitled to all claimed costs irrespective of reasonableness. The court disagrees. Attorneys' fees or other litigation costs not reasonably spent on the enforcement action are not "direct costs . . . incurred by the director for undertaking corrective action."

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The State has calculated its litigation costs on a time and hourly rate basis. The court finds the State's hourly rates to be reasonable. It further finds the time incurred in this litigation to be reasonable in light of the complexity of this action, the nature of the State's burden of proof and the defenses raised by Mr. Arnett.

Litigation costs incurred in the prior lawsuit, CV2009-007788, are not recoverable. The court ruled at trial that it would decide attorneys' fees incurred in this action post-trial under Rule 54(g), just as it does in ordinary civil litigation. But that only applies to fees incurred in this litigation. If the State wished to recover attorneys' fees from a separate lawsuit, it could have presented them as an element of damages at trial. Thus, the total litigation costs to which the State is entitled is \$204,007.45, which deducts \$68,145.29 spent on the prior lawsuit.

Mr. Arnett argues for an allocation of litigation costs between him and the prior owner in the same proportion that remediation costs were allocation. Unlike the remediation project, however, the litigation pertained solely to Mr. Arnett. No allocation is warranted.

The State has lodged a form of judgment with the Application. Mr. Arnett does not object to the form, but the court finds it inappropriate for two reasons. First, only a money judgment is warranted. The court is not issuing an injunction directing payment according to any schedule. Second, the judgment will not include penalty interest because that only applies if "nonpayment is due to wilful neglect." A.R.S. § 49-113(B). There has been no finding of willful neglect.

**IT IS ORDERED** granting the Application and awarding litigation costs of \$204,007.45.

**IT IS FURTHER ORDERED** approving and settling the Final Judgment in favor of Arizona Department of Environmental Quality and against William W. Arnett, as modified consistent with this order, electronically signed by the court on December 18, 2015. The judgment will be electronically filed (entered) by the clerk on December 21, 2015.