

COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania, Department of Environmental Protection v. Service Station Co. Inc. 1324 d/b/a Fulton’s Service Station

Service Station Co. · No. 214 M.D. 2023 · Decided April 1, 2026

SUMMARY

The Pennsylvania Commonwealth Court addresses a civil contempt purge and sanctions proceeding arising from the respondent’s failure to permanently close underground storage tanks as required by the Storage Tank and Spill Prevention Act, Department of Environmental Protection orders, and prior court orders. The opinion considers continuing contempt, the respondent’s ability to comply, due process protections associated with potential incarceration, and whether monetary fines and further sanctions are appropriate.

CASE DETAILS

COURT	Commonwealth Court of Pennsylvania
WRITING FOR THE COURT	Stacy Wallace
JURISDICTION	Commonwealth Court of Pennsylvania
DECIDED	April 1, 2026
DOCKET	214 M.D. 2023
DISPOSITION	other
PROCEDURAL POSTURE	The Department of Environmental Protection sought continued civil contempt, entry of judgment on previously imposed daily fines, a new purge schedule, and incarceration of the respondent corporation’s principal following the corporation’s failure to comply with court orders requiring permanent closure of underground storage tanks.
STANDARD OF REVIEW	The Department bore the initial burden to prove civil contempt by a preponderance of the evidence. The Court evaluated whether the corporation had notice of the order, whether its noncompliance was volitional, and whether it acted with wrongful intent. The corporation bore the burden of establishing inability to comply as an affirmative defense.

PRECEDENTIAL VALUE	Published single-judge opinion; persuasive, not binding, under 210 Pa. Code § 69.414(b).
PARTIES	Commonwealth of Pennsylvania, Department of Environmental Protection v. Service Station Co. Inc. 1324 d/b/a Fulton's Service Station

TOPICS

environmental law administrative law contempt remedies civil procedure

PRACTICE AREAS

environmental law administrative law civil procedure contempt remedies

QUESTIONS PRESENTED

1. Whether the respondent corporation remained in civil contempt for failing to comply with the Court's August 15, 2024 Contempt Order.
2. Whether the Department proved by a preponderance of the evidence that the corporation had notice of the Contempt Order, acted volitionally in failing to comply, and acted with wrongful intent.
3. Whether the corporation established inability to comply with the purge conditions as an affirmative defense.
4. Whether the sale of the property containing the underground storage tanks mooted the contempt proceeding.
5. Whether the Court could convert the previously imposed \$100 daily civil contempt fine into a \$25,500 judgment and impose a new purge schedule.
6. Whether evidence elicited through Robert J. Fulton, Jr.'s provisional cross-examination of a Department witness should be considered despite Fulton's lack of authority to represent the corporation.

HOLDINGS

1. The corporation remained in civil contempt because it failed to permanently close the underground storage tanks, complete the required site assessment, amend the tank registration, and file the required closure report as directed by the Court's Contempt Order.
2. The corporation failed to establish its affirmative defense that it was presently unable to comply with the purge conditions.
3. The sale of the property did not moot the contempt proceeding because Fulton remained the owner or operator of the tanks and the corporation remained responsible for their closure.
4. The Court converted the previously imposed \$100 daily civil contempt fines, totaling \$25,500, into a judgment against the corporation and established a new purge schedule, but imposed no additional sanction and denied incarceration of Fulton at that time.

5. The Court sustained the Department’s objection and did not consider evidence Fulton elicited during his cross-examination of the Department witness concerning the corporation’s ability to comply, but declined to strike that testimony from the record.

KEY QUOTATIONS

“The complaining party must prove 1) the contemnor had notice of the specific order it is alleged to have disobeyed; 2) the act constituting the contemnor’s violation was volitional; and 3) the contemnor acted with wrongful intent.” (34)

“At this time, however, the Court finds Fulton’s testimony alone lacked pertinent credibility and did not amount to sufficient evidence to establish the affirmative defense of Corporate Respondent’s inability to comply.” (40)

FACTUAL BACKGROUND

The respondent operated an automobile service center at 1324 Washington Lane in Philadelphia where three underground storage tanks had been registered as temporarily out of service in 2000. The tanks were not permanently closed within the required three-year period, and the Department issued notices and a 2019 administrative order requiring closure. Despite a 2023 court-approved stipulation and an August 2024 contempt order requiring closure, the tanks remained in the ground and the required closure reports and amended registration were not filed. The respondent’s principal, Robert J. Fulton, Jr., claimed the corporation lacked sufficient funds to comply, but the Court found his testimony insufficiently credible and unsupported by documentary financial evidence.

PROCEDURAL HISTORY

The Department issued a 2019 administrative order requiring permanent closure of three underground storage tanks. The corporation did not appeal or comply with that order. After the Department filed a judicial enforcement petition, the parties entered a stipulation that the Court adopted in July 2023. The Court adjudicated the corporation in civil contempt in August 2024, imposed a \$100 daily fine, and established purge conditions. Following the corporation’s continued noncompliance, the Department filed a certification and purge/sanctions petition. After an August 19, 2025 hearing, the Court held the corporation remained in contempt, converted \$25,500 in unpaid fines into a judgment, established a new purge schedule, and denied incarceration at that time.

DISPOSITION

other

REMAND INSTRUCTIONS

No remand was ordered. The Court retained jurisdiction, established purge deadlines requiring permanent tank closure and related reporting, directed the Department to certify compliance, and authorized the Department to seek discovery, a further sanctions hearing, or another lawful remedy if the corporation again failed to purge contempt.

CASES CITED

- Spirit of the Avenger Ministries v. Commonwealth, 767 A.2d 1130, 1130 (Pa. Cmwlth. 2001)
- Turner v. Rogers, 564 U.S. 431 (2011)
- Maggio v. Zeitz, 333 U.S. 56 (1948)
- Barrett v. Barrett, 368 A.2d 616, 621 (Pa. 1977)
- Commonwealth v. Diaz, 191 A.3d 850 (Pa. Super. 2018)
- Pa. State Police v. Doe, 217 A.3d 455, 464 (Pa. Cmwlth. 2016)
- Povacz v. Pa. Pub. Util. Comm'n, 280 A.3d 975, 1006-07 (Pa. 2022)
- Waggle v. Woodland Hills Ass'n Inc., 213 A.3d 397, 403 (Pa. Cmwlth. 2019)
- Lachat v. Hinchcliffe, 769 A.2d 481, 489 (Pa. Super. 2001)
- Stahl v. Redcay, 897 A.2d 478, 489 (Pa. Super. 2006)
- Jordan v. Pa. State Univ., 276 A.3d 751, 766-67 (Pa. Super. 2022)
- Hicks on Behalf of Feiock v. Feiock, 485 U.S. 624 (1988)
- Department of Environmental Protection v. Takona Oil Company and Osborne, Pa. Cmwlth., No. 781 M.D. 2018, filed Oct. 13, 2020, slip op. at 4
- Ramey Borough v. Department of Environmental Resources, 351 A.2d 613, 614 (Pa. Cmwlth. 1976)
- Taylor v. Pa. State Police of Commonwealth, 132 A.3d 590, 603 n.15 (Pa. Cmwlth. 2016)
- Bocker v. Bocker, 241 A.2d 336, 339 (Pa. 1968)
- Bisher v. Lehigh Valley Health Network, Inc., 265 A.3d 383, 406 (Pa. 2021)
- Martinez v. City of Reading Police Department, 289 A.3d 1136, 1139 n.13 (Pa. Cmwlth. 2023)

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