

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
WERNER CONSTRUCTION CO.,)
A Nebraska Corporation)
)
Defendant.)

Case No. _____

COMPLAINT

COMES NOW Michael J. Linder, Director of the Nebraska Department of Environmental Quality, who institutes this action through Jon C. Bruning, Attorney General, on behalf of the State of Nebraska, and alleges as follows:

FIRST CLAIM

1. The Plaintiff, the Nebraska Department of Environmental Quality, is at all times material herein the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504 (Reissue 1999, Cum. Supp. 2004) to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004, Supp. 2005) and all rules, regulations, and permits created thereunder.

2. The Defendant, Werner Construction Co. is a corporation authorized to do business in the State of Nebraska.

3. The Defendant owned and operated an aboveground storage tank system located at 2430 E 7th Street, Hastings, Nebraska.

4. It is unlawful for any person to violate any rule or regulation promulgated pursuant to the Nebraska Environmental Protection Act. Neb. Rev. Stat. § 81-1508.02(e). Any person who violates § 81-1508.02(e) shall be subject to a civil penalty of no more than ten thousand dollars (\$10,000) per day. In the case of a continuing violation, each day shall constitute a separate offense. Neb. Rev. Stat. § 81-1508.02(2).

5. Pursuant to Neb. Rev. Stat. § 81-1505(14), the Nebraska Environmental Quality Council adopted Nebraska Administrative Code, Title 126 - Rules and Regulations Pertaining to the Management of Wastes.

6. According to Title 126, Chapter 18, 001, “[N]o person shall release, cause to be released, or allow the release of an oil or hazardous substance or residuary products thereof, into, or upon the waters or land of the state, except in quantities, and at times and locations, or under circumstances and conditions as the Department approves.”

7. The definition of “oil” includes “oil of any kind or in any form, including, but not limited to petroleum, fuel oil, oil refuse, and oil mixed with wastes” Title 126, Chapter 1, 030.01.

8. On or about May 10, 2005 and continuing until June 27, 2005, the Defendant released, caused to be released or allowed the release of approximately 200 to 500 gallons of oil from its aboveground storage tank into or upon the waters and land of the state without the Department’s approval in violation of Title 126, Chapter 18, 001.

SECOND CLAIM

9. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 7 of the First Claim.

10. Pursuant to Title 126, Chapter 18, 002, “[!]t shall be the duty of any responsible person to notify the Department of any release or suspected release of an oil or hazardous substance”

11. The Defendant is a “responsible person” as defined by Title 126, Chapter 1, 038.

12. On or about May 10, 2005 and continuing until June 9, 2005, the Defendant failed to notify the Department of the release in violation of Title 126, Chapter 18, 002.

THIRD CLAIM

13. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 7 of the First Claim.

14. Pursuant to Title 126, Chapter 18, 003, “[w]henver an oil or hazardous substance is released, it shall be the duty of the responsible person to take or cause to be taken, within 24 hours, all necessary steps to stop the release and contain all released material. As soon as the release has been stopped and contained, the responsible person shall take action to preclude continued or future releases.

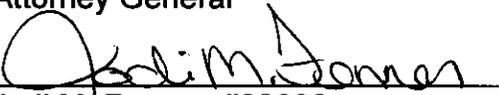
15. On or about May 10, 2005 and continuing until June 27, 2005, the Defendant failed to take or cause to be taken, within 24 hours, all necessary

steps to stop the release and contain all the released oil and also failed to take any action to preclude continued or future releases of the oil in violation of Title 126, Chapter 18, 002.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of civil penalties as provided in Neb. Rev. Stat. § 81-1508.02(2), and that all costs of this action be taxed to the Defendant.

STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

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