

RCDCJDG JUSTICE DIXON DISTRICT COURT  
 Record Complex Judgment Information Erma Fitch

Case ID CI 03 50 Old Case ID Date Filed 9 3 2003  
 Caption State of Nebraska v. Michael Strong etal Case Status C  
 Disposition Date 03 09 2006 Disposition Type TRIED Tried to Court  
 Jda Date 03 09 2006 Interest Type & Rate N .0000 Judgment No. 2  
 Jda Code FINE Fines Hold Disbursement(Y/N/O) N  
 Creditor PLF001 State of Nebraska Date Modified 00/00/0000  
 Debtor JNT001 M.Strong/Strong Tire/Am Tire Pr Date Satisfied 00 00 0000  
 Alternate Pavee RV/SA/VC Date 00 00 0000

Selection	4=Delete	Reason	Name	Jdamt	amt	F	WK/MO	Start date	Juda Bill	Start	Stop	NON IV-D
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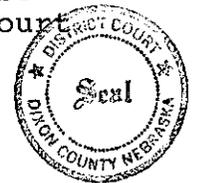
F1=Help F3=Exit F4=Prompt F5=Refresh F6=Add F9=Delete F12=Cancel F13=Judge Note  
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IN THE DISTRICT COURT OF DIXON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.	*	
MICHAEL J. LINDNER, Director,	*	
NEBRASKA DEPARTMENT OF	*	
ENVIRONMENTAL QUALITY,	*	
Plaintiff,	*	CASE NO. CI03-50
vs.	*	
MICHAEL KIRK STRONG aka MIKE	*	NOTICE OF JUDGMENT
STRONG, d/b/a STRONG TIRE	*	
COMPANY, an individual, and	*	
AMERICAN TIRE PROCESSING AND	*	
RECYCLING, INC.,	*	
Defendant.	*	

You as a party or attorney of record are hereby notified that on March 9, 2006, judgment was rendered in the above entitled case for the Plaintiff and transcribed to the Dixon County District Court on March 9, 2006.

Dated this 9th day of March, 2006.



*Jackie King-Coughlin*  
 Jackie King-Coughlin  
 Clerk of the District Court

cc: Asst. Neb. Atty. Gen. Katherine Spahn  
 Michael Kirk Strong

COPY

STATE OF NEBRASKA  
DIXON COUNTY  
FILED

MAR 09 2006

*Janice King - Audlin*  
CLERK OF DISTRICT COURT of

IN THE DISTRICT COURT OF DIXON COUNTY, NEBARASKA

STATE OF NEBRASKA, ex rel. \*  
MICHAEL J. LINDNER, Director, \*  
NEBRASKA DEPARTMENT OF \*  
ENVIRONMENTAL QUALITY, \*

Plaintiff, \*

CASE NO. CI03-50

vs. \*

MICHAEL KIRK STRONG aka MIKE \*  
STRONG, d/b/a STRONG TIRE \*  
COMPANY, an individual, and \*  
AMERICAN TIRE PROCESSING AND \*  
RECYCLING, INC., \*

JOURNAL ENTRY

Defendant. \*

\* \* \* \* \*

AND NOW, on this 8th day of March, 2006, the above matter

comes on for further consideration on the matter of assessment of civil penalties in the above matter. Hearing on the same was held herein on February 1, 2006, at which time the matter was taken under advisement. The court, having reviewed the testimony of the witnesses and the pleadings herein, together with the exhibits offered and received at said hearing, and being fully advised in the premises, FINDS:

1. This is a proceeding instituted by the Nebraska Attorney General on behalf of plaintiff director of the Nebraska Department of Environmental Quality ("NDEQ") to enforce compliance with Nebr. Rev. Stat. §81-15,162.03 (Reissue 1989).

2. Defendant Michael Kirk Strong, ("Strong"), and individual, doing business individually and as "Strong Tire Company, a sole proprietorship, is and was the owner of a scrap tire collection site ocated within part of NW 1/4 SE 1/4 Section 35, Township 27 North, Range 5 East of the 6th P.M. in Dixon County, Nebraska, whereinafter referred to as "the site."

3. This court entered a summary judgment order herein on July 29, 2005, finding that in its January 14, 2000, order, NDEQ revoked Strong's scrap tire permit issued September 19, 1997, being permit number 97-035-1124, and ordered that directed that closure of Strong's facility was to commence as directed under Title 136 of the Nebraska Administrative Code. Further, the summary judgment order found that Strong had failed to remove the tires from the site and properly close the site and was therefore in violation of the January 14, 2000, order of the NDEQ. The summary judgment found that the January 14, 2000, order of the NDEQ was against Michael Strong, d/b/a Strong Tire Company, and not against defendant American Tire Processing and Recycling, Inc. The summary judgment order reserved the issue of civil penalties, if any, to be determined at trial, as well as the liability, if any of American Tire Processing and Recycling, Inc.

4. Plaintiff did not present any evidence at trial on the issue of civil penalties to show any liability of American Tire Processing and Recycling, Inc., and no civil penalty is assessed against that entity, if in fact it does presently exist.

5. The amount of civil penalties to be assessed, if any, herein, is governed by Nebr. Rev. Stat. §81-1508.02(2).

6. Exhibit #2 establishes that by Administrative Order of Michael J. Lindner, Director of NDEQ, it was found that during January of 2000, there were some 948,000 scrap tires on the site. (P. 3, ¶6, Attachment A to Exh. #2). The NDEQ Final Order of January 14, 2000, (Attachment A to Exhibit #2) ordered that "Closure of Strong's facility shall commence as directed under Title 136, and that Strong's Permit No. 97-035-1234 was

was revoked by said order. As noted in ¶1 of this court's summary judgment order filed herein on August 29, 2005, that Administrative Order was not appealed. Title 136 of the Nebraska Administrative Code required clean-up of the site within four months of receipt of the last scrap tire on the site under the permit, which would have been no later than the date on which the permit was revoked, i.e. January 14, 2000. See Title 136, Neb. Admin. Code, Ch. 8, Sec. 001.

7. Strong is subject to civil penalties beginning May 15, 2000, and continuing daily thereafter, inasmuch as the completion of clean-up and closure of the site has not been accomplished as of the date of trial herein on the imposition of civil penalties, i.e. February 1, 2006, as of which date Strong has been in violation of Nebr. Rev. Stat. §81-1508.02(1)(b) for a total of 2,088 days. Civil penalties are thus appropriate and are to be assessed pursuant to Nebr. Rev. Stat. §81-1508.02(2) in an amount not to exceed \$10,000.00 per day for each day of said violation.

8. In determining the amount of such civil penalty to be imposed on Strong, the court considers the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.

9. The court also considers certain additional factors prescribed for consideration in the imposition of civil penalties under the federal Clean Water Act, 33 U.S.C. §§ 1251 through 1387 (1994), being a) the seriousness of the violation, b) the economic benefit (if any) resulting from the violation, c) any history of such violations, d) any good-faith efforts to comply with the applicable requirements, e) the economic impact of the penalty on the violator, and f) such other matters as justice may require.

10. Plaintiff urges the court to use a "top-down" analysis of the

amount of civil penalty per day to be imposed, beginning with the \$10,000 per day maximum allowable, and then decreasing the amount imposed from that level based on matters of mitigation and extenuation shown by Strong. However, the court declines to utilize that analytical approach in view of Strong's status as an individual of somewhat circumscribed resources, and in view of the extensive period of time during which the violation has endured.

11. The court cannot determine from the evidence the exact extent of the remaining mass of tires on the site, but the photographic exhibits received as evidence, together with the testimony of the NDEQ officials unequivocally show that a very great portion of the original 948,000 tires remain on the site, either in original "scrap" form or as shredded tire form, as of February 1, 2006. The degree and extent of the violation thus is very great in relation to the size of the problem as found to exist on January 14, 2000.

12. Plaintiff has not shown that any particular catastrophe to human health or life, nor to wildlife, has directly resulted to date from the existence of the huge mass of stockpiled scrap tires. However, it is unequivocal that a very substantial inchoate problem with potential risk to human health and life and wildlife does exist by virtue to the very presence of the mass of tires on the site. The size of the mass is comprehensible by virtue of the perspective in Exh. #16 showing the size of the various piles of tires juxtapositioned in relation to a semi-trailer located on the site. That photograph was taken on October 7, 2002, nearly three years after entry of the NDEQ Director's administrative order, and shortly more than three years prior to trial herein on February 1, 2006. Exh. #14 shows basically

the same egregious situation to have existed on February 26, 2004.

Exh. #12 shows a ground-level photographic perspective of the problem on August 24, 2004.

13. Witness Dave Haldeman testified, and the court finds, that there doesn't appear to have been a significant reduction in the number of tires on the site from 2000 to the date of the trial herein on February 1, 2006.

14. Witness Haldeman also described a potential fire hazard from the huge mass of scrap tires being maintained on the site.

15. Defendant Strong testified that he has made some efforts to dispose of some portion of the tire mass by using a tire shredder to reduce some of the tires to rather small particles, which can be used by landfills in their daily covering of compacted trash. However, the court finds that such shredding to date has not appreciably reduced the general size of the mass of tires piled on the site.

16. Witness Barton Dean Moore testified that he is the head of an accounting and fiscal section of NEDQ and that he has utilized a "BEN" model in calculating the economic benefit Strong has gained by delaying the expenditure of funds necessary to clean up and close the site since 2000. He referenced the figure of \$711,004 as being the amount calculated by NDEQ in its January 14, 2000, administrative order required to clean up the site at that time. The court notes that Strong did in 2000 face a substantial financial obligation relative to the requisite clean-up of the site; and, that he continues to face such an obligation at present; and, that he has doubtless benefited to a substantial extent by delaying expending such funds as may be possible for him to expend toward the requisite clean-up. But,

the court does not find the application of the "BEN" model to be particularly determinative in considering the amount of civil penalty to be imposed, especially in view of the need for the court to factor in such items as the financial resources at the disposal of Strong, the fact that the health, life and fire hazards inherent in the maintenance of the tire mass have to date remained inchoate and potential, and the efforts (minimal as they may have been) of Strong to rectify the situation. The court is particularly hesitant to utilize the 9.1% annual interest factor suggested by the "BEN" model. Accordingly, the court does find there to have been a substantial savings realized by Strong in delaying the clean-up and closing of the site; but the court does not adopt the suggested figure of plaintiff of \$152,255, being the estimated clean-up cost calculated by plaintiff of \$711,004 as of May 15, 2000, and \$1,156,000 as of December 12, 2005.

17. Witness Jeffrey Lee Edwards testified that the Strong site is twice, or more, as large as the second largest scrap tire accumulation site in Nebraska. He testified that he last visited the Strong site on January 31, 2006, (the day prior to trial) and saw no significant change in the condition of the site from August 24, 2004.

18. Exhibit #17 shows Strong's current home to have been bought in October, 2003, for \$315,000. Strong testified that the down payment on the home was \$50,000\* and that he and his wife are presently behind in making their mortgage payments on the home. He testified that in 2000 he had a Jet-Ski in his name alone, but that it was sold for \$1,500. Also, in 2002 he obtained a new motorcycle in his own name. Exhibit #21 shows Strong to have an interest in a 2004 Jeep vehicle. Exhibits #22, #23 and #24 show Strong to have engaged in sizable financial transactions in 2002, involving transfers of such amounts as \$75,000 and \$137,00 in investment matters.

(\* See Exh. #81, p. 87.)

19. Strong testified that at present he is a loan officer and branch manager for a lending institution specializing in arranging reverse mortgage loans for elderly individuals. His employment does not result in my receiving a regular, predictable paycheck, but is rather based on a commission basis for which he receives compensation at irregular and unpredictable intervals. He testified to having spent some \$15,000 for a tire shredder, which to some modest degree reduced the amount of tires on the site to shredded product. However, he testified to having lost the equity of the shredder when he sold it and didn't get paid for it. He has been through a bankruptcy proceeding, but the bankruptcy judge determined\*that his liability for the civil penalties to be imposed in this case was not discharged by that proceeding. He describes himself as being financially strapped and states that he is "late on his bills." He testified to having no health insurance and to being late on his car payments. He testified that in 2004 his wife earned about \$22,000, but that he lost money for the year. (\* See Exh. #28.)

20.. The evidence shows variously that Strong received \$1.50 to \$2.00\* for accepting the 948,000 tires at the site prior to the Janaury, 2000, order, and also (by his testimony on February 1, 2006) that he only received about 40¢ to 85¢ per tire. The court finds his earlier testimony to have been more credible, and the court finds that he received approximately \$1,422,000 (i.e. 948,000 x \$1.50) for accepting the tires at the site prior to January, 2000. It is not the province of the court to presently determine where that rather sizable amount of money has gone; however, the amount does cause the court to consider with some degree of skepticism Strong's contention that he is a somewhat impoverished individual. (\* See Exh. #32, Pg.2.)

21. The court finds that Strong's efforts to rectify the situation and clean-up and close the site, thereby eliminating the hazard to the life

and health of humans and wildlife, and the hazard of potential fire on the site, have been minimal, and indeed scanty, in relation to the amount of funds he received for creating the mess in the first place.

22. In view of the factors set out in paragraphs 8. and 9., above, as applied to all of the facts in this case, as above enunciated, the court finds that it would be inappropriate for the civil penalty herein to be imposed in an amount of less than \$150 per day from May 15, 2000, to the date of trial on civil penalties herein on February 1, 2006, or in an amount of less than \$150 per day for each day from and after February 1, 2006, until the site is ultimately cleaned-up and closed by defendant Strong pursuant to Title 136 of the Nebraska Administrative Code which was in effect as of the date of the NDEQ's Administrative Order dated January 14, 2000.

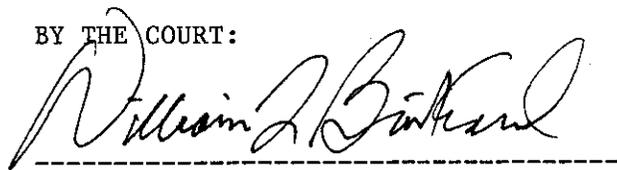
WHEREFORE, IT IS CONSIDERED, ORDERED, ADJUDGED AND DEDREED that for his continuing violation of the Order of the Director of the NDEQ dated January 14, 2000, by failing to properly clean-up and close the "site" in accordance with and pursuant to Title 136 of the Nebraska Administrative Code which was in effect as of that date, a civil penalty of \$150 per day is hereby imposed on Defendant Michael Kirk Strong for the period from May 15, 2000, to and including February 1, 2006, and also for the period from and after February 1, 2006, until such time as defendant Strong has cleaned-up and closed the "site" pursuant to said Title 136.

IT IS SO ORDERED.

COPIES TO:

PLAINTIFF \_\_\_\_\_  
DEFENDANT  \_\_\_\_\_  
P. ATTORNEY  \_\_\_\_\_  
D. ATTORNEY \_\_\_\_\_  
JUDGE \_\_\_\_\_  
PROB. OFF. \_\_\_\_\_  
SHERIFF \_\_\_\_\_

BY THE COURT:



William L. Binkard,  
District Judge

COPY

IN THE DISTRICT COURT OF DIXON COUNTY, NEBRASKA

STATE OF NEBRASKA  
DIXON COUNTY  
FILED

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

Plaintiff,

vs.

MICHAEL KIRK STRONG aka MIKE  
STRONG, d/b/a STRONG TIRE  
COMPANY, an individual, and  
AMERICAN TIRE PROCESSING AND  
RECYCLING, INC.,

Defendant.

\* \* \* \* \*

MAR 09 2006  
*Jackie King-Coughlin*  
CLERK OF DISTRICT COURT

CASE NO. CI03-50

JOURNAL ENTRY

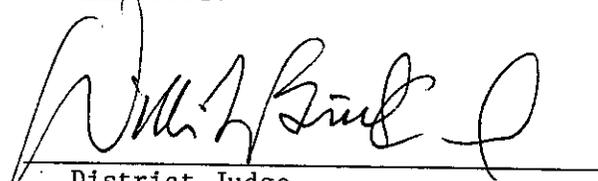
AND NOW, on the 1st day of February, 2006, the above matter came on for hearing for assessment of civil penalties herein. Plaintiff appeared by Asst. Nebr. Atty. Gen. Katherine Spahn. Defenant appeared pro se. Opening statements are heard. Plaintiff calls Dave Haldeman to testify. Exhibits #1, #2, #3, #4, #5 and #7 are offered and received as evidence. The court takes judicial notice of Exhibit #6 and #8. Plaintiff calls Barton Dean Moore to testify. Exhibits #9 and #10 are offered and received as evidence. Plaintiff calls Jeffrey Lee Edwards to testify. Exhibits #11 through #18, inclusive, are offered and received as evidence. Plaintiff calls defendant Michael Kirk Strong to testify. Exhibits #19 through #24, inclusive, and #26 through #34, inclusive, are offered and received as evidence. Plaintiff rests. Defendant Michael Kirk Strong testifies. Exhibits #36, #39, #40, #41, #43, #44 and #70 are offered and recieved as evidence. Defendant rests. Plaintiff rests its rebuttal case. The matter

is taken under advisement..

WHEREFORE, IT IS ORDERED that the hearing for assessment of civil penalties having been concluded, the matter is taken under advisement.

IT IS SO ORDERED.

BY THE COURT:

  
\_\_\_\_\_  
District Judge

COPIES TO:  
PLAINTIFF \_\_\_\_\_  
DEFENDANT  \_\_\_\_\_  
P. ATTORNEY  \_\_\_\_\_  
D. ATTORNEY \_\_\_\_\_  
JUDGE \_\_\_\_\_  
PROB. OFF. \_\_\_\_\_  
SHERIFF \_\_\_\_\_