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IN THE DISTRICT COURT OF WASHINGTON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
 MICHAEL J. LINDER, Director )  
 DEPARTMENT OF ENVIRONMENTAL )  
 QUALITY, )  
 Plaintiff, )  
 v. )  
 JOHN L. TIMM, doing business as, TIMM )  
 BURROW PIT )  
 Defendant. )

Case No. CH 12 117

COMPLAINT

WASHINGTON COUNTY, NE  
SUSAN PAULSEN  
CLERK OF DISTRICT COURT

2012 JUN - 8 AM 8:39

FILED

The Nebraska Department of Environmental Quality institutes this action through Jon C. Bruning, Attorney General, and alleges the following:

FIRST CLAIM

1. The Nebraska Department of Environmental Quality ("Department") is the agency of the State of Nebraska responsible for enforcement of the Nebraska Environmental Protection Act, NEB. REV. STAT. §81-1501 *et seq.* (Reissue 2008) and all rules, regulations, orders, and permits created thereunder.
2. John L. Timm, d/b/a Timm Borrow Pit, at all times material herein, owned and operated a soil mine in Washington County, Nebraska.
3. On January 1, 2008, the Department issued Mr. Timm a general permit for the discharge of stormwater to waters of the State known as the General NPDES Permit NER 110000, pursuant to NEB. REV. STAT. §81-1504 (11) and (20).
4. Pursuant to his Notice of Intent, John L. Timm, was granted authorization to discharge stormwater under Permit Number NER 110000 in accordance with certain conditions imposed on January 12, 2009. The permit and the conditions of authorization



remain in full force and effect; and the Defendant's specific authorization number assigned by NDEQ under the general permit in SER 1113374.

5. Under Nebraska law, it is unlawful to discharge stormwater containing pollutants unless in accordance with a proper permit. See, NEB. REV. STAT. §81-1506; TITLE 119, NEB. ADMIN. CODE, CHAPTER 10, § 002.01

6. Stormwater permit NER 110000 provides: "A. Storm Water Pollution Prevention Plan Framework. ...4. You must implement the SWPPP [storm water pollution prevention plan] as written from commencement of construction of activity until final stabilization is complete. ..."

7. Mr. Timm adopted a SWPPP and submitted it to NDEQ on January 7, 2009. However, the SWPPP identifies controls and protective measures that Mr. Timm failed to put in place, including: a sediment basin, an outfall structure, and a stabilized road entrance to the soil mine contrary to the permit.

#### SECOND CLAIM

8. The State hereby incorporates the allegations contained in its First Claim.

9. Stormwater permit NER 110000 requires that inspections of the site be conducted every 14 days and within 24 hours of the end of a storm event of 0.5 inches or greater and that an inspection report be completed for each inspection.

10. Mr. Timm has failed to conduct the inspections and complete the inspection reports required by the permit in violation of its terms.

#### THIRD CLAIM

11. The State hereby incorporates the allegations contained in its First Claim.

12. Stormwater permit NER 110000 requires that the SWPPP be amended

whenever there is a change in design, construction, operation, or maintenance at the site that could have a significant effect on the discharge of pollutants to waters of the State.

13. Mr. Timm modified the design, construction, operation, and maintenance of the site in ways that could and did have significant effects on the discharge of pollutants to waters of the State yet failed to amend the SWPPP.

#### FOURTH CLAIM

14. The State hereby incorporates the allegations contained in its First Claim.

15. Stormwater permit NER 110000 requires that Mr. Timm have a copy of the SWPPP available at the construction site or at convenient location when requested by inspectors from NDEQ.

16. On October 22, 2010, upon request by the Department, Mr. Timm was unable to produce a copy of the SWPPP.

#### FIFTH CLAIM

17. The State hereby incorporates the allegations contained in its First Claim.

18. Stormwater permit NER 110000 requires that when construction activities have temporarily or permanently ceased for more than 14 days that Mr. Timm must implement stabilization activities as described in the SWPPP.

19. Mr. Timm has ceased construction at definable areas of the site for more than 14 days without implementing stabilization measures specified in the SWPPP.

**PRAYER FOR RELIEF**

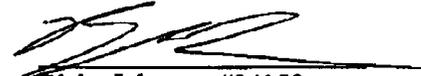
The State requests that the Court enter judgment herein against Mr. Timm in the form of a civil penalty as provided pursuant to NEB. REV. STAT. §81-1508.02 and that all court costs herein be taxed to the Defendant.

Respectfully submitted this 6<sup>th</sup> day of June, 2012.

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

By: **JON C. BRUNING, #20351**  
Attorney General

By:

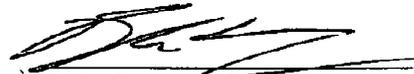


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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I, Blake E. Johnson, hereby certify that a copy of the foregoing Complaint has been served upon John L. Timm by regular United States mail, first class postage prepaid on this 6<sup>th</sup> day of June, 2012, at the addressed below:

John L. Timm  
4604 N. Broad  
Fremont, NE 68025



Blake Johnson  
Assistant Attorney General