

IN THE DISTRICT COURT FOR DAWSON COUNTY, NEBRASKA

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

Case No. C-13-393

Plaintiff,)

COMPLAINT

v.)

TERRY L. JESSEN;)
TJ 2010 CORP.;)
d/b/a COMFORT SUITES,)

Defendant.)

The Nebraska Department of Environmental Quality ("Department"), through counsel, alleges the following:

1. The Department is the agency of the State of Nebraska charged with the duty to administer and enforce the Environmental Protection Act, NEB. REV. STAT. §§ 81-1501 *et seq.* (Reissue 2008) along with all rules, regulations, orders, and permits promulgated and issued pursuant thereto.

2. On or about March 9, 2010, representatives for the Department conducted an investigation of a construction site located southwest of Gothenburg, Nebraska.

3. At the time of the March 9, 2010 investigation, Defendant had not submitted a Construction Storm Water Notice of Intent ("NOI").

4. On or about March 9, 2010, a representative of the Department informed Defendant of the need to submit an NOI pursuant to Department regulations.

5. On or about May 25, 2010, representatives for the Department conducted a second investigation of Defendant's construction site.



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STATE OF NEBRASKA
DAWSON COUNTY

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CLERK OF DISTRICT COURT



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6. At the time of the May 25, 2010 investigation, Defendant still had not submitted an NOI.

7. On June 16, 2010, the Department issued a Notice of Violation ("NOV") to Defendant for failure to obtain authorization under the National Pollutant Discharge Elimination System Construction Storm Water General Permit, NER110000 ("CSW-GP")

8. The NOV directed Defendant to submit an NOI for coverage under the CSW-GP within 15 days of receipt of the notice and submit a SWPPP within 30 days of receipt of the notice.

9. The Department received Defendant's NOI on or about June 25, 2010.

10. The NOI was signed by Terry Jessen as President of "TJ 2010 Corp." and dated May 25, 2010.

11. The NOI represented that: a) construction had begun in approximately November 2009; b) a SWPPP for the construction project was being developed by Jeff Tidyman of Engineering International; and c) the area to be disturbed by construction was 2.25 acres.

12. On July 27, 2010, the Department issued a unilateral administrative Compliance Order ("Order") requiring that Defendant submit a Storm Water Pollution Prevention Plan ("SWPPP") for the construction project within 30 days of receipt of the Order.

13. Appendix A of the Order provided Defendant with the information relevant to the development and submission of a SWPPP.

14. The Order provided Defendant an opportunity to request a hearing contesting the finding of the Department. See, NEB. REV. STAT. § 81-1507; 115 NEB. ADMIN. CODE, Chapter 7.

15. Defendant did not contest the Department's findings in the Order.

16. On or about September 23, 2010, the Department received the SWPPP submitted by Engineering International on behalf of Defendant.

17. On or about October 8, 2010, the Department returned the SWPPP to Defendant and requested a response to comments regarding several items requiring correction.

18. No response from Defendant was forthcoming.

17. It is unlawful for any person to violate any regulation, permit, or order issued pursuant to the Environmental Protection Act. NEB. REV. STAT. § 81-1508.02(1)(b).

- I. Defendant was obligated to acquire coverage under the CSW-GP for the construction project. See, 119 NEB. ADMIN. CODE § 10-003.01.
- II. The CSW-GP required Defendant to submit a complete and accurate NOI and receive authorization prior to commencement of construction activities.
- III. The CSW-GP required Defendant to prepare a SWPPP prior to submission of the NOI.
- IV. The Department's Order required Defendant to submit the SWPPP within thirty (30) days of receipt of the Order.

18. Defendant failed to comply with the requirements set forth in paragraph 17(I)-(IV).

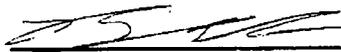
19. A civil penalty not to exceed \$10,000.00 for each violation is provided for under Nebraska law. NEB. REV. STAT. § 81-1508.02(2).

PRAYER FOR RELIEF

The Department respectfully requests that the Court enter judgment against the Defendant in the form of a civil penalty, including the costs of this action, as provided under NEB. REV. STAT. §81-1508.02.

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

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint has been served upon Defendant and counsel Sterling Huff by certified, return-receipt United States mail at the address provided below.

Sterling Huff
1428 10th Street
Gering, Nebraska 69341

Terry L. Jessen
3660 10th Street
Gering, Nebraska 69341

Blake E. Johnson
Assistant Attorney General