

IN THE DISTRICT COURT OF DODGE COUNTY, NEBRASKA

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

Plaintiff,

vs.

ROBERT HOOPS,

Defendant.

CASE NO. CI02-527

ORDER

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DODGE COUNTY, NB.
LINDA J. NELSON
DISTRICT COURT CLERK

FILED

On this 29th day of September, 2010 this matter came before the Court for consideration upon the Motion for Contempt filed by the Plaintiff herein. The Plaintiff was represented by Assistant Attorney General Marcus Powers. Defendant appeared pro se. Evidence was introduced by the parties and testimony presented from the sole witness, Mr. John Fogerty of the Nebraska Department of Environmental Quality (NDEQ). The Court, after considering the evidence, testimony, the stipulations made and agreed to by the Plaintiff and the Defendant, the files in this case, briefs and motions previously submitted, and the arguments of the parties, finds as follows:

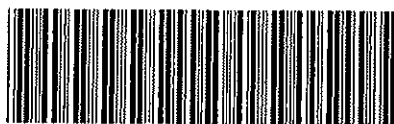
1. In the December 2, 2002 Order of this Court, Plaintiff was ordered to immediately monitor, investigate, and remediate petroleum contamination at Defendant's property. The Court specifically directed the Defendant to complete certain tasks associated with the Tier 1 Investigation phase.

2. After the December 2, 2002 Order, Defendant completed the specific tasks associated with the Tier 1 Investigation and filed a report with the NDEQ.

3. Once the completed Tier 2 Investigation report was filed with and reviewed by the NDEQ, Defendant was required to complete a second phase of investigative work referred to as a Tier 2 Investigation. The completed Tier 2 Investigation report was to be filed with the NDEQ by October 28, 2005.

DEPARTMENT OF JUSTICE

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STATE OF NEBRASKA

4. To date, Defendant has not filed a completed Tier 2 Investigation report with the NDEQ.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

(a) By stipulation and agreement of the Parties, this Order will serve as an addendum to the original Order of this Court, made and entered on December 2, 2002.

(b) Defendant has until April 1, 2011 to file a Tier 2 Investigation report with the NDEQ. To complete the Tier 2 Investigation, Defendant needs to install Monitoring Well No. 13 in the area indicated on Exhibit 4, which was offered and received at the hearing on September 29, 2010. Defendant shall then commission an updated sampling of each Monitoring Well, Nos. 1-13. The results of such sampling shall be included in the Tier 2 Investigation report filed with the NDEQ on or before April 1, 2011.

(c) If Defendant fails to meet the deadline listed in (b) above, Defendant shall be subject to a civil penalty in the amount of up to \$50,000.00 and shall appear before this Court to show cause why Defendant should not be held in contempt of this Court's Order.

(d) From the date NDEQ provides Defendant with notice that the Tier 2 Investigation is complete and adequate, Defendant has 4 months to conduct all remedial action determined reasonably necessary by the NDEQ. Defendant may conduct the remedial work using his own equipment, provided that Defendant gives at least 5 days advanced notice to NDEQ and has an NDEQ inspector present during the excavation of any contaminated soil. Defendant must also dispose of any contaminated soil in accordance with any applicable state regulations.


(e) If Defendant fails to meet the deadline referenced in (d) above, Defendant shall be subject to a civil penalty in the amount of up to \$50,000.00 and shall appear before this Court to show cause why Defendant should not be held in contempt of this Court's Order.

(f) Defendant must further conduct all monitoring of the site as reasonably determined necessary by NDEQ and submit written reports of all monitoring, investigation, and remediation activity in a format and pursuant to a schedule established by the NDEQ after review of all reports and in accordance with Appendix B to Title 118 of the Nebraska Administrative Code.

IT IS SO ORDERED.

Dated this 1 day of November, 2010.

BY THE COURT:



John E. Samson, District Judge