

IN THE DISTRICT COURT OF SAUNDERS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.)
MICHAEL J. LINDER, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY)
)
Plaintiff,)
)
v.)
)
CLIFFORD COFFMAN)
)
Defendant.)

Case No. _____

COMPLAINT

COMES NOW the Plaintiff, Nebraska Department of Environmental Quality ("NDEQ"), who institutes this action through its attorney, Jon C. Bruning, Attorney General, and alleges and states as follows:

FIRST CLAIM

1. Plaintiff is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) (Reissue 1999) of exercising exclusive supervision, administration, and enforcement of the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004, Supp. 2005), the Integrated Solid Waste Management Act, Neb. Rev. Stat. § 13-2001 *et seq.* (Reissue 1997, Cum. Supp. 2004) and all rules, regulations, and orders promulgated thereunder.
2. The mailing address of the Defendant, Clifford Coffman in 302 Galena Street, Box 159, Memphis, Nebraska 68042.
3. At all times material herein, the Defendant, Clifford Coffman (hereinafter "Defendant" or "Coffman"), received, collected, and disposed of solid waste, including rubbish and junk as those terms are defined in Neb. Rev. Stat. §81-1502, on real

property he owns, located in part of the West ½ of the SE ¼ of Section 17, Township 13 North, Range 9 West, in Saunders County, Nebraska (hereinafter “the property.”)

4. Neb. Rev. Stat. §81-1504(7) authorizes the Director of the NDEQ to issue Orders “prohibiting or abating discharges of wastes into the air, waters, or land of the state.”

5. On or about April 26, 2004, the NDEQ issued a Complaint, Compliance Order, and Notice of Opportunity for Hearing (hereinafter “Compliance Order”) against Defendant requiring him to (a) immediately upon receipt of the order, cease any and all operations involving the acceptance, collection, and disposal of solid wastes on the property, (b) immediately cease any and all burning of solid waste at the property, (c) post signs around all access points to the property notifying that no wastes will be accepted at the property and prohibiting any dumping of wastes on the property, (d) within sixty days of the receipt of the Order, Coffman was ordered to completely remove and properly dispose of any and all solid wastes from the property, (e) provide proof to the NDEQ of the proper removal, transportation, and disposal of all solid waste from the property within sixty days of the receipt of the Order, and within seven days of the disposal, and such proof shall be in the form of, among other things, certified gate tickets and receipts evidencing that all of the solid waste has been disposed of at a facility authorized to accept such solid waste.

A copy of this Compliance Order is attached hereto and incorporated herein by reference as “Attachment A.” The Defendant failed to respond or request a hearing on the matter, and the Compliance Order became final on May 27, 2004.

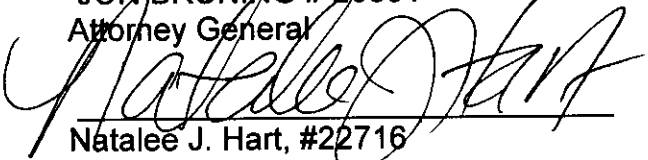
6. Beginning on or about May 28, 2004 and continuing daily thereafter, the Defendant failed to comply with the Compliance Order and the requirements therein.

7. According to Neb. Rev. Stat. §81-1508.02(1)(b) and (2), any person violating an order of the Department of Environmental Quality issued pursuant to the Environmental Protection Act or the Integrated Solid Waste Management Act, or the rules or regulations promulgated pursuant to such acts, shall be subject to a civil fine of not more than ten thousand dollars (\$10,000) for each offense and, in the case of a continuing violation, each day of violation shall constitute a separate offense.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the NDEQ and against the Defendant in the form of an injunction ordering Coffman to comply with the terms of the Compliance Order, civil penalties as provided in Neb. Rev. Stat. §81-1508.02(2) and further that all costs of this action be taxed to the Defendant.

BY: STATE OF NEBRASKA ex rel.
MICHAEL J. LINDER, Director
Department of Environmental Quality,
Plaintiff,

BY: JON BRUNING # 20351
Attorney General

BY: 
Natalee J. Hart, #22716
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2682
natalee.hart@notes.state.ne.us
Attorneys for Plaintiff

promulgated pursuant to Neb. Rev. Stat. §81-1505 of the Environmental Protection Act and Neb. Rev. Stat. §13-2034 of the Integrated Solid Waste Management Act, and such regulations were in effect at all relevant times herein.

3. Coffman's mailing address is 302 Galena Street, Box 159, Memphis, Nebraska 68042.

4. Coffman is a "person" defined by Neb. Rev. Stat. §81-1502(10) that defines "person" to include any "individual" or "agent".

5. Coffman received, collected and disposed of solid waste, including rubbish and junk as those terms are defined in Neb. Rev. Stat. §81-1502 on real property he owns that is located in Part of the W 1/2 of the SE 1/4 of Section 17, Township 13 North, Range 9 West of the 6th PM, Saunders County, Nebraska (hereinafter "the property").

6. Neb. Rev. Stat. §81-1506(3)(d) makes it unlawful for any person to, "after October 1, 1993, dispose of any solid waste at any location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act". Coffman was not and is not permitted or authorized to conduct or engage in solid waste disposal activities at the property.

7. Neb. Rev. Stat. §81-1506(3)(a) makes it unlawful for any person to construct or operate a solid waste management facility without first obtaining a permit. Coffman was not and is not permitted or authorized to operate a solid waste management facility, as defined by Neb. Rev. Stat.

§81-1502.

8. Title 132, Chapter 1, § 026 defines the act of "disposal" as follows:

026 "Disposal" shall mean the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air, land or water of the state.

9. The Department inspected the property on or about July 18, 2001 and observed solid waste, including but not limited to, mattresses, municipal solid waste, wood, tires, shingles, Styrofoam insulation, 55-gallon drums, junk automobiles, furniture, concrete, refrigerators, and wrecked mobile homes disposed of on the property.

10. Coffman, since on or before July 18, 2001 and continuously to the present, disposed of solid waste on the above-described property, without a permit or other authorization, by discharging, depositing, injecting, dumping, or placing such solid wastes into and on the land located within such property.

11. The Department notified Coffman of these violations in writing by letters dated October 15, 2001, received by Coffman October 17, 2001, and December 11, 2001, received by Coffman December 12, all requesting the cessation of solid waste collection and disposal activities at the property and the removal and proper disposal of the solid waste from the property. Coffman failed to respond to the Department.

12. The Department conducted follow-up inspections on or about October 21, 2002 and July 23, 2003 and observed continuing solid waste disposal on the property.

13. Coffman has continued to dispose of solid waste on said property and further, has not removed and properly disposed of the solid waste unlawfully placed upon the property in violation of Neb. Rev. Stat. §81-1506(3)(d). Coffman, by accepting solid waste at the property, is unlawfully operating a solid waste management facility in violation of Neb. Rev. Stat. §81-1506(3)(a).

COMPLIANCE ORDER

14. IT IS HEREBY ORDERED THAT:

- (a) Immediately upon receipt of this Order, Coffman shall cease any and all operations involving the acceptance, collection and disposal of solid wastes on the property.
- (b) Immediately cease any and all burning of solid waste at the property.
- (c) Post signs around all access points to the property notifying that no wastes will be accepted at the property and prohibiting any dumping of wastes on the property.
- (d) Within sixty days of the receipt of this Order, Coffman shall completely remove and properly dispose of any and all solid wastes from the property.

- (e) Coffman is required to provide proof to the Department of the proper removal, transportation and disposal of all solid waste from said property within sixty days of the receipt of this Order, and such proof shall be in the form of, among other things, certified gate tickets and receipts evidencing that all of the solid waste has been disposed of at a facility authorized to accept such solid waste. Such certified gate tickets and receipts shall be provided to the Department within seven days of the disposal of any solid waste.
- (f) Information required to be submitted under this Order shall be sent to:

William C. Gidley, Section Supervisor
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number (402) 471-4495

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

15. In accordance with Neb. Rev. Stat. §81-1507(2), this Order shall become final unless Coffman files an answer and requests, in writing, a hearing no later than thirty days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

16. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115 Neb. Admin. Code, chapter 7. The answer and request for hearing must be

filed by mail to: Michael J. Linder, Director, State of Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the Department's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

SETTLEMENT CONFERENCE

17. Whether or not Respondent Coffman requests a hearing, an informal conference may be requested in order to reach an amicable settlement. To request a settlement conference, please write to Lisa Buechler, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or, if an attorney represents you, have your attorney make such request.

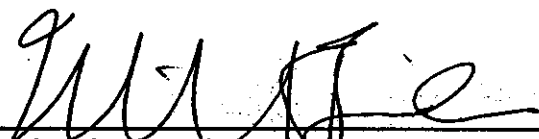
18. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

INJUNCTIVE RELIEF AND PENALTY PROVISIONS

19. This Complaint, Compliance Order and Notice of Opportunity for Hearing does not preclude the Department from pursuing enforcement in the proper court of law for injunctive relief or to seek civil or criminal penalties for any violations which are the subject of this Complaint, Compliance Order and Notice of Opportunity for Hearing.

April 26 2004

Date



Michael J. Linder, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing was served by certified United States mail, postage prepaid, return receipt requested this 27th day of April 2004 upon the Respondent listed below:

Clifford R. Coffman
302 Galena Street
Box 159
Memphis, Nebraska 68042

Lisa A. Buechler

Lisa A. Buechler

dispute. The parties desire to conclude this case without trial or adjudication of any issues of fact or law, without this Consent Decree constituting an admission by the Defendant with respect to such issues. The Defendant agrees to the form and entry of this Consent Decree for the purposes of settlement only. Therefore, and for only the purposes of this Consent Decree, the parties agree to the entry of this Order by the Court.

4. This Consent Decree shall be in full satisfaction of all claims alleged in the Complaint and the parties further agree to release any and all claims or actions arising out of the same transaction or occurrence referenced above and in the Complaint herein, provided that such claims were known to the State of Nebraska, or were reasonably ascertainable from information in the State's possession, as of the date of the filing of the consent decree.

5. IT IS THEREFORE ORDERED that the Defendant shall pay to the Clerk of the District Court of Saunders County a civil penalty in the amount of \$6,000.00 (six thousand dollars), and the costs of the action in the amount of ^{nine NT} ~~seventy-six~~ dollars and ^{#79.00 NT} ~~fifty cents~~ (\$76.50);

- A. \$100.00 (one hundred dollars) of said penalty is to be paid within thirty (30) days of approval of this Consent Decree by the District Court;
- B. \$900 (nine hundred dollars) of said penalty will be due and owing on June 1, 2006. In the event that Defendant achieves and maintains compliance with the following obligations and provisions, during the time period between the approval of this Consent

Decree by the District Court and May 31, 2006, the remaining \$5,900.00 (five thousand nine hundred dollars) of civil penalties will be waived:

- i. By May 31, 2006, be in compliance with paragraph 14 (fourteen) of the compliance order, attached hereto and incorporated herein by reference as "Attachment A." Compliance with the administrative compliance order will require the following:
 - a. Immediately cease any and all operations involving the acceptance, collection and disposal of solid wastes on the property.
 - b. Cease any and all burning of solid waste at the property.
 - c. Continue to post signs around all access points to the property notifying that no wastes will be accepted at the property and prohibiting any dumping of wastes on the property.
 - d. By May 31, 2006, completely remove and properly dispose of any and all solid wastes from the property, to the satisfaction of the NDEQ.
 - e. Provide proof to the NDEQ of the proper removal, transportation, and disposal of all solid waste from the property by May 31, 2006.

C. The remaining \$5,000 (five thousand dollars) of said penalty, if not waived pursuant to provision 5(B) of this Consent Decree, will be due and owing on August 1, 2006. In the event that Defendant achieves and maintains compliance with the following obligations and provisions by July 31, 2006, this remaining \$5,000.00 (five thousand dollars) of civil penalties will be waived:

- i. By July 31, 2006, be in compliance with paragraph 14 (fourteen) of the compliance order, "Attachment A" to this Decree. Compliance with the administrative compliance order will require the following:
 - a. Immediately cease any and all operations involving the acceptance, collection and disposal of solid wastes on the property.
 - b. Cease any and all burning of solid waste at the property.
 - c. Continue to post signs around all access points to the property notifying that no wastes will be accepted at the property and prohibiting any dumping of wastes on the property.
 - d. Completely remove and properly dispose of any and all solid wastes from the property, to the satisfaction of the NDEQ.

e. Provide proof to the NDEQ of the proper removal, transportation, and disposal of all solid waste from the property.

6. To qualify for the waivers of civil penalties provided for in paragraphs 5(B) and 5(C) above, Defendant shall notify the Nebraska Attorney General's Office on or before the due date of the civil penalties, establishing that he has achieved and maintained compliance as required. If Plaintiff does not dispute compliance with the waiver requirements set forth in paragraphs 5(B) and 5(C) above, then Plaintiff shall file a Satisfaction of Judgment in this case within ten days of Defendant's notification. If Defendant receives a Notice of Violation from Plaintiff related to the requirements in paragraphs 5(B) and 5(C), or is a party to legal action disputing compliance with the regulatory requirements in paragraph (5)(B) and 5(C) during the relevant time period, Plaintiff may file an objection to Defendant's notification with the Court and request that no waiver of civil penalties be granted to Defendant.

7. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

8. The undersigned consent without further notice to the form and entry of the foregoing Consent Decree.

DATED THIS _____ day of _____, 2006, in Saunders County, Nebraska.

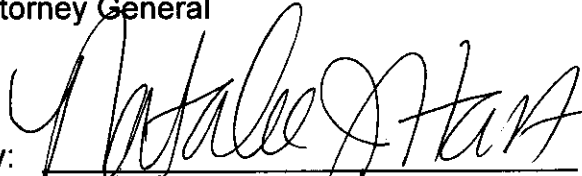
BY THE COURT:

District Judge

STATE OF NEBRASKA ex rel.,
MICHAEL J. LINDER, Director
Department of Environmental
Quality, Plaintiff,

By: JON C. BRUNING #20351,
Attorney General

By:



Natalee J. Hart, #22716
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2682
natalee.hart@notes.state.ne.us
Attorneys for Plaintiff.

CLIFFORD COFFMAN,
Defendant,

By:



304 ~~302~~ Galena Street, Box 159
Memphis, Nebraska 68042
Defendant.

promulgated pursuant to Neb. Rev. Stat. §81-1505 of the Environmental Protection Act and Neb. Rev. Stat. §13-2034 of the Integrated Solid Waste Management Act, and such regulations were in effect at all relevant times herein.

3. Coffman's mailing address is 302 Galena Street, Box 159, Memphis, Nebraska 68042.

4. Coffman is a "person" defined by Neb. Rev. Stat. §81-1502(10) that defines "person" to include any "individual" or "agent".

5. Coffman received, collected and disposed of solid waste, including rubbish and junk as those terms are defined in Neb. Rev. Stat. §81-1502 on real property he owns that is located in Part of the W 1/2 of the SE 1/4 of Section 17, Township 13 North, Range 9 West of the 6th PM, Saunders County, Nebraska (hereinafter "the property").

6. Neb. Rev. Stat. §81-1506(3)(d) makes it unlawful for any person to, "after October 1, 1993, dispose of any solid waste at any location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act". Coffman was not and is not permitted or authorized to conduct or engage in solid waste disposal activities at the property.

7. Neb. Rev. Stat. §81-1506(3)(a) makes it unlawful for any person to construct or operate a solid waste management facility without first obtaining a permit. Coffman was not and is not permitted or authorized to operate a solid waste management facility, as defined by Neb. Rev. Stat.

§81-1502.

8. Title 132, Chapter 1, § 026 defines the act of "disposal" as follows:

026 "Disposal" shall mean the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste or hazardous waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air, land or water of the state.

9. The Department inspected the property on or about July 18, 2001 and observed solid waste, including but not limited to, mattresses, municipal solid waste, wood, tires, shingles, Styrofoam insulation, 55-gallon drums, junk automobiles, furniture, concrete, refrigerators, and wrecked mobile homes disposed of on the property.

10. Coffman, since on or before July 18, 2001 and continuously to the present, disposed of solid waste on the above-described property, without a permit or other authorization, by discharging, depositing, injecting, dumping, or placing such solid wastes into and on the land located within such property.

11. The Department notified Coffman of these violations in writing by letters dated October 15, 2001, received by Coffman October 17, 2001, and December 11, 2001, received by Coffman December 12, all requesting the cessation of solid waste collection and disposal activities at the property and the removal and proper disposal of the solid waste from the property. Coffman failed to respond to the Department.

12. The Department conducted follow-up inspections on or about October 21, 2002 and July 23, 2003 and observed continuing solid waste disposal on the property.

13. Coffman has continued to dispose of solid waste on said property and further, has not removed and properly disposed of the solid waste unlawfully placed upon the property in violation of Neb. Rev. Stat. §81-1506(3)(d). Coffman, by accepting solid waste at the property, is unlawfully operating a solid waste management facility in violation of Neb. Rev. Stat. §81-1506(3)(a).

COMPLIANCE ORDER

14. IT IS HEREBY ORDERED THAT:

- (a) Immediately upon receipt of this Order, Coffman shall cease any and all operations involving the acceptance, collection and disposal of solid wastes on the property.
- (b) Immediately cease any and all burning of solid waste at the property.
- (c) Post signs around all access points to the property notifying that no wastes will be accepted at the property and prohibiting any dumping of wastes on the property.
- (d) Within sixty days of the receipt of this Order, Coffman shall completely remove and properly dispose of any and all solid wastes from the property.

- (e) Coffman is required to provide proof to the Department of the proper removal, transportation and disposal of all solid waste from said property within sixty days of the receipt of this Order, and such proof shall be in the form of, among other things, certified gate tickets and receipts evidencing that all of the solid waste has been disposed of at a facility authorized to accept such solid waste. Such certified gate tickets and receipts shall be provided to the Department within seven days of the disposal of any solid waste.
- (f) Information required to be submitted under this Order shall be sent to:

William C. Gidley, Section Supervisor
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number (402) 471-4495

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

15. In accordance with Neb. Rev. Stat. §81-1507(2), this Order shall become final unless Coffman files an answer and requests, in writing, a hearing no later than thirty days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

16. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115 Neb. Admin. Code, chapter 7. The answer and request for hearing must be

filed by mail to: Michael J. Linder, Director, State of Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the Department's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

SETTLEMENT CONFERENCE


17. Whether or not Respondent Coffman requests a hearing, an Informal conference may be requested in order to reach an amicable settlement. To request a settlement conference, please write to Lisa Buechler, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or, if an attorney represents you, have your attorney make such request.

18. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

INJUNCTIVE RELIEF AND PENALTY PROVISIONS

19. This Complaint, Compliance Order and Notice of Opportunity for Hearing does not preclude the Department from pursuing enforcement in the proper court of law for Injunctive relief or to seek civil or criminal penalties for any violations which are the subject of this Complaint, Compliance Order and Notice of Opportunity for Hearing.

April 26 2004
Date


Michael J. Linder, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing was served by certified United States mail, postage prepaid, return receipt requested this 27th day of April 2004 upon the Respondent listed below:

Clifford R. Coffman
302 Galena Street
Box 159
Memphis, Nebraska 68042

Lisa A. Buechler
Lisa A. Buechler

SECTION

Complete items 1, 2, and 3. Also complete

20040003524

or on the front if space permits.

1. Article addressed to:

Clifford R. Coffman
302 Geneva Street
P.O. Box 159
Memphis, NE 68042

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
Clifford R. Coffman Addressee

B. Received by (Printed Name) Date of Delivery
Clifford R. Coffman *4-28-04*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
4. Restricted Delivery? (Extra Fee) Yes

83618 2465 Complaint, Comp
7002 0860 0006 4184 4149

PS Form 3871, August 2001

Domestic Return Receipt

102595-02-M-1540