

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA ex rel. )  
MICHAEL J. LINDER, DIRECTOR )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
NEBRASKA RUBBER INNOVATIONS, )  
INC., )  
 )  
Defendant. )

Case Cl 03-2702

**COMPLAINT**

COMES NOW the State of Nebraska Department of Environmental Quality (hereinafter the "Department" or "Plaintiff"), who institutes this action through Jon Bruning, Attorney General, and alleges and states as follows:

FIRST CLAIM

1. The Plaintiff, the State of Nebraska Department of Environmental Quality, (hereinafter "NDEQ"), is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-15,161.01 (Reissue 1999) of administering and enforcing the Scrap Tire Reduction and Recycling Incentive Act, Neb. Rev. Stat. §81-15,158.01 et seq. (Reissue 1999 and Cum. Supp. 2002), all rules and regulations promulgated there under, and the award and disbursement of grants under the Act.

2. The Defendant, Nebraska Rubber Innovations, Inc., is a Nebraska Corporation, whose registered agent is Larry J. Schmitz, 47292 North Westwood Avenue, O'Neill, Nebraska 68763. Nebraska Rubber Innovations, Inc. owns and operates a scrap tire hauling, collecting, and processing facility in O'Neill, Holt County, Nebraska.

3. Pursuant to Neb. Rev. Stat. § 81-15,161(4), the Plaintiff, in administering the Scrap Tire Reduction and Recycling Incentive Fund, is authorized to allocate grant funds, set any terms for the administration of the funds deemed necessary, and any penalties to be imposed upon the recipient for failure to comply with grant requirements.

4. On or about June 1, 1999, the Plaintiff, awarded to the Defendant a Scrap Tire Reduction and Recycling Incentive Grant, #9992024 (hereafter the "Grant"), for a total grant amount of \$391,888. The acceptance of Defendant's grant application and the decision to award the Grant occurred at Plaintiff's main office in Lincoln, Nebraska.

5. On or about June 7, 1999, the Defendant signed a Grant Conditions Acceptance Form, developed pursuant to Neb. Rev. Stat. § 81-15,162.02(6), in which the Defendant agreed to the terms and conditions for the Grant, and in which, among other things, Defendant agreed to abide by all rules and regulations, record-keeping and reporting requirements, and to return improperly used funds and the balance of any unexpended funds. Defendant's Grant Conditions Acceptance Form has been attached to this Complaint as Exhibit 1 and is hereby incorporated herein as if fully set forth.

6. On or about June 22, 1999, the Plaintiff, in reliance upon Defendant's grant application and written agreement, disbursed a Grant amount of \$391,888 to the Defendant to be used pursuant to Neb. Rev. Stat. § 81-15,162.02(3)(c).

7. Defendant was required to use or encumber all funding during the grant period, which was the period of time from June 1, 1999 through June 30, 2000, with all work to be performed under the Grant by June 30, 2000. Pursuant to Neb. Rev. Stat. § 81-15,162.02(3)(c) and Neb. Rev. Stat. § 81-15,162.02(4), the terms of the Grant require Defendant to provide a fifty percent match for the proper expenditure of any grant funds,

and also require the Defendant to maintain financial records and copies of all receipts and relevant documents for expenditures of grant funds, matching funds, and interest or dividends earned on grant funds.

8. Defendant, as of the end of the grant period for the Grant, has not properly accounted for grant expenditures of \$132,012.14 after repeated attempts by the Plaintiff to obtain such an accounting. On or about September 24, 2002 and October 11, 2002, the Plaintiff sent letters to Defendant demanding return of improperly accounted for, improperly used, or unexpended grant funds in Defendant's possession in the amount of \$132,012.14, as required by Exhibit 1.

9. Defendant has failed and refused to return any part of the sum of \$132,012.14 to Plaintiff as required by law, regulation and the terms and conditions of the Grant.

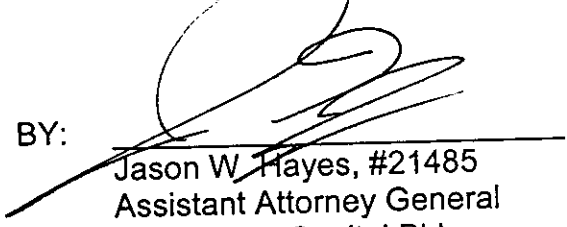
10. Due to Defendant's failure and refusal to fulfill the terms and conditions of the Grant, or to return the unaccounted for funds, the Defendant now owes the State of Nebraska the sum of \$132,012.14 (one hundred thirty two thousand twelve dollars and fourteen cents) plus interest (charged from the end of the grant period). The aforementioned is now a debt owed to the State of Nebraska, which the Defendant must repay.

11. The Grant Conditions Acceptance Form (Exhibit 1), further provides that the Plaintiff may impose penalties for violation of grant conditions, including the withdrawal of grant funds, reimbursement of improperly expended funds, forfeiture of Department funded property, ineligibility for future funding, or any combination of the above.

WHEREFORE, Plaintiff prays for judgment in favor of the Plaintiff and against the Defendant in the amount of \$132,012.14 (one hundred thirty two thousand twelve dollars and fourteen cents) together with interest. Plaintiff further prays that this court order that all costs of this action be taxed to Defendants, and for such other and further relief as the court deems just and equitable.

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

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