

IN THE DISTRICT COURT OF DIXON COUNTY, NEBRASKA

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

Plaintiff,)

v.)

MICHAEL KIRK STRONG aka MIKE)
STRONG, d/b/a STRONG TIRE)
COMPANY, an individual, and,)
AMERICAN TIRE PROCESSING AND)
RECYCLING, INC.,)

Defendants.)

Case No. _____

COMPLAINT

COMES NOW Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ") and alleges and states as follows:

FIRST CLAIM

1. Pursuant to the Waste Reduction and Recycling Incentive Act, Neb. Rev. Stat. §§ 81-15,158.01 to 81-15,165 (Reissue 1999, Cum. Supp. 2002), at all times alleged herein, the Plaintiff, NDEQ is and was charged with the duty through its Director, pursuant to Neb. Rev. Stat. § 81-15,162.01(3) (Reissue 1999), to issue written complaints and orders to enforce compliance with Neb. Rev. Stat. § 81-15,162.01(3) (Reissue 1999) or to require abatement of unpermitted collection sites.

2. The Director of NDEQ is additionally empowered by Neb. Rev. Stat. § 81-15,162.01(3) (Reissue 1999), to report to, and, by the Attorney General, institute proceedings to enforce compliance with Neb. Rev. Stat. § 81-15,162.01(3) (Reissue 1999).

3. Defendant Michael Kirk Strong, (hereinafter "Strong"), an individual, doing business individually or as Strong Tire Company, a sole proprietorship, is and was the owner and operator of a scrap tire collection site located within part of the NW 1/4, SE 1/4, Section 35, Township 27 North, Range 5 East of the 6th P.M., Dixon County, Nebraska (hereinafter the "Site").

4. In 1997, Defendant American Tire Processing and Recycling, Inc. became the owner of the Site.

5. Defendant Strong is the alter ego of Defendant American Tire Processing and Recycling, Inc., and has intentionally violated Nebraska laws, rules and regulations while acting as this entity, and should be held personally liable for the violations listed below.

6. On January 30, 1997, the Department of Environmental Quality issued Scrap Tire Permit # 97-035-1234 to Defendant Strong, an individual doing business as Strong Tire Company, permitting him to collect, process, haul scrap tires, and own and operate a scrap tire collection site.

7. As part of his business, Defendant Strong collected scrap tires from tire retailers in the States of Nebraska, South Dakota and Iowa and transported said scrap tires to his site in Dixon County, Nebraska, where said tires were deposited.

8. Defendant Strong subsequently processed some of these scrap tires by shredding the scrap tires into various sized pieces.

9. Defendant Strong presently stores these whole and shredded scrap tires in large piles on the Dixon County site, exposed to the environment. Defendant Strong collected a fee for these activities.

10. In compliance with the provisions of Neb. Rev. Stat. § 81-15,162.01(3), and in order to enforce compliance with said statute, the Department, through its director, issued written complaints and orders to Defendant Strong.

11. On or about September 19, 1997, the Director issued to Strong a complaint and order, which enumerated alleged violations of state statutes and regulations and stated the Department's intent to revoke Defendant Strong's Scrap Tire Permit # 97-035-1234.

12. On or about October 21, 1998, the Director issued to Defendant Strong a second complaint and order which enumerated violations of state statutes, regulations, and Strong's Scrap Tire Permit # 97-035-1234, and ordered Defendant Strong to comply with his permit or properly close his scrap tire collection facility in Dixon County, Nebraska.

13. The two proceedings were consolidated, and on July 21 and 22, 1999, NDEQ held a contested case hearing, at which Defendant Strong appeared and was represented by counsel.

14. On January 14, 2000 the Director of NDEQ issued a final order ("Final Order") in the consolidated matters. The Final Order is in writing and accompanied by findings of fact and conclusions of law, as required by Neb. Rev. Stat. § 84-915 (Reissue 1999). A true and accurate copy of this Final Order is attached as Exhibit 1 and incorporated herein as if fully set forth. This Final Order was not appealed, and became final by operation of law.

15. The terms of the Final Order require Defendant Strong to close his facility, completing such closure within Nebraska Administrative Code Title 136 time periods

unless he requests leave for additional time from the Department. Defendant Strong has not requested leave for additional time.

16. Nebraska Administrative Code Title 136 Scrap Tire Management Rules and Regulations are regulations of the State of Nebraska duly adopted and promulgated by the Environmental Quality Council pursuant to the authority of Neb. Rev. Stat. § 81-15,162.01(5). These regulations were effective January 14, 1996 and are and were in effect at all times material to this action.

17. Title 136 Neb. Admin. Code, ch. 1, section 005 defines "Closure" as follows:

005 "Closure" shall mean the removal of all scrap tires, tire-derived products and residuals from a site or facility in compliance with procedures established by statute rule, order, or permit.

18. Title 136 Neb. Admin. Code, ch. 8, section 001 states:

001 Closure Required. The owner or operator of a facility shall cease to accept scrap tires and immediately close the facility and initiate the implementation of the closure plan within four (4) months of receipt of the last tire pursuant to [the regulations] and any special closure conditions established in the permit.

19. Defendant Strong's Scrap Tire Permit does not contain any special closure conditions.

20. On or about May 15, 2000 and continuing daily thereafter, Defendant Strong failed to properly close the Site pursuant to the regulations as set out in the Final Order.

21. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate any order of the director. Neb. Rev. Stat. §81-1508.02(2) provides that any person who violates §81-15-1508.02(1) shall be subject to a civil penalty of no more than

\$10,000 per day. In a case of a continuing violation, each day shall constitute a separate offense. Defendants are in violation of these statutes.

SECOND CLAIM

22. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 21 of this complaint.

23. Defendant's maintenance of the scrap tires at the Dixon County Site in violation of NDEQ's Final Order interferes with the use and enjoyment of private and public property near the scrap tire site.

24. Defendant's maintenance of the scrap tires at the Dixon County site in violation of NDEQ's Final Order threatens the health, safety, peace and welfare of persons reasonably using nearby public and private property.

25. Defendant's maintenance of the scrap tires at the Dixon County site in violation of NDEQ's Final Order is a fire hazard.

26. Defendant's maintenance of the scrap tires at the Dixon County site in violation of NDEQ's Final Order is a public nuisance.

THIRD CLAIM

27. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 26 of this complaint.

28. Scrap tires are a solid waste as defined by Neb. Rev. Stat. § 81-1502(26).

29. Neb. Rev. Stat. § 81-1506(3)(d) makes it unlawful for any person, after October 1, 1993, to dispose of any solid waste at any location other than a solid waste management facility holding a current permit issued by the NDEQ.

30. Defendants Strong and American Tire Processing and Recycling, Inc., on or about April 12, 2003, and continuing daily thereafter, disposed of solid waste upon the Site by permitting, agreeing and allowing the discharging, depositing, injecting, dumping, or placing of such solid wastes into and on the land located at the Site.

31. Defendants' disposal of solid waste on the property located in Dixon County, Nebraska, caused pollution of the air, waters, or land of the state or was a location where the waste was likely to cause pollution of any air, waters or land of the state, in violation of Neb. Rev. Stat. § 81-1506(3)(d), at a location not holding a current permit issued by the NDEQ. Such violations are ongoing.

32. Defendants should be held liable under Neb. Rev. Stat. §81-1508.02(2), which provides that any person who violates §81-1506 or §81-15-1508.02(1) shall be subject to a civil penalty of no more than \$10,000 per day. In a case of a continuing violation, each day shall constitute a separate offense.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this court enter judgment for Plaintiff against Defendant:

a. Issuing a preliminary and permanent injunction compelling Defendant Strong to comply with the terms of the Final Order of NDEQ by taking immediate actions to promptly remove and properly dispose of all scrap tires, tire-derived products and residuals from the Dixon County Site to a legal destination and to permanently cease all scrap tire operations;

b. Finding that Defendants are responsible for the creation and continuing maintenance of an ongoing nuisance condition and issuing a preliminary and permanent

injunction compelling Defendants to promptly abate the nuisance by hiring a qualified third party to remove all scrap tires, tire-derived products and residuals from the Site to a legal destination;

c. Finding Defendants in violation of Neb. Rev. Stat. § 81-1506(3)(d) and impose penalties for the ongoing violations pursuant to Neb. Rev. Stat. §81-1508.02(2).

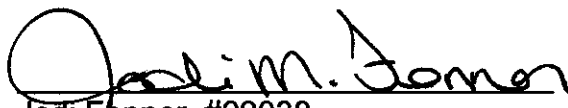
d. Ordering that Defendants grant access to the Site to the Nebraska Department of Environmental Quality in order for the Department to assess and stabilize the Site and remove waste tires and residuals to the extent possible; and

e. Granting such other and further relief as the court deems just and proper.

Dated this 28th day of August, 2003.

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

By JON BRUNING #20351
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Attorneys for Plaintiff.

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF)	CONSOLIDATED
MICHAEL STRONG)	CASE NO. 1634
d/b/a STRONG TIRE COMPANY,)	
)	FINAL ORDER
Respondent.)	
)	

This matter has come before me in the form of a FINDINGS OF FACT AND CONCLUSIONS OF LAW submitted by Hearing Officer Annette Kovar. The case involves Respondent's facility in Dixon County, Nebraska which is a scrap tire facility. Respondent is Mike Strong, d/b/a Strong Tire Company.

A hearing was held on July 21 and 22, 1999 responding to Strong's request for a hearing on a Notice of Violation (NOV) letter issued by the Department of Environmental Quality (DEQ). An adequate description of the facts and process leading up to the contested case hearing is contained within the FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Both parties were notified by Notice of Filing dated October 27, 1999 that the FINDINGS OF FACT AND CONCLUSIONS OF LAW had been filed with the Director and that the parties had 15 days to file exceptions to such document. Exceptions were filed in a timely manner by both parties and have been considered by me in the formation of this



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Final Order. Also considered by me were the contents of the record, evidence and testimony entered by Hearing Officer Kovar.

NOW, THEREFORE, having considered all relevant material herein, the Director finds the following:

1. Judge Redmond's Order of March 31, 1998 is relevant to this matter as being indicative of violations committed by the Respondent of his permit #97-035-1234 or of the statutes and regulations "governing the collection, processing, and disposal of waste tires".

2. Judge Redmond's Order of March 31, 1998 did not trigger closure under Title 136 since the facility was not "closed" by the court as contemplated by Title 136. The Order allowed Strong to rectify his status under the permit.

3. Because Strong's facility has not been "closed" prior to the date of this Final Order, Strong has not violated the 4 month closure period set out in Title 136 at Chapter 8 or under Strong's permit in condition 8.

4. Evidence is sufficient in the record to determine that tires have remained at Strong's facility for greater than 18 months which constitutes a violation of Title 136. I find no merit to the affirmative defense raised by Strong to exempt 93,000 passenger tire equivalents which constituted an existing tire collection site at the time he applied for a permit.

5. I find that it is beyond my authority as Director of the Department of Environmental Quality to determine whether or not violations of the State Fire Marshal regulations occurred. As a result, I will not consider the testimony of the Deputy State Fire Marshal.

6. I find that the only relevance to the number of tires on site at the Strong facility is to determine the level of financial assurance which must be maintained under the permit. Absent demonstrative evidence by the permittee as to the actual number of tires on site, I find it reasonable to liberally estimate tires on site for adequate protection of public welfare and the environment. Adequate financial assurance must be available in the event of abandonment by a permittee. I find no evidence of actual documentation by the permittee as to the number of tires on site. The permittee offered estimates only. I therefore accept the Findings of the Hearing Officer in this regard which totalled 948,000 passenger tire equivalents. This equates to approximately \$800,000 in required financial assurance compared to Strong's actual bond amount of \$73,855.80. This gross disparity equates to an obvious and egregious permit violation which has not been remedied.

7. I find no merit to the argument that Strong cannot find an acceptable use for tire product. This is clearly the type of risk that any business venture must weigh before undertaking the enterprise and poor judgment should not become the problem of the citizens of Nebraska.

8. I find no need to address the adequacy of Strong's annual report or any alleged intentional misrepresentation therein.

9. I find that revocation of Strong's permit was at issue pursuant to the Notice of Violation issued on September 19, 1997 and that Strong was clearly on notice that revocation may occur due to violations of terms or conditions of his permit or Title 136.

REGARDING the affirmative defenses herein, I find as follows:

10. That Judge Redmond's Order of March 31, 1998 identified violations by Strong.

11. For purposes of this Final Order, the 300,000 PTE is not a substantive issue and is not dispositive of the outcome of this matter.

12. Whether or not the 105,500 PTE or 93,000 PTE that existed on the effective date of Title 136 are exempt as alleged by Strong in his affirmative defense is not relevant to the outcome of this matter.

13. There is no evidence that approvals of use of scrap tire product were unreasonably withheld by DEQ and, further, availability of end use markets is a normal business risk for this facility.

REGARDING the exceptions filed by the Respondent, I find as follows:

14. As Finding Number 6 above states, it is prudent to estimate the number of tires on site in a way which assures that adequate financial mechanisms are in place should the permittee abandon the site. The Hearing Officer heard and received adequate evidence to support a reasonable approach to tire estimates and her recommendation stands.

15. The DEQ's NOV dated September 19, 1997 which forms the basis for this revocation hearing sets forth adequate notice that "permanent disposal" of scrap tires would be at issue in this matter. The letter states that "the basis of this NOV is as follows... 3. Failure to obtain approval from the Director for the permanent disposal of scrap tires...". The argument by Strong that he was not afforded adequate notice of this issue and, therefore, suffered a lack of due process is not supported by the record.

16. Similarly, Strong's argument that revocation of his permit was not at issue is clearly not supported by the record. The stated purpose of the NOV was to put Strong on notice that his permit would be revoked unless he requested a contested case on the matter. In fact, it is a result of that very notice that Strong asked for and received an adjudicatory hearing.

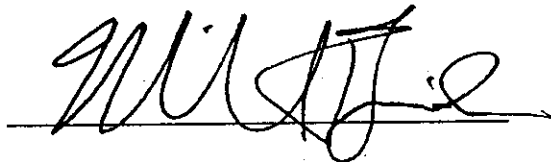
IT IS ORDERED THAT:

Permit number 97-035-1234 issued to Michael Strong is hereby revoked for failure to maintain adequate financial assurance and for failure obtain approval from the Director for the permanent disposal of scrap tires.

Closure of Strong's facility shall commence as directed under Title 136. If closure is not completed within the Title 136 time periods and if Strong can demonstrate an impossibility to perform, he may request leave for additional time from this Department.

SO ORDERED this 14th day of January, 2000.

BY THE DIRECTOR:

A handwritten signature in black ink, appearing to read "M. J. Linder", written over a horizontal line.

Michael J. Linder, Director

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 14th day of January, 2000, a copy of the foregoing Final Order were mailed by certified U.S. Mail, first class, postage prepaid, to the following:

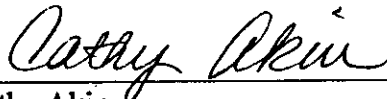
Stephen D. Mossman
MATTSON, RICKETTS, DAVIES,
STEWART & CALKINS
233 South 13th St., Suite 1401
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hand-delivered to:

Lisa Buechler
Department of Environmental Quality
1200 N Street
Lincoln, NE 68509-8922

and sent by inter-office mail to:

William L. Howland
Assistant Attorney General
1235 K Street
Lincoln, NE 68508



Cathy Akin