

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF  
JOHN L. TIMM, a/k/a  
JOHNNY L. TIMM, d/b/a  
TIMM BORROW PIT  
Respondent.

Case No. 3057  
COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY  
FOR HEARING

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) (Reissue 2008) of the Nebraska Environmental Protection Act § 81-1501 et seq (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to herein as NDEQ). The Respondent is John L. Timm, also known as Johnny L. Timm, doing business as Timm Borrow Pit, in Washington County, Nebraska.

COMPLAINT

2. The Complainant, NDEQ, is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504 (1) and (4) (Reissue 2008) of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq., and all rules, regulations and permits promulgated thereunder.

3. Pursuant to §81-1504 (11) and (20) (Reissue 2008) the NDEQ has the power and duty to issue permits governing the discharge of pollutants to waters of the State of Nebraska. On January 1, 2008, the NDEQ issued a general permit for the discharge of stormwater to waters of the State of Nebraska known as the General NPDES Permit NER 110000.

4. Pursuant to the application and Notice of Intent of the Respondent, John L. Timm was granted authorization under Permit Number NER 110000 with conditions imposed on January 12, 2009. The permit and the conditions of authorization remain in full force and effect; and the Respondent's specific authorization number assigned by NDEQ under the general permit is NER 111337.

5. Pursuant to Neb. Rev. Stat. §81-1504 (7) and Neb. Rev. Stat. §81-1507 (2008) the NDEQ has the authority to require compliance measures by order in instance of

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violation of The Nebraska Environmental Protection Act and rules and regulations adopted pursuant to the act.

6. From January 12, 2009, prior thereto, and to the present, the Respondent has engaged in soil mining in Washington County, Nebraska, from which stormwater containing sediments discharged to waters of the State of Nebraska.

7. At all times material herein the permit NER 110000, applicable to the Respondent, and consisting in full of 23 pages, has provided in pertinent parts as follows:

“A. Storm Water Pollution Prevention Plan Framework. ...4. You must implement the SWPPP [storm water pollution prevention plan] as written from commencement of construction of activity until final stabilization is complete. .... E. Maintenance of Controls. 1. All erosion and sediment control measures and other protective measures identified in the SWPPP must be maintained in effective operating condition...I. Inspections. ...1. Inspections must be conducted at least once every fourteen (14) calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater...6. for each inspection you must complete an inspection report. ...J. The SWPPP, including the site map, must be amended whenever there is a change in design, construction, operation, or maintenance at the construction site that has or could have a significant effect on the discharge of pollutants to waters of the state that has not been previously addressed in the SWPPP. ...K. Signature, Plan Review and Making Plans Available. 1. A copy of the SWPPP ...must be retained at the construction site or other locations easily accessible during normal business hours. ...L. Management Practices. 1. All control measures must be properly selected, installed and maintained in accordance with any relevant manufactures specifications and good engineering practices. ...4. Except as provided below, stabilization measures must be implemented as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased. ...”

8. The Respondent adopted a SWPPP (stormwater pollution prevention plan) and submitted it to the Respondent on January 7, 2009. The SWPPP identifies controls

and protective measures that the Respondent has failed to put in place, including but not limited to a sediment basin, an outfall structure, and a stabilized road entrance to the facility, in violation of the permit.

9. The Respondent has failed to conduct the inspections required by the permit and failed to produce inspection reports, in violation of the permit.

10. The Respondent, since submission of the SWPPP, has modified the design, construction, operation, and maintenance at the construction site in ways that could significantly effect the discharge of pollutants to waters of the state but have not been previously addressed in the SWPPP but has failed amend the SWPPP to account for such in violation of the permit.

11. On October 22, 2010, the Respondent failed to have a copy of the SWPPP at the construction site or at any convenient location for inspectors of NDEQ who were present at the construction site and requested the SWPPP in violation of the permit.

12. The Respondent has prior to issuance of this order permanently ceased construction activity in some definable areas of the site and has temporarily ceased construction activity yet has failed to implement stabilization measures as soon as practicable and within 14 days after cessation of construction activity. At some parts of the site the Respondent has excavated so close to the property line that the slopes specified in the SWPPP as stabilization measures are not in place and are impossible to attain by removal of additional soil from those surfaces without encroachment on the adjoining property.

13. Pursuant to Neb. Rev. Stat. § 81-1505 (1) and (2) (Reissue 2008) the Nebraska Environmental Quality Council adopted and promulgated Title 119, Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System, which is in effect at all times material herein and Chapter 10 of which provides in pertinent part as follows: “002 Permit Requirement ...002.01 No person shall discharge storm water containing any pollutant except as authorized by a NPDES permit or this Chapter. ...”

14. Neb. Rev. Stat. § 81-1506 (Reissue 2008) provides in part: “(1) It shall be unlawful for any person to: ...(a) To cause pollution of any air, waters, or land of the state or place or cause to be placed any wastes in a location where they are likely to cause

pollution of any air, waters, or land of the state;...(2) It shall be unlawful for any person to: (a) Discharge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System as created by the Clean Water Act... (d) Construct, install, or operate any industrial, commercial, or other facility or extend, modify, or add to any such facility if the operation would cause an increase in the discharge or emission of wastes into the air, waters, or land of the state or would otherwise cause an alteration of the physical, chemical, or biological properties of any air, waters, or land of the state in a manner that is not lawfully authorized; ...”(3) It shall be unlawful for any person to: ...(d) Violate any rule or regulation adopted and promulgated by the council [Nebraska Environmental Quality Council] pursuant to the Environmental Protection Act or the Livestock Waste Management Act. ...”

#### COMPLIANCE ORDER

15. IT IS THEREFORE ORDERED that the Respondent shall: Immediately cease soil mining at this location for any purpose other than to move soil for the purpose of conforming the site to the SWPPP of January 7, 2009, or to a modified SWPPP provided however that such modified SWPPP must be prepared by a qualified individual as specified in the permit, must be submitted to the NDEQ for review and approval, and be thereafter expressly approved by NDEQ in writing. Soil mining at this site shall not resume until all stabilization measures and control structures and practices are completed and conform as specified in either the January 8, 2009 SWPPP, or a modified SWPPP that is expressly approved by NDEQ.

16. Within 120 days from receipt of this Complaint, Compliance Order, and Notice of Opportunity for Hearing the Respondent shall initiate slope stabilization and permanent cover on the eastern and northern boundaries of the mined soil proceeding in conformity with an approved SWPPP and the Respondent shall complete stabilization and permanent cover of the eastern and northern site boundaries in conformity with an approved SWPPP by November 1, 2011.

### NOTICE OF OPPORTUNITY TO REQUEST A HEARING

17. Pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2008) the Respondent has the right to apply for a hearing to contest a Complaint and Compliance Order by making a request for such hearing to the Director no later than 30 days after service hereof. Nebraska Department of Environmental Quality, Rules of Practice and Procedure, Title 115, Chapter 7, provides sets forth the procedure of such hearings.

### ADVISEMENT OF POSSIBLE PENALTIES

18. The NDEQ reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil or criminal penalties for any violations that are the subject of this Complaint, Compliance Order, and Notice of Opportunity for Hearing. Nothing in this Complaint, Compliance Order, and Notice of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement. Failure to obey the Order may result in fines of up to \$10,000 per day as set out in Neb. Rev. Stat. § 81-1508.02 (Reissue 2008) for violations of the Environmental Protection Act.

Dated: 3-11-2011

By: /s/ Michael J. Linder  
Michael J. Linder, Director  
Nebraska Department of  
Environmental Quality