



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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December 18, 2013

Trudy Schmidt
Burnett County Clerk of Court
7410 County Road K, #115
Siren, WI 54872

Re: State v. Interstate Energy Partners, LLC and Tiller Corporation

Dear Ms. Schmidt:

Enclosed are an original and two copies of a Summons and Complaint in the above-entitled case. Please file the original and authenticate the copies and return those copies of the Summons and Complaint to me in the self-addressed, stamped envelope enclosed.

Also enclosed are the original and two copies of a Stipulation and Order for Judgment and an original and two copies of a Judgment. Please arrange to have a circuit court judge assigned to this case to consider this matter and to review the Stipulation and Order for Judgment and the Judgment. If the assigned judge finds that all is in order, I request that the judge sign the Order and that the Judgment be signed and entered as well. Please return conformed copies of the Stipulation and Order for Judgment and of the Judgment in the self-addressed, stamped envelope with the Summons and Complaint. I will then send a copy to opposing counsel.

A check in the amount of \$77,000.00 in payment of the judgment has also been enclosed.

This is a civil action for forfeitures using the classification code of Complex Forfeiture 30109, and no filing fee is required.

Thank you for your assistance in this matter.

Sincerely,


Cynthia R. Hirsch
Assistant Attorney General

CRH:jph
Enclosures
cc w/enc:

Attorney Gregory Korstad
Deb Dix, WDNR (via email)
Ruth King, WDNR (via email)

STATE OF WISCONSIN

CIRCUIT COURT

BURNETT COUNTY

STATE OF WISCONSIN
17 West Main Street
Post Office Box 7857
Madison, Wisconsin 53707-7857,

Plaintiff,

v.

Case No. 13-CX-_____
Complex Forfeiture: 30109

INTERSTATE ENERGY
PARTNERS, LLC
a Foreign Limited Liability Company
3033 Campus Drive, Suite W200
Plymouth, Minnesota 55441

and

TILLER CORPORATION
a Foreign Business Corporation
d/b/a Barton Sand & Gravel Company
7200 Hemlock Lane, Suite 200
Maple Grove, Minnesota 55369,

THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d)

Defendants.

SUMMONS

THE STATE OF WISCONSIN,

To each person named above as a defendant:


You are hereby notified that the plaintiff named above has filed a lawsuit or other legal action against you. The complaint, which is attached states the nature and basis of the legal action.

Within 20 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Burnett County Clerk of Court, 7410 County Road K #115, Siren, WI 54872, and to Cynthia R. Hirsch, plaintiff's attorney, whose address is Wisconsin Department of Justice, Environmental Protection Unit, 17 West Main Street, Post Office Box 7857, Madison, WI 53707-7857. You may have an attorney help or represent you.

If you do not provide a proper answer within 20 days, the Court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 9 day of December, 2013.

J.B. VAN HOLLEN
Attorney General



CYNTHIA R. HIRSCH
Assistant Attorney General
State Bar #1012870
Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3861
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STATE OF WISCONSIN

CIRCUIT COURT

BURNETT COUNTY

STATE OF WISCONSIN
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THE AMOUNT CLAIMED IS
GREATER THAN THE
AMOUNT CLAIMED UNDER
WIS. STAT. § 799.01(1)(d)

Defendants.

COMPLAINT

The plaintiff State of Wisconsin, by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General Cynthia R. Hirsch, brings this complaint at the request of the State of Wisconsin Department of Natural Resources (DNR) against the defendants Interstate Energy Partners, LLC, and Tiller Corporation and alleges that the defendants violated Wis. Stat. ch. 283, and Wis. Admin. Code §§ NR 216.22 as follows:

1. The plaintiff State of Wisconsin is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin.

2. The defendant Interstate Energy Partners, LLC (IEP) is a Minnesota limited liability corporation with its principal office located at 3303 Campus Drive, Suite W200, Plymouth, Minnesota 55441.

3. IEP owns a sand and gravel mining operation located in the NE ¼ of the NW ¼ of Section 18, T38N, R19W, and in the SE ¼ of the SW ¼ of Section 7, T38N, R19W, in the Town of Grantsburg, Burnett County, Wisconsin (the site).

4. IEP's Registered Agent is CT Corporation System and the registered agent's office is 8040 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.

5. The defendant Tiller Corporation (Tiller) is a Minnesota corporation whose sand and gravel mining division, Barton Sand and Gravel Company, operates the mining operation at the site. Tiller's principal office is located at 7200 Hemlock Lane, Suite 200, P.O. Box 1480, Maple Grove, Minnesota 55311-6480.

6. Tiller's Registered Agent is CT Corporation System and the registered agent's office is 8040 Excelsior Drive, Suite 200, Madison, Wisconsin 53717.

7. IEP purchased the site in 2011.

8. The site is bordered by lands owned by the National Park Service and by the Governor Knowles State Forest. High quality, unique wetlands consisting of at least five separate wetland types are located directly to the west of the site. Within the adjacent wetlands are drainage swales that feed into a creek that discharges into the St. Croix River, approximately one mile west of the site.

9. The St. Croix River is designated as an Area of Special Natural Resource Interest (ASNRI) by the State of Wisconsin, and is part of the National Wild and Scenic Rivers System.

10. The St. Croix River supports 95 species of fish, 41 species of mussels, beaver, muskrat, and otters, and eagles, ospreys and ducks nest along it.

11. On April 28, 2011, IEP applied to Burnett County for a conditional use permit seeking permission to mine sand and gravel on the three parcels that constitute the site. Parcel A, which is 32 acres in size, and Parcel B, which is 40 acres in size, had been mined in the past, and IEP proposed to mine, wash, dry and size sand and gravel on a 38-acre portion of Parcels A and B. Its plan indicated that there would be a 50' setback surrounding the active mining site where no mining would take place.

12. IEP's application stated that it would not mine the third parcel (39.05 acre Parcel C), a parcel that contained five structures, a small pond, tree coverage and unmined areas, but it would store the overburden removed from the mining site inside the three existing outbuildings on Parcel C.

13. IEP's conditional use permit application and reclamation plan was signed by Bill Frothinger, the Chief Executive Officer of IEP.

14. On May 11, 2011, IEP submitted an application for coverage under WPDES general permit for non-metallic mining operations, WI-0046515-05 (effective July 1, 2009 through March 31, 2014), and coverage under this permit (the permit) was conferred on May 13, 2011.

15. The permit requires those engaged in non-metallic mining activities to prevent the discharge of pollutants from their operations by using physical controls, such as pollution prevention or treatment best management practices, so that contaminants are not discharged through storm water to natural wetlands, surface water resources, or groundwater.

16. IEP had represented to DNR that its operation would be internally drained: all runoff from the mining activity would be directed into seepage ponds, and that ponds would be constructed as needed to keep runoff from discharging off of the mine site or into on-site wetlands.

17. The water use plan IEP provided to DNR to depict water withdrawal and discharge locations showed a mining area located in the northern half of Parcel B, two wash pond locations in the northeast portion of Parcel A, and no mining activity on Parcel C.

18. Based on this site plan and representations made by IEP during DNR's site visit, DNR staff concurred that the site would be internally drained and would therefore not need a storm water management plan.

19. By December 2011, the active mining area on the site had expanded to approximately 51 acres, and had expanded slightly into Parcel C.

20. In February 2012, Burnett County determined the pit was 51 acres in size rather than the 38 acres indicated on IEP's plan.

21. At some time between April 19 and April 22, 2012, a discharge of fine grained sediment began to leave the site. This discharge ran into a wetland complex, into the creek, and downstream into the St. Croix River.

22. Neither Tiller nor IEP reported this discharge to DNR when it occurred.

23. On April 26, 2012, Burnett County Land and Water Conservation Department staff and a DNR Conservation Warden responded to a citizen complaint that "muddy water" was entering the St. Croix River.

24. DNR and County staff traced the discharge into the St. Croix River back to the site.

25. Production was shut down at 1:00 p.m. on April 26, after the state and county officials approached the mine operator about the discharge.

26. On April 26, 2012, a DNR pilot flew over the site and took aerial photos of the mining operation.

27. These photos show a significant discharge of sediment from the southeast corner of the mine site, and show sediment-laden water following a path all of the way to the St. Croix River.

28. The aerial photos also show that the mining operation had expanded to take up almost all of Parcels A and B, and parts of Parcel C were also disturbed.

29. At an Enforcement Conference held on May 14, 2012, IEP told DNR that they had begun mining in August/September 2011, that they had stopped mining in late November/early December 2011, and that they had started up again in late March/early April 2012.

30. Since operations began Tiller has reconfigured the water storage and ponding areas on the site. ponds .

31. Ponds 2-7 were used for processing while mining was underway during 2011, ponds 8 and 9 were constructed over the winter, and pond 10 was constructed in April 2012.

32. Ponds 8, 9 and 10 had been constructed to facilitate the installation and use of an upgraded alternative wash line on the site.

33. Pond 10 had been constructed with on-site materials to return wash water to the wash line. It was first used on April 19, 2012.

34. Seepage through the on-site materials used in the Pond 10 berm was the source of the discharge of sediment to the wetlands and the St. Croix River.

35. Tiller reported that Pond 10 had been used for 6 hours on April 19, 10 hours on April 20, 8 hours on April 23, 6.5 hours on April 24, 9.5 hours on April 25, and 6 hours on April 26 before it was shut down due to the discovery of the release.

36. Since the seepage from Pond 10 resulted in the site not being internally drained, DNR directed Tiller to submit a Storm Water Pollution Prevention Plan (SWPPP) by June 15, 2012.

37. The SWPPP for the site was issued June 15, 2012.

38. The SWPPP states that Tiller is responsible for storm water management and implementation of storm water Best Management Practices (BMPs).

39. The SWPPP states that the project size (property/mining operations boundary) is 140 acres, and approximately 53 of the 140 acres are wetlands.

40. The SWPPP provides for internal drainage of the site and replacement of pond 10 with the construction of secondary containment berms along portions of the perimeter of the site in order to prevent the off-site discharge for up to the 10-year, 24-hour storm event.

VIOLATION 1: FAILURE TO MAINTAIN DIKES AND BERMS

41. Section 2.1 of the permit provides:

There shall be no above ground leakage through or over the top of dikes or berms utilized for holding or diverting wastewater or storm water. Outflow shall be through structures or channels designed to withstand the force of flowing water.

42. Wisconsin Admin. Code § NR 205.07(1)(a) provides that any permit noncompliance is a violation of the permit and is grounds for enforcement action, permit revocation or modification, or denial of a permit reissuance application. It further provides that a permittee who violates the terms of its permit is subject to the penalties established in Wis. Stat. ch. 283.

43. IEP and Tiller violated Wis. Admin. Code § NR 205.07(1)(a) and Section 2.11 of the permit when it failed to properly construct and maintain the dikes and berms around pond 10, and when the outflow from that pond failed to occur through structures or channels designed to withstand the force of the water.

44. The violation for failure to maintain dikes and berms began on or before April 22, 2012, when the unpermitted outflow from Pond 10 was discovered by the hiker, and continued through April 26, 2012 (at least 5 days of violation).

VIOLATION 2: DISCHARGE WITHOUT A PERMIT AND/OR OUTSIDE THE
CONDITIONS OF A PERMIT

45. Wisconsin Stat. § 283.31(1) prohibits the discharge of any pollutant into any waters of the state unless such discharge or disposal is done under a permit issued by the DNR under Wis. Stat. § 281.31 or Wis. Stat. § 281.33.

46. Wisconsin Stat. § 283.33 requires an owner or operator to obtain a permit for any discharge of storm water from a discernible conveyance and for any discharge that the DNR determines to be a significant contributor of pollutants to the waters of the state.

47. IEP and Tiller violated Wis. Stat. § 283.33 when they failed to obtain a permit for the discharge of sediment-laden wastewater and storm water from pond 10, which the DNR has determined to be a significant contributor of pollutants to the waters of the state (namely wetland complex, waterways and the St. Croix River).

48. The unpermitted discharge to waters of the state began between April 19 and April 22, 2012, and continued through April 26, 2012 (at least 5 days of violation).

RELIEF REQUESTED

1. Any person who violates Wis. Stat. ch. 283, any rule promulgated under this chapter or any term or condition of a permit issued under this chapter shall forfeit not less than \$10 nor more than \$10,000 for each day of violation pursuant to Wis. Stat. § 283.91.

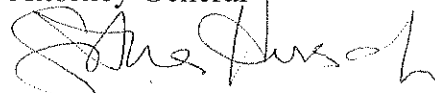
2. Wisconsin Admin. Code chs. NR 205 and 216 and the defendant's permit were issued pursuant to Wis. Stat. ch. 283.

WHEREFORE, the plaintiff asks for judgment as follows:

1. The forfeitures provided for in Wis. Stat. § 283.91(2).
2. The reasonable and necessary expenses of the investigation and prosecution, including attorney fees, pursuant to Wis. Stat. § 283.91(5);
3. An injunction ordering the defendants to comply with the erosion control plan sequence, and implement and maintain best management practices according to technical standards;
4. The costs and disbursements of this action; and
5. Such other relief as the Court may deem appropriate.

Dated this 9 day of December, 2013.

J.B. VAN HOLLEN
Attorney General



CYNTHIA R. HIRSCH
Assistant Attorney General
State Bar #1012870

Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
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hirschcr@doj.state.wi.us

STATE OF WISCONSIN

CIRCUIT COURT

BURNETT COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 13-CX-_____
Complex Forfeiture: 30109

INTERSTATE ENERGY
PARTNERS, LLC

and

TILLER CORPORATION,

Defendants.

STIPULATION AND ORDER FOR JUDGMENT

Plaintiff State of Wisconsin brought this civil action against defendants, Interstate Energy Partners, LLC and Tiller Corporation, and alleges that the defendants have violated Wis Stat. ch. 283 and Wis. Admin. Code § NR 216 at their sand and gravel mining operation in Burnett County, Wisconsin.

The parties now wish to resolve the litigation and as such enter into this stipulation and order for judgment setting forth the terms and conditions as such settlement.

IT IS HEREBY STIPULATED AND AGREED THAT:

1. Judgment shall be entered in favor of the plaintiff State of Wisconsin and against the defendants, Interstate Energy Partners, LLC and Tiller Corporation, in the amount of \$80,000. This sum is comprised of forfeitures, statutory surcharges, and costs as follows: forfeitures of \$52,294.22 under Wis. Stat. §§ 283.91(2) and 30.298(1), a 26%

penalty surcharge of \$13,596.50 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$10,458.84 under Wis. Stat. § 814.75(12), \$25 in court costs under Wis. Stat. § 814.63(1), a \$13 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$522.94 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15) and attorney fees of \$3,000.00 under Wis. Stat. §§ 281.98(2) and 289.96(3)(b).

2. The defendants Interstate Energy Partners, LLC and Tiller Corporation will pay the \$77,000.00 by a check payable to the Burnett County Circuit Court and delivered to the Clerk of Court, Burnett County Courthouse, 7410 County Road K #115, Siren, WI 54872, along with cover letters to the Court identifying the case by name and number. A copy of each check and cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Cynthia R. Hirsch at the Wisconsin Department of Justice, Post Office Box 7857, Madison, WI 53707-7857. The defendants are liable for the payment of this judgment within thirty (30) days following the date upon which the Court signs the Order for Judgment.

3. Defendants Interstate Energy Partners, LLC and Tiller Corporation will pay the 3,000.00 in attorney fees within 30 days of the by check payable to the Wisconsin Department of Justice and delivered to Assistant Attorney General Cynthia R. Hirsch at the address provided in paragraph two, above. The defendants are liable for the payment of this judgment within thirty (30) days following the date upon which the Court signs the Order for Judgment.

4. This Stipulation and Order for Judgment reflects the compromise of disputed claims and, except as between the parties in this action, nothing contained in this stipulation and order for judgment, nor the fact defendants entered into this Stipulation and Order for Judgment, shall be construed as an admission of liability by the defendants in any proceeding now pending or hereafter commenced.

5. The parties acknowledge that this stipulation and order for judgment sets forth the entire understanding of the parties with respect to the subject matter hereto.

6. The order for judgment accompanying this stipulation will be a final and appealable order. The order for judgment and judgment may be entered incorporating the terms of this stipulation without further notice, and the judgment may be docketed, pursuant to Wis. Stat. § 806.10(1).

Dated this 18 day of December, 2013.

J.B. VAN HOLLEN
Attorney General



CYNTHIA R. HIRSCH
Assistant Attorney General
State Bar #1012870

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-3861
(608) 266-2250 (Fax)
hirschcr@doj.state.wi.us

Dated this 11 day of December, 2013.


LARKIN HOFFMAN DALY & LINDGREN, LTD.



Gregory Korstad

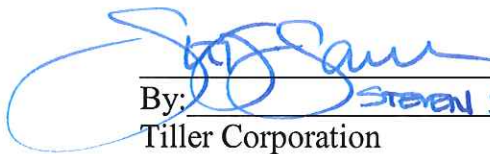
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(952) 896-3292
(952) 842-1722 (Fax)
gkorstad@larkinhoffman.com

Dated this 11 day of Dec., 2013.



By: William Frohinger (print name)
Interstate Energy Partners, LLC

Dated this 11 day of December, 2013.



By: STEVEN SAMER (print name)
Tiller Corporation

ORDER FOR JUDGMENT

The Court approves the terms of the foregoing settlement Stipulation in *State of Wisconsin v. Interstate Energy Partners, LLC and Tiller Corporation*, Burnett County Case No. 13-CX-___, pursuant to which the defendants will pay \$80,000.00 in forfeitures, surcharges, costs, and attorney fees. The Court therefore directs the clerk to enter and docket the Judgment accordingly.

This is a final order that disposes of the entire matter in litigation between the State of Wisconsin and Interstate Energy Partners, LLC and Tiller Corporation, and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

Dated this ____ day of _____, 2013.

BY THE COURT:

_____, Judge
Burnett County Circuit Court

STATE OF WISCONSIN

CIRCUIT COURT

BURNETT COUNTY

STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 13-CX-_____
Complex Forfeiture: 30109

INTERSTATE ENERGY
PARTNERS, LLC

and

TILLER CORPORATION,

Defendants.

JUDGMENT

The plaintiff, State of Wisconsin, is a sovereign state of the United States of America, with its principal offices at the State Capitol in Madison, Wisconsin.

The defendant, Interstate Energy Partners, LLC (IEP), is a Minnesota limited liability corporation with its principal office located at 3303 Campus Drive, Suite W200, Plymouth, Minnesota 55441. The defendant, Tiller Corporation (Tiller), is a Minnesota corporation whose sand and gravel mining division, Barton Sand and Gravel Company, operates the mining operation at the site. Tiller's principal office is located at 7200 Hemlock Lane, Suite 200, P.O. Box 1480, Maple Grove, Minnesota 55311-6480.

Based on the Stipulation between the plaintiff and the defendant, and upon the Court's order, the terms of which are to be incorporated into this judgment in their entirety, judgment is hereby granted in favor of the plaintiff, State of Wisconsin, and against the

defendants, Interstate Energy Partners, LLC and Tiller Corporation, in the amount of \$80,000. This sum is comprised of forfeitures, statutory surcharges, and costs as follows: forfeitures of \$52,294.22 under Wis. Stat. §§ 283.91(2) and 30.298(1), a 26% penalty surcharge of \$13,596.50 under Wis. Stat. § 814.75(18), a 20% environmental surcharge of \$10,458.84 under Wis. Stat. § 814.75(12), \$25 in court costs under Wis. Stat. § 814.63(1), a \$13 crime laboratories and drug law enforcement surcharge under Wis. Stat. § 814.75(3), a \$68 court support services surcharge under Wis. Stat. § 814.75(2), a 1% jail surcharge of \$522.94 under Wis. Stat. § 814.75(14), and a \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15) and attorney fees of \$3,000.00 under Wis. Stat. §§ 281.98(2) and 289.96(3)(b).

The defendants Interstate Energy Partners, LLC and Tiller Corporation will pay the \$77,000.00 by a check payable to the Burnett County Circuit Court and delivered to the Clerk of Court, Burnett County Courthouse, 7410 County Road K #115, Siren, WI 54872, along with cover letters to the Court identifying the case by name and number. A copy of each check and cover letter shall be simultaneously mailed as proof of payment to Assistant Attorney General Cynthia R. Hirsch at the Wisconsin Department of Justice, Post Office Box 7857, Madison, WI 53707-7857. The defendants are liable for the payment of this judgment within thirty (30) days following the date upon which the Court signs the Order for Judgment.

Defendants Interstate Energy Partners, LLC and Tiller Corporation will pay the 3,000.00 in attorney fees within 30 days of the by check payable to the Wisconsin Department of Justice and delivered to Assistant Attorney General Cynthia R. Hirsch at the

address provided in paragraph two, above. The defendants are liable for the payment of this judgment within thirty (30) days following the date upon which the Court signs the Order for Judgment.

This is a final order that disposes of the entire matter in litigation between the State of Wisconsin and Interstate Energy Partners, LLC and Tiller Corporation, and is intended by the Court to be an appealable order within the meaning of Wis. Stat. § 808.03(1).

The terms of the Stipulation and Order for Judgment are incorporated in their entirety.

This judgment is final for purposes of appeal.

Dated this _____ day of _____, 2013.

BY THE COURT:

_____, Judge
Burnett County Circuit Court