

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 1

JEFFERSON COUNTY

STATE OF WISCONSIN
17 West Main Street
PO Box 7857
Madison, WI 53707-7857,

Plaintiff,

v.

Case No. 05-CX-1
Complex Forfeiture: 30109

WAYNE HENSLER
W9521 Waterloo Road
Waterloo, WI 53594,

Defendant.

NOTICE OF MOTION AND MOTION FOR REMEDIAL SANCTIONS FOR
CONTEMPT OF COURT

TO: Wayne Hensler
W9521 Waterloo Road
Waterloo, WI 53594

Please take notice that at 3:00 p.m. on June 13, 2008, before the Honorable John Ullsvik, Jefferson County Circuit Court Judge, in his courtroom number 125 at Branch 1 of the Jefferson County Courthouse at 320 South Main Street, Jefferson, WI 53549, plaintiff State of Wisconsin by its attorneys, Attorney General J.B. Van Hollen and Assistant Attorney General JoAnne F. Kloppenburg, will move the Court, pursuant to Wis. Stat. §§ 785.03(1)(a) and 785.04(1), for an order finding the defendant Wayne Hensler in contempt of court and imposing appropriate remedial sanctions, including but not limited to: imprisonment so long as the contempt continues; forfeitures not to exceed \$2,000 for

each day the contempt of court continues; and an order designed to ensure compliance with the prior order for judgment and judgment of the court, dated July 6, 2005, copies of which are attached to and incorporated in this motion as Exhibit A.

As grounds for this motion the plaintiff states as follows:

1. Under the terms of the order for judgment and judgment entered in this matter on July 6, 2005, the defendant was ordered to comply with the Department of Natural Resources' September 30, 2004, Order No. 2003-SCEE-034 by October 15, 2005. That September 30, 2004 order, a copy of which is attached to and incorporated in this motion as Exhibit B, required that defendant:

Plant a dormant seeding that will convert the land (from the top of the slope down to County Highway A) to permanent vegetative cover. The permanent cover can be alfalfa, native grasses, or some other seeding mixture recommended in the U.S. Department of Agriculture's "Critical Area Planting" standard. The Conservation Reserve Program's annual sign-up also enables fields to be put into permanent cover.

September 30, 2004 Order at 3. The ordered seeding would minimize or eliminate the discharge of material from defendant's property into the Rock Lake Priority Watershed.

2. The defendant did not plant any seeding by October 15, 2005, and the State moved for remedial sanctions for contempt of court. The Court held a hearing on the State's motion for contempt of court on November 29, 2005, and issued a Contempt Order on December 9, 2005, a copy of which is attached to and incorporated in this motion as Exhibit C.

3. The Contempt Order found the defendant in contempt, imposed remedial sanctions of a \$2,000 forfeiture and imprisonment for 30 days, stayed the remedial sanctions

and purged the remedial sanctions if the defendant complied with certain conditions designed to accomplish the seeding required by the September 2004 Order.

4. To lift the remedial sanctions, the Contempt Order required the defendant to pay \$1,500 to the Department of Natural Resources, "for the Department to use to retain a contractor to seed the defendant's property as required by the September 30, 2004, Order," and required that the defendant "shall not disturb the acres that are seeded after the seeding." Order ¶¶4, 6.

5. A subsequent Order Modifying Contempt Order included subsequent mowing as well as seeding, to ensure the success of the seeding, and set approximate dates for the seeding and mowing. A copy of the Order Modifying Contempt Order is attached to and incorporated in this Motion as Exhibit D.

6. The defendant paid the \$1,500, the Department retained a contractor, and the contractor seeded and did some follow-up maintenance work on the defendant's property in the summer of 2006.

7. On or about April 18, 2007, the defendant chiselploved all of the area that had been seeded by the Department contractor in the summer of 2006, Cicero Affidavit ¶15, and he has therefore not complied with this Court's Order of Judgment requiring such compliance.

8. The State again moved for remedial sanctions for contempt of court. The Court held a hearing on the State's motion for contempt of court on May 22, 2007, and issued a Second Contempt Order on May 30, 2007, a copy of which is attached to and incorporated in this motion as Exhibit E.

9. The Contempt Order found the defendant in contempt, imposed remedial sanctions of a \$2,500 forfeiture, and stayed and purged the remedial sanctions if the defendant complied with certain conditions designed to accomplish the seeding required by the September 2004 Order.

10. To lift the remedial sanctions, the Contempt Order required the defendant to pay \$2,500 to the Department of Natural Resources, "for the Department to use to retain a contractor to seed the defendant's property as required by the September 30, 2004, Order," by June 21, 2007.

11. Defendant neither paid the \$2,500 ordered by the Court to lift the remedial sanction, nor reseeded the area in compliance with the Department Order and earlier Judgment of the Court.

12. The area needs to be reseeded in compliance with the Department Order, and the Department will present evidence by affidavit that the seeding and maintenance required to ensure a successful ground cover will cost as much as \$8,000.

WHEREFORE the plaintiff respectfully requests that this Court find the defendant in contempt of the court's prior judgment and order appropriate remedial sanctions to ensure compliance with that prior judgment.

Specifically, the State asks that the Court order that:

1) the defendant pay a forfeiture of \$5,000 as a remedial sanction pursuant to Wis. Stat. § 785.04(1)(c);

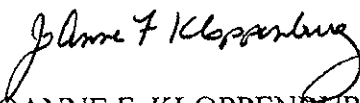
2) the defendant be imprisoned for thirty days as a remedial sanction pursuant to Wis. Stat. § 785.04(1)(b);

3) the order for imprisonment be stayed and purged if: a) by mail postmarked on or before June 20, 2008, the defendant sends a check to the undersigned made payable to the State of Wisconsin Department of Natural Resources in the amount of \$8,000, for the Department to use to retain a contractor to seed the defendant's property as required by the September 30, 2004, Order No. 2003-SCEE-034, and b) the defendant leaves the area seeded undisturbed;

4) the Order expires on June 13, 2013.

Dated this 18th day of April, 2008.

J.B. VAN HOLLEN
Attorney General


JOANNE F. KLOPPENBURG
Assistant Attorney General
State Bar #1012239
Attorneys for Plaintiff

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-9227