

IN THE DISTRICT COURT OF BUFFALO COUNTY, NEBRASKA

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

Case No. \_\_\_\_\_

Plaintiff, )

COMPLAINT

v. )

KIRSCHNER IMPLEMENT, INC., )  
a corporation authorized to do )  
business in Nebraska, )

Defendant. )

COMES NOW Michael J. Linder, Director of the Department of Environmental Quality, who institutes this action through Jon Bruning, Attorney General, on behalf of the State of Nebraska as Plaintiff and alleges as follows:

1. The Nebraska Department of Environmental Quality, Plaintiff, is the agency of the State of Nebraska charged with the duty, pursuant to NEB.REV.STAT. § 81-1504(1) (Reissue 2008, Cum. Supp. 2010) of exercising exclusive supervision, administration and enforcement of the Environmental Protection Act, NEB.REV.STAT. § 81-1501 *et seq.* (Reissue 2008, Cum. Supp. 2010).

2. Defendant, Kirschner Implement, Inc. is a corporation authorized to do business in Nebraska. Defendant owns, and has owned during all times material herein, an implement dealership located at 42185 Highway 2 in Ravenna, Buffalo County, Nebraska (hereinafter the "property"), and has used this dealership in the course of its business.

3. NEB.REV.STAT. § 81-1502(10) is in effect at all times material herein and defines Defendant as a "person."



## FIRST CLAIM

4. Plaintiff hereby incorporates by reference each and every one of the foregoing paragraphs of this Complaint as though fully restated herein.

5. The Nebraska Integrated Solid Waste Management Act was in effect at all times material herein and states, in pertinent part: “[N]o person shall dump or deposit any solid waste at any place other than a landfill approved by the [NDEQ] director unless [NDEQ] has granted a permit which allows the dumping or depositing of solid waste at any other facility.” NEB.REV.STAT. § 13-2033(1) (Reissue 2007).

6. The Nebraska Environmental Protection Act was in effect at all times material herein and states, in pertinent part, that it shall be unlawful for any person to “dispose of any solid waste at a location other than a solid waste management facility holding a current permit issued by [NDEQ] pursuant to the Integrated Solid Waste Management Act.” NEB.REV.STAT. §81-1506(3)(d).

7. On or about September 20, 2010, the Defendant dumped and deposited solid waste from the demolition of a grain elevator on the property without a permit, in violation of §§ 13-2033(1) and 81-1506(3)(d).

## SECOND CLAIM

8. Plaintiff hereby incorporates by reference each and every one of the foregoing paragraphs of this Complaint as though fully restated herein.

9. It is unlawful for any person to “construct or operate a solid waste management facility without first obtaining a permit. . . .” NEB.REV.STAT. § 81-1506(3)(a).

10. From on or about September 20, 2010 through on or about January 18, 2011, Defendant kept the solid waste referenced in paragraph 7 on the property without a permit. This constituted the construction or operation of a solid waste management facility, in violation of § 81-1506(3)(a).

THIRD CLAIM

11. Plaintiff hereby incorporates by reference each and every one of the foregoing paragraphs of this Complaint as though fully restated herein.

12. It is unlawful for any person to violate any rule or regulation adopted and promulgated pursuant to the Nebraska Environmental Protection Act. NEB.REV.STAT. § 81-1508.02(1)(b).

13. 132 NEB.ADMIN.CODE., Ch. 2 § 001 was adopted and promulgated pursuant to the Nebraska Environmental Protection Act and states: "No person shall cause or allow any open fires."

14. On or about January 18, 2011, Defendant caused or allowed on open fire on the property, in violation of NEB.REV.STAT. § 81-1508.02(1)(b) and 132 NEB.ADMIN.CODE., Ch. 2 § 001.

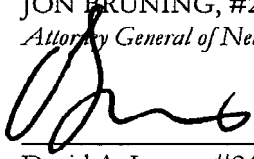
15. A civil penalty not to exceed ten thousand dollars (\$10,000) per day per violation is provided in cases of violation of the Environmental Protection Act, the Integrated Solid Waste Management Act, or the rules and regulations adopted and promulgated pursuant to such acts. NEB.REV.STAT. § 81-1508.02(2).

WHEREFORE, the plaintiff prays that judgment on its claims be entered herein against the Defendant in the form of a civil penalty as provided under NEB.REV.STAT. § 81-1508.02(2) and that all costs of this action be taxed to Defendant.

Respectfully submitted this 25<sup>th</sup> day of February, 2013.

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

By: JON BRUNING, #20351  
*Attorney General of Nebraska*

By:   
David A. Lopez, #24947  
*Assistant Attorney General*

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Attorneys for Plaintiff.

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint and Request for Injunction has been served on Defendant by regular United States mail, first class postage prepaid on this 25<sup>th</sup> day of February, 2013, addressed to Defendant's attorney of record as follows.

Stephen D. Mossman, Esq.  
Mattson Ricketts Davies Stewart & Calkins  
134 South 13<sup>th</sup> Street, Suite 1200  
Lincoln, NE 68508



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David A. Lopez  
*Assistant Attorney General*