

IN THE DISTRICT COURT OF BOONE COUNTY, NEBRASKA

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

Plaintiff,

v.

NIEWOHNER GRANDCHILDRENS'
LIMITED PARTNERSHIP,

Defendant.

Case No. CI12-15

COMPLAINT

FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

APR 02 2012

Ellen L. Hirsch
CLERK OF DISTRICT COURT

COMES NOW the Nebraska Department of Environmental Quality (hereinafter the "NDEQ" or "Plaintiff"), who institutes this action through Jon C. Bruning, Attorney General, and alleges and states as follows:

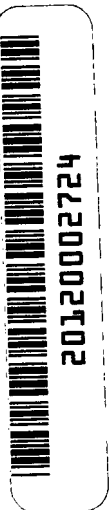
FIRST CLAIM

1. The Plaintiff is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) of exercising exclusive supervision, administration and enforcement of the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 (Reissue 2008 and Supp. 2009) *et seq.* and the Livestock Waste Management Act, Neb. Rev. Stat. §54-2401 (Reissue 2010) *et seq.*, along with all rules and regulations promulgated thereunder.

2. At all times material herein the Defendant, Niewohner Grandchildrens' Limited Partnership, a Nebraska Limited Partnership, owned and operated three animal feeding operations, located in Boone County, Nebraska, to wit: the "Niewohner Farms" site, the legal description being NW1/4, NW1/4, Section 21, Township 21N, Range 07W, Boone County the "Marilee" site, the legal description being NE1/4, NE1/4,



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Section 31, Township 21N, Range 07W, Boone County, and the "West" site, NW1/4, NW1/4, Section 30, Township 21N, Range 07W, Boone County.

3. Pursuant to Neb. Rev. Stat. § 81-1506(5)(c), "It shall be unlawful for any person to: Violate any term or condition of an animal feeding operation permit."

4. Pursuant to Neb. Rev. Stat. § 81-1508.02(1)(b), "It shall be unlawful for any person: To violate any air, water, or land quality standards, any emission or effluent standards or limitations, any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to the Environmental Protection Act, the Integrated Solid Waste Management Act, or the Livestock Waste Management Act or the rules or regulations adopted and promulgated pursuant to such acts."

5. On or about June 18, 2008, Defendant obtained a construction and operating permit for an animal feeding operation at the "Niewohner Farms" location.

6. Defendant's June 18, 2008 permit stated, "The LWCF shall not be operated until written approval is received from the Department".

7. On or about February 4, 2009 NDEQ observed Defendant operating the waste control facility at the "Niewohner Farms" location.

8. As of February 4, 2009, NDEQ had not provided written approval for operation of the livestock waste control facility at the "Niewohner Farms" location and did not provide such approval until March 17, 2009.

9. Pursuant to Neb. Rev. Stat. § 81-1508.02 2), a civil penalty is provided in the amount of not more than \$10,000 (ten thousand dollars) for each day of violation. In case of a continuing violation, each day shall constitute a separate offense.

SECOND CLAIM

10. Plaintiff hereby incorporates by reference all preceding paragraphs as fully set forth herein.

11. On or about June 10, 2008, Defendant obtained a construction and operating permit for an animal feeding operation at the "Marilee" location.

12. Defendant's June 10, 2008 permit stated, "The LWCF shall not be operated until written approval is received from the Department".

13. On or about February 4, 2009 NDEQ observed Defendant operating the waste control facility at the "Marilee" location.

14. As of February 4, 2009, NDEQ had not provided written approval for operation of the livestock waste control facility at the "Marilee" location and did not provide such approval until March 17, 2009.

15. Pursuant to Neb. Rev. Stat. § 81-1508.02 2), a civil penalty is provided in the amount of not more than \$10,000 (ten thousand dollars) for each day of violation. In case of a continuing violation, each day shall constitute a separate offense.

THIRD CLAIM

16. Plaintiff hereby incorporates by reference all preceding paragraphs as fully set forth herein.

17. On or about June 10, 2008, Defendant obtained a construction and operating permit for an animal feeding operation at the "West" location.

18. Defendant's June 10, 2008 permit stated, "The LWCF shall not be operated until written approval is received from the Department".

19. On or about February 4, 2009 NDEQ observed Defendant operating the waste control facility at the "West" location.

20. As of February 4, 2009, NDEQ had not provided written approval for operation of the livestock waste control facility at the "West" location and did not provide such approval until March 17, 2009.

21. Pursuant to Neb. Rev. Stat. § 81-1508.02 2), a civil penalty is provided in the amount of not more than \$10,000 (ten thousand dollars) for each day of violation. In case of a continuing violation, each day shall constitute a separate offense.

WHEREFORE, Plaintiff prays that judgment be entered in favor of Plaintiff and against Defendant in the form of civil penalties as provided in Neb. Rev. Stat. § 81-1508.02 and further that all costs of this action be taxed to Defendant. Pursuant to Neb. Rev. Stat. §81-1508.02, in determining the appropriate civil penalty, the Court shall consider "the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance".

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

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on this 30th day of March, 2012, addressed to the Defendant's attorney of record as follows:

Stephen D. Mossman
Mattson Ricketts Davies
Stewart & Calkins
134 S. 13th Street, #1200
Lincoln, NE 68508-1901

Ryan Post
Ryan S. Post
Assistant Attorney General