

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY, )  
Plaintiff, )  
v. )  
LONNIE BREINER d/b/a BREINER )  
RANCH, )  
Defendant. )

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

**COMPLAINT**

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

**FIRST CLAIM**

1. Plaintiff is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) (Reissue 1999) of exercising exclusive supervision, administration, and enforcement of the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2006), and all rules, regulations, and orders promulgated thereunder.
2. The Defendant, Lonnie Breiner (hereinafter "Defendant" or "Breiner"), doing business as Breiner Ranch, is a resident of Holt County, Nebraska.
3. At all times material herein, Defendant owned and operated a livestock operation located at the SW 1/4 and SE 1/4, Section 34, Township 32 North, Range 15 West near or in the city of Stuart, in Holt County, Nebraska ("the Site"). The Site is also generally described as 89265 427<sup>th</sup> Avenue near the city of Stuart, in Holt County, Nebraska.

4. On or about September 14, 2005, the Director of the NDEQ and Defendant entered into and agreed to be bound by an Administrative Consent Order (hereinafter "Consent Order").

5. Paragraph 3 of the Consent Order required Defendant to:

- D. Complete construction of a Livestock Waste Control Facility as approved by the NDEQ in accordance with plans and specifications as submitted to the NDEQ within the timeframe set forth in the Construction Approval/Permit and meet all of the regulatory requirements. Further Respondent agrees to immediately empty the bottom three pens of livestock, clean the other pens monthly, and to remove all cattle from the facility by June 1, 2006 until livestock waste controls, as approved by the Department, are constructed; and
- E. Submit monthly progress reports to the NDEQ on the activities listed above.

6. On or about February 3, 2006, two NDEQ employees, Alan Rosenboom and David Miesbach, observed cattle in the one of the bottom three pens in violation of ¶ 3(D) of the Consent Order.

7. On or about March 1, 2006, NDEQ employee Keith Sandall (hereinafter "Sandall") observed cattle in one of the bottom three pens in violation of ¶ 3(D) of the Consent Order.

8. On or about December 13, 2006, Sandall observed cattle in Defendant's pens in violation of ¶ 3(D) of the Consent Order.

9. On or about January 10, 2007, Sandall again observed cattle in one of Defendant's pens in violation of ¶ 3(D) of the Consent Order.

10. On or about March 21, 2007, Sandall observed cattle in Defendant's pens in violation of ¶ 3(D) of the Consent Order.

11. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate an Administrative Order issued by the Director of the NDEQ.

12. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1508.02(1)(b). In the case of a continuing violation, each day shall constitute a separate offense.

### **SECOND CLAIM**

13. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1-15 as if fully set forth herein.

14. The Consent Order also required Defendant to submit monthly progress reports to the NDEQ.

15. Defendant did not submit monthly progress reports to NDEQ until September 2007, a violation of ¶ 3(E) of the Consent Order.

### **THIRD CLAIM**

16. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1-18 as if fully set forth herein.

17. On or about July 14, 2006, NDEQ received an application completed by Defendant for a permit to construct a livestock waste control facility (hereinafter "LWCF") at the Site.

18. On or about September 28, 2006, Defendant received a construction permit (hereinafter "Construction Permit") from the NDEQ to construct a LWCF.

19. The Construction Permit required Defendant to submit a Groundwater Monitoring plan, with onsite monitoring wells, to the NDEQ by January 15, 2007.

20. Defendant did not comply with the Construction Permit by failing to submit a Groundwater Monitoring plan by January 15, 2007.

21. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate any permit or license condition or limitation.

#### **FOURTH CLAIM**

22. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1-25 as if fully set forth herein.

23. The Construction Permit also required Defendant to complete construction of a LWCF by May 1, 2007.

24. Defendant failed to complete construction of the LWCF by May 1, 2007.

#### **FIFTH CLAIM**

25. Neb. Rev. Stat. §81-1508(2) allows the Director of NDEQ to petition the Court for an injunction enjoining Defendants from further violating any provision of the Nebraska Environmental Protection Act, any rules and regulations promulgated thereunder, or any order of the Director.

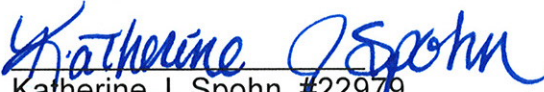
26. The Director of NDEQ respectfully petitions this Court for an injunction enjoining Defendant from further violating Neb. Rev. Stat. §81-1508.02(1)(b) and the Consent Order entered into between the parties on September 14, 2005. In particular, the Director of NDEQ respectfully requests that Defendant be enjoined from holding, feeding, or containing any further cattle at the Site until Defendant comes into compliance with Title 130, its Construction Permit, and the Consent Order.

WHEREFORE, NDEQ prays that judgment be entered in its favor and against the Defendant in the form of an injunction pursuant to Neb. Rev. Stat. §81-1508(2), civil penalties as provided in Neb. Rev. Stat. § 81-1508.02, with consideration by the Court of “the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance” in determining the appropriate civil penalty pursuant to Neb. Rev. Stat. § 81-1508.02(2); that all costs of this action be taxed to the Defendant; and any other relief as this court deems just and equitable.

STATE OF NEBRASKA ex rel.  
MICHAEL J. LINDER, Director  
Department of Environmental Quality,  
Plaintiff,

BY: JON BRUNING # 20351  
Attorney General

BY:

  
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Attorneys for Plaintiff

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon the Defendant by regular United States mail, first class postage prepaid on this 7<sup>th</sup> day of January, 2008 addressed to the Defendant's attorney of record as follows:

Donald G. Blankenau, #18528  
Blackwell Sanders Peper Martin, LLP  
206 S. 13<sup>th</sup> Street, #1400  
Lincoln, NE 68508

  
Katherine J. Spohn  
Assistant Attorney General