

IN THE DISTRICT COURT OF PHELPS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
NEBRASKA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY, )  
Plaintiff, )  
v. )  
CLYDE MCCLYMONT & SONS, INC., )  
Defendant. )

CASE NO. \_\_\_\_\_

COMPLAINT

**FILE COPY**

COMES NOW the Nebraska Department of Environmental Quality (hereinafter the "Department" 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) (Reissue 1999) of exercising exclusive supervision, administration and enforcement of the Environmental Protection Act, Neb. Rev. Stat. §81-1501 (Reissue 1999 and Cum. Supp. 2002) et seq. and the Livestock Waste Management Act, Neb. Rev. Stat. §54-2401 (Reissue 1998 and Cum. Supp. 2002) et seq., along with all rules and regulations promulgated thereunder.

2. At all times material herein the Defendant, Clyde McClymont & Sons, Inc., owned and operated a livestock operation, located in Phelps County, Nebraska.

3. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for handling livestock waste, the Council adopted, pursuant to 81-

1504 (1) a rule and regulation, Title 130, *Rules and Regulations Pertaining to Livestock Waste Control*.

4. Title 130, Chapter 2, Section 005, requires that "when facilities are required by the Department, the applicant shall apply for a construction permit as provided in Chapter 3."

5. Beginning July 2, 2002, and continuing every day thereafter until March 12, 2003, Defendant, knowing facilities were required by the Department, failed to apply for a construction permit. It is unlawful for any person to violate or fail to perform any duty imposed by such acts, rules or regulations under Neb. Rev. Stat. §81-1508.02 (1) (e).

6. Pursuant to Neb. Rev. Stat. §81-1508.02 (1) and (2) (Reissue 1999), 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

7. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 6 herein.

8. Neb. Rev. Stat. §81-1506 (2)(b) (Reissue 1999) states that it is unlawful for any person to "construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto without obtaining the necessary permits from the department..."

9. Beginning on or about September 5, 2002, and continuing daily thereafter until June 2, 2003, Defendant built and modified a livestock waste control facility without obtaining the necessary permits from the Department.

#### THIRD CLAIM

10. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 9 herein.

11. Defendant was issued a construction permit on June 2, 2003, which required completion of Phase I Construction by October 1, 2003. Defendant failed to complete Phase I Construction by this date, violating its construction permit and Neb. Rev. Stat. §81-1508.02 (1) (b).

#### FOURTH CLAIM

12. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 11 herein.

13. Defendant was issued a construction permit on June 2, 2003.

14. Neb. Rev. Stat. §54-2407(3) (Cum. Supp. 2002) requires that any person holding a permit for a livestock waste control facility notify the Department of a change of ownership. Neb. Rev. Stat. §81-1506(5)(b) makes it unlawful for any person to violate a provision of the Livestock Waste Management Act.

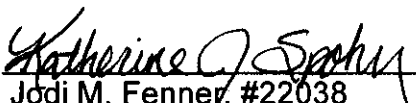
15. Ownership of the facility changed on or about September 15, 2003.

16. On or about September 15, 2003, the Defendant failed to notify the Department of this change in ownership.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the 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 the Defendant. Pursuant to Neb. Rev. Stat. §81-1508.02, the maximum penalties for the violations described herein are \$ 535,000.00. However, Plaintiff prays not necessarily for maximum penalties, but that the Court consider "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).

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

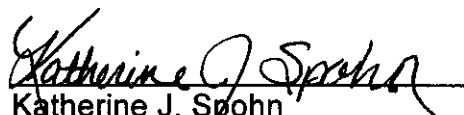
By JON C. BRUNING, #20351  
Attorney General

By   
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(402) 471-2682  
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 \_\_\_ day of November, 2004 addressed to the Defendant's attorney of record as follows:

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

  
Katherine J. Spohn  
Assistant Attorney General