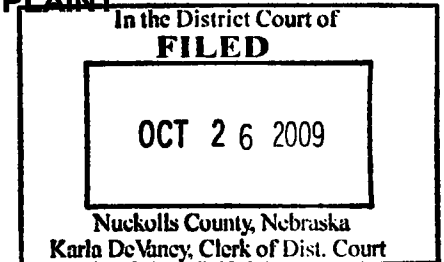


IN THE DISTRICT COURT FOR NUCKOLLS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY, )  
Plaintiff, )  
v. )  
JAY LYON d/b/a LYON LIME )  
PRODUCTS, )  
Defendant. )

Case No. CI09-64

**COMPLAINT**



The State of Nebraska, on behalf of the Nebraska Department of Environmental Quality (NDEQ), alleges the following:

1. NDEQ is the agency of the State of Nebraska charged with the duty, under Neb. Rev. Stat. §81-1504 (Reissue 2008), to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2008) and all rules, regulations, permits, and orders promulgated under the Act, including the "Nebraska Air Quality Regulations" at Title 129 of the Nebraska Administrative Code.
2. At all relevant times, Jay Lyon d/b/a Lyon Lime Products, owned and operated a limestone quarry and processing operation in Nuckolls County, Nebraska.

**FIRST CLAIM**

3. 40 CFR Part 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, §60.670(a)(1) states: "Except as provided in paragraphs (a)(2), (b), (c), and (d) of this section, the provisions of this subpart are applicable to the following affected facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station."



4. Nonmetallic mineral processing plant is defined in 40 CFR Part 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, §60.671 as “any combination of equipment that is used to crush or grind any nonmetallic mineral wherever located, including lime plants, power plants, steel mills, asphalt concrete plants, portland cement plants, or any other facility processing nonmetallic minerals except as provided in §60.670 (b) and (c).”

5. Nonmetallic mineral is defined in 40 CFR Part 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, §60.671 as “any of the following minerals or any mixture of which the majority is any of the following minerals: (a) Crushed and Broken Stone, including Limestone, Dolomite, Granite, Traprock, Sandstone, Quartz, Quartzite, Marl, Marble, Slate, Shale, Oil Shale, and Shell.”

6. Lyon is subject to the requirements of 40 CFR Part 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, §60.670(a)(1).

7. 40 CFR Part 60, Subpart OOO, Standards of Performance for Nonmetallic Mineral Processing Plants, §60.670(f) provides “Table 1 of this subpart specifies the provisions of subpart A of this part 60 that apply and those that do not apply to owners and operators of affected facilities subject to this subpart.”

8. Table 1 of Subpart OOO provides that 40 CFR Part 60, Subpart A, General Provisions, §60.8 is applicable to Lyon.

9. 40 CFR Part 60, Subpart A - General Provisions, §60.8(a) states: “[e]xcept as specified in paragraphs (a)(1),(a)(2), (a)(3), and (a)(4) of this section, within 60 days after achieving the maximum production rate at which the affected facility will be

operated, but not later than 180 days after initial startup of such facility . . . the owner or operator of such facility shall conduct performance test(s) and furnish [NDEQ] a written report of the results of such performance test(s).”

10. Lyon began operating his limestone quarry and processing operation in 1994. More than 180 days elapsed since the operation’s initial startup, yet Lyon failed to conduct and report the performance tests as required. Lyon operated the limestone quarry and processing operation in the years 2003, 2004, and 2006, without adequately conducting and reporting the performance tests as required.

11. 40 CFR Part 60, Subpart A, General Provisions, §60.8(a)(4) provides: “Until an extension of the performance test deadline has been approved by [NDEQ] under paragraphs (a)(1), (2), and (3) of this section [force majeure], the owner or operator of the affected facility remains strictly subject to the requirements of this part.”

12. No extension of the performance test deadline was requested by Lyon or approved by NDEQ.

13. 40 CFR Part 60, Subpart A, General Provisions, §60.8(d) provides: “The owner or operator of an affected facility shall provide the [NDEQ] at least 30 days prior notice of any performance test, except as specified under other subparts, to afford [NDEQ] the opportunity to have an observer present.”

14. Lyon never provided NDEQ with 30 days notice prior to any attempted performance test.

15. 129 Neb. Admin. Code, ch. 18, as in effect at all relevant times, adopts by reference the "Standards of Performance for New Stationary Sources" published at 40

CFR Part 60, effective July 1, 2003, including, "General Provisions - Subpart A;" and "Nonmetallic mineral processing plants - Subpart OOO."

16. Neb. Rev. Stat. §81-1508.02(1)(e) provides that it is unlawful for any person "to violate any other provision of or fail to perform any other duty imposed by [the Nebraska Environmental Protection Act], rules, or regulations."

17. 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)(e). In the case of a continuing violation, each day shall constitute a separate offense.

### **SECOND CLAIM**

18. NDEQ incorporates by reference paragraphs 1 and 2 of this complaint.

19. Neb. Rev. Stat. §81-1507(1) authorizes the director of NDEQ to issue orders when a violation of any provision of the Environmental Protection Act, or any rule or regulation pursuant to that Act, has occurred.

20. On December 6, 2006, a "Complaint, Order, and Notice of Opportunity for Hearing" (the "administrative order") was entered by the director of NDEQ and sent to Lyon.

21. Lyon did not request a hearing regarding the administrative order, nor did he contest the administrative order, which became a final order on January 5, 2007.

22. The administrative order is attached hereto and incorporated herein as "Attachment A."

23. Paragraph 9 of the administrative order required Lyon to conduct performance tests as required by 40 CFR, Part 60, Subpart A and Subpart OOO on or before March 1, 2007.

24. Paragraph 11 of the administrative order required Lyon to submit a written testing protocol to NDEQ not less than 30 days prior to its required performance test.

25. Paragraph 11 of the administrative order also required Lyon to submit a written report of the results of the test to NDEQ within 45 days after the performance test was conducted.

26. Lyon did not comply with the requirements of paragraphs 9 and 11 of the administrative order.

27. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate an administrative order issued by the director of NDEQ.

28. 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.

### **THIRD CLAIM**

29. NDEQ incorporates by reference paragraphs 1 and 2 of this complaint.

30. 129 Neb. Admin. Code, ch. 32, § 001 provides that "no person may cause or permit the handling, transporting or storage of any material in a manner which may allow particulate matter to become airborne in such quantities and concentrations that it remains visible in the ambient air beyond the premises where it originates."

31. On November 13, 2007, a NDEQ representative observed particulate matter, i.e. dust, blowing from Lyon's lime quarry and processing operation beyond the boundary of Lyon's premises.


32. Neb. Rev. Stat. §81-1508.02(1)(e) provides that it is unlawful for any person “to violate any other provision of or fail to perform any other duty imposed by [the Nebraska Environmental Protection Act], rules, or regulations.”

33. 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)(e).

WHEREFORE, the State prays that judgment be entered in its favor and against Lyon in the form of a civil penalty as provided in Neb. Rev. Stat. § 81-1508.02. The State also requests that all costs of this action be taxed to Lyon and requests any other relief as this court deems just and equitable.

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

By JON C. BRUNING, #20351  
Attorney General

By   
Kevin L. Griess, #22182  
Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-2682  
kevin.griess@nebraska.gov

*Attorney for Plaintiff.*

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF NEBRASKA ex rel  
MICHAEL J. LINDER, DIRECTOR,  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY, Complainant,  
COMPLIANCE ORDER

Case No. 2724

COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY  
FOR HEARING

vs.

JAY LYON d/b/a LYON LIME  
PRODUCTS, Respondent.

TO: JAY LYONS d/b/a LYON LIME PRODUCTS:

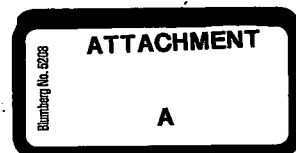
1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (1) (Reissue 1999) of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §81-1501 et seq. (Reissue 1999, Cum Supp. 2004). The Complainant is Michael J. Linder, Director, Nebraska Department of Environmental Quality, hereinafter NDEQ. The Respondent is Jay Lyon, doing business as Lyon Lime Products, in Nuckolls County, Nebraska.

2. Pursuant to Neb. Rev. Stat. §81-1504 (1) (Reissue 1999) the NDEQ has the duty and power to exercise exclusive general supervision of the administration and enforcement of the Environmental Protection Act and all rules and regulations promulgated pursuant thereto.

3. The Respondent owns and operates a limestone processing plant in Nebraska that began to operate on or about September 15, 1994, at a processing rate of 300 tons per hour, and that is subject to Title 129, Nebraska Air Quality Regulations, Chapter 18, adopted by the Nebraska Environmental Quality Council in effect at all times herein. Chapter 18 contains the following provision incorporating by reference portions of the Code of Federal Regulations (CFR):

“Chapter 18 – NEW SOURCE PERFORMANCE STANDARDS AND EMISSION LIMITS FOR EXISTING SOURCES...001 Standards of Performance for New Stationary Sources. Notwithstanding any other provisions of these regulations, the following “Standards of Performance for New Stationary Sources” published at 40 CFR Part 60, effective July 1, 2003, unless otherwise indicated are hereby adopted by reference and incorporated herein:

001.01 General Provisions – Subpart A ...



001.33 Nonmetallic mineral processing plants – Subpart OOO...”

4. Subpart OOO Standards of Performance for Nonmetallic Mineral Processing Plants provides in part: “Except as provided in paragraphs (a)(2), (b), (c), and (d) of this section, the provisions of this subpart are applicable to the following affected facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station. ...”

5. Subpart OOO further provides: “...(f) Table 1 of this subpart specifies the provisions of Subpart A of this part 60 that apply and those that do not apply to owners and operators of affected facilities subject to this subpart.”

6. Table 1 – Applicability of Subpart A to Subpart OOO, provides: “...60.8, Performance tests ....Yes...”

7. Subpart A General Provisions provides in part: “...§60.8 Performance tests. (a) Within 60 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial startup of such facility... the owner or operator of such facility shall conduct performance test(s) and furnish the Administrator a written report of the results of such performance test(s). ...”

8. The initial startup of the Respondent’s facility was September 15, 1994, and more than 180 have passed since then, yet the Respondent has not completed a proper performance test and not furnished a proper report to the Administrator in violation of Title 129, Chapter 18, incorporating 40 CFR 60, Subpart OOO.

9. IT IS THEREFORE ORDERED as follows:

On or before March 1, 2007, the Respondent, Jay Lyons, shall conduct performance tests as required by 40 CFR, Part 60, Subpart A and Subpart OOO.

11. IT IS FURTHER ORDERED that the Respondent shall, not less than 30 days prior to such test, submit a written testing protocol to NDEQ for the test it will perform, and not less than 45 days after such test, the Respondent shall submit a written report of the results of the test to NDEQ.

PENALTIES AND INJUNCTIVE RELIEF RESERVED

12. This Complaint and Compliance Order does not preclude NDEQ from pursuing enforcement action in a court of appropriate jurisdiction for penalties or



injunctive relief as provided in the Nebraska Environmental Protection Act.

NOTICE OF OPPORTUNITY FOR HEARING

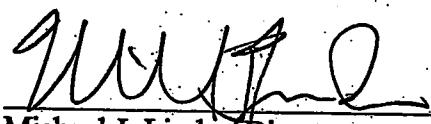
13. Pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 1999) the Respondent may apply for a hearing to contest this Complaint and Compliance Order by making a request in writing for such hearing to the Director no later than 30 days after the date hereof. Nebraska Department of Environmental Quality, Rules of Practice and Procedure, Title 115, Chapter 7, set forth requirements related to initiation of, and procedure for, such hearings. The Director's office address is: Nebraska Department of Environmental Quality, 1200 'N' Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska 68509-8922.

SETTLEMENT CONFERENCE

14. Whether or not the Respondent requests a hearing, an informal conference may be requested in order to reach an amicable settlement. To request a settlement conference, please write to Timothy Doyle, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or if an attorney represents you, have your attorney make such a request.

15. A request for settlement conference does not extend the period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

IT IS SO ORDERED this 6<sup>th</sup> day of December, 2006,

By:   
Michael J. Linder, Director,  
Nebraska Department of  
Environmental Quality

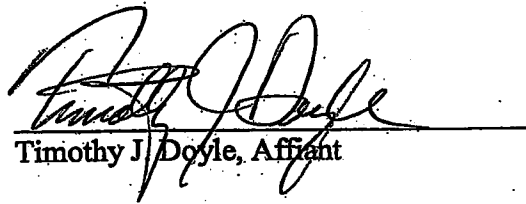
AFFIDAVIT

STATE OF NEBRASKA  
COUNTY OF LANCASTER

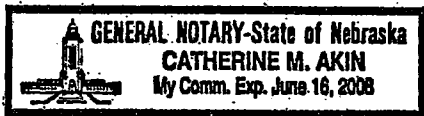
SS


The undersigned, being first sworn on oath deposes and says that he is an employee of the Nebraska Department of Environmental Quality and that on the 6<sup>th</sup> day of December, 2006, the undersigned served an exact copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing by regular United States mail, first class, postage prepaid, and certified with return receipt requested addressed as follows:

Jay Lyon, Owner  
Lyon Lime Products-Nelson Quarry  
214 ½ South Main Street  
Smith Center, KS 66967

  
Timothy J. Doyle, Affiant

Subscribed and sworn to before me, a Notary Public, on the 6<sup>th</sup> day of November, 2006.



  
Notary Public