

IN THE DISTRICT COURT OF CHEYENNE COUNTY, NEBRASKA

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

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

Plaintiff, )

**COMPLAINT**

v. )

CORAL PRODUCTIONS )  
CORPORATION, A Nebraska Authorized )  
Corporation, )

Defendant. )

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:

1. The Plaintiff is, at all times material herein, the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. §81-1504 (Reissue 1999) to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2006) and all rules, regulations, permits, and orders promulgated thereunder.

2. Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations" (hereinafter "Title 129") was promulgated pursuant to the Environmental Protection Act, and at all times material herein, such regulations were in full force and effect.

3. Title 129, Chapter 30, Section 001 provides "No person shall cause or allow any open fires."

4. Title 129, Chapter 30, Section 002 provides several exceptions to the general rule of Title 129, Chapter 30, Section 001.

5. Title 129, Chapter 30, Section 002 states:

Exceptions:

002.01 Fires set solely as part of a religious activity, for recreational purposes or for outdoor cooking of food for human consumption on non-commercial premises, provided no nuisance or hazard is created.

002.02 Fires set for the purpose of training public and industrial fire fighting personnel.

002.03 Fires set in the operation of smokeless flare stacks for the combustion of waste gases, provided they meet the requirements of Chapter 20, Particulate Emissions; Limitations and Standards.

002.04 Fires set in an agricultural operation where no nuisance or traffic hazard is created. For the purpose of this regulation, "fires set in an agricultural operation" shall mean:

002.04A The burning of any trees or vegetation indigenous to the property of the owner or person in lawful possession of the land; and

002.04B The burning of any agriculturally related material that is potentially hazardous and where disposal by burning is recommended by the manufacturer. Such materials must have been used on the owner's property or person in legal possession of the said property.

002.05 Unless prohibited by local ordinances, fires set to destroy household refuse on residential premises containing ten or less dwelling units, by individuals residing on the premises providing no nuisance or traffic hazard is created.

002.06 For the purpose of plant and wildlife and parks management, provided such burning is conducted by the Nebraska Game Commission, the United States Forest Service, the University of Nebraska, or other groups as determined by the Department.

002.07 Unless prohibited by local ordinances or regulations, fires set in compliance with a general open fire permit or a community open fire permit issued by the Department:

002.07A For the purpose of the destruction of dangerous materials, diseased vegetation or abatement of a fire hazard.

002.07B For the purpose of destruction of trees, brush and other vegetation removed from road and utility right-of-ways.

002.07C For the purpose of the destruction of trees, brush, vegetation and untreated lumber generated as a result of land clearing, and construction activities.

002.07D For the purpose of the destruction of straw used as a winter insulating cover on agricultural products.

002.07E For the purpose of destroying untreated wood and trees at community land disposal sites. (Materials being burned must be in an area separate from materials not being burned).

002.07F For the purpose of destruction of materials after cleanup from a natural disaster.

002.08 Permits for open fires as specified in this regulation will be granted only if there is no other practical means of disposal. Any burning of materials not specified in the burning permit may result in withdrawal of the permit.

6. Defendant, Coral Production Corporation (hereinafter "Coral"), owns, occupies, and/or operates at property located at the intersection of Road 107 and Road 54, rural Cheyenne County, Nebraska (hereinafter the "Property.")

7. On or about March 12, 2007, Coral caused or allowed an open fire at the Property without the written permission of the Director of the NDEQ and burned material for which Title 129, Chapter 30 provides no exception, in violation of Title 129.

8. On or about March 12, 2007, Coral lit a spill of crude oil on fire at the Property.

9. Crude oil is a material for which Title 129, Chapter 30 provides no exception.

10. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person to violate the rules and regulations adopted pursuant to the Nebraska Environmental Protection Act.

11. Neb. Rev. Stat. §81-1508.02(1)(e) makes it unlawful to violate any other provision of or fail to perform any other duty imposed by [the Environmental Protection Act], rules, or regulations.

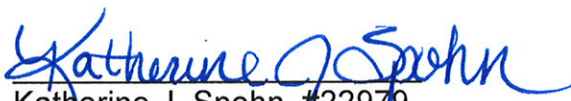
12. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1508.02(1)(b) and (1)(e). In the case of a continuing violation, each day shall constitute a separate offense.

13. Plaintiff's allegations in paragraphs 1 through 12 of the Complaint constitutes one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of an injunction pursuant to Neb. Rev. Stat. §81-1508(2), a civil penalty 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  
NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY, Plaintiff

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