

IN THE DISTRICT COURT FOR PERKINS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
AGRI AFFILIATES, INC.)
Defendants.)

Case No. ^{CI} 08-43

COMPLAINT

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. §§ 81-1501–81-1532 (Reissue 1999, Cum Supp. 2006, Supp. 2007).

2. At all times material herein, the Defendant, Agri Affiliates, Inc., managed a farming operation containing above ground diesel fuel storage tanks in Perkins County, Nebraska.

3. Neb. Admin. Code Title 126, Chapter 18, Section 001.01 states, "No person shall release, cause to be released or allow the release of an oil or hazardous substance or residuary products thereof, into, or upon the waters or land of the state, except in quantities, and at times and locations, or under circumstances and conditions



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RITA LONG
CLERK OF DISTRICT COURT

as the Department approves.”

4. On or about July, 2005, Defendant released, caused to be released, or allowed the release of oil or hazardous substances or residuary products thereof, into, or upon the waters or land of the state, without the Department’s approval.

5. Neb. Rev. Stat. §81-1508.02(1)(e) makes it unlawful for any person to “violate any other provisions of or fail to perform any other duty imposed by such acts, rules or regulations.”

6. Neb. Rev. Stat. §81-1508.02(2) states that each violation of this section shall subject a person to a civil penalty of not more than ten thousand dollars (\$10,000) for each day of violation.

SECOND CLAIM

7. Plaintiff hereby incorporates by reference each and every allegation contained in its First Claim.

8. Title 126, Chapter 18, Section 002, states that it shall be the duty of any responsible person to immediately notify the Department of any release or suspected release of an oil or hazardous substance in a quantity that exceeds twenty-five (25) gallons.

9. Defendant failed to immediately notify the Department of the July 2005 release of an oil or hazardous substance in violation of Title 126, Chapter 18, Section 002.

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(2) and that all costs of this action be taxed to the Defendant.

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

By JON C. BRUNING, #20351
Attorney General

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Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

It is hereby certified that on this 26th day of November, 2008, a true and accurate copy of the foregoing Complaint has been served upon Defendant herein by placing a copy of the same in the United State Mail, first class postage prepaid, addressed to Defendant.

Michelle Weber
Michelle Weber
Assistant Attorney General

CERTIFICATE
STATE OF NEBRASKA }
COUNTY OF PERKINS } ss.

I hereby certify that this is a true and
correct copy of the Original Record in this Office
this 2 day of December, 2008
Rita A. Sney
Clerk of District Court
Perkins County