

IN THE DISTRICT COURT OF SHERIDAN COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
SHERIDAN LIVESTOCK AUCTION)
CO., INC.,)
)
Defendant.)

Case No. CI 12-59

COMPLAINT and
REQUEST FOR INJUNCTION

FILED
9-21-12
ELOISE J. KAMPEL
CLERK DISTRICT COURT
SHERIDAN COUNTY
NEBRASKA

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

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 2008) of exercising exclusive supervision, administration and enforcement of the Environmental Protection Act, Neb. Rev. Stat. §81-1501 (Reissue 2008 and Supp. 2009) *et seq.* and all rules and regulations created thereunder.

2. The Defendant, Sheridan Livestock Auction Co., Inc., is a domestic corporation, organized and existing under the laws of the State of Nebraska and conducting business in Sheridan County, Nebraska. At all times material herein, the Defendant owned and operated a sale barn and truck wash located at 501 Sale Barn Road, Rushville, Sheridan County, Nebraska.

3. Neb. Rev. Stat. §81-1502(10) (Reissue 2008) is in effect at all times material herein and defines Defendant as a "person."



4. Pursuant to Neb. Rev. Stat. §81-1506(2)(b) (Reissue 2008) it is unlawful to “[c]onstruct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department...”

5. On or about October 2008, Defendant constructed a wastewater lagoon to capture wash water and manure from its truck wash operation.

6. Defendant never sought or received a construction permit for this wastewater system and has operated the lagoon since this time without a permit, in violation of Neb. Rev. Stat. § 81-1506(2)(b).

7. Pursuant to Neb. Stat. § 81-1508.02 (Reissue 2008), 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

8. Plaintiff hereby incorporates by reference all preceding paragraphs as fully set forth herein.

9. Nebraska Administrative Code Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008). Title 123, Chapter 5, Section 005.01 states that “[t]he seepage rate of wastewater lagoons shall not exceed one-eighth inch per day at the design maximum water depth. A lower seepage rate, or zero seepage, shall be required if the Department determines that additional ground water protection is required.”

10. On or about June 17, 2009, NDEQ received permeability test results which indicated that the unpermitted lagoon has a seepage rate of up to 16 feet per day.

THIRD CLAIM

11. Plaintiff hereby incorporates by reference all preceding paragraphs as fully set forth herein.

12. On or about September 1, 2010, Plaintiff issued an Administrative Order, a true and correct copy of which is attached as Exhibit A. Among the requirements of said Administrative Order, the Defendant was to take the following actions within the prescribed timeframe:

- c. On or before January 1, 2011: either abandon the truck wash lagoon or submit plans, created by a qualified professional engineer, for modification of the waste system as determined to be necessary by the Department to comply with all relevant statutes and regulations.
- d. By April 1, 2011: submit to NDEQ a plan for a qualified professional to take groundwater samples, at least one directly below the truck wash lagoon and one upgradient from the lagoon.
- e. By June 1, 2011: apply for an NPDES permit as needed for proper operation of the truck wash lagoon and proper waste disposal.

13. Defendant did not perform items c-e above.

14. Neb. Rev. Stat. 81-1508.02 (1)(b) makes it unlawful for any person to "violate...any order of the director."

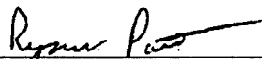
15. In addition to civil penalties, Plaintiff further requests the Court enter an injunction pursuant to Neb. Rev. Stat. § 81-1508(2) enjoining the Defendant from any

further violations of the Director's Order and to have Defendant come into compliance with the Administrative Order as soon as possible.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of civil penalties and injunction as provided in Neb. Rev. Stat. § 81-1508.02 and 81-1508(2), and further that all cost of this action be taxed to the Defendant.

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

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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 18 day of September, 2012 addressed to the Defendant as follows:

Dan Otte
Sheridan Livestock Auction Co.
501 Sale Barn Road
Rushville, Nebraska 69360



Ryan S. Post
Assistant Attorney General