

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA		
STATE OF NEBRASKA, ex rel.,)	Case No. CI _____
MICHAEL J. LINDER, Director)	
DEPARTMENT OF ENVIRONMENTAL)	
QUALITY,)	COMPLAINT
Plaintiff,)	
v.)	
)	
A & S CONCRETE RECYCLING, INC.,)	
A Nebraska Corporation)	
Defendant.)	

COMES NOW the Plaintiff, Nebraska Department of Environmental Quality (hereinafter "NDEQ"), who institutes this action through its attorney, Jon C. Bruning, Attorney General, and alleges and states as follows:

FIRST CLAIM

1. 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 *et seq.* (Reissue 1999, Cum. Supp. 2006), and all rules, regulations, and orders promulgated thereunder.
2. Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations" (hereinafter "Title 129") was promulgated pursuant to such act, and at all times material herein, such regulations were in full force and effect.
3. A & S Concrete Recycling (hereinafter "Defendant" or "A & S") is an inactive Nebraska corporation.

4. At all times material herein, A & S owned and operated a concrete recycling business in Omaha, Douglas County, Nebraska (“the facility.”)
5. The facility was issued a Nebraska Air Quality Construction permit pursuant to Title 129, Chapter 17, Section 001 (hereinafter “the Permit.”)
6. The facility has been subject to the terms of the Permit since October, 1994.
7. The facility has the potential to emit the air pollutant “PM10” at a rate in excess of 15 tons per year.
8. Title 129, Chapter 6, Section 001 requires every source subject to an Air Construction Permit to complete an annual emissions inventory by March 31 for emission information for the previous calendar year, if requested by the NDEQ.
9. The NDEQ requested that A & S submit an annual emissions inventories for the calendar year 2003 on or about January 1, 2004 and April 15, 2004.
10. To date, A & S has failed to submit an annual emissions inventory for the calendar year 2003, in violation of Title 129, Chapter 6, Section 001.
11. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful to violate any rule or regulation adopted and promulgated pursuant to the Environmental Protection Act.
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). 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).

SECOND CLAIM

14. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 13 of this Complaint as if fully set forth herein.

15. The NDEQ requested that A & S submit an annual emissions inventories for the calendar year 2004 on or about July 25, 2005, and September 23, 2005.

16. To date, A & S has failed to submit an annual emissions inventory for the calendar year 2004, in violation of Title 129, Chapter 6, Section 001.

17. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful to violate any rule or regulation adopted and promulgated pursuant to the Environmental Protection Act.

18. 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.

19. Plaintiff's allegations in paragraphs 14 through 18 of the Complaint constitutes one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

THIRD CLAIM

20. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 19 of this Complaint as if fully set forth herein.

21. The NDEQ requested that A & S submit an annual emissions inventories for the calendar year 2005 on or about January 2, 2006.

22. To date, A & S has failed to submit an annual emissions inventory for the calendar year 2005, in violation of Title 129, Chapter 6, Section 001.

23. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful to violate any rule or regulation adopted and promulgated pursuant to the Environmental Protection Act.

24. 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.

25. Plaintiff's allegations in paragraphs 20 through 24 of the Complaint constitutes one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

FOURTH CLAIM

26. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. A & S was required to submit an annual emissions inventories for the calendar year 2006 by March 31, 2007.

28. To date, A & S has failed to submit an annual emissions inventory for the calendar year 2006, in violation of Title 129, Chapter 6, Section 001.

29. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful to violate any rule or regulation adopted and promulgated pursuant to the Environmental Protection Act.

30. 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.

31. Plaintiff's allegations in paragraphs 26 through 30 of the Complaint constitutes one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

FIFTH CLAIM

32. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 31 of this Complaint as if fully set forth herein.

33. On or about January 26, 2006, a "Complaint, Order, and Notice of Opportunity for Hearing" (hereinafter "Administrative Order") was entered by the Director of the NDEQ pursuant to Neb. Rev. Stat. §81-1507 and sent to A & S.

34. A & S did not request a hearing regarding the Administrative Order, did not contest the Administrative Order, and it became a final order on or about February 26, 2006.

35. The Administrative Order is attached hereto and incorporated herein as "Attachment A."

36. The Administrative Order required A & S to submit annual emissions inventories to the NDEQ for the calendar year 2003 and the calendar year 2004.

37. A & S did not comply with the requirements of the Administrative Order.

38. A & S did not submit annual emission inventories for the calendar year 2003 as required by the Administrative Order.

39. A & S did not submit annual emission inventories for the calendar year 2004 as required by the Administrative Order.

40. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate an Administrative Order issued by the Director of the NDEQ.

41. 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.

42. Plaintiff's allegations in paragraphs 32 through 41 of the Complaint, as of June 4, 2007, constitute four hundred sixty three (463) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

SIXTH CLAIM

43. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 42 of this Complaint as if fully set forth herein.

44. Neb. Rev. Stat. §81-1508(2) allows the Director of the NDEQ to petition the court for an injunction enjoining the Defendant from further violating any provision of the Nebraska Environmental Protection Act, any rules and regulations promulgated thereunder, or an order of the Director.

45. The Director of the NDEQ respectfully requests this court for an injunction enjoining A & S from further violating Title 129 and the Administrative Order issued by the Director of the NDEQ on January 26, 2006.

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
Department of Environmental Quality,
Plaintiff,

BY: JON BRUNING # 20351
Attorney General

BY: 
Natalee J. Hart, #22716
Assistant Attorney General
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Lincoln, NE 68509
Tel. (402) 471-2682
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Attorneys for Plaintiff

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
A & S CONCRETE RECYCLING, INC.
Respondent.

Case No. 2668
COMPLAINT AND COMPLIANCE ORDER

COMPLAINT

1. This Complaint and Compliance Order is issued pursuant to Neb. Rev. Stat. §81-1507 (1) (Reissue 1999) and Neb. Rev. Stat. §81-1504 (7) (Reissue 1999) of the Environmental Protection Act §81-1501 et seq. (Reissue 1999, Cum. Supp. 2004, Supp. 2005). The Complainant is Michael J. Linder, Director, Nebraska Department of Environmental Quality (referred to herein as NDEQ). The rules and regulations of the Nebraska Department of Environmental Quality are adopted and promulgated by the Nebraska Environmental Quality Council pursuant to Neb. Rev. Stat. §81-1505 (12) (Reissue 1999, Cum Supp. 2004).

2. The Respondent is a corporation authorized under the laws of the State of Nebraska. The Respondent owns and operates a concrete recycling business in Douglas County, Nebraska. The Respondent's recycling facility has the potential to emit the air pollutant PM10 at a rate in excess of 15 tons per year and thus is subject to the requirement to have, and in fact does have, an air quality construction permit issued under Title 129, Chapter 17, Nebraska Air Quality Rules and Regulations, which provides in part as follows:

"001...no person shall cause the construction, reconstruction, or modification at any of the following without first having obtained a construction permit from the Department in the manner prescribed by this Chapter:...001.01 Any stationary source or emission unit, such that there is a net increase in potential emissions at the stationary source equal to or exceeding the following levels:... 001.01A Fifteen (15) tons/year of PM10 emissions. ..."

3. Title 129, Chapter 6, Nebraska Air Quality Rules and Regulations, provides in part as follows:

"001 Every source subject to a permit requirement under Chapter 5 or 17 shall complete and submit to the Department an annual emissions inventory, if



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Attachment
A

requested, on forms furnished by or acceptable to the Department by March 31, and shall include emission information for the previous calendar year. ...”

4. The Department requested that the Respondent submit annual emissions inventories to the Department for the calendar year 2003 on January 1, 2004 and April 15, 2004, and for the calendar year 2004 on January 1, 2004, July 25, 2005, and September 23, 2005. Despite the Department’s requests the Respondent has not submitted emissions inventories for either 2003 or 2004.

8. IT IS THEREFORE ORDERED that the Respondent shall immediately submit properly prepared emissions inventories for the calendar years 2003 and 2004 to the Department.

PENALTIES AND INJUNCTIVE RELIEF RESERVED

9. 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

10. 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.

IT IS SO ORDERED BY:

January 26 2006
Date


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 26th day of January, 2006, the undersigned served an exact copy of the foregoing Complaint and Compliance Order by regular United States mail, first class, postage prepaid, and certified with return receipt requested addressed as follows:

Linda Swain
A & S Concrete Recycling, Inc.
6002 North 89 Circle
Omaha, NE 68134


Timothy J. Doyle, Affiant

Subscribed and sworn to before me, a Notary Public, on the 26th day of January, 2006.




Notary Public

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<p>■ Complete items 1, 2, and 3. Also complete</p>  <p>20060005795 or on the front if space permits.</p>	<p>A. Signature <input checked="" type="checkbox"/> <i>Chris Peck</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p>Linda Swain A & S Concrete Recycling Inc 6001 North 89 Circle Omaha, NE 68134</p>	<p>B. Received by (Printed Name) C. Date of Delivery <i>CHRIS PECK</i> <i>6-27-06</i></p> <p>D. Is delivery address different from Item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input checked="" type="checkbox"/> No <i>4</i></p>
<p>62453 2668 Complaint &</p>	<p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>
<p>2. Article Number Compliance Order (Transfer from service label)</p>	<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> <p>7004 2510 0002 0649 2174</p>
<p>PS Form 3811, August 2001</p>	<p>Domestic Return Receipt 102595-02-M-1540</p>