

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,	)	
MICHAEL J. LINDER, Director,	)	Case CI _____
NEBRASKA DEPARTMENT OF	)	
ENVIRONMENTAL QUALITY,	)	
	)	
Plaintiff,	)	<b>COMPLAINT</b>
	)	
v.	)	
	)	
CONAGRA INTERNATIONAL	)	
FERTILIZER COMPANY,	)	
	)	
Defendant.	)	

COMES NOW Michael J. Linder, Director of the Department of Environmental Quality (hereinafter "NDEQ" or "Plaintiff"), who institutes this action through Jon C. Bruning, Attorney General of the State of Nebraska, as plaintiff 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 (Reissue 1999, Cum. Supp, 2004, and Supp. 2005) et seq and all rules and regulations promulgated thereunder.

2. The Defendant, ConAgra International Fertilizer Company, is a Corporation registered to do business in the State of Nebraska and is the owner of a fertilizer plant located at 4935 E. "J" Street, Hastings, Adams County, Nebraska.

3. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for agricultural chemical containment, as expressed in Neb. Rev. Stat. §81-1505(8), (14) (Reissue 1999), the Council adopted a rule and standard codified as Title 198, *Rules and Regulations Pertaining to Agricultural Chemical Containment*.

4. Title 198, Chapter 3, requires load-out facilities when bulk fertilizer is loaded or unloaded from a railcar.

5. On or about 2002, and continuing daily thereafter through at least March 2006, the Defendant owned and operated a bulk fertilizer loading and unloading facility in Adams County, Nebraska, which did not have load-out facilities as required by Title 198.

6. Neb. Rev. Stat. §81-1508.02(1)(e) states that it is unlawful to violate any other provision or fail to perform any other duty imposed by such acts, rules and regulations.

7. Pursuant to Neb. Rev. Stat. §81-1508.02 (2), a civil penalty is provided in the amount of not more than \$10,000 (ten thousand dollars) for each day of violation. In cases of a continuing violation, each day shall constitute a separate offense.

## SECOND CLAIM

8. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 7 as if fully set forth herein.

9. Neb. Rev. Stat. §81-1506 (1) (a) makes it unlawful for any person to cause pollution of any air, waters, or land of the state or place or cause pollution of any air, waters or land of the state.

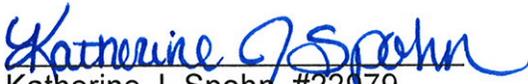
10. On or about January 12, 2006, Defendant released 3,800 gallons of nitrogen fertilizer at its plant in Adams County, Nebraska thereby causing pollution of the air, waters, or land of the state.

WHEREFORE, Plaintiff prays that judgment be entered in favor of Plaintiff and against Defendants 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 Defendant.

DATED this 21<sup>st</sup> day of November, 2007.

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

By: Jon C. Bruning, #20351  
Attorney General

By:   
Katherine J. Spohn, #22979  
Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
Tel. (402) 471-2682  
Attorneys for Plaintiff.

## CERTIFICATE OF SERVICE

It is hereby certified that on this 21st day of November, 2007, 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 States Mail, first class postage prepaid, addressed to Defendant's attorney of record,

Stephen P. Case  
McGrath North Mullin & Kratz, PC LLO  
1601 Dodge Street. Suite 3700  
Omaha, NE 68102  
Phone- (402) 341-3070

  
Katherine J. Spohn  
Assistant Attorney General