

IN THE DISTRICT COURT OF WAYNE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
F&S FEEDLOT, INC.,)
)
Defendant.)

Case No. _____

COMPLAINT

COMES NOW, Michael J. Linder, Director of the Department of Environmental Quality, who institutes this action through Jon C. Bruning, Attorney General, on behalf of the State of Nebraska, and alleges as follows:

FIRST CLAIM

1. The plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), is at all times material herein 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. 2004, Supp. 2005) and all rules, regulations, and permits created thereunder.

2. The defendant, F&S Feedlot, Inc., ("Defendant"), at all times material herein, owned and operated a livestock operation located in Wayne County, Nebraska.

3. Pursuant to Neb. Rev. Stat. §81-1508.02(1)(b) (Reissue 1999), it is unlawful to "violate ... any order of the director."

4. On or about September 1, 2004, NDEQ issued an Administrative Order, which required Defendant to complete construction of Phase III of its livestock waste control facility, as approved by NDEQ, by August 1, 2005. The Administrative Order was not contested and became a final order on or about October 1, 2004.

5. On or about August 1, 2005 and continuing daily thereafter, Defendant did not complete construction of a livestock waste control facility as approved by the Department in violation of the Administrative Order issued on September 1, 2004.

6. Pursuant to Neb. Rev. Stat. §81-1508.02, a civil penalty, not to exceed ten thousand dollars (\$10,000.00), is warranted for each day of violation of an administrative order.

SECOND CLAIM

7. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 6 herein.

8. Pursuant to Neb. Rev. Stat. §81-1508(2) (Reissue 1999) may ask the Court for an injunction enjoining Defendant from any further livestock operations in open lots covered by the Phase III of its livestock waste control facility, as approved by NDEQ, until all proper controls and necessary permits are in place.

WHEREFORE, NDEQ prays that judgment on its Claim be entered herein in favor of NDEQ and against Defendant in the form of a civil penalty as provided under Neb. Rev. Stat. §81-1508.02, and an injunction under Neb. Rev. Stat. §81-1508(2), together with the costs of the action.

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

By: JON C. BRUNING, #20351
Attorney General

By: 
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Attorney for Plaintiff

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 19th day of November, 2007 addressed to the Defendant's attorney of record as follows:

Patrick P. Carney, #20356
900 Riverside Boulevard
P.O. Box 17
Norfolk, NE 68702


Katherine J. Spohn
Assistant Attorney General