

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	Case No. _____
Michael J. Linder, Director,)	
NEBRASKA DEPARTMENT OF)	
ENVIRONMENTAL QUALITY)	COMPLAINT
)	
Plaintiff,)	
vs.)	
)	
MALCOLM PUBLIC SCHOOL)	
DISTRICT, A Political Subdivision of the)	
State of Nebraska; ENGINEERING)	
TECHNOLOGIES, INC., and)	
NIFCO MECHANICAL SYSTEMS, INC.,)	
)	
Defendants.)	
)	

COMES NOW the State of Nebraska, ex rel., Michael J. Linder, Director, Nebraska Department of Environmental Quality (hereinafter the "Department" or "Plaintiff"), who institutes this action through Jon 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) (Reissue1999) of exercising exclusive supervision, administration and enforcement of the Environmental Protection Act, Neb. Rev. Stat.

§81-1501 (Cum. Supp. 2006) *et seq.* (“NEPA”) and all rules and regulations promulgated thereunder.

2. At all times material herein the Defendant, Malcolm Public School District, a political subdivision of the State of Nebraska, owned and operated an elementary school and high school in Lancaster County, Nebraska. Defendant Malcolm Public School District contracted with Defendants, Engineering Technologies, Inc. and Nifco Mechanical Systems, Inc., for services related to the alteration of the School District’s heat pump system. (These parties are referred to collectively hereinafter as “Defendants.”)

3. At all times material herein the Village of Malcolm (the “Village”), a political subdivision of the State of Nebraska, owned and operated a wastewater treatment plant (“POTW”) in Lancaster County, Nebraska, that discharges wastewater pursuant to a National Pollutant Discharge Elimination System (NPDES) permit # NE0024261, to Elk Creek in Lancaster County.

4. On or about June 30, 2005, Defendants were involved in the planning, implementation, or oversight of alterations to the School District’s heat pump system when approximately 5,000 gallons of coolant/heat transfer liquid was released into the Village POTW, and was ultimately released to Elk Creek, which resulted in the killing of fish and fingernail clams.

5. Pursuant to Neb. Rev. Stat. §81-1508.02 (1)(b) (Reissue 1999), it is unlawful to violate any permit condition or limitation, rule, or regulation adopted pursuant to NEPA. Pursuant to NEPA, pretreatment regulations were adopted in Title

119 of the Nebraska Administrative Code, entitled *Rules and Regulations Pertaining To The Issuance of Permits Under the National Pollutant Discharge Elimination System*, that prohibit the introduction of pollutants into a POTW which will interfere with the operation of a POTW or will pass through the treatment works or otherwise be incompatible with such works. Specifically, Title 119, Chapter 26, Section 002.01 of the Nebraska Administrative Code, states that any user may not introduce into a POTW any pollutant which causes pass through or interference. Further, *Neb. Rev. Stat.* §81-1508.02 (2), states a civil penalty is provided in the amount of not more than \$10,000 (Ten thousand dollars) for each day of violation, and in the case of a continuing violation, each day shall constitute a separate offense.

6. Pursuant to *Neb. Rev. Stat.* §81-1508 (1) (Reissue 1999) any person who fails to perform a duty required under NEPA or imposed by any rule or regulation of the Department, and in doing so causes the death of fish or other wildlife, shall be liable to the state for the amount equal to the sum necessary to restock the waters with fish or replenish the wildlife.

7. On or about June 30, 2005 through July 6, 2005, Defendants' release of coolant/heat transfer liquid caused a pass through or interference with the Village POTW, causing a release of this material into Elk Creek that resulted in the death of fish and fingernail clams in the stream.

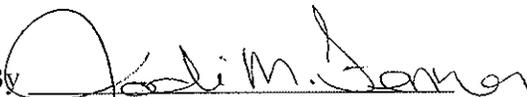
WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendants in the form of civil penalties and reimbursement to the State Game Fund for the cost of the fish and other wildlife killed, as provided in *Neb.*

Rev. Stat. §§ 81-1508(1) and 1508.02, and further that all costs of this action be taxed to the Defendants.

Dated this 11th day of ~~March~~ ^{April}, 2007.

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

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