

IN THE DISTRICT COURT OF BUFFALO COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.)
MICHAEL J. LINDER, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY)
)
 Plaintiff,)
)
 v.)
)
SHANE ROACH d/b/a)
BUFFALO COUNTY REDI-MIX)
)
 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:

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 Protect Act, *Neb. Rev. Stat. §81-1501* (Reissue 1999, Cum.Supp.2006) *et seq.* and all rules and regulations, and permits created thereunder.

2. The Defendant, Shane Roach, does business as Buffalo County Redi-Mix, in Buffalo County, Nebraska. The Defendant's business consists of a concrete production facility in Buffalo County, Nebraska. The facility has at all times material herein had the capacity to emit PM10 (particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers) in excess of 15 tons per year.

3. The Nebraska Environmental Quality Council, pursuant to *Neb. Rev. Stat.* §81-1505(1) and (12), duly adopted a rule relating to particulate emissions, found in Title 129, Chapter 17, which provides in pertinent part,

“001 Except as provided under section 014 of this chapter or Chapter 42 of the Title, 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 provided 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.”

4. *Neb. Rev. Stat.* §81-1506(2) states: It shall be unlawful for any person to ... (d) Construct, install, or operate any industrial, commercial, or other facility or extend, modify, or add to any such facility if the operation would cause an increase in the discharge or emission of wastes into the air, waters, or land of the state... in a manner that is not lawfully authorized; or (e) Construct or use any new outlet of the discharge or emission of any wastes in the air, waters, or land of the state without the necessary permit.

5. The Defendant began actual construction of its facility in Buffalo County, Nebraska, on or before June 16, 2005, without having first obtained a construction permit therefore as required by Title 129, Chapter 17.

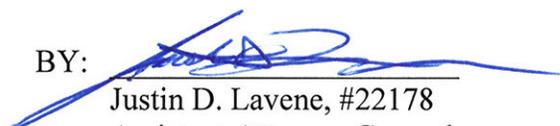
6. *Neb. Rev. Stat.* §81-1508.02(1)(e) states that it is unlawful to violate any other provision or fail to perform any other duty imposed by such acts, rules and regulations.

7. Pursuant to *Neb. Rev. Stat.* §81-1508.02(2) where there has been a violation of Section 81-1508.02(1)(e), a civil penalty is provided in the amount of not more than \$10,000 for each day of violation.

WHEREFORE, the Plaintiff prays that judgment on its Claim be entered herein against the Defendant in the form of a civil penalty as provided under §81-1508.02, together with the costs of the action.

**STATE OF NEBRASKA ex rel.
MICHAEL J. LINDER, Director
Department of Environmental Quality,
Plaintiff,**

BY: JON BRUNING # 20351
Attorney General

BY: 
Justin D. Lavene, #22178
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2682

Attorneys for Plaintiff