

IN THE DISTRICT COURT OF MADISON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director, )  
NEBRASKA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
TYSON FRESH MEATS, INC., )  
 )  
Defendant. )  
 )

Case No. \_\_\_\_\_

COMPLAINT

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

1. Plaintiff, the Nebraska Department of Environmental Quality, is at all times material herein the agency of Nebraska charged with the duty pursuant to Neb. Rev. Stat. §81-1504(1) (Reissue 2008) to administer and enforce the Environmental Protection Act, Neb. Rev. §81-1501 *et seq.* (Reissue 2008) and all rules, regulations, orders, and permits created thereunder.

2. Defendant, Tyson Fresh Meats, Inc., is a domesticated foreign corporation, organized and existing under the laws of the State of Delaware and conducting business in Madison County, Nebraska. At all times material herein, Defendant owned and operated a meat processing facility located at 1200 Industrial Parkway, Madison, Madison County, Nebraska.

3. Pursuant to Neb. Rev. Stat. §81-1504 (Reissue 2009) and the National Pollutant Discharge Elimination System, on February 1, 2001, the

defendant was issued and Authorization to Discharge under the State of Nebraska Pretreatment Program NPP #NE0028363. Defendant's permit provides in part: "The application of wastes shall cease immediately if ponding or runoff occurs during the application event." Permit at Part III.A.9.

4. The permit also requires the submittal of a Best Management Practices Plan including the requirements that "[n]o treated wastewater shall be allowed to run-off the application site." Permit at Part III.C.4.a.(1).

5. Neb. Rev. Stat. §81-1508.02(1)(b) (Reissue 2008) prohibits the violation of any permit or license condition or limitation. Pursuant

6. In addition, pursuant to Neb. Rev. Stat. §81-1506(1)(a) (Reissue 2008), "[i]t shall be unlawful for any person... to cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state."

7. On or about November 7 through 9, 2009, Defendant applied wastewater in a way that allowed the waste to pool and run off onto adjacent land, waters of the state, and a public right-of-way, contrary to Neb. Rev. Stat. §§81-1506(1)(a) & -1508.02(1)(b).

8. Pursuant to Neb. Rev. Stat. §81-1508.02 (Reissue 2008), a civil penalty not to exceed ten thousand dollars (\$10,000) per day per violation is provided in cases of violation of the Environmental Protection Act.

WHEREFORE, NDEQ prays that judgment on its claim be entered herein against Defendant in the form of civil penalty as provided under Neb. Rev. Stat. §81-1508.02, together with the costs of the action.

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

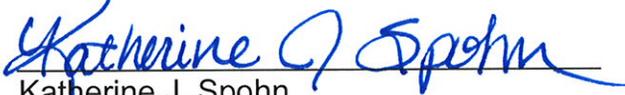
By: Jon C. Bruning, #20351  
Attorney General

By:   
Katherine J. Spohn, #22979  
Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
Tel. (402) 471-2834  
Attorney for Plaintiff.

#### CERTIFICATE OF SERVICE

It is hereby certified that on this 10<sup>th</sup> day of September, 2010, 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 State Mail, first class postage prepaid, addressed to the Defendant's as follows:

Dan Brooks  
Tim Jones  
Tyson Fresh Meats, Madison  
PO Box 1010  
1200 Industrial Parkway  
Madison, Nebraska 68748

  
Katherine J. Spohn  
Assistant Attorney General