

IN THE DISTRICT COURT FOR SCOTTS BLUFF COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY, )  
Plaintiff, )  
v. )  
SIMON CONTRACTORS INC., )  
a Nebraska authorized corporation, )  
Defendant. )

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

**COMPLAINT**

The state of Nebraska, on the relation of the Nebraska Department of Environmental Quality (NDEQ), alleges the following:

1. NDEQ is the agency of the state of Nebraska charged with exercising exclusive supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (Reissue 1999, Cum. Supp. 2006, and Supp. 2007), and all rules and regulations promulgated under the Act.

2. Simon Contractors Inc. is a corporation authorized to do business in Nebraska. Simon owns and operates an asphalt production plant near the city of Scottsbluff, Scotts Bluff County, Nebraska. As a regular part of its business operations, Simon combines, mixes, and heats materials for roadway surfaces. In doing so, Simon generates smoke and particulate emissions.

3. Title 129 of the Nebraska Administrative Code, chapter 20, section 004 says: "No person shall cause or allow emissions, from any source, which are of an opacity equal to or greater than twenty percent (20%), as evaluated by an EPA-approved method ...."

4. On October 25, 2007, Simon caused and allowed emissions from its asphalt production plant, the opacity of which were 62.7%, as determined by an EPA-approved method.

5. Under Neb. Rev. Stat. § 81-1508.02(1) (Reissue 1999), it is unlawful for any person to violate any air quality standards or emission standards, or to violate any provision of the Nebraska Environmental Protection Act or the rules and regulations promulgated under it. Section 81-1508.02(2) says that violations of § 81-1508.02 shall be subject to a civil penalty of no more than \$10,000 per day.

WHEREFORE, the state of Nebraska prays that judgment on its claim be entered against Simon in the form of a civil penalty as provided under §81-1508.02 and that all costs of this action be taxed to Simon.

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

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