

5. Title 129, Chapter 30, Section 002 states:

Exceptions:

002.01 Fires set solely as part of a religious activity, for recreational purposes or for outdoor cooking of food for human consumption on non-commercial premises, provided no nuisance or hazard is created.

002.02 Fires set for the purpose of training public and industrial fire fighting personnel.

002.03 Fires set in the operation of smokeless flare stacks for the combustion of waste gases, provided they meet the requirements of Chapter 20, Particulate Emissions; Limitations and Standards.

002.04 Fires set in an agricultural operation where no nuisance or traffic hazard is created. For the purpose of this regulation, "fires set in an agricultural operation" shall mean:

002.04A The burning of any trees or vegetation indigenous to the property of the owner or person in lawful possession of the land; and

002.04B The burning of any agriculturally related material that is potentially hazardous and where disposal by burning is recommended by the manufacturer. Such materials must have been used on the owner's property or person in legal possession of the said property.

002.05 Unless prohibited by local ordinances, fires set to destroy household refuse on residential premises containing ten or less dwelling units, by individuals residing on the premises providing no nuisance or traffic hazard is created.

002.06 For the purpose of plant and wildlife and parks management, provided such burning is conducted by the Nebraska Game Commission, the United States Forest Service, the University of Nebraska, or other groups as determined by the Department.

002.07 Unless prohibited by local ordinances or regulations, fires set in compliance with a general open fire permit or a community open fire permit issued by the Department:

002.07A For the purpose of the destruction of dangerous materials, diseased vegetation or abatement of a fire hazard.

002.07B For the purpose of destruction of trees, brush and other vegetation removed from road and utility right-of-ways.

002.07C For the purpose of the destruction of trees, brush, vegetation and untreated lumber generated as a result of land clearing, and construction activities.

002.07D For the purpose of the destruction of straw used as a winter insulating cover on agricultural products.

002.07E For the purpose of destroying untreated wood and trees at community land disposal sites. (Materials being burned must be in an area separate from materials not being burned).

002.07F For the purpose of destruction of materials after cleanup from a natural disaster.

002.08 Permits for open fires as specified in this regulation will be granted only if there is no other practical means of disposal. Any burning of materials not specified in the burning permit may result in withdrawal of the permit.

6. Defendant, Randy Sunderman (hereinafter "Sunderman"), owns property located along 549th Avenue, Norfolk, Madison County, Nebraska (hereinafter "property.")

7. On or about March 27, 2007, the NDEQ discovered through an inspection of the property that Sunderman had caused or allowed an open fire without the written permission of the Director of the NDEQ, and had burned material for which Title 129, Chapter 30 provides no exception, in violation of Title 129.

8. In March, 2007, Sunderman lit a fire on the property to burn trees and brush without first removing tires, furniture, pallets, and household waste, which are materials for which Title 129, Chapter 30 provides no exception.

9. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person to violate the rules and regulations adopted pursuant to the Nebraska Environmental Protection Act.

10. Neb. Rev. Stat. §81-1508.02(1)(e) makes it unlawful to violate any other provision of or fail to perform any other duty imposed by [the Environmental Protection Act], rules, or regulations.

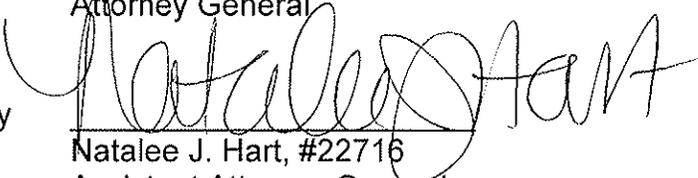
11. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1508.02(1)(b) and (1)(e). In the case of a continuing violation, each day shall constitute a separate offense.

12. Plaintiff's allegations in paragraphs 1 through 11 of the Complaint constitute four (4) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of an injunction pursuant to Neb. Rev. Stat. §81-1508(2), a civil penalty as provided in Neb. Rev. Stat. § 81-1508.02, with consideration by the Court of "the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance" in determining the appropriate civil penalty pursuant to Neb. Rev. Stat. § 81-1508.02(2); that all costs of this action be taxed to the Defendant; and any other relief as this court deems just and equitable.

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

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