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IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
 MICHAEL J. LINDER, Director)
 DEPARTMENT OF ENVIRONMENTAL)
 QUALITY,)
 Plaintiff,)
 v.)
 KOCH EXCAVATING, CO.,)
 JONATHAN KOCH, RAYMOND KOCH,)
 and STEVEN KOCH)
 Defendant.)

Case No. CE11-710

COMPLAINT

CLERK OF THE
DISTRICT COURT

2011 FEB 23 PM 4 23

LANCASTER COUNTY

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:

1. Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), is at all times herein the agency of the State 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. Stat. §81-1501 *et seq.* (Reissue 2008, Supp. 2009) and all rules, regulations, and permits created thereunder.

2. Defendant, Koch Excavating Co., is a corporation organized and existing under the laws of the State of Nebraska and conducting business in Platte County, Nebraska. The defendants, Jonathan Koch, Raymond Koch, and Steven Koch, are residents of Platte County, Nebraska. Defendant Raymond Koch owns, and has owned since on or about August 26, 2009, real property located on 29262 250th Avenue, Platte Center, Platte County, Nebraska. Defendant Jonathan Koch owned the same property prior to Raymond Koch and at all other times material herein. Defendant Koch



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Excavating, Co. has used the same property in the course of its business at all times material herein. Defendants Jonathan Koch, Raymond Koch, and Steven Koch have operated Koch Excavating on the same property at all times material herein.

CLAIM ONE

3. Pursuant to Neb. Rev. Stat. §13-2033 (1) (Reissue 2007) "...no person shall dump or deposit any solid waste at any place other than a landfill approved by the director unless the department has granted a permit which allows the dumping or depositing of solid waste at any other facility." Pursuant to Neb. Rev. Stat. §81-1506(3)(d), it is unlawful for any person to "dispose of any solid waste at a location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act."

4. Prior to February 23, 2007, and again prior to August 26, 2009, Defendants dumped and deposited solid waste on the property without a permit.

5. A civil penalty not to exceed ten thousand dollars (\$10,000) per day per violation is authorized pursuant to Neb. Rev. Stat. §81-1508.02 (Reissue 2008) in cases of violation of the Environmental Protection Act, the Integrated Solid Waste Management Act, or the rules and regulations adopted and promulgated pursuant to such acts.

CLAIM TWO

6. Pursuant to its authority under Neb. Rev. Stat. §81-1505 (Reissue 2008), the Nebraska Environmental Quality Council adopted and promulgated Title 129 of the Nebraska Administrative Code, Nebraska Air Quality Regulations. Title 129, Chapter 30, Section 001 provides, "No person shall cause or allow any open fires."

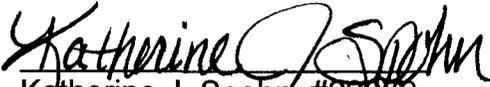
7. In addition, Neb. Rev. Stat. §81-1506 (4) (Reissue 2008) is in effect at all times material herein and in pertinent part provides: "It shall be unlawful to: (a) Construct or operate an air pollution source without first obtaining a permit required under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to subsection (12) of section 81-1505; (b) Violate any term or condition of an air pollution permit or any emission limit set in the permit; or (c) Violate any emission limit or an air quality standard established by the council."

8. Between February 23 and March 17, 2007, and again between August 26 and October 14, 2009, Defendants caused or allowed an open fire on the property.

WHEREFORE Plaintiff prays that judgment on its claims be entered herein against Defendants in the form of a civil penalty, together with the costs of the action and such other relief as the Court deems just and proper.

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
Telephone: (402) 471-2682
katie.spohn@nebraska.gov

Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on this 23rd day of February, 2011, addressed to the Defendant's attorney of record as follows:

David A. Jarecke
Crosby Guenzel LLP
Federal Trust Building
134 S. 13th Street, Suite 400
Lincoln, Nebraska 68508


Katherine J. Spohn
Assistant Attorney General