

IN THE DISTRICT COURT OF HARLAN COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
JAMES DRAKE,)
Defendant.)

Case No. _____

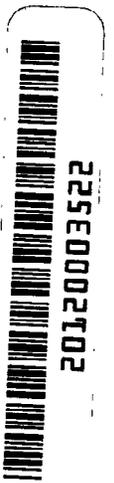
COMPLAINT

COMES NOW the Nebraska Department of Environmental Quality (hereinafter the "Department" or "Plaintiff"), who institutes this action through Jon C. Bruning, Attorney General, and alleges and states as follows:

FIRST CLAIM

1. The Plaintiff is 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 Protection Act, Neb. Rev. Stat. § 81-1501 (Reissue 2008) et seq. and all rules and regulations and orders promulgated under such acts. Title 126 of the Nebraska Administrative Code, "Rules and Regulations Pertaining to the Management of Wastes" (August 1999, as amended) was promulgated pursuant to such act, and at all times material, such regulations were in full force and effect.

2. At all times material herein the Defendant, James Drake owned and operated at least two large above-ground petroleum storage tanks on property he owns along Railroad Street on the east side of Maple Street in Orleans, Harlan County, Nebraska, legally described as part of the NE ¼, NW ¼, Section 21, Township 2 North, Range 19 West of the 6th P.M., Harlan County, Nebraska. Defendant James Drake's



above ground petroleum storage tanks contained oil, as defined by Title 126 Neb. Admin. Code Chapter 1, section 030, specifically, farm grade diesel fuel and vehicle grade diesel fuel.

3. Title 126, Chapter 18, Section 001.01, states: "No person shall release, cause to be released or allow the release of an oil or hazardous substance or residuary products thereof, into, or upon the water or land of the state, except in quantities, and at all times and locations, or under circumstances and conditions as the Department approves."

4. Sometime during February or March 2007, over a period of days, Defendant released, caused to be released, or allowed the release of oil or hazardous substance or residuary products thereof, into, or upon the waters or land of the state, without Department approval.

5. Neb. Rev. Stat. § 81-1508.02(1)(e) makes it unlawful for any person to "violate any other provision of or fail to perform any other duty imposed by such acts, rules or regulations."

6. Pursuant to the foregoing facts, Defendant is liable to the State of Nebraska for the penalty imposed under and by virtue of the provisions of Neb. Rev. Stat. § 81-1508.02(1)(e) and (2) in the sum of not more than ten thousand dollars per day per violation, with each day the violation continued being considered a separate violation.

SECOND CLAIM

7. Plaintiff hereby incorporates by reference each and every allegation contained in its First Claim.

8. Title 126, Chapter 18, Section 002.01B requires any responsible person to immediately notify the Department of a release or suspected release upon the surface of the land of an oil in a quantity that exceeds 25 gallons. Defendant's release on his property was of oil in a quantity greater than twenty five gallons.

9. Defendant, as the responsible person, failed to notify the Department of a release of an oil or hazardous substance in violation of Title 126, Chapter 18, Section 002. Defendant's failure to notify occurred on the days between February or March 2007, and July 23, 2007, when Defendant confirmed to the Department that a release of diesel fuel occurred in February or March 2007.

10. Pursuant to the foregoing facts, Defendant is liable to the State of Nebraska for the penalty imposed under and by virtue of the provisions of Neb. Rev. Stat. § 81-1508.02(1)(e) and (2) in the sum of not more than ten thousand dollars per day per violation, with each day the violation continued being considered a separate violation.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of civil penalties as provided in Neb. Rev. Stat. §81-1508.02 (2), and that all costs of this action be taxed to the Defendant.

DATED this 18th day of September, 2009.

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

By JON C. BRUNING, #20351
Attorney General

By 
Mark Hassebrook, #23507
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
mark.hassebrook@nebraska.gov
Attorneys for Plaintiff.

IN THE DISTRICT COURT OF HARLAN COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
JAMES DRAKE)
Defendant.)

Case No. CI _____

**PRAECIPE FOR SUMMONS
BY CERTIFIED MAIL**

TO THE CLERK OF SAID COURT:

Please prepare and issue Summons according to law, together with a copy of the Complaint, and deliver to the undersigned attorney for service by certified mail upon the Defendant, James Drake at the following address:

Rick Calkins, Attorney
25 N. John Street
P.O. Box 440
Alma, Nebraska 68920-0440

DATED this 18th day of September, 2009.

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

BY: JON C. BRUNING #20351
Attorney General

BY: 
Mark Hassebrook, #23507
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509
(402) 471-2682
mark.hassebrook@nebraska.gov
Attorneys for Plaintiff.