

IN THE DISTRICT COURT OF CUMING COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	Case No. _____
MICHAEL J. LINDER, Director)	
DEPARTMENT OF ENVIRONMENTAL)	
QUALITY,)	
)	COMPLAINT
Plaintiff,)	
v.)	
)	
GERALD SMITH, D/B/A GERALD)	
SMITH LIVESTOCK,)	
Defendant.)	

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. Defendant is Gerald Smith, doing business as Gerald Smith Livestock, Cuming County, Nebraska, which owns a cattle feeding operation located at SE ¼, Section 03, Township 24N, Range 06E, Cuming County, Nebraska. The operation is located 100 yards uphill from Stage Creek, a water of the state.

2. Neb. Rev. Stat. §81-1506 (5) (d) states that it is unlawful to violate any rule or regulation adopted and promulgated pursuant to the Environmental Protection Act or the Livestock Waste Management Act. Title 130, Chapter 2, Section 004, states that when waste control facilities are required by the department, the owner or operator of the animal feeding operation is required to submit an application for a construction and operating permit.

3. After an inspection in 2001, Defendant was informed by the Department that a livestock waste control facility was necessary. An inspection on August 8, 2004, revealed that none of the items needed to be done to be exempt from permitting requirements had been done by the Defendant and that an application for a livestock waste control facility permit was required to be submitted no later than March 1, 2005. The Defendant has not filed an accurate completed application for a construction and operating permit with the Department to build a waste control facility. Further, Defendant since March 1, 2005 continues to operate and place livestock waste in a location where it is likely to cause pollution to waters of the state in violation of Neb. Rev. Stat. §81-1506 (1) (a).

4. The Defendant is a "person" as defined in Neb. Rev. Stat. §81-1502 (10).

5. Defendant has violated Neb. Rev. Stat. §81-1506 (5) (d) and Neb. Rev. Stat. §81-1506 (1) (a).

6. Pursuant to Neb. Rev. Stat. §81-1508.02 (2) (Reissue 1999) where there has been a violation of section 81-1506, a civil penalty is provided in the amount of not more than \$10,000 (ten thousand dollars) for each day of violation.

SECOND CLAIM

7. Plaintiff hereby incorporates paragraphs 1 and 4 contained in its First Claim.

8. On or about October 25, 2007, Plaintiff issued an Administrative Order requiring Defendant by January 1, 2008, to submit a complete and accurate application for construction of a livestock waste control facility and to submit an application for a

general or individual National Pollutant Discharge Elimination System permit. This Administrative Order was not contested and became a final order on or about November 25, 2007.

9. Defendant has not submitted a complete and accurate application for construction of a livestock Waste Control Facility and has not submitted an application for a general or individual National Pollutant Discharge Elimination System permit.

10. Neb. Rev. Stat. §81-1508.02 (1) (b) (Reissue 1999) makes it unlawful for any person to "violate...any order of the director."

11. Pursuant to Neb. Rev. Stat. §81-1508.02 (1) (b) and (2) (Reissue 1999) where there has been a violation of an order of the director, a civil penalty is provided in the amount of not more than \$10,000 (ten thousand dollars) for each day of violation.

THIRD CLAIM

12. Plaintiff hereby incorporates by reference each and every allegation contained in its First and Second Claims.

13. The Director, pursuant to Neb. Rev. Stat. §81-1508 (2) (Reissue 1999), asks the Court for an injunction enjoining the Defendant from any further cattle feeding in open lots and requiring him remove all fences from the abandoned areas (with the exception of working pens), do a complete clean-up/removal of waste from the abandoned pens, establish permanent vegetative cover in the abandoned areas, and refrain from onsite stockpiling of used bedding without prior approval by the Department.

WHEREFORE, Plaintiff prays that judgment be entered in favor of Plaintiff and against Defendant in the form of civil penalties as provided in Neb. Rev. Stat. §81-1508.02 (2) (Reissue 1999), an injunction be entered and that all costs of this action be taxed to the Defendant.

DATED this 18th day of September, 2008.

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

By JON C. BRUNING, #20351
Attorney General

By Michelle Weber
Michelle Weber, #23985
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
michelle.weber@nebraska.gov
Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

It is hereby certified that on this ___ day of September, 2008, 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 Defendant's attorney of record.

Michelle Weber
Michelle Weber
Assistant Attorney General