

IN THE DISTRICT COURT OF KEARNEY COUNTY, NEBRASKA

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

Plaintiff,

v.

COOPERATIVE PRODUCERS, INC.,
Defendant.

Case CI 07-111

COMPLAINT

FILED
JILL L. FRITSON

OCT 2 2007

CLERK DISTRICT COURT
KEARNEY COUNTY

COPY

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

FIRST CLAIM

1. 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 *et seq.* (Reissue 1999, Cum. Supp, 2000, Supp. 2003), and all rules and regulations promulgated thereunder.

2. Defendant, Cooperative Producers, Inc. (hereinafter "Cooperative Producers"), is a Nebraska corporation that owns and operates a bulk fertilizer and pesticide storage and mixing facility in Kearney County, Nebraska.

3. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for agricultural chemical containment, as expressed in Neb. Rev.

SCANNED



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Stat. §81-1505(8), (14) (Reissue 1999), the Council adopted a rule and standard codified as Title 198, *Rules and Regulations Pertaining to Agricultural Chemical Containment*.

4. Title 198, Chapter 8, Section 004 requires that storm water that comes in contact with pesticide, fertilizer or pesticide- or fertilizer-contaminated material within the secondary containment or loadout facility shall be managed as contaminated water as required under Title 198, Chapter 8, Section 002.

5. Neb. Rev. State. §81-1508.02(1)(e) states that it is unlawful to violate any other provision or fail to perform any other duty imposed by such acts, rules and regulations.

6. On or about November 7, 2006, Defendant failed to manage pesticide- and fertilizer-contaminated storm water within its secondary containment and load out facility in accordance with Title 198, Chapter 8, Section 002.

7. Pursuant to Neb. Rev. Stat. §81-1508.02(2) where there has been a violation of Section 81-1508.02(1)(e), a civil penalty is provided in the amount of not more than \$10,000 for each day of violation.

SECOND CLAIM

8. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1-7 as if fully set forth herein.

9. Title 198, Chapter 8, Section 006 requires that a release of pesticide, fertilizer, or pesticide- or fertilizer-contaminated material from the

secondary containment facility or loadout facility shall be immediately reported to NDEQ.

10. On or about November 7, 2006, Defendant failed to immediately report to NDEQ the release of pesticide- and fertilizer-contaminated material from its secondary containment facility.

THIRD CLAIM

11. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1-10 as if fully set forth herein.

12. Title 198, Chapter 8, Section 007.01 requires no fertilizer- or pesticide-contaminated material shall be disposed of through a storm sewer system or waters of the State.

13. On or about November 7, 2006, Defendant disposed of fertilizer- and pesticide-contaminated material from the secondary containment by discharging to waters of the State.

FOURTH CLAIM

14. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1-13 as if fully set forth herein.

15. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the issuance of operating permits for sources of water pollution, as expressed in Neb. Rev. Stat. §81-1505(11), the Council adopted a rule and standard codified as Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*.

16. Title 119, Chapter 10, Section 002.01 requires that no person shall discharge storm water containing any pollutant except as authorized by a NPDES permit.

17. On or about November 7, 2006, Defendant discharged to waters of the State without an NPDES permit as required by Title 119, Chapter 10, Section 002.01.

WHEREFORE, Plaintiff prays that judgment be entered in favor of Plaintiff and against Defendants 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 Defendant.

DATED this 1st day of October, 2007.

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

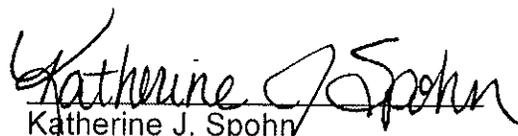
By: Jon C. Bruning, #20351
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By: 
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Tel. (402) 471-2682
Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

It is hereby certified that on this 1st day of October, 2007, 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 States Mail, first class postage prepaid, addressed to Defendant's attorney of record,

William R. Kutilek
Crosby Guenzel, LLP
134 S 13th Street, Suite 400
Lincoln, NE 68508


Katherine J. Spohn
Assistant Attorney General