

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

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

Plaintiff,

v.

GAVILON, L.L.C.,  
a corporation authorized to  
business in Nebraska,

Defendant.

Case No. \_\_\_\_\_

COMPLAINT

COMES NOW Michael J. Linder, Director of the Department of Environmental Quality, who institutes this action through Jon Bruning, Attorney General, on behalf of the State of Nebraska as Plaintiff and alleges as follows:

FIRST CLAIM

1. Plaintiff, the Nebraska Department of Environmental Quality, is at all times material herein the agency of Nebraska charged with the duty, pursuant to NEB.REV.STAT. § 81-1504 (Reissue 2008) to administer and enforce the Environmental Protection Act, NEB.REV.STAT. § 81-1501 *et seq.* (Reissue 2008, Cum. Supp. 2010) and all rules, regulations, orders, and permits issued thereunder.

2. Defendant, Gavilon LLC, is a corporation authorized to do business in Nebraska and conducts operations in Douglas County, Nebraska. At all times material herein, Defendant leased and contracted to operate a transload site located at 12900 "T" Street in Omaha, Douglas County, Nebraska (hereinafter "site").

3. NEB.REV.STAT. § 81-1502(10) (Reissue 2008) is in effect at all times material herein and defines Defendant as a "person."



4. NEB.REV.STAT. § 81-1506(1)(a) (Reissue 2008) is in effect at all times material herein and states that it is unlawful for any person “[t]o cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state.” Similarly, NEB.REV.STAT. § 81-1506(2)(a) states that it is unlawful for any person to “[d]ischarge any pollutant into waters of the state without obtaining a permit” as required by state and federal statutes and regulations. NEB.REV.STAT. § 81-1508.02(1)(b) (Reissue 2008) is in effect at all times material herein and states that it is unlawful to violate any regulations promulgated pursuant to the Environmental Protection Act. At all times material herein, 126 NEB.ADMIN.CODE, Ch. 18 § 001.01 states that “No person shall release, cause to be released or allow the release of an oil or hazardous substance ... into, or upon the waters or land of the state, except in quantities, and at times and locations, or under circumstances and conditions as [NDEQ] approves.”

5. On or about November 21, 2011, Defendant (including any agent acting on Defendant’s behalf) was responsible for overfilling a rail car at the site with inedible corn oil, thereby causing a release or discharge which led to the West Papio Creek, a water of the state. This constituted a prohibited discharge in violation of NEB.REV.STAT. § 81-1506(2)(a).

6. Pursuant to NEB.REV.STAT. §81-1508.02 (Reissue 2008), a civil penalty not to exceed ten thousand dollars (\$10,000) per day per violation is provided in cases of violation of the Environmental Protection Act or the rules or regulations adopted and promulgated pursuant thereto.

## SECOND CLAIM

7. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 3 of its First Claim.

8. NEB.REV.STAT. § 81-1508.02(1)(b) (Reissue 2008) is in effect at all times material herein and states that it is unlawful to violate any regulations promulgated pursuant to the Environmental Protection Act. At all times material herein, 126 NEB.ADMIN.CODE, Ch. 18 § 002.01 states that “It shall be the duty of any responsible person to notify [NDEQ] of any release or suspected release of an oil or hazardous substance, in the following manner: § 002.01A Immediate notification is required regardless of the quantity of an oil or hazardous substance release which ... impacts or threatens waters of the state or threatens the public health and welfare.”

9. Defendant failed to notify NDEQ of the release or discharge of inedible corn oil at the site on or about November 21, 2011. This constitutes a violation of 126 NEB.ADMIN.CODE, Ch. 18 § 002.01A.

10. Pursuant to NEB.REV.STAT. § 81-1508.02 (Reissue 2008), a civil penalty not to exceed ten thousand (\$10,000) per day per violation is provided in cases of violation of the Environmental Protection Act or the rules or regulations adopted and promulgated pursuant thereto.

### THIRD CLAIM

11. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 3 of its First Claim.

12. NEB.REV.STAT. § 81-1508.02(1)(b) (Reissue 2008) is in effect at all times material herein and states that it is unlawful to violate any regulations promulgated pursuant to the Environmental Protection Act. At all times material herein, 126 NEB.ADMIN.CODE, Ch. 18 § 003.01 states that “Whenever an oil or hazardous substance is released, it shall be the duty of the responsible person to take or cause to be taken, within 24 hours, all necessary steps to stop the release and contain all released material.”

13. As of December 1, 2011, Defendant failed to take all necessary steps to contain all released material from the release of inedible corn oil which occurred at the site on or before November 22, 2011. This constituted a violation of 126 NEB.ADMIN.CODE, Ch. 18 § 003.01.

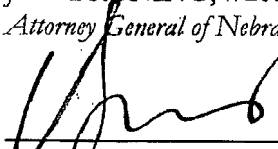
14. Pursuant to NEB.REV.STAT. §81-1508.02 (Reissue 2008), a civil penalty not to exceed ten thousand dollars (\$10,000) per day per violation is provided in cases of violation of the Environmental Protection Act or the rules or regulations adopted and promulgated pursuant thereto.

WHEREFORE, Plaintiff prays this Court enter judgment herein against Defendant in the form of a civil penalty as provided under NEB.REV.STAT. § 81-1508.02 (Reissue 2008), and Plaintiff further prays that all court costs herein be taxed to Defendant.

Respectfully submitted this 17<sup>th</sup> day of December, 2012.

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

By: JON BRUNING, #20351  
*Attorney General of Nebraska*

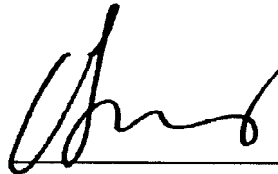
By:   
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Attorneys for Plaintiff.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served on Defendant by regular United States mail, first class postage prepaid on this 17<sup>th</sup> day of December, 2012, addressed to Defendant's attorney of record as follows.

Steven P. Case, Esq.  
McGrath North Mullin & Kratz, PC LLO  
First National Tower, Suite 3700  
1601 Dodge Street  
Omaha, NE 68102-1627

A handwritten signature in black ink, appearing to read 'D. Lopez', written over a horizontal line.

David A. Lopez  
*Assistant Attorney General*