

IN THE DISTRICT COURT OF JEFFERSON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
 MICHAEL J. LINDER, Director,)
 NEBRASKA DEPARTMENT OF)
 ENVIRONMENTAL QUALITY,)
)
 Plaintiff,)
)
 v.)
)
 CLASSIC DAIRY, INC.)
)
 Defendant.)

Case No. CI 11-155

COMPLAINT

FILED

AUG 11 2011

Joanna M. Wagoner
 CLERK DISTRICT COURT
 JEFFERSON COUNTY, NE

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



FIRST CLAIM

1. The 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. §81-1501 *et seq.* (Reissue 2008) and all rules, regulations, orders, and permits created thereunder.

2. The defendant, Classic Dairy, Inc. is a domestic corporation organized and existing under the laws of the State of Nebraska and conducting business in Jefferson County, Nebraska. At all times material herein, Defendant owned and operated a dairy located at 71465 Highway 103, Jansen, Jefferson County, Nebraska legally described as NE 1/4, Section 35, Township 3N, Range 4E, Jefferson County, Nebraska.



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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) (Reissue 2008) is in effect at all times material herein and states that it is unlawful for any person “(a) To cause pollution of any air, waters, or land of the state that 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...”

5. 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 or the Livestock Waste Management Act. Pursuant to Neb. Rev. Stat. §§81-1505 and 54-2435, The Nebraska Environmental Quality Council adopted *Livestock Waste Control Regulations*, Title 130, which is in effect at all times material herein.

6. Title 130, Chapter 2, 008.03 states that “[a]ny person who owns or operates an animal feeding operation shall not [a]pply manure, litter, or process wastewater to land in a manner that results in a discharge to waters of the State...” Title 130, Chapter 11, 005 states that “[a]ll livestock wastes removed from the facility and the animal feeding operation itself shall be land applied or stockpiled in a manner which will not contribute to water pollution.”

7. On or about August 22 and August 24, 2009, the Defendant discharged effluent from a livestock waste land application site to a water of the state in violation of §81-1506(1) and Title 130, Chapter 2, 008.03 and Chapter 11, 005.

8. Pursuant to Neb. Rev. Stat. §81-1508.02 (Reissue 2008), a civil penalty not to exceed ten thousand dollars (\$10,000) per day violation is provided in cases of

violation of the Environmental Protection Act, Livestock Waste Management Act, “or the rules and regulations adopted and promulgated pursuant to such acts.”

SECOND CLAIM

9. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 5 of its First Claim.

10. Title 130, Chapter 2, 010 states that “[a]ny person who owns or operates an animal feeding operation shall report any discharge of manure, litter, or process wastewater to the Department within 24 hours of the event...”


11. On or about August 2009, Defendant failed to report the above alleged discharges to the Department within 24 hours of the event. This constitutes a violation of Title 130, Chapter 2, 010.

12. Pursuant to Neb. Rev. Stat. §81-1508.02 (Reissue 2008), a civil penalty not to exceed ten thousand dollars (\$10,000) per day violation is provided in cases of violation of the Environmental Protection Act, Livestock Waste Management Act, “or the rules and regulations adopted and promulgated pursuant to such act.”

WHEREFORE, the plaintiff prays that the Court enter judgment herein against the defendant in the form of a civil penalty as provided under Neb. Rev. Stat. §81-1508.02 (Reissue 2008); the plaintiff further prays that all court costs herein be taxed to the defendant.

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

By: Jon C. Bruning, #20351
Attorney General

By: 
Blake E. Johnson, #24158
Assistant Attorney General
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Lincoln, Nebraska 68509-8920
Tel. (402) 471-1912
Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

It is hereby certified that on this 2nd day of August, 2011, 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 as follows:

Dean R. Engelman
Classic Dairy Inc.
71465 Highway 103
Jansen, NE 68377



Blake E. Johnson
Assistant Attorney General