

IN THE DISTRICT COURT OF BUFFALO COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
CONSOLIDATED BLENDERS, INC.,)
D/B/A WESTERN ALFALFA)
Defendant.)

Case No. _____

COMPLAINT

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

FIRST CLAIM

1. The Plaintiff, Nebraska Department of Environmental Quality, hereinafter NDEQ, is at all times material herein the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504 (1) to exercise exclusive general supervision of the administration and enforcement of the Environmental Protection Act and all rules and regulations promulgated pursuant thereto.
2. The Defendant is Consolidated Blenders Inc., doing business as Western Alfalfa, of Elm Creek, Buffalo County, Nebraska.
3. The Defendant owns and operates an alfalfa dehydration plant in Elm Creek, Buffalo County, Nebraska.
4. At all times material herein, Defendant's plant was subject to rules promulgated by the Nebraska Environmental Quality Council in force and effect.

5. Title 129, Chapter 32, Nebraska Administrative Code, Dust; Duty to Prevent Escape Of, provides in pertinent part as follows:

001 Handling, Transportation, Storing. No person may cause or permit the handling, transporting or storage of any material in a manner which may allow particulate matter to become airborne in such quantities and concentrations that it remains visible in the ambient air beyond the premises where it originates.

6. In October and November of 2007, on several occasions, particulate matter in visible quantities was observed leaving defendant's property blowing towards the community of Elm Creek.

7. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person "to violate . . . any emission or effluent standards or limitations... contained in or issued or entered into pursuant to the Environmental Protection Act. . . or the rules or regulations adopted and promulgated pursuant to such acts."

8. Neb. Rev. Stat. §81-1508.02(2) provides that any person who violates §81-15-1508.02(1) shall be subject to a civil penalty of no more than \$10,000 per day. In a case of a continuing violation, each day shall constitute a separate offense.

SECOND CLAIM

9. Plaintiff hereby incorporates by reference paragraphs 1, 2, 3, 4, 6, and 8 contained in its First Claim

10. Title 129, Chapter 20, Nebraska Administrative Code, Particulate Emissions; Limitations and Standards, provides in pertinent part as follows:

005.02 No person shall cause or allow emissions from an existing alfalfa dehydration plant dryer which are of an opacity equal to or greater than thirty percent (30%)...

11. On or about July 10, 2008, the defendant caused and allowed emissions from a dryer at its Elm Creek plant which were 63% in opacity, as evaluated by the EPA-approved method 9, in violation of Chapter 20.

12. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person "to violate . . . any emission or effluent standards or limitations... contained in or issued or entered into pursuant to the Environmental Protection Act. . . or the rules or regulations adopted and promulgated pursuant to such acts."


13. Neb. Rev. Stat. §81-1508.02(2) provides that any person who violates §81-15-1508.02(1) shall be subject to a civil penalty of no more than \$10,000 per day. In a case of a continuing violation, each day shall constitute a separate offense.

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; the plaintiff further prays that all court costs herein be taxed to the defendant.

Dated this 1st day of September, 2009.

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

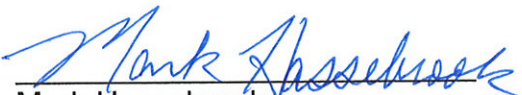
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Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on this 1st day of September, 2009, addressed to the Defendant's attorney of record as follows:

Anna L. Stehlik
Consolidated Blenders, Inc.
P.O. Box 609
Hastings, Nebraska 68902


Mark Hassebrook
Assistant Attorney General