

IN THE DISTRICT COURT OF NEMAHA COUNTY, NEBRASKA

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

Case No. CI _____

Plaintiff,)

COMPLAINT

v.)

ARMSTRONG WOOD PRODUCTS,)
INC., a Delaware Corporation, d/b/a)
ARMSTRONG CABINET PRODUCTS,)

Defendant.)

COMES NOW the Plaintiff, Nebraska Department of Environmental Quality (hereinafter "NDEQ"), who institutes this action through its attorney, Jon C. Bruning, Attorney General, 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. 2006), and all rules, regulations, and orders promulgated thereunder.

2. Title 128 of the Nebraska Administrative Code, "Nebraska Hazardous Waste Regulations" (hereinafter "Title 128") was promulgated pursuant to the Environmental Protection Act, and at all times material herein, such regulations were in full force and effect.

3. Title 129 of the Nebraska Administrative Code, "Nebraska Air Quality Regulations" (hereinafter "Title 129") was promulgated pursuant to such act, and at all times material herein, such regulations were in full force and effect.

4. Armstrong Wood Products, Inc. is a Delaware Corporation.

5. Armstrong Wood Products, Inc. has been doing business in Nebraska under the name Armstrong Cabinet Products.

6. Armstrong Cabinet Products is a trade name that has not been registered with the Nebraska Secretary of State.

7. Armstrong Wood Products, Inc. (hereinafter "Armstrong"), at all times material herein, owned and operated a manufacturing facility in Auburn, Nemaha County, Nebraska (hereinafter "the facility.")

8. The facility was issued a Nebraska Air Quality Operating permit pursuant to Title 129. (hereinafter "the Operating Permit.")

9. The Operating Permit was issued in May, 2001 to the predecessor in interest to Armstrong, Triangle Pacific Corporation.

10. The Operating Permit was amended in June, 2004 pursuant to Neb. Rev. Stat. §81-1504(11) to reflect the succession of the facility to Armstrong.

11. Armstrong, at all times material herein, has been subject to the obligations of the Operating Permit.

12. The facility was issued a Nebraska Air Quality Construction permit pursuant to Title 129 (hereinafter "the Construction Permit.")

13. The facility has been subject to the terms of the Construction Permit since June 29, 2004.

14. Section XXX(B)(2)(a) of the Operating Permit provides requirements for an operator training course for certain Armstrong personnel.

15. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to annually train all existing personnel as required by the Operating Permit, in violation of the Operating Permit.

16. On or about October 6, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had continued to fail to annually train all existing personnel as required by the Operating Permit, in continuing violation of the Operating Permit.

17. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

18. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

19. Plaintiff's allegations in paragraphs 1 through 18 of the Complaint constitute two hundred sixty-nine (269) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

SECOND CLAIM

20. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 19 of this Complaint as if fully set forth herein.

21. Section XXX(B)(2)(a)(i) of the Operating Permit requires Armstrong to keep a list of all current personnel by name and job description who are required to be trained under the Operating Permit.

22. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to keep a list of all current personnel by name and job description who are required to be trained, in violation of the Operating Permit.

23. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

24. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

25. Plaintiff's allegations in paragraphs 20 through 24 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

THIRD CLAIM

26. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. Section XXX(B)(2)(a)(ii) of the Operating Permit requires Armstrong to keep an outline of subjects to be covered in the initial and refresher training for each position or group of personnel at Armstrong required to be trained pursuant to the Operating Permit.

28. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to keep an outline

of the subjects to be covered in the initial and refresher training for each position or group of personnel, in violation of the Operating Permit.

29. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

30. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

31. Plaintiff's allegations in paragraphs 26 through 30 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

FOURTH CLAIM

32. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 31 of this Complaint as if fully set forth herein.

33. Section XXX(B)(2)(a)(iv) of the Operating Permit requires Armstrong to keep a description of the methods to be used to demonstrate and document successful completion of training.

34. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to have a description of the methods to be used at the completion of initial or refresher training to demonstrate and document successful completion, in violation of the Operating Permit.

35. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

36. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

37. Plaintiff's allegations in paragraphs 32 through 36 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

FIFTH CLAIM

38. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 37 of this Complaint as if fully set forth herein.

39. Section XXX(B)(2)(d) of the Operating Permit requires Armstrong to use normally closed containers for storing finishing, gluing, cleaning, and wash-off materials.

40. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to use normally closed containers for storing, finishing, gluing, cleaning, and wash-off materials, in violation of the Operating Permit.

41. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

42. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

43. Plaintiff's allegations in paragraphs 38 through 42 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

SIXTH CLAIM

44. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 43 of this Complaint as if fully set forth herein.

45. Section XXX(B)(2)(g) of the Operating Permit requires Armstrong to collect all organic HAP solvent used to clean spray guns into a normally closed container.

46. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to collect all organic hazardous air pollutant (HAP) solvent used to clean spray guns into a normally closed container, in violation of the Operating Permit.

47. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

48. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

49. Plaintiff's allegations in paragraphs 44 through 48 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

SEVENTH CLAIM

50. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 49 of this Complaint as if fully set forth herein.

51. Section XXX(B)(6)(a) of the Operating Permit provides that the leak inspection and maintenance plan contain provisions for a visual inspection of no less

than once per month for all equipment used to transfer or apply coatings, adhesives, or organic HAP solvents.

52. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to perform a minimum visual inspection of at least once per month for all equipment used to transfer or apply coatings, adhesives, or organic hazardous air pollutant (HAP) solvents, in violation of the Operating Permit.

53. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

54. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

55. Plaintiff's allegations in paragraphs 50 through 54 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

EIGHTH CLAIM

56. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 55 of this Complaint as if fully set forth herein.

57. Section XXX(B)(6)(c) of the Operating Permit provides that the leak inspection and maintenance plan specify methods for documenting the date and results of each inspection and any repairs that were made.

58. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to document the

date and results of each inspection performed and any repairs that were made, in violation of the Operating Permit.

59. On or about October 6, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had continued to fail to document the date and results of each inspection performed and any repairs that were made, in continuing violation of the Operating Permit.

60. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

61. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

62. Plaintiff's allegations in paragraphs 56 through 61 of the Complaint constitute two hundred sixty-nine (269) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

NINTH CLAIM

63. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 62 of this Complaint as if fully set forth herein.

64. Section XXX(B)(6)(d) of the Operating Permit contains provisions for the allowable time between identifying a leak and making a repair pursuant to the leak inspection and implementation plan.

65. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to identify the

timeframe between the discovery of a leak and the repair of the leak, in violation of the Operating Permit.

66. On or about October 6, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had continued to fail to identify the timeframe between the discovery of a leak and the repair of the leak, in continuing violation of the Operating Permit.

67. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

68. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

69. Plaintiff's allegations in paragraphs 63 through 68 of the Complaint constitute two hundred sixty-nine (269) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

TENTH CLAIM

70. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 69 of this Complaint as if fully set forth herein.

71. Section XXX(B)(9)(c) of the Operating Permit requires records be kept of data demonstrating that viscosity is an appropriate parameter for demonstrating compliance.

72. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to supply data

demonstrating that viscosity is an appropriate parameter for demonstrating compliance, in violation of the Operating Permit.

73. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

74. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

75. Plaintiff's allegations in paragraphs 70 through 74 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

ELEVENTH CLAIM

76. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 75 of this Complaint as if fully set forth herein.

77. Sections XXX(B)(9)(a), (B)(9)(b), (B)(9)(g), (B)(9)(h), (B)(9)(o) of the Operating Permit provide specific record keeping requirements for Armstrong.

78. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to perform the record keeping requirements found in Sections XXX(B)(9)(a), (B)(9)(b), (B)(9)(g), (B)(9)(h), and (B)(9)(o) of the Operating Permit, in violation of the Operating Permit.

79. On or about October 6, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had continued to fail to perform some or all of the record keeping requirements found requirements found in Sections XXX(B)(9)(a), (B)(9)(b), (B)(9)(g), (B)(9)(h), and (B)(9)(o) of the Operating Permit, in continued violation of the Operating Permit.

80. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

81. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

82. Plaintiff's allegations in paragraphs 76 through 81 of the Complaint constitute two hundred sixty-nine (269) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

TWELTH CLAIM

83. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 82 of this Complaint as if fully set forth herein.

84. Sections XXX(B)(10)(g)(ii) and (B)(10)(g)(ii)(C) of the Operating Permit provide for reporting requirements for compliance certification for continuous coaters.

85. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to maintain a viscosity of the coating in the reservoir that is no less than the viscosity of the initial coating and failure to maintain records of solvent additions, in violation of the Operating Permit.

86. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

87. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

88. Plaintiff's allegations in paragraphs 83 through 87 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

THIRTEENTH CLAIM

89. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 88 of this Complaint as if fully set forth herein.

90. Section XXX(B)(10)(h)(i) of the Operating Permit provides for reporting requirements relating to compliance certification for the work practice implementation plan required of Armstrong.

91. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed identify the provisions of the plan that had not been implemented and each day the provisions were not implemented, in violation of the Operating Permit.

92. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

93. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

94. Plaintiff's allegations in paragraphs 89 through 93 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

FOURTEENTH CLAIM

95. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 94 of this Complaint as if fully set forth herein.

96. Section XXX(D)(4) of the Operating Permit requires the operating of dust collector #7 be in compliance with certain requirements.

97. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to perform regular observations of at least once each shift of operation to determine whether there were excessive visible emissions from the stack, excessive leaks or noise, or other indications of poor performance requiring corrective action, in violation of the Operating Permit.

98. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

99. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

100. Plaintiff's allegations in paragraphs 95 through 99 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

FIFTEENTH CLAIM

101. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 100 of this Complaint as if fully set forth herein.

102. Section XXX(E) of the Operating Permit requires records to be maintained on-site by Armstrong for five years, and be available to NDEQ representatives.

103. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to maintain records on-site for a minimum period of five years unless otherwise specified, and had failed to

have records available and clear to the NDEQ during an inspection, in violation of the Operating Permit.

104. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

105. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

106. Plaintiff's allegations in paragraphs 101 through 105 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

SIXTEENTH CLAIM

107. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 106 of this Complaint as if fully set forth herein.

108. Section XXX(E)(1) of the Operating Permit requires that copies of all reports required by the Operating Permit be maintained at the facility for five years.

109. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to keep copies of all reports required by the Operating Permit, in violation of the Operating Permit.

110. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

111. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

112. Plaintiff's allegations in paragraphs 107 through 111 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

SEVENTEENTH CLAIM

113. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 112 of this Complaint as if fully set forth herein.

114. Section XXX(E)(2) of the Operating Permit requires that records maintained pursuant to Operating Permit Condition XXX(B) be maintained for a period of five years and be kept in conformance with Operating Permit Condition XXX(B) and XXX(E)(2)

115. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to keep records as required in Operating Permit Condition XXX, in violation of the Operating Permit.

116. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

117. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

118. Plaintiff's allegations in paragraphs 113 through 117 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

EIGHTEENTH CLAIM

119. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 118 of this Complaint as if fully set forth herein.

120. Sections XXX(E)(3)(a), (E)(3)(b), (E)(3)(c), and (E)(3)(d) of the Operating Permit require inspection and maintenance records for fabric dust collector #7 to be kept for five years, and provides requirements for the content of those records.

121. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to keep inspection and maintenance records for the facility's fabric dust collector number seven, in violation of the Operating Permit.

122. On or about October 6, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had continued to fail to keep inspection and maintenance records for the facility's fabric dust collector number seven, in continuing violation of the Operating Permit.

123. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

124. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

125. Plaintiff's allegations in paragraphs 119 through 124 of the Complaint constitute two hundred sixty-nine (269) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

NINETEENTH CLAIM

126. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 125 of this Complaint as if fully set forth herein.

127. Section XIII(C) of the Construction Permit requires compliance with the Operating Permit.

128. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to comply with the facility's Operating Permit, in violation of the Construction Permit.

129. On or about October 6, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had continued to fail to comply with the facility's Operating Permit, in violation of the Construction Permit.

130. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

131. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

132. Plaintiff's allegations in paragraphs 126 through 131 of the Complaint constitute two hundred sixty-nine (269) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

TWENTIETH CLAIM

133. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 132 of this Complaint as if fully set forth herein.

134. Section XIII(D)(1) of the Construction Permit provides requirements related to records for all VOC containing materials.

135. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to keep the

quantity and a description of all volatile organic compound containing materials used during each calendar month, and during the preceding period of 12 consecutive calendar months, including, but no limited to, paints, coatings, cleaners, solvents, thinners, and adhesives, in violation of the Construction Permit.

136. On or about October 6, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had continued to fail to keep the quantity and a description of all volatile organic compound containing materials used during each calendar month, and during the preceding period of 12 consecutive calendar months, including, but no limited to, paints, coatings, cleaners, solvents, thinners, and adhesives, in continuing violation of the Construction Permit.

137. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

138. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

139. Plaintiff's allegations in paragraphs 133 through 138 of the Complaint constitute two hundred sixty-nine (269) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

TWENTY-FIRST CLAIM

140. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 139 of this Complaint as if fully set forth herein.

141. Section XIII(D)(2) of the Construction Permit provides record keeping requirements for calculated VOC emissions.

142. On or about January 10 or 11, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had failed to calculate all volatile organic compound emissions for each calendar month, and for the preceding period of twelve consecutive calendar months, in violation of the Construction Permit.

143. On or about October 6, 2006, the NDEQ discovered through a routine inspection of the Armstrong facility that Armstrong had continued to fail to calculate all volatile organic compound emissions for each calendar month, and for the preceding period of twelve consecutive calendar months, in continuing violation of the Construction Permit.

144. Neb. Rev. Stat. §81-1506(4)(b) makes it unlawful to violate any term or condition of an air pollution permit.

145. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1506. In the case of a continuing violation, each day shall constitute a separate offense.

146. Plaintiff's allegations in paragraphs 140 through 145 of the Complaint constitute two hundred sixty-nine (269) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

TWENTY-SECOND CLAIM

147. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 146 of this Complaint as if fully set forth herein.

148. At all times material herein, Armstrong was a large quantity generator of hazardous waste, as that term is defined in Title 128, Chapter 19, Section 001.

149. Title 128, Chapter 4, Section 002, as referenced by Title 128, Chapter 10, Section 001.05 requires a generator of solid waste to determine if that waste is hazardous.

150. On or about January 26 or 27, 2006, the NDEQ discovered through a routine inspection, that Armstrong had failed to determine if solid waste in the form of paint booth filters was hazardous in violation of Title 128, Chapter 4, Section 002.

151. Tests performed in November, 2005 of the paint booth filters showed them to be hazardous for chromium.

152. Despite these test results, however, Armstrong failed to treat the paint booth filters as hazardous.

153. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate any air, water, or land quality standards, any permit condition or limitation, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to the Environmental Protection Act, the Integrated Solid Waste Management Act, or the rules or regulations adopted and promulgated pursuant to such acts.

154. Neb. Rev. Stat. § 81-1508.02(1)(e) makes it unlawful for any person to violate any provision or fail to perform any duty imposed by the Nebraska Environmental Protection Act or any regulations promulgated thereunder.

155. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1508.02. In the case of a continuing violation, each day shall constitute a separate offense.

156. Plaintiff's allegations in paragraphs 147 through 155 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

TWENTY-THIRD CLAIM

157. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 156 of this Complaint as if fully set forth herein.

158. Title 128, Chapter 20, Section 006.01, requires a generator of hazardous waste to identify all applicable waste codes for the wastes they generate.

159. Title 128, Chapter 20, Section 005.01B requires hazardous waste generators to submit land disposal restriction notices to the treatment, storage, or disposal facility receiving the hazardous waste.

160. On or about January 26 or 27, 2006, the NDEQ discovered through a routine inspection, that Armstrong had failed to include with hazardous waste shipments the proper land disposal restriction notifications identifying all applicable hazardous waste codes and treatment standards, in violation of Title 128, Chapter 20.

161. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate any air, water, or land quality standards, any permit condition or limitation, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to the Environmental Protection Act, the Integrated Solid Waste Management Act, or the rules or regulations adopted and promulgated pursuant to such acts.

162. Neb. Rev. Stat. § 81-1508.02(1)(e) makes it unlawful for any person to violate any provision or fail to perform any duty imposed by the Nebraska Environmental Protection Act or any regulations promulgated thereunder.

163. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1508.02. In the case of a continuing violation, each day shall constitute a separate offense.

164. Plaintiff's allegations in paragraphs 157 through 163 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

TWENTY-FOURTH CLAIM

165. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 164 of this Complaint as if fully set forth herein.

166. Title 128, Chapter 10, Section 004.01G, requires a generator of hazardous waste to properly label drums of hazardous waste.

167. On or about January 26 or 27, 2006, the NDEQ discovered through a routine inspection, that Armstrong had failed to properly label drums of hazardous waste containing chromium-toxic paint booth filters, in violation of Title 128, Chapter 10, Section 004.01G.

168. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate any air, water, or land quality standards, any permit condition or limitation, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to the Environmental Protection Act, the Integrated Solid Waste Management Act, or the rules or regulations adopted and promulgated pursuant to such acts.

169. Neb. Rev. Stat. § 81-1508.02(1)(e) makes it unlawful for any person to violate any provision or fail to perform any duty imposed by the Nebraska Environmental Protection Act or any regulations promulgated thereunder.

170. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1508.02. In the case of a continuing violation, each day shall constitute a separate offense.

171. Plaintiff's allegations in paragraphs 165 through 170 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

TWENTY-FIFTH CLAIM

172. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 171 of this Complaint as if fully set forth herein.

173. Title 128, Chapter 4, Sections 005.01A3 through A5 require a generator of hazardous waste who ships that waste off-site at any time during a calendar year to prepare and submit include in biennial hazardous waste reports, and include specific information about that waste.

174. On or about January 26 or 27, 2006, the NDEQ discovered through a routine inspection, that Armstrong had failed to include in its biennial hazardous waste reports the quantity of hazardous paint booth filters generated at the facility and shipped for disposal, in violation of Title 128, Chapter 4, Sections 005.01A3 through A5.

175. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate any air, water, or land quality standards, any permit condition or limitation, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to the Environmental Protection Act, the Integrated Solid Waste Management Act, or the rules or regulations adopted and promulgated pursuant to such acts.

176. Neb. Rev. Stat. § 81-1508.02(1)(e) makes it unlawful for any person to violate any provision or fail to perform any duty imposed by the Nebraska Environmental Protection Act or any regulations promulgated thereunder.

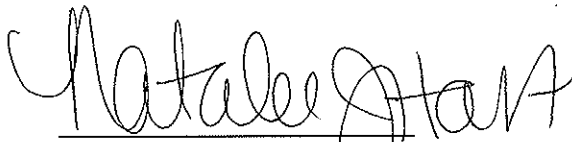
177. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1508.02. In the case of a continuing violation, each day shall constitute a separate offense.

178. Plaintiff's allegations in paragraphs 172 through 177 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of an injunction pursuant to Neb. Rev. Stat. §81-1508(2), a civil penalty as provided in Neb. Rev. Stat. § 81-1508.02, with consideration by the Court of "the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance" in determining the appropriate civil penalty pursuant to Neb. Rev. Stat. § 81-1508.02(2); that all costs of this action be taxed to the Defendant; and any other relief as this court deems just and equitable.

BY: STATE OF NEBRASKA ex rel.
MICHAEL J. LINDER, Director
Department of Environmental Quality,
Plaintiff,

BY: JON BRUNING # 20351
Attorney General

BY: 
Natalee J. Hart, #22716
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2682
natalee.hart@ago.ne.gov
Attorneys for Plaintiff