

UNITED STATES DISTRICT COURT  
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA  
Plaintiff

v.

Case Number 8:05cr272-001

USM Number 20362-047

ALAN ERICKSON  
Defendant

MATTHEW HEFFRON

Defendant's Attorney

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JUDGMENT IN A CRIMINAL CASE  
(For Offenses Committed On or After November 1, 1987)

THE DEFENDANT pleaded guilty to counts I and II of the Information on January 4, 2007.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

<u>Title, Section &amp; Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Numbers</u>
15 USC 2615(b) - Illegal Removal of Friable Asbestos-Containing Materials		I
15 USC 2615(b) - Illegal Removal of Friable Asbestos-Containing Materials		II

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and *Booker/FanFan* decisions.

The Indictment is dismissed on motion of the United States.

Following the imposition of sentence, the Court advised the defendant of his right to appeal pursuant to the provisions of Fed. R. Crim. P. 32 and the provisions of 18 U.S.C. § 3742 (a) and that such Notice of Appeal must be filed with the Clerk of this Court within ten (10) days of this date.

**IT IS ORDERED** that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States attorney of any material change in the defendant's economic circumstances.

Date of Imposition of Sentence:  
January 4, 2007

s/Joseph F. Bataillon  
United States District Judge

January 5, 2007

Defendant: ALAN ERICKSON  
Case Number: 8:05cr272-001

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### ACKNOWLEDGMENT OF RECEIPT

I hereby acknowledge receipt of a copy of this judgment this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
Signature of Defendant

**NOTE: The following certificate must also be completed if the defendant has not signed the Acknowledgment of Receipt, above.**

### CERTIFICATE

It is hereby certified that a copy of this judgment was served upon the defendant this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES WARDEN

By: \_\_\_\_\_

Defendant: ALAN ERICKSON  
Case Number: 8:05cr272-001

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**IMPRISONMENT**

No Term of Imprisonment is imposed.

**SUPERVISED RELEASE**

No Term of Supervised Release is imposed.

Defendant: ALAN ERICKSON  
Case Number: 8:05cr272-001

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**CRIMINAL MONETARY PENALTIES**

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth in this judgment.

<u><b>Total Assessment</b></u>	<u><b>Total Fine</b></u>	<u><b>Total Restitution</b></u>
<b>\$50.00</b>	<b>\$50,000.00</b>	<b>\$10,318.64</b>

The Court has determined that the defendant does not have the ability to pay interest and it is ordered that:

interest requirement is waived.

**FINE**

A Fine in the amount of \$50,000.00 is imposed. The fine was paid in full on 1/4/07, receipt #8-2884

**RESTITUTION**

Restitution in the amount of **\$10,318.64** is hereby ordered. The defendant shall make restitution to the following payees in the amounts listed below. The restitution was paid in full on 1/4/07, receipt #8-2884.

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(l), all nonfederal victims must be paid in full prior to the United States receiving payment.

<u><b>Name of Payee</b></u>	<u><b>**Total Amount of Loss</b></u>	<u><b>Amount of Restitution Ordered</b></u>	<u><b>Priority Order or Percentage of Payment</b></u>
State of Nebraska Department of Health and Human Services	\$3,440.00	\$3,440.00	Priority Order/Percentage
State of Nebraska Department of Environmental Quality	\$6,878.64	\$6,878.64	Priority Order/Percentage
<b>Totals</b>	<b>\$10,318.64</b>	<b>\$10,318.64</b>	

\*\*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

Defendant: ALAN ERICKSON  
Case Number: 8:05cr272-001

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### SCHEDULE OF PAYMENTS

**The special assessment in the amount of \$50.00 was paid in full on 1/4/07, receipt #8-2884.**

The criminal monetary penalty is due in full on the date of the judgment. The defendant is obligated to pay said sum immediately if he or she has the capacity to do so. The United States of America may institute civil collection proceedings at any time to satisfy all or any portion of the criminal monetary penalty.

Any payments made on the outstanding criminal monetary penalty shall be applied in the following order of priority: special assessment; restitution; fine; and other penalties. Unless otherwise specifically ordered, all criminal monetary penalty payments, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be made to the clerk of the Court. Unless otherwise specifically ordered, interest shall not accrue on the criminal monetary penalty.

All financial penalty payments are to be made to the Clerk of Court for the District of Nebraska, 111 S. 18<sup>th</sup> Plaza, Suite 1152, Omaha, NE 68102-1322.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

The defendant shall inform the probation officer of any change in his or her economic circumstances affecting the ability to make monthly installments, or increase the monthly payment amount, as ordered by the court.

The defendant is restrained from transferring any real or personal property, unless it is necessary to liquidate and apply the proceeds of such property as full or partial payment of the criminal monetary penalty.

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CLERK'S OFFICE USE ONLY:

ECF DOCUMENT

I hereby attest and certify this is a printed copy of a document which was electronically filed with the United States District Court for the District of Nebraska.

Date Filed: \_\_\_\_\_

DENISE M. LUCKS, CLERK

By \_\_\_\_\_ Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	)	
	)	8:05CR272
Plaintiff,	)	
	)	
v.	)	PLEA AGREEMENT
	)	
ALAN J. ERICKSON,	)	
	)	
Defendant.	)	

The United States of America, by and through Assistant United States Attorney, Frederick D. Franklin, the defendant, personally and by and through defendant's counsel, Matthew F. Heffron, and hereby enter into the following plea agreement pursuant to Rule 11(c)(1)(c) of the Federal Rules of Criminal Procedure:

1. The defendant will waive indictment and agrees to plead guilty to the two count Information, charging a violation of the Toxic Substances Control Act (TSCA), 15 U.S.C., Sections 2601-2692, that is, a violation of TSCA by removing regulated asbestos containing material from a commercial building without the required accreditation. By entering into this plea agreement, the defendant admits to committing this offense, and to being guilty of this offense. This offense is a misdemeanor punishable by a maximum term of incarceration of one year, a fine not to exceed \$25,000 or both such fine and imprisonment on each count.

2. The parties agree pursuant to FRCP 11(c)(1)(C) that the court shall impose a sentence of \$25,000 on each count and restitution in the total sum of \$10,318.64. Pursuant to FRCP 11(c)(1)(C), the parties agree that a sentence of the

monetary penalties listed above, with no term of imprisonment, community confinement, house arrest or probation, is the appropriate disposition of this case.

3. The parties agree the facts constituting the offense to which the defendant is pleading guilty are as follows:

The defendant, Alan J. Erickson is in the business of building construction and demolition. In or before July, 2003, the defendant knowingly conducted a "response action", as defined at 15 U.S.C. Section 2642(11), by removing "friable asbestos-containing materials", as defined at 15 U.S.C. Section 2642(6), from pipes, from the building located at 705 North Jeffers, North Platte, Nebraska. This building is a "commercial building" under the definition set forth in 15 U.S.C. Section 2642(10). (The Defendant contends the amount he removed was from a heating pipe and arguably in total was less than a chargeable amount of Regulated Asbestos-Containing Material under the Clean Air Act, 42 U.S.C. § 7413(c)(1), as originally indicted.) Neither the defendant Alan J. Erickson, nor anyone else involved with the "response action" described above, has ever been accredited to conduct an asbestos "response action" by any state TSCA accreditation program. The defendant understands and agrees that all of the above is a violation of Title 15, United States Code, Section 2615(b).

4. The United States and the defendant jointly recommend that the Court:
- (a) Order the defendant to pay, immediately upon sentencing, a fine in this case in the amount of Fifty Thousand (\$50,000.00) dollars.
  - (b) Order the defendant to pay, immediately upon sentencing if

it has not been paid before that time, the special assessment of \$50 due under Title 18, United States Code, Section 3013(a)(1)(A)(iii).

- (c) Order the defendant to pay, immediately at sentencing the sum of \$10,318.64.

5. In return for the defendant's plea of guilty as set forth herein, the United States Attorney for the District of Nebraska agrees to dismiss the Indictment in this case once sentence has been imposed and not file any additional charges against the defendant or his employees or associates or his business entities, arising out of the facts forming the basis for the dismissed Indictment or the present Information. In the event the defendant breaches or violates this plea agreement or otherwise fails to adhere to its terms, the United States shall not be bound by this paragraph and may pursue any additional charges arising from the criminal activity under investigation as well as any perjury, false statement, or obstruction of justice charges which may have occurred. The defendant understands and agrees that in the event the defendant violates this plea agreement, all statements made by the defendant subsequent to the execution of this plea agreement, any testimony given by defendant before a grand jury or any tribunal or any leads from such statements or testimony shall be admissible against the defendant in any and all criminal proceedings. The defendant waives any rights which might be asserted under the United States Constitution, any statute, Federal Rules of



Criminal Procedure, \_ 11(f), Federal Rules of Evidence, \_ 410, or any other federal rule that pertains to the admissibility of any statements made by the defendant subsequent to this plea agreement.

6. The defendant has had sufficient time to discuss this case, the evidence, and this agreement with the defendant's attorney and defendant is fully satisfied with the advice and representation provided by defendant's counsel. Further, the defendant acknowledges that he has read the plea agreement, understands it and agrees it is true and accurate and not the result of any threats, duress or coercion. The defendant further understands that this plea agreement supersedes any and all other agreements or negotiations between the parties, and that this agreement embodies each and every term of the agreement between the parties. The defendant acknowledges that he is entering into this agreement and is pleading guilty because he is guilty and is doing so freely and voluntarily.

7. The defendant acknowledges that he is entering into this Plea Agreement and is pleading guilty freely and voluntarily. The defendant further acknowledges his understanding of the nature of the offense to which he is pleading guilty and the elements of the offense, including the penalties provided by law, and his complete satisfaction with the representation and advice received from his undersigned counsel. The defendant understands that he has the right to plead not guilty or to persist in that plea if it has already been made, the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against it, and the right to compulsory process for the attendance of witnesses to testify in his defense. The


defendant understands that by pleading guilty, he waives or gives up those rights and that there will be no trial

8. It is contemplated as part of this Plea Agreement that the State of Nebraska has agreed not to bring any criminal action against the Defendant, or his employees or associates or his business entities, arising out of the facts forming the basis for the dismissed Indictment or the present Information..


9. If acceptable to the Court, the Defendant and the United States will waive the Presentence Investigation and Report, pursuant to Rule 32(c)(1)(ii) of the Federal Rules of Criminal Procedure, and ask that the Defendant be sentenced at the time the plea is entered.

10. If the Court rejects this Plea Agreement or any material provision of the Plea Agreement, the parties shall be released from their obligations under this Plea Agreement and it shall be null and void.

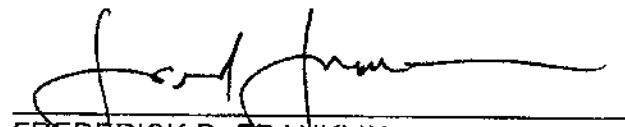
Date: 12/26/06

  
ALAN J. ERICKSON  
Defendant

Date: December 26, 2006

  
MATTHEW F. HEFFRON  
13220 California Street, #400  
Omaha, NE 68154-5228

Date: December 28, 2006

  
FREDERICK D. FRANKLIN  
Assistant U.S. Attorney  
1620 Dodge Street, Suite 1400  
Omaha, Nebraska 68102

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

FILED  
U.S. DISTRICT COURT  
DISTRICT OF NEBRASKA

07 JAN -4 PM 4: 25

UNITED STATES OF AMERICA )

Plaintiff )

v. )

ALAN J. ERICKSON, )

Defendant. )

8:05CR272

INFORMATION  
15 U.S.C. § 2615(b)

OFFICE OF THE CLERK

The United States Attorney charges::

The Toxic Substances Control Act

1. The Toxic Substances Control Act (TSCA), 15 U.S.C., Sections 2601-2692, governs the use of certain hazardous substances within the United States.

Subchapter II of TSCA, 15 U.S.C. Sections 2641-2656, regulates certain aspects of asbestos control and removal within the United States.

2. The term "asbestos-containing material" is defined at 15 U.S.C. Section 2642(4), and means "any material which contains more than 1 percent asbestos by weight."

3. The term "friable asbestos-containing material" is defined at 15 U.S.C. Section 2642(6), and means "any asbestos-containing material applied on ceilings, walls, structural members, piping, duct work, or any other part of a building which may be crumbled, pulverized, or reduced to powder by hand pressure."

4. The term "Public and commercial building" is defined at 15 U.S.C. Section 2642(10) as "any building which is not a school building, except that term does not include any residential apartment building of fewer than 10 units."

5. The term "Response Action" is defined at 15 U.S.C. Section 2642(11), and means "methods that protect human health and the environment from asbestos-containing material."

6. The term "Person" is defined at 40 C.F.R. Section 720.3(x), a federal regulation which was promulgated pursuant to TSCA, and the Defendant Alan Erickson meets the definition of "Person".

7. Pursuant to 15 U.S.C. Section 2646(a), a person may not conduct a "response action" with respect to friable asbestos-containing material in a "public or commercial building" unless such person has been accredited by a State under an approved TSCA asbestos accreditation program.

8. 15 U.S.C. Section 2614(1)(D), provides that is unlawful for any person to fail to comply with any requirement of Subchapter II of TSCA, and 15 U.S.C. Section 2615(b) provides for criminal penalties of not more than \$25,000 per day for each day of the violation or imprisonment for more than one year, or both, for any person who knowingly or willfully violates any provision of 15 U.S.C. Section 2614.

<sup>RAM</sup>  
<sup>MFK</sup>  
In early <sup>AD E</sup> COUNTY

9. On ~~or about~~ the <sup>2<sup>nd</sup></sup> day of July 2003, Defendant Alan Erickson knowingly and willfully conducted a "response action", as defined at 15 U.S.C. Section 2642(11), by removing "friable asbestos-containing materials", as defined at 15 U.S.C. Section 2642(6), from pipes, duct work and structural members from the building located at 705 North Jeffers, North Platte, Nebraska. This building is a "commercial building" under the definition set forth in 15 U.S.C. Section 2642(10).

10. Neither Defendant Alan Erickson, nor anyone else involved with the "response action" described above, was accredited to conduct an asbestos "response action" by any state under an approved TSCA asbestos accreditation program, all in violation of Title 15, United States Code, Section 2615(b).

*Revised*  
*7/14/03*  
COUNT II

11. ~~On or about the 14<sup>th</sup>~~ *In early July* day of July 2003, Defendant Alan Erickson knowingly and willfully conducted a "response action", as defined at 15 U.S.C. Section 2642(11), by removing "friable asbestos-containing materials", as defined at 15 U.S.C. Section 2642(6), from pipes, duct work and structural members from the building located at 705 North Jeffers, North Platte, Nebraska. This building is a "commercial building" under the definition set forth in 15 U.S.C. Section 2642(10).

12. Neither Defendant Alan Erickson, nor anyone else involved with the "response action" described above, was accredited to conduct an asbestos "response action" by any state under an approved TSCA asbestos accreditation program, all in violation of Title 15, United States Code, Section 2615(b).

UNITED STATES OF AMERICA,

JOE W. STECHER  
United States Attorney  
District of Nebraska

*Frederick D. Franklin*

By: FREDERICK D. FRANKLIN  
Assistant U.S. Attorney

The United States of America requests that trial of this case be held in Omaha, Nebraska, pursuant to the rules of this Court.

*Frederick D. Franklin*  
FREDERICK D. FRANKLIN  
Assistant U.S. Attorney