

IN THE DISTRICT COURT OF MADISON COUNTY, NEBRASKA		
STATE OF NEBRASKA, ex rel.,)	Case No. _____
MICHAEL J. LINDER, Director)	
DEPARTMENT OF ENVIRONMENTAL)	
QUALITY,)	
)	COMPLAINT
Plaintiff,)	
v.)	
)	
SINCA INDUSTRIES, INC.)	
d/b/a/ APACHE MANUFACTURING CO.,)	
)	
Defendant.)	

COMES NOW the Nebraska Department of Environmental Quality (hereinafter the "NDEQ" or "Plaintiff"), who institutes this action through Jon C. Bruning, Attorney General, and alleges and states as follows:

I. FIRST CLAIM

1. The Plaintiff is, at all times material herein, the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504 (Reissue 1999, Cum. Supp. 2004), to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004, Supp. 2005) and all rules, regulations, permits, and orders promulgated thereunder.

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

3. The Defendant, Sinca Industries, Inc. d/b/a Apache Manufacturing Co. (hereinafter "Defendant" or "Apache") is incorporated in the State of Nebraska.

4. The Defendant owns and operates a metal products manufacturing facility in Madison County, Nebraska.

5. As part of its day-to-day operations, the Defendant engages in painting.

6. As a result of the painting operations, the Defendant emits xylene into the air.

7. Xylene is defined by Title 129, Chapter 1, Section 050 and Appendix II, as a hazardous air pollutant.

8. Title 129, Chapter 5, Section 001 provides that any major source, as defined in Title 129, Chapter 2, is required to obtain a Class I (major source) air operating permit from the NDEQ.

9. Title 129, Chapter 2, Section 001 defines a "major source" of air pollutants as "any stationary source . . .that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant listed in Appendix II [to Title 129], 25 tpy or more of any combination of such hazardous air pollutants. . . . All fugitive emissions must be considered in determining whether a stationary source is a major source.

10. Title 129, Chapter 5 Section 001.02 provides that, if a Class I permit is not required, that a Class II (minor source) permit is required when actual emissions from any source exceed "five (5) tons per year or more of any hazardous air pollutant or an aggregate of twelve and one-half (12.5) tons/year or more of any hazardous air pollutants."

11. At no time material herein did the Defendant possess an air Operating Permit of Class I.

12. At no time material herein did the Defendant possess an air Operating Permit of Class II.

13. During the calendar year 2003 the Defendant emitted 15.70 tons of the hazardous air pollutant xylene.

14. This emission level of xylene placed Defendant in the category of sources that is required to obtain a Class I Permit.

15. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person "to violate . . . any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements 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."

16. 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.

17. Defendant has failed, to date, to obtain an operating permit, in violation of Neb. Rev. Stat. §81-1508.02(1)(b) and Title 129, Chapter 5.

18. Plaintiff's allegations in paragraphs 1 through 17 of the Complaint constitute one thousand two hundred sixteen (1,216) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

II. SECOND CLAIM

19. The plaintiff hereby incorporates by reference each and every allegation contained paragraphs 1 through 18, as if fully set forth herein.

20. During the calendar year 2004 the Defendant emitted 9.15 tons of xylene.

21. This emission level of xylene placed Defendant in the category of sources that is required to obtain at a minimum, a Class II Permit.

22. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person "to violate . . . any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements 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."

23. 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.

24. Defendant has failed to obtain an operating permit, in violation of Neb. Rev. Stat. §81-1508.02(1)(b) and Title 129, Chapter 5.

25. Plaintiff's allegations in paragraphs 19 through 24 of the Complaint constitute eight hundred fifty-one (851) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

III. THIRD CLAIM

26. The plaintiff hereby incorporates by reference each and every allegation contained paragraphs 1 through 25, as if fully set forth herein.

27. On or about May 29, 2002, the NDEQ issued a construction permit to the Defendant, attached hereto and incorporated herein by reference as "Attachment A."

28. The construction permit was in effect at all times material herein.

29. The construction permit places limitations on the Defendant as to acceptable limits for emissions of hazardous air pollutants.

30. The Defendant's construction permit provides in condition XIII(A) that "Process related emissions from this source shall be limited to less than: 0.25 tons per

calendar month and 2.5 tons per any period of 12 consecutive calendar months for any individual Hazardous Air Pollutant (HAP), and 1.0 tons per calendar month and 10 tons per any period of 12 consecutive calendar months for all regulated HAPs combined.”

31. During the 12 months from January 1, 2003 through December 31, 2003, the Defendant emitted 15.70 tons of the hazardous air pollutant xylene in violation of its construction permit.

32. Neb. Rev. Stat. §81-1506(4)(b) provides that it is unlawful to “violate any term or condition or an air pollution permit or any emission limit set in the permit.”

33. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person “to violate . . . any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements 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.”

34. 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.

35. Plaintiff’s allegations in paragraphs 26 through 34 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

IV. FOURTH CLAIM

36. The plaintiff hereby incorporates by reference each and every allegation contained paragraphs 1 through 35, as if fully set forth herein.

37. During the 12 months from January 1, 2004 through December 31, 2004, the Defendant emitted 9.15 tons of the hazardous air pollutant xylene in violation of its construction permit.

38. Neb. Rev. Stat. §81-1506(4)(b) provides that it is unlawful to “violate any term or condition or an air pollution permit or any emission limit set in the permit.”

39. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person “to violate . . . any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements 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.”

40. 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.

41. Plaintiff’s allegations in paragraphs 36 through 40 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

V. FIFTH CLAIM

42. The plaintiff hereby incorporates by reference each and every allegation contained paragraphs 1 through 41, as if fully set forth herein.

43. The Defendant’s construction permit provides in permit condition XIII(D) that “Records shall be maintained on-site for a minimum period of five (5) years. These records shall be updated to be current through the end of the previous month but no later than the 15th day of each calendar month. These records shall be clear and readily accessible to the Department representatives and shall include the following . . .(2)

Calculated VOC and HAP emissions for each calendar month and for the preceding period of 12 consecutive calendar months to show compliance with Condition XIII(A)”

44. The Defendant failed to calculate and record monthly emission of both VOC (volatile organic compounds) and hazardous air pollutants for each of the twelve calendar months in 2003, as required by its construction permit.

45. The Defendant failed to calculate and record monthly emission of both VOC (volatile organic compounds) and hazardous air pollutants for each of the twelve calendar months in 2004, as required by its construction permit.

46. The Defendant failed to calculate and record monthly emission of both VOC (volatile organic compounds) and hazardous air pollutants for each of the first three calendar months, January through March, in 2005, as required by its construction permit.

47. Neb. Rev. Stat. §81-1506(4)(b) provides that it is unlawful to “violate any term or condition or an air pollution permit or any emission limit set in the permit.”

48. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person “to violate . . . any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements 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.”

49. 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.

50. Plaintiff's allegations in paragraphs 42 through 49 of the Complaint constitute twenty-seven (27) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

VI. SIXTH CLAIM

51. The plaintiff hereby incorporates by reference each and every allegation contained paragraphs 1 through 50, as if fully set forth herein.

52. The Defendant failed to calculate and record monthly emission of both VOC (volatile organic compounds) and hazardous air pollutants for the total of the twelve consecutive months for each month in 2003, as required by its construction permit.

53. The Defendant failed to calculate and record monthly emission of both VOC (volatile organic compounds) and hazardous air pollutants for the total of the twelve consecutive months for each month in 2004, as required by its construction permit. The Defendant failed to calculate and record monthly emission of both VOC (volatile organic compounds) and hazardous air pollutants for the total of the twelve consecutive months for each of the first three months, January through March, in 2005, as required by its construction permit.

54. Neb. Rev. Stat. §81-1506(4)(b) provides that it is unlawful to "violate any term or condition or an air pollution permit or any emission limit set in the permit."

55. Neb. Rev. Stat. §81-1508.02(1)(b) provides that it is unlawful for any person "to violate . . . any permit or license condition or limitation, any order of the director, or any monitoring, reporting, or record-keeping requirements 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."

56. 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.

57. Plaintiff's allegations in paragraphs 51 through 56 of the Complaint constitute twenty-seven (27) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

VII. SEVENTH CLAIM

58. The plaintiff hereby incorporates by reference each and every allegation contained paragraphs 1 through 57, as if fully set forth herein.

59. Neb. Rev. Stat. §81-1508 provides that the Director of the Department of Environmental Quality may seek an injunction directed towards any person who is violating or threatens to violate any provision of the Environmental Protection Act.

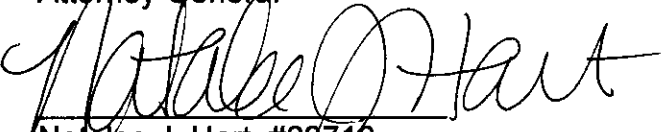
60. The Defendant threatens to continue operation with emissions in excess of the level requiring an operating permit without having obtained such permit, to continue to operate with emissions in excess of those contained in its construction permit, and to continue to operate without calculating monthly emissions and 12 month total emissions, as alleged above.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of an Injunction to prevent the Defendant from further violating the Nebraska Environmental Protection Act and Title 129 and requiring immediate compliance therewith; a civil penalty pursuant to §81-1508.02(2), 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 the court deems just and proper.

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

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