

4. At all times relevant herein, Defendant owned and operated a facility, used to treat, store, or dispose of hazardous waste, located at 2247 South Highway 71 (hereinafter the "Facility") in Kimball, Kimball County, Nebraska.

5. Pursuant to Title 128, the Defendant had been reissued a "Hazardous Waste Treatment and Storage Permit" (hereinafter the "RCRA Permit") on or about July 30, 1999 by the NDEQ.

6. Title 128, Chapter 12, 002.01, requires compliance with the RCRA Permit that has been issued to the facility.

7. Section III.B.2 of the RCRA Permit provides, in pertinent part, "[h]azardous waste listed as F020, F021, F022, F023, F026, F027, and F028 shall not be accepted for storage or incinerated at the facility."

8. On or about November 5, 2003 through February 18, 2004, Defendant accepted for storage F027 hazardous waste at the facility in violation of Part III.B.2 of the RCRA Permit.

9. 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.

10. 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.

11. Neb. Rev. Stat. §81-1508.02(2) provides that each violation of Neb. Rev. Stat. §81-1508.02 shall subject a person to a civil penalty of no more than ten thousand dollars (\$10,000) per day, and in case of a continuing violation, each day shall constitute a separate offense.

12. Plaintiff's allegations in paragraphs 1 through 11 of the Complaint constitute one hundred five (105) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

SECOND CLAIM

13. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 12 of this Complaint as if fully set forth herein.

14. On or about December 22, 2003 and continuing to March 31, 2004, Defendant accepted for storage F027 hazardous waste at the facility in violation of Part III.B.2 of the RCRA Permit.

15. 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.

16. 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.

17. Neb. Rev. Stat. §81-1508.02(2) provides that each violation of Neb. Rev. Stat. §81-1508.02 shall subject a person to a civil penalty of no more than ten thousand dollars (\$10,000) per day, and in case of a continuing violation, each day shall constitute a separate offense.

18. Plaintiff's allegations in paragraphs 13 through 17 of the Complaint constitute one hundred (100) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

THIRD CLAIM

19. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 18 of this Complaint as if fully set forth herein.

20. On or about January 19, 2004 and continuing to March 31, 2004, Defendant accepted for storage F027 hazardous waste at the facility in violation of Part III.B.2 of the RCRA Permit.

21. 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.

22. 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.

23. Neb. Rev. Stat. §81-1508.02(2) provides that each violation of Neb. Rev. Stat. §81-1508.02 shall subject a person to a civil penalty of no more than ten thousand dollars (\$10,000) per day, and in case of a continuing violation, each day shall constitute a separate offense.

24. Plaintiff's allegations in paragraphs 19 through 23 of the Complaint constitute seventy-two (72) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

FOURTH CLAIM

25. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 24 of this Complaint as if fully set forth herein.

26. The Defendant is a generator of a solid waste, under Title 128, Chapter 1, 053.

27. The Defendant generated solid waste, as defined by Title 128, Chapter 2, 003, in the form of wash water contaminated with incinerator ash.

28. Title 128, Chapter 4, 002, requires the generator of a solid waste, to determine if that waste is hazardous.

29. On or about September 21, 2004, the NDEQ discovered that Defendant generated solid waste without making a determination as to whether that waste was hazardous.

30. 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.

31. Neb. Rev. Stat. §81-1508.02(2) provides that each violation of Neb. Rev. Stat. §81-1508.02 shall subject a person to a civil penalty of no more than ten thousand dollars (\$10,000) per day, and in case of a continuing violation, each day shall constitute a separate offense.

31. Plaintiff's allegations in paragraphs 25 through 31 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

FIFTH 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 III.A.1 of the RCRA Permit provides, in pertinent part, "[t]he Permittee may store in containers at the facility wastes and only those hazardous wastes identified in Appendix I on this permit, subject to the terms of this permit."

34. Appendix I of the RCRA Permit does not list waste identified by the waste code "U205"

35. On or about June 29, 2005 Defendant accepted for storage U205 hazardous waste at the facility in violation of Part III.A.1 of the RCRA Permit.

36. On or about July 1, 2005 and continuing to July 4, 2005, Defendant incinerated the U205 waste at its facility, in violation of Part III.A.1 of the RCRA Permit.

37. 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.

38. 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.

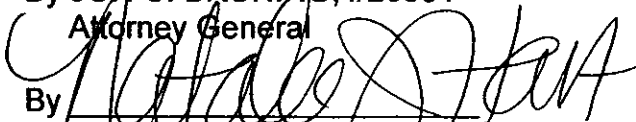
39. Neb. Rev. Stat. §81-1508.02(2) provides that each violation of Neb. Rev. Stat. §81-1508.02 shall subject a person to a civil penalty of no more than ten thousand dollars (\$10,000) per day, and in case of a continuing violation, each day shall constitute a separate offense.

40. Plaintiff's allegations in paragraphs 32 through 39 of the Complaint constitute four (4) violations 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 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.

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

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