

4. At all times relevant herein, Defendant owned and operated a dry cleaning facility located at 802 West 25th Street, Kearney, Buffalo County, Nebraska (hereinafter the "Facility").

5. Liberty Cleaners is, and was at all times material herein, a "person" for purposes of the Environmental Protection Act and Title 128.

6. Liberty Cleaners is a generator of hazardous waste, as that term is defined in Title 128, Chapter 1.

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

8. As a result of its dry cleaning operations, Liberty Cleaners generated trichloroethylene waste, also known as perchloroethylene, and also known as perc, or PCE, waste.

9. PCE waste is hazardous waste.

10. The PCE waste from Liberty Cleaners contained the hazardous constituents chromium, lead, and selenium.

11. At all times material herein, Liberty Cleaners was required to determine if its waste was hazardous.

12. On or about November 6, 2002, the NDEQ discovered that Liberty Cleaners generated hazardous PCE waste without making a hazardous waste determination in violation of Title 128, Chapter 4, Section 002.

13. Compliance with Title 128, Chapter 4, Section 002 was met when Liberty Cleaners tested its waste on or about February 10, 2003.

14. 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.

15. 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.

16. 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.

17. Plaintiff's allegations in paragraphs 1 through 16 of the Complaint constitute ninety-six (96) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

SECOND CLAIM

18. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 17 of this Complaint as if fully set forth herein.

19. Title 128, Chapter 20, Section 006 requires the initial generator of a solid waste to determine each EPA Hazardous Waste Number (also called a

waste code) applicable to the waste in order to determine the applicable treatment standard.

20. For purposes of Title 128, Chapter 20, the waste will carry the waste code for any applicable listed waste, characteristic waste, and underlying hazardous constituent contained in the characteristic waste.

21. On or about February 10, 2003 Liberty Cleaners conducted an analysis of its waste.

22. The February 10, 2003 test results showed that Liberty Cleaner's waste contained listed trichloroethylene or PCE waste, characteristic chromium, lead, and selenium and/or underlying lead and selenium hazardous constituents.

23. On or about June 4, 2003, Liberty Cleaners conducted a second analysis of its waste.

24. The June 4, 2003 test results showed that Liberty Cleaner's waste contained listed trichloroethylene or PCE waste, characteristic chromium, lead, and selenium and/or underlying lead and selenium hazardous constituents.

25. On or about March 18, 2003, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

26. On or about April 16, 2003, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

27. On or about May 13, 2003, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

28. On or about June 10, 2003, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

29. On or about July 10, 2003, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

30. On or about August 29, 2003, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

31. On or about October 3, 2003, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

32. On or about October 30, 2003, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but

failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

33. On or about November 21, 2003, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

34. On or about December 18, 2003, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

35. On or about January 23, 2004, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

36. On or about February 18, 2004, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

37. On or about April 21, 2004, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

38. On or about May 14, 2004, Liberty Cleaners only identified the waste codes for the listed PCE waste and characteristic chromium waste, but failed to include codes for lead and selenium on its land disposal restriction notification forms, in violation of Title 128, Chapter 20, Section 006.

39. 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.

40. 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.

41. 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.

42. Plaintiff's allegations in paragraphs 18 through 43 of the Complaint constitute fourteen (14) 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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