

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA  
STATE OF NEBRASKA, ex rel.,  
MICHAEL J. LINDER, Director  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY,

Plaintiff,

v.

RADIO ENGINEERING INDUSTRIES,  
INC.,

Defendant.

Case No. \_\_\_\_\_

1062 341

**COMPLAINT**

Assigned to Judge *Seu*

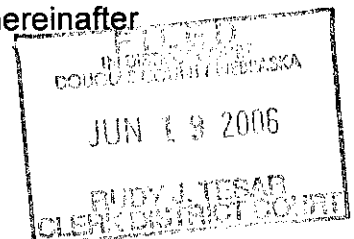
COMES NOW Michael J. Linder, Director of the Nebraska Department of Environmental Quality, who institutes this action through Jon C. Bruning, Attorney General, on behalf of the State of Nebraska, and alleges as follows:

**FIRST CLAIM**

1. The Plaintiff, the Nebraska Department of Environmental Quality, 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) to administer and enforce the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004, Supp. 2005) and all rules, regulations, and permits created thereunder.

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

3. The Defendant, Radio Engineering Industries, Inc. (hereinafter "Defendant" or "REI") is a Nebraska Corporation.



4. At all times relevant herein, Defendant owned and operated a facility located at 6534 L Street, Omaha, Douglas County, Nebraska (hereinafter "the Facility").

5. At the Facility, REI manufactured circuit boards.

6. The manufacture of the circuit boards ceased on or about September 11, 2003.

7. Title 128, Chapter 2, Section 010.01 exempts hazardous waste that is generated "in a manufacturing process unit or an associated non-waste-treatment manufacturing unit" from the requirements of Title 128, "unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing."

8. The hazardous waste generated by REI in its manufacture of circuit boards was no longer exempt under Title 128, Chapter 2, Section 010.01 ninety days after the manufacture of circuit boards ended.

9. Ninety days after September 11, 2003 was December 10, 2003.

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

11. REI is a generator of hazardous waste, as that term is defined in Title 128, Chapter 1.

12. Beginning on or about December 10, 2003, REI accumulated and stored hazardous waste in tanks, associated piping, and containers at the facility.

13. On or about December 10, 2003, REI became a large quantity generator of hazardous waste at the Facility, as defined by Title 128, Chapter 1,

Section 074, due to the accumulation and storage of hazardous waste at the Facility.

14. Beginning on or about December 10, 2003, REI maintained hazardous waste in tanks and associated piping, and a container storage area.

15. On or about December 10, 2003, REI owned a hazardous waste management unit as defined by Title 128, Chapter 1, Section 058 due to the maintenance of hazardous waste at the Facility.

16. Pursuant to Title 128, Chapter 12, Section 001, REI was required to obtain a permit for the treatment, storage, or disposal of any hazardous waste.

17. At all times material herein, REI did not obtain a permit for the treatment, storage, or disposal of hazardous waste.

18. On or about December 10, 2003 and continuing every day until September 29, 2004, REI stored hazardous waste at the Facility without a permit, in violation of Title 128, Chapter 12, Section 001.

19. 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.

20. 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.

21. 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.

22. Plaintiff's allegations in paragraphs 1 through 15 of the Complaint constitute two hundred ninety-three (293) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

### **SECOND CLAIM**

23. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 22 of this Complaint as if fully set forth herein.

24. Title 128, Chapter 10, Section 004.01 allows a generator of hazardous waste to accumulate hazardous waste on site for a maximum of ninety days without a permit, provided certain conditions are met.

25. The accumulation of hazardous waste by REI at the facility began on or about December 10, 2003.

26. Ninety days after December 10, 2003 is March 9, 2004.

27. Title 128, Chapter 10, Section 004.01 allowed REI to accumulate hazardous waste on-site only until March 9, 2004.

28. Beginning March 9, 2004, and continuing every day until September 29, 2004, REI accumulated hazardous waste at the Facility, in violation of Title 128, Chapter 10, Section 004.01.

29. 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.

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.

32. Plaintiff's allegations in paragraphs 23 through 31 of the Complaint constitute two hundred four (204) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

### **THIRD CLAIM**

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

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

35. Pursuant to Title 128, Chapter 4, Section 002, REI was required to determine whether its waste was hazardous waste.

36. Beginning on or about December 10, 2003 and continuing every day until September 29, 2004, REI generated hazardous waste without conducting a hazardous waste determination, in violation of Title 128, Chapter 4, Section 002.

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 33 through 39 of the Complaint constitute two hundred ninety-four (294) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

#### **FOURTH CLAIM**

41. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 40 of this Complaint as if fully set forth herein.

42. Title 128, Chapter 10, Section 004.01F requires a generator of hazardous waste to label or mark the tanks in which it accumulates hazardous waste with the date upon which accumulation of the hazardous waste began.

43. Beginning on or about December 10, 2003 and continuing every day until September 15, 2004, REI failed to label or mark the tanks in which it was accumulating hazardous waste with the date on which accumulation began.

44. 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.

45. 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.

46. 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.

47. Plaintiff's allegations in paragraphs 41 through 46 of the Complaint constitute two hundred eighty-one (281) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

#### **FIFTH CLAIM**

48. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. Title 128, Chapter 10, Section 004.01G requires a generator of hazardous waste to label or mark the tanks in which it accumulates hazardous waste with the words "Hazardous Waste."

50. Beginning on or about December 10, 2003 and continuing every day until September 15, 2004, REI failed to label or mark the tanks in which it was accumulating hazardous waste with the words "Hazardous Waste."

51. 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.

52. 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.



53. 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.

54. Plaintiff's allegations in paragraphs 48 through 53 of the Complaint constitute two hundred eighty-one (281) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

#### **SIXTH CLAIM**

55. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 54 of this Complaint as if fully set forth herein.

56. Title 128, Chapter 4, Section 005.01A requires a generator of hazardous waste "who ships any hazardous waste off-site to a treatment, storage, or disposal facility within the United States and is subject to the requirements of Chapter 10 at any time during a calendar year must prepare and submit a Biennial Report for that Biennial reporting cycle, using forms furnished by DEQ, to the Director no later than March 1 of each even numbered year. . ."

57. During the 2003 calendar year, REI was subject to the requirements of Title 128, Chapter 10.

58. On or about February 10, 2003, REI shipped hazardous waste off the Facility to a treatment, storage, or disposal facility within the United States.

59. REI failed to submit a Biennial Report to the NDEQ by March 1, 2003, in violation of Title 128, Chapter 4, Section 005.01A.

60. REI submitted its required Biennial Report to the NDEQ on or about February 7, 2005.

61. 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.

62. 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.

63. 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.

64. Plaintiff's allegations in paragraphs 55 through 63 of the Complaint constitute three hundred forth-three (343) 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

By JON C. BRUNING, #20351  
Attorney General

By   
Natalee J. Hart, #22716  
Assistant Attorney General  
2115 State Capitol  
Lincoln, NE 68509-8920  
(402) 471-2682  
Attorney for Plaintiff