

IN THE DISTRICT COURT OF RED WILLOW COUNTY, NEBRASKA

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

Case No. _____

Plaintiff,)

COMPLAINT

v.)

VALMONT INDUSTRIES, INC.,)

Defendant.)

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. The Defendant, Valmont Industries, Inc., is a corporation authorized to do business in the State of Nebraska, which owns and operates a facility located in McCook, Nebraska (the "facility"). The Defendant's principal business at the facility is construction of irrigation equipment. In the course of normal operations the Defendant generates a variety of hazardous wastes so as to be a large quantity generator of hazardous wastes.

3. At all times material herein the Defendant's operations at the Facility were subject to a rule adopted by the Nebraska Environmental Quality Council pursuant to Neb. Rev. Stat. §§81-1505(13) (Reissue 1999, Cum Supp. 2004), that being Title 128, Nebraska Hazardous Waste Regulations, Chapter 12, which provides in pertinent part as follows: "001.01 A permit is required for the treatment, storage, or disposal of any hazardous waste identified or listed in Chapters 2 and 3", except where excluded under 001.03 of this rule.

4. On April 18, 2005, and intermittently for at least the last 2 previous years, the Defendant allegedly treated or "managed" hazardous waste in Red Willow County, Nebraska, by placing canister filters that had been used to clean liquid galvanizing solutions on a grate and allowed the liquid contents retained in the filter to drain into a sump beneath the grate where the liquids were then piped and returned to a galvanizing process tank. The filters are hazardous wastes when discarded.

5. Neb. Rev. Stat. §81-1508.02(2)(Reissue 1999) provides that any person who violates any provision of the Nebraska Environmental Protection Act shall be subject to a civil penalty of no more than ten thousand dollars (\$10,000) per violation, with each day a violation continues constituting a separate offense.

SECOND CLAIM

6. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 5 of the First Claim.

7. There is applicable to the Defendant as a large quantity generator the following requirement from Title 128: "002.01 Each generator must have a contingency plan for the site

designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil or surface water.”

8. In relation to such plan Title 128, Chapter 18,003.04 provides: “The plan must list names, addresses and phone numbers (office and home) of all persons qualified to act as emergency coordinator which must be kept up to date.”

9. In relation to such plan Title 128, Chapter 18,003.03 provides: “The plan must describe arrangements agreed to by local police and/or fire department, hospitals, contractors and state and local emergency response teams to coordinate emergency services, pursuant to Chapter 17, 007.”

10. In relation to such plan Title 128, Chapter 18, 003.06 provides: “The plan must include an evacuation plan for personnel where there is a possibility that evacuation could be necessary. This plan must describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes (in cases where primary routes could be blocked by releases of hazardous waste or fires).”

11. At all times material herein there was applicable to the Defendant a regulation adopted by the Environmental Quality Council that being Title 128, Chapter 4, 003, which provides in pertinent part as follows: “Notification of hazardous waste activity. Not later than ninety days after the effective date of regulations promulgated under the State Act identifying by its characteristics or listing any substance as hazardous waste subject to these regulations, any person generating or transporting such hazardous waste, as defined in Chapter 2 and Chapter 3,

or the owner or operator of a facility for treatment, storage or disposal of such hazardous waste shall file with the Department, on forms furnished by the Department, a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person, unless such person has already filed such notification with the U.S. Environmental Protection Agency not later than thirty days after any change in the information or status of any such person as described to the Department or EPA in Section 003 of this Chapter, such person shall file an amended notification with the Department.”

12. On April 18, 2005, and July 4, 2005, the Defendant’s contingency plan did not contain an up to date list of all current emergency coordinators, did not fully describe arrangements agreed to by local emergency response teams, and did not adequately describe any signal to be used to begin evacuation.

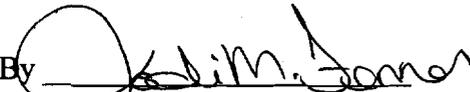
13. On October 21, 1999, the Defendant provided notification to the Department of its hazardous waste generating activity on a form furnished by the Department. One of the items of information on the form requested by the Department and supplied by the Defendant was the name of an individual as the installation contact or person to be contacted regarding hazardous waste activity at the site. On April 18, 2005, although the named individual had not been the installation contact for more than 30 days, the Defendant had failed to file an amended notification of such change with the Department.

WHEREFORE the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of civil penalties as provided in Neb. Rev. Stat. §81-1508.02(2) and further that all costs of this action be taxed to the Defendant.

STATE OF NEBRASKA, ex rel.,

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

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