

IN THE DISTRICT COURT OF WAYNE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	
JIM MACY, Director,)	Case No. _____
NEBRASKA DEPARTMENT OF)	
ENVIRONMENT AND ENERGY,)	
)	
Plaintiff,)	COMPLAINT
)	
v.)	
)	
GREAT DANE, LLC d/b/a GREAT)	
DANE TRAILERS,)	
)	
Defendant.)	

COMES NOW Jim Macy, Director of the Nebraska Department of Environment and Energy, who initiates this action through Douglas J. Peterson, Nebraska Attorney General, on behalf of the State of Nebraska, as Plaintiff, and alleges as follows:

PARTIES AND INTERESTS

1. Plaintiff Nebraska Department of Environment and Energy (“Department”) is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504, to administer and enforce the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.*, and all rules, regulations, orders, and permits issued pursuant to NEPA.

2. Under NEPA, the Department is further charged with the duty to act as the state solid and hazardous waste pollution control agency for all purposes of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6901 *et seq.* Neb. Rev. Stat. § 81-1504(4).

3. Defendant Great Dane, LLC d/b/a Great Dane Trailers (“Great Dane”) is a limited liability company organized in Delaware and registered as a foreign limited liability company in Nebraska. Great Dane’s principal office is in Chicago, Illinois but owns and operates a manufacturing facility or plant in Wayne, Nebraska (“Wayne Facility”).



4. Great Dane's Wayne Facility manufactures semi-tractor trailers. In its manufacturing process, Great Dane generates both solid and hazardous wastes.

5. Great Dane is considered a "person" for purposes of NEPA. Neb. Rev. Stat. § 81-1502(10).

JURISDICTION AND VENUE

6. The District Court has jurisdiction over the subject matter of this action, pursuant to Neb. Rev. Stat. § 24-302, and over the parties to this action.

7. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as Great Dane's Facility is located in Wayne County and the events at issue took place in Wayne County.

LEGAL BACKGROUND

8. NEPA was enacted in 1971 to protect the water, land, and air of this State by, *inter alia*, making it unlawful "[t]o cause pollution of any air, waters, or land of the state or to place any wastes in a location where they are likely to cause pollution of the air, waters, or land of the state" *Id.* §§ 81-1501, 1506(1).

9. NEPA provides the Department with the power to act as the state solid waste pollution control agency for all purposes of RCRA. Neb. Rev. Stat. § 81-1504(4). The main purpose of RCRA is to ensure proper management of hazardous wastes from the point of generation until final disposal. *See* 42 U.S.C. § 6902.

10. Pursuant to its authority under Neb. Rev. Stat. § 81-1505, the Nebraska Environmental Quality Council ("council") promulgated Title 128—*Nebraska Hazardous Waste Regulations*, to regulate hazardous waste management, storage, transport, and disposal for purposes of RCRA.

11. Hazardous waste means "a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or (b) pose a substantial present or potential hazard to human or animal

health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.” Neb. Rev. Stat. § 81-1502(25). Chapters 2 and 3 of Title 128—*Nebraska Hazardous Waste Regulations* further identify or list solid wastes that are hazardous wastes, including those solid wastes that have characteristics of ignitability, corrosivity, reactivity, and toxicity.

12. Under Title 128, generators of solid waste are required to make hazardous waste determinations. 128 Neb. Rev. Stat. § 4-002. These hazardous waste determinations allow the Department to regulate the generation and disposal of hazardous waste, as well as help generators maintain compliance with Title 128 and RCRA.

13. A generator is “any person, by site, whose act or process produces hazardous waste identified or listed in Chapter 3 [of Title 128] or whose act first causes a hazardous waste to become subject to regulation.” 128 Neb. Admin. Code § 1-060. A generator may be considered a small quantity generator or large quantity generator, depending on the quantity of hazardous waste generated in a calendar month. *See* Neb. Admin. Code §§ 1-085 & 1-120. A small quantity generator generates more than 100 kilograms and less than 1,000 kilograms of hazardous waste in a calendar month and a large quantity generator generates more than or equal to 1,000 kilograms of hazardous waste in a calendar month. *Id.* Anytime the status of a generator or other information changes, the generator must submit an amended notification to the Department no later than thirty days after the change. 128 Neb. Admin. Code § 4-003.02.

14. It is unlawful for a generator to offer hazardous waste for transport or disposal if the transporters or disposal facilities are not authorized for such hazardous waste activities. 128 Neb. Admin. Code §§ 1-035, 1-043, 1-136, & 4-004. Manifests must be prepared by generators to identify the “quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.” Neb. Rev. Stat. § 81-1506(28) & 128 Neb. Admin. Code §§ 1-089, 10-001, & 10-002.

15. Generators of hazardous waste also must properly manage those wastes by, *inter alia*, only accumulating hazardous waste onsite for 90 days or less, keeping containers holding hazardous waste in good condition and closed

during storage, conducting weekly inspections of storage areas, and labeling or marking containers with proper wording, such as "Hazardous Waste." 128 Neb. Admin. Code § 10-004. Generators of used oil also must properly manage those wastes by keeping containers in good condition and labeling or marking containers with the phrase "Used Oil." *Id.* § 7-009.04.

16. Generators must have contingency plans to minimize hazards should there be a release of hazardous waste and these plans must be maintained onsite. 128 Neb. Admin. Code §§ 18-001, 18-002, 18-004, & 1-026. Generators must also document and describe training provided for its employees in positions related to hazardous waste management. 128 Neb. Admin. Code §§ 1-104, 19-001, and 19-004.

17. Title 128 also covers management of universal waste. Universal wastes are "certain hazardous wastes that are defined and managed under the universal waste requirements of Title 128, Chapter 25." 128 Neb. Admin. Code § 1-144. Universal wastes include waste batteries and waste lamps. 128 Neb. Admin. Code §§ 25-001, 25-002, 25-005, & 25-008. The universal waste requirements apply to universal waste handlers who are generators of universal waste or owners or operators of facilities that receive, accumulate, or send universal waste. 128 Neb. Admin. Code §§ 25-001 & 25-008. These requirements include proper containment, cleanup, and labeling of universal wastes. 128 Neb. Admin. Code §§ 25-012, 25-013, & 25-014.

18. Under NEPA, the Department, through the Attorney General's Office, is empowered to file an enforcement action seeking civil penalties and/or injunctive relief. *See* Neb. Rev. Stat. §§ 81-1508 & 81-1508.02.

19. Each violation of NEPA subjects "a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance." Neb. Rev. Stat. § 81-1508.02(2).

FACTUAL BACKGROUND

20. At all times relevant to this Complaint, Great Dane owned and operated a manufacturing facility in Wayne County, Nebraska for the production of semi-tractor trailers.

21. As part of its manufacturing operations at the Wayne Facility, Great Dane generates both solid wastes and hazardous wastes that are subject to regulation by the Department. These wastes include used oil, universal wastes like lamps and batteries, spent solvent, distillation bottoms, paint booth filters, empty aerosol cans, rags, and other materials.

22. In March 2015, the Department inspected the Wayne Facility and confirmed that Great Dane was a small quantity generator of hazardous waste.

23. In February 2019, Great Dane submitted its 2018 Annual Hazardous Waste Report with a RCRA Subtitle C Site Identification Form for its Wayne Facility. This information created uncertainty about Great Dane's generator status and resulted in the Department conducting an inspection to confirm Great Dane's generator status.

24. Between February 2019 and September 2019, the Department reviewed hazardous waste manifests prepared by Great Dane. These manifests showed Great Dane was generating more than 1,000 kilograms of hazardous waste each month.

25. Between September 18 and 20, 2019, the Department conducted a routine compliance evaluation inspection of the Wayne Facility ("September 2019 inspection").

26. The Department inspector toured the Wayne Facility to make observations and, also, examined Great Dane's records associated with management of hazardous waste, including used oil and universal waste.

27. During the inspection, the Department inspector learned that Great Dane's distillation unit broke on or about September 2018 or October 2018, which resulted in Great Dane shipping its paint solvent waste off-site instead of distilling it onsite. The shipment of the paint solvent waste off-site added to the quantity of hazardous waste generated by Great Dane. Based on this information,

the Department inspector confirmed that Great Dane was generating more than 1,000 kilograms of hazardous waste each month.

28. The Department did not receive an amended notification of change in status from Great Dane within thirty days of Great Dane becoming an LQG, which occurred as early as September or October 2018.

29. During the inspection, the Department inspector observed that Great Dane had not made hazardous waste determinations for three solid waste streams: (a) boxes labeled "Robovent Filter;" (b) a black garbage bag with a tag marked "Filter from Hings and Keeper;" and (c) an open, unlabeled, and leaking container holding material.

30. The Department inspector discovered the wastes from the Whitney #2 3400 Plasma Cutter (dust) and Robovent Stainless Steel Vent system (stainless steel dust) had hazardous waste determinations conducted in February 2018. The February 2018 lab results for the wastes from the Whitney #2 3400 Plasma Cutter and Robovent Stainless Steel Vent system showed the wastes exceeded the regulatory limit for chromium, which is 5.0 mg/L. Lab results for the same wastes were also done on or about April 2019 and similarly showed the wastes exceeded the regulatory limit for chromium.

31. The wastes from the Whitney #2 3400 Plasma Cutter (dust) and Robovent Stainless Steel Vent system (stainless steel dust) were hazardous wastes because the wastes contained chromium in amounts higher than the regulatory limit, meaning the wastes met the characteristics for toxicity.

32. Although the wastes from the Whitney #2 3400 Plasma Cutter and Robovent Stainless Steel Vent system were hazardous wastes, Great Dane had been combining these hazardous wastes with non-hazardous wastes for transport and disposal at a facility that was not permitted to accept or dispose of hazardous waste.

33. Great Dane also did not prepare hazardous waste manifests for the transportation and disposal of the Whitney #2 3400 Plasma Cutter and Robovent Stainless Steel Vent system hazardous wastes that were mixed with non-hazardous wastes.

34. During the inspection, the Department inspector observed a container with used oil had an oil emblem but was not labeled with the words "Used Oil."

35. In the south paint kitchen of the Wayne Facility, the Department inspector observed the aerosol can puncturing device. On top of the puncturing device was a drum that had a small bung hole open instead of closed. In the paint booth area, the Department inspector observed a one-gallon metal can with solvent and paint waste was open instead of closed and was not labeled with the words "Hazardous Waste." A satellite accumulation container was leaking, open instead of closed, and was not labeled with the words "Hazardous Waste."

36. The Department inspector observed one of the six 55-gallon drums did not contain a date showing when the drum entered 90-day storage.

37. In the stainless steel welding area, the Department inspector observed a Hex Vac, a collection point bucket, and a 55-gallon metal drum were not labeled with the words "Hazardous Waste."

38. The Department inspector also made observations related to universal waste. In the universal waste storage area, the Department inspector observed one of the boxes containing universal waste lamps was open and the lamps inside were not marked with the words "Universal Waste—Lamps," "Waste Lamps," or "Used Lamps." The Department inspector also noted that neither the box nor the individual waste lamps were marked with the date the first waste lamp was put into the box. The Department inspector was not aware of Great Dane using any other methods to demonstrate the date the universal wastes began to be accumulated and Great Dane did not present any other methods.

39. Similarly, the Department inspector observed an orange container with used batteries that was not marked with the date the first waste battery was put into the container. Without dates, the Department inspector could not determine how long the waste lamps and waste batteries had been accumulated.

40. The Department inspector asked to review records during the inspection. The Department inspector did not find a contingency plan for a LQG onsite at the Wayne Facility. The Department inspector asked to review the personnel files for three Great Dane employees involved with management of

hazardous waste. Only one of the three employees had some training in the personnel file, but none had a written description of the training required for the position.

41. On January 8, 2020, the Department issued a Notice of Violation (“NOV”) outlining thirteen violations and corrective actions for Great Dane to perform.

42. Since the September 2019 inspection, Great Dane filed an amended notification that its generator status changed from SQG to LQG. Great Dane also addressed and corrected the violations outlined in the January 8, 2020 NOV.

FIRST CAUSE OF ACTION

FAILURE TO FILE AN AMENDED NOTIFICATION OF ITS CHANGE IN GENERATOR STATUS IN VIOLATION OF NEB. REV. STAT. §§ 81-1506(3)(c) & 81-1508.02(1)(e) AND 128 NEB. ADMIN. CODE § 4-002.

43. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–42 as though fully set forth herein.

44. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c).

45. 128 Neb. Admin. Code § 4-003.02 provides:

Not later than thirty days after any change in the information or status of any person as described to the Department or EPA in Section 003 of this Chapter, such person shall file an amended notification with the Department, except that generators voluntarily complying with all hazardous waste management requirements of a higher generator status are not required to renotify when their status drops to a lower level.

46. Great Dane is a “generator” as defined in 128 Neb. Admin. Code § 1-060 because its manufacturing process at the Wayne Facility produces hazardous wastes subject to regulation by the Department.

47. Great Dane was an SQG, as defined in 128 Neb. Admin. Code § 1-120, when the Department previously inspected the Wayne Facility in March 2015.

48. In September or October 2018, Great Dane's distillation unit broke and it began shipping its paint solvent waste off-site, which added to the quantity of hazardous waste generated by Great Dane.

49. Because of the off-site shipment of its hazardous waste or other generation of hazardous waste, Great Dane began generating greater than or equal to 1,000 kilograms of hazardous waste in a calendar month thereby changing its status from an SQG to an LQG, as defined in 128 Neb. Admin. Code § 1-085.

50. The Department inspector confirmed Great Dane changed from an SQG to an LQG during the inspection conducted in September 2019.

51. This change in status required Great Dane to file an amended notification of its change in status with the Department within thirty days of the change.

52. Great Dane did not file an amended notification of its change to an LQG until October 15, 2019, more than thirty days after its change in status.

53. Great Dane violated 128 Neb. Admin. Code § 4-003.02 by failing to file an amended notification of its change in generator status no later than thirty days after becoming an LQG.

54. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Great Dane is subject to a civil penalty of not more than \$10,000 per day for each violation.

SECOND CAUSE OF ACTION

FAILURE TO MAKE HAZARDOUS WASTE DETERMINATIONS IN VIOLATION OF NEB. REV. STAT. §§ 81-1506(3)(c) & 81-1508.02(1)(e) AND 128 NEB. ADMIN. CODE § 4-002.

55. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–42 as though fully set forth herein.

56. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA] ...” Neb. Rev. Stat. § 81-1506(3)(c).

57. 128 Neb. Admin. Code § 4-002 requires generators of solid waste to make hazardous waste determinations.

58. 128 Neb. Admin. Code § 2-003.01 defines “solid waste” as “discarded material that is not excluded by Section 008 of this Chapter or that is not excluded by variance ...” “Discarded material” means “any material which is ... [a]bandoned, by being ... [d]isposed of; or ... [b]urned or incinerated; or ... [a]ccumulated, stored, or treated (but not recycled) before or in lieu of being abandoned by being disposed of, burned, or incinerated ...” 128 Neb. Admin. Code § 2-003.02.

59. Great Dane was generating solid waste at the time of the September 2019 inspection.

60. During the September 2019 inspection, the Department inspector observed three solid waste streams that did not have recent hazardous waste determinations. These three solid waste streams were the filter for the Robovent Stainless Steel Vent system, the filter for the Hings and Keeper, and an open, unlabeled and leaking container holding waste.

61. Great Dane was required to make hazardous determinations for these three solid waste streams.

62. Great Dane, however, had not made hazardous waste determinations for these three solid waste streams at the time of the September 2019 inspection.

63. Great Dane violated 128 Neb. Admin. Code §4-002 by failing to make hazardous waste determinations for the three solid waste streams generated by Great Dane at the Wayne Facility.

64. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Great Dane is subject to a civil penalty of not more than \$10,000 per day for each violation.

THIRD CAUSE OF ACTION
OFFERING HAZARDOUS WASTE TO A TRANSPORTER AND
DISPOSAL FACILITY WITHOUT HAZARDOUS WASTE
IDENTIFICATION NUMBERS IN VIOLATION OF
NEB. REV. STAT. §§ 81-1506(3)(c) & 81-1508.02(1)(e)
AND 128 NEB. ADMIN. CODE § 4-004.02.

65. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–42 as though fully set forth herein.

66. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c).

67. 128 Neb. Admin. Code § 4-004 provides “A generator must not offer hazardous waste to transporters or to treatment, storage, or disposal facilities that have not notified in accordance with Section 003 of this Chapter and received a [Department]/EPA identification number, or fulfilled an equivalent requirement of the EPA or an authorized state.”

68. Great Dane is a “generator” as defined in 128 Neb. Admin. Code § 1-060 because its manufacturing process at the Wayne Facility produces hazardous wastes subject to regulation by the Department.

69. In February 2018, Great Dane made hazardous waste determinations for two waste streams: dust from the Whitney #2 3400 Plasma Cutter and stainless steel dust from Robovent Stainless Steel Vent system. These hazardous waste determinations included sending samples of the wastes to a lab to test for toxicity, including chromium. The February 2018 lab results showed the two waste streams exceeded the regulatory limit for chromium, which is 5.0 mg/L as set forth in 128 Neb. Admin. Code § 3-010.02 Table 3. April 2019 lab results for these two waste streams also showed the waste streams exceeded the regulatory limit for chromium.

70. The two waste streams were hazardous wastes because the waste streams exceeded the 5.0 mg/L regulatory limit for chromium and, thus, exhibited characteristics of toxicity.

71. Great Dane, however, had been combining these hazardous wastes with non-hazardous wastes for transport and disposal at a facility that did not have a Department/EPA identification number.

72. On at least two occasions, Great Dane offered these hazardous wastes mixed with non-hazardous wastes to transporters and/or disposal facility that was not authorized to transport or dispose of hazardous waste.

73. Great Dane violated 128 Neb. Admin. Code § 4-004.02 by offering hazardous waste to transporters and/or disposal facilities not authorized to transport or dispose of hazardous wastes.

74. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Great Dane is subject to a civil penalty of not more than \$10,000 per day for each violation.

FOURTH CAUSE OF ACTION

FAILURE TO MANIFEST HAZARDOUS WASTE WHEN OFFERED FOR TRANSPORT IN VIOLATION OF NEB. REV. STAT. §§ 81-1506(3)(c) & 81-1508.02(1)(e) AND 128 NEB. ADMIN. CODE § 10-002.01A.

75. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1-42 as though fully set forth herein.

76. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c).

77. 128 Neb. Admin. Code § 10-002.01A provides: “A generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest on EPA Form 8700-22..., and if necessary, EPA Form 8700-22A” A “manifest” is “the form used for identifying the quantity, composition, origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.” 128 Neb. Admin. Code § 1-089; *see* Neb. Rev. Stat. § 81-1502(28).

78. Great Dane is a “generator” as defined in 128 Neb. Admin. Code § 1-060 because its manufacturing process at the Wayne Facility produces hazardous wastes subject to regulation by the Department.

79. The wastes generated by Great Dane from Whitney #2 3400 Plasma Cutter and Robovent Stainless Steel Vent system are hazardous wastes.

80. On at least two occasions, Great Dane offered these hazardous wastes mixed with non-hazardous wastes to transporters and/or disposal facility for transportation or disposal.

81. Great Dane did not prepared manifests for these hazardous wastes when offered for transport and/or disposal.

82. Great Dane violated 128 Neb. Admin. Code § 10-002.01A by failing to prepare manifests for the hazardous wastes from the Whitney #2 3400 Plasma Cutter and Robovent Stainless Steel Vent system that were offered for transport and/or disposal.

83. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Great Dane is subject to a civil penalty of not more than \$10,000 per day for each violation.

FIFTH CAUSE OF ACTION

FAILURE TO PROPERLY MANAGE HAZARDOUS WASTE IN VIOLATION OF NEB. REV. STAT. §§ 81-1506(3)(c) & 81-1508.02(1)(e) AND 128 NEB. ADMIN. CODE § 10-004.01.

84. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–42 as though fully set forth herein.

85. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c).

86. 128 Neb. Admin. Code § 10-004.01 provides a “generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status” if the generator complies with enumerated conditions, such as keeping containers holding hazardous waste closed, conducting weekly inspections of areas where containers are stored, marking the

date accumulation began on the containers, and marking the containers with the words “hazardous waste.”

87. Great Dane is a “generator,” as defined in 128 Neb. Admin. Code § 1-060, and is subject to the hazardous waste management requirements in Chapter 10 of the Title 128 of the Nebraska Administrative Code.

A. Failure to Keep a Container Holding Hazardous Waste Closed During Storage.

88. 128 Neb. Admin. Code § 10-004.01A2 provides “A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste[.]”

89. During the September 2019 inspection, the Department inspector observed three containers used to accumulate hazardous wastes were open. A container on top of the aerosol can puncturing device had a small bung hole open. A one-gallon metal can holding solvent and paint waste was open. Another container holding waste was both open and leaking.

90. None of the three containers were open to add or remove the waste at the time of the Department inspector’s observations.

91. Great Dane violated 128 Neb. Admin. Code § 10-004.01A2 because three containers used to accumulate hazardous waste were open and not closed when not in use.

B. Failure to Perform Weekly Inspections of Areas Where Containers are Stored.

92. 128 Neb. Admin. Code § 10-004.01A4 provides “The generator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion and other factors[.]”

93. During the September 2019 inspection, the Department inspector observed a container that was both open and leaking.

94. Upon information and belief, Great Dane had not completed a weekly inspection of the area where this container was stored.

95. Great Dane violated 128 Neb. Admin. Code § 10-004.01A4 because no weekly inspection had occurred as evidenced by the leaking container.

C. Failure to Mark the Date When Each Accumulation Period Began on Each Container of Hazardous Waste.

96. 128 Neb. Admin. Code § 10-004.01F provides “The date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container[.]”

97. During the September 2019 inspection, the Department inspector observed a 55-gallon drum in the 90-day storage area that did not have a date showing when the container entered 90-day storage.

98. Great Dane violated 128 Neb. Admin. Code § 10-004.01F because the container was not marked with the date that accumulation began.

D. Failure to Mark Each Container in Accumulation with the Words “Hazardous Waste.”

99. 128 Neb. Admin. Code § 10-004-01G provides “While being accumulated on-site, each container and tank must be labeled or marked clearly with words ‘Hazardous Waste.’”

100. During the September 2019 inspection, the Department inspector observed five containers were not labeled or marked with the words “Hazardous Waste.”

101. Great Dane violated 128 Neb. Admin. Code § 10-004.01G because five containers were not labeled or marked with the words “Hazardous Waste.”

102. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Great Dane is subject to a civil penalty of not more than \$10,000 per day for each violation.

SIXTH CAUSE OF ACTION

FAILURE TO ENSURE CONTAINERS WITH A VOLUME OF 25 GALLONS OR GREATER FOR ACCUMULATING USED OIL ARE MARKED WITH THE WORDS “USED OIL” IN VIOLATION OF NEB. REV. STAT. §§ 81-1506(3)(c) & 81-1508.02(1)(e) AND 128 NEB. ADMIN. CODE § 7-009.04A.

103. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–42 as though fully set forth herein.

104. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c).

105. Used oil generators are subject to used oil requirements. 128 Neb. Admin. Code § 7-009.04A3 provides “For containers and aboveground tanks with a volume of 25 gallons or greater, they must be labeled or marked clearly with the words ‘Used Oil.’”

106. Great Dane is a generator of used oil and stores used oil in containers with a volume of 25 gallons or greater.

107. During the September 2019 inspection, the Department inspector observed one used oil container with a volume of 25 gallons or greater was not labeled or marked with the words “Used Oil.”

108. Great Dane violated 128 Neb. Admin. Code § 7-009.04A3 because one used oil container was not labeled or marked with the words “Used Oil.”

109. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Great Dane is subject to a civil penalty of not more than \$10,000 per day for each violation.

SEVENTH CAUSE OF ACTION

FAILURE TO HAVE A CONTINGENCY PLAN IN VIOLATION OF NEB. REV. STAT. §§ 81-1506(3)(c) & 81-1508.02(1)(e) AND 128 NEB. ADMIN. CODE § 18-002.01.

110. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–42 as though fully set forth herein.

111. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA] ...” Neb. Rev. Stat. § 81-1506(3)(c).

112. 128 Neb. Admin. Code § 18-002.01 provides: “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.” The contingency plan and all revisions must be maintained at the site and be submitted to the Department. *Id.* § 18-004.

113. As an LQG, Great Dane was required to have a contingency plan and to maintain it onsite.

114. During the September 2019 inspection, the Department inspector learned Great Dane did not have a contingency plan as an LQG.

115. Great Dane violated 128 Neb. Admin. Code § 18-002.01 because it was required to have a contingency plan as an LQG and it did not.

116. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Great Dane is subject to a civil penalty of not more than \$10,000 per day for each violation.

EIGHTH CAUSE OF ACTION

FAILURE TO MAINTAIN DOCUMENTS FOR EMPLOYEES IN POSITIONS RELATED TO HAZARDOUS WASTE MANAGEMENT IN VIOLATION OF NEB. REV. STAT. §§ 81-1506(3)(c) & 81-1508.02(1)(e) AND 128 NEB. ADMIN. CODE § 19-004.

117. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–42 as though fully set forth herein.

118. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA] ...” Neb. Rev. Stat. § 81-1506(3)(c).

119. A LQG is subject to personnel training and documentation requirements. 128 Neb. Admin. Code § 19-004 provides what documents and records a generator must maintain at the site, *inter alia*, “[a] written description of the type and amount of both introductory and continuing training that will be

given to each person filling a position [related to hazardous waste management]” and “[r]ecords that document that the training or job experience required ... of this Chapter have been given to, and have been completed by, facility personnel.” *Id.* §§ 19-004.03 & 19-004.04.

120. Great Dane is a “generator,” as defined in 128 Neb. Admin. Code § 1-060, and is subject to the document and record requirements for job positions related to hazardous waste management in Chapter 19 of the Title 128 of the Nebraska Administrative Code.

121. During the September 2019 inspection, the Department inspector reviewed three Great Dane employees for job titles, employees filing those positions, and records of training. During the review, the Department inspector observed only one employee had evidence of some training in the records, but the other two employees did not. None of the three employees had written descriptions of the type and amount of training that is given to each person filling a position related to hazardous waste management.

122. Great Dane violated 128 Neb. Admin. Code § 19-004 because it was required to maintain a written description of the type and amount of training and records of training completed for employees in positions related to hazardous waste management and it did not.

123. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Great Dane is subject to a civil penalty of not more than \$10,000 per day for each violation.

NINTH CAUSE OF ACTION

FAILURE TO COMPLY WITH UNIVERSAL WASTE REQUIREMENTS IN VIOLATION OF NEB. REV. STAT. §§ 81-1506(3)(c) & 81-1508.02(1)(e) AND 128 NEB. ADMIN. CODE §§ 25-012, 25-013, & 25-014.

124. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–42 as though fully set forth herein.

125. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c).

126. Persons handling universal waste are subject to universal waste management requirements. 128 Neb. Admin. Code § 25-001 provides generally that waste batteries and waste lamps are universal wastes.

127. Great Dane generates and accumulates universal waste and, thus, is a universal waste handler, as defined in 128 Neb. Admin. Code § 25-008.14.

128. Great Dane accumulates less than 5,000 kilograms of universal waste like waste batteries and waste lamps at any time and, thus, is a small quantity handler of universal waste, as defined in *id.* § 25-008.11.

A. Failure to Maintain Universal Waste Lamps in a Closed Container.

129. 128 Neb. Admin. Code § 25-012.04A provides:

A small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage or damage that could cause leakage under reasonably foreseeable conditions.

130. During the September 2019 inspection, the Department inspector observed a container holding waste lamps was left open.

131. Great Dane violated 128 Neb. Admin. Code § 25-012.04A because it failed to keep the container holding waste lamps closed.

B. Failure to Mark Each Container Holding Universal Waste Lamps with Proper Words.

132. 128 Neb. Admin. Code § 25-013.05 provides “A small quantity handler of universal waste must label or mark the universal waste to identify the type of universal waste” such as “Universal Waste lamps, i.e., each lamp, or a container in which the lamps are contained, must be labeled or marked clearly with any one of the following phrases: ‘Universal Waste—Lamps’ or ‘Waste Lamps’ or ‘Used Lamps.’”

133. During the September 2019 inspection, the Department inspector observed the container holding waste lamps that was left open also was not

labeled or marked with “Universal Waste—Lamps,” “Waste Lamps,” or “Used Lamps.”

134. Great Dane violated 128 Neb. Admin. Code § 25-013.05 because it failed to label or mark the container holding waste lamps with any of the required phrases.

C. Failure to Demonstrate the Length of Time the Universal Waste Has Been Accumulated Once It Became a Waste.

135. 128 Neb. Admin. Code § 25-014.03 provides “A small quantity handler of universal waste who accumulates universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received.” The handler may demonstrate by marking or labeling the container holding the universal waste with the earliest date any of the universal waste became a waste; marking or labeling the individual items with the date each universal waste became a waste; maintaining an inventory system; placing the universal waste in a specific accumulation area and identifying the earliest date any of the universal waste became a waste; or any other method clearly demonstrating the length of time the universal waste has been accumulated on site.

136. During the September 2019 inspection, the Department inspector observed the open, unlabeled container holding waste lamps was not marked with the earliest date any of the lamps became a waste and neither were the individual waste lamps marked. The Department inspector also observed an orange container holding waste batteries was not marked with the earliest date any of the batteries became a waste and neither were the individual waste batteries marked.

137. Great Dane violated 128 Neb. Admin. Code § 25-014.03 because it failed to label or mark the containers holding universal waste or the universal wastes individually with the dates the universal wastes became wastes and it also could not demonstrate the date the universal wastes became wastes with any other method.

138. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Great Dane is subject to a civil penalty of not more than \$10,000 per day for each violation.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests this Court to enter judgment on this Complaint in its favor and grant the following relief:

- A. Declare Great Dane violated the Nebraska Environmental Protection Act and/or Title 128 of the Nebraska Administrative Code;
- B. Enter the statutory maximum civil penalty against Great Dane, as provided under Neb. Rev. Stat. § 81-1508.02(2), for each day of each violation;
- C. Tax all court costs herein to Great Dane; and
- D. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 26th day of January 2022.

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director of the NEBRASKA
DEPARTMENT OF ENVIRONMENT
AND ENERGY, Plaintiff

By: Douglas J. Peterson, #18146
Attorney General

By: /s/ Maegan L. Woita
Maegan L. Woita, #26287
Assistant Attorney General
2115 State Capitol
P.O. Box 98920
Lincoln, Nebraska 68509-8920
Tel. (402) 471-1912
maegan.woita@nebraska.gov
Attorneys for Plaintiff