

IN THE DISTRICT COURT OF BUFFALO COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.) Case No. _____
MICHAEL J. LINDER, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,) **COMPLAINT**
)
v.)
)
SAHLING KENWORTH, 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 (hereinafter "NDEQ"), 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. 2006) and all rules, regulations, orders, and permits created or promulgated 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, Sahling Kenworth, Inc., is a corporation authorized to do business in the State of Nebraska.

4. The principal place of business of Sahling Kenworth, Inc. is located in Kearney, Buffalo County, Nebraska.

5. Sahling Kenworth is a generator of hazardous waste, as defined by Title 128, Chapter 1, Section 053, and Title 128, Chapter 2, Section 003.

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

7. Between approximately June 1, 2005 and January 26, 2006, Defendant generated solid paint waste without conducting a hazardous waste determination in violation of Title 128, Chapter 4, Section 002.

8. 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.

9. 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.

10. 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.

11. Plaintiff's allegations in paragraphs 1 through 10 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

SECOND CLAIM

12. The NDEQ hereby incorporates by reference each and every allegation contained paragraphs 1 through 11, as if fully set forth herein.

13. Prior to approximately January 26, 2006, the Defendant generated spent washer fluid, mixed it with used oil, and burned it in a heater, without conducting a hazardous waste determination in violation of Title 128, Chapter 4, Section 002.

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 12 through 16 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

THIRD CLAIM

18. The NDEQ hereby incorporates by reference each and every allegation contained paragraphs 1 through 17, as if fully set forth herein.

19. Pursuant to Title 128, Chapter 20, 005.01B, a generator must identify the correct hazardous waste number(s) on a one-time notice that is sent to each treatment or storage facility receiving the hazardous waste.

20. On or about May 13, 2004 and on or about August 11, 2005, Defendant failed to include all applicable hazardous waste numbers on the one-time notice that is sent to each treatment or storage facility receiving hazardous waste.

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.

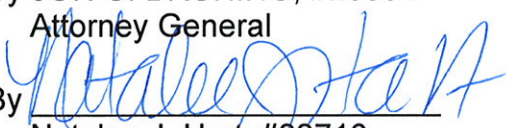
23. Neb. Rev. Stat. §81-1508.02(2) provides that each violation of Neb. Rev. Stat. §81-1508.02 shall subject a person to a civil penalty of no more than ten thousand dollars (\$10,000) per day, and in case of a continuing violation, each day shall constitute a separate offense.

24. Plaintiff's allegations in paragraphs 18 through 23 of the Complaint constitute two (2) 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 civil penalties as provided in Neb. Rev. Stat. § 81-1508.02(2), 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 the court deems just and equitable.

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

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