

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

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

Plaintiff,

v.

DUNCAN AVIATION, INC.
A Nebraska Corporation

Defendant.

Case Number _____

COMPLAINT

COMES NOW Michael J. Linder, Director of the Nebraska Department of Environmental Quality, who institutes the 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, Cum. Supp. 2006) to administer and enforce the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2006) all rules, regulations, and permits created thereunder.

2. The Defendant, Duncan Aviation, Inc., is a corporation authorized to do business in the State of Nebraska.

3. Pursuant to Neb. Rev. Stat. §81-1508.02(1)(e), it is 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. Any person who violates §81-1508.02(1)(e) shall be subject to a civil penalty of no more than ten thousand dollars (\$10,000) per day. In the case of a continuing violation, each day shall constitute a separate offense. Neb. Rev. Stat. §81-1508.02(2).

4. Pursuant to Neb. Rev. Stat. §81-1505(13), the Nebraska Environmental Quality Council adopted Nebraska Administrative Code, Title 128 – Nebraska Hazardous Waste Regulations.

5. Defendant is a “generator” of hazardous waste, as defined by Title 128, Chapter 1, 053.

6. According to Title 128, Chapter 12, Section 001.01, a permit is required for the treatment, storage, or disposal of any hazardous waste, as defined in Title 128, Chapter 2, 004. According to Title 128, Chapter 10, 002.01, as referenced by Chapter 9, 007.06, any generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage or disposal must prepare a hazardous waste manifest.

7. On or about March 25, 2004, Plaintiff discovered that Defendant was transporting hazardous waste in the form of used disposable rags and empty aerosol cans from Defendant’s off-site facility (Duncan West) to Defendant’s east facility (Duncan East) for storage and/or treatment prior to disposal without obtaining a permit for the treatment, storage, or disposal of hazardous waste at

Duncan East in violation of Title 128, Chapter 12, Section 001.01 and without preparing a hazardous waste manifest in violation of Title 128, Chapter 10, 002.01, as referenced by Chapter 9, 007.06.

SECOND CLAIM

8. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 7 of the First Claim.

9. According to Title 128, Chapter 4, 002, a person who generates a solid waste must determine if that waste is a hazardous waste.

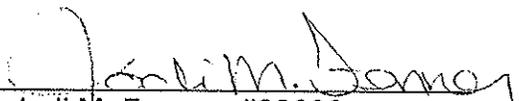
10. According to Title 128, Chapter 4, 004.02, as referenced by Chapter 10, 001.05, generator must not offer hazardous waste to transporters or to treatment, storage, or disposal facilities that have not notified in accordance with Chapter 4, 003 and received DEQ/EPA identification number.

11. On or about March 25, 2004, Plaintiff discovered Defendant failed to make a hazardous waste determination of solid waste in the form of spent masking materials contaminated with primer paint and bead blasting media wastes in violation of Title 128, Chapter 4, Section 002, and had sent said wastes with the general trash to Lancaster County Municipal Landfill, a facility that had not notified in accordance with Chapter 4, 003 nor received a DEQ/EPA identification number, in violation of Title 128, Chapter 4, 004.02.

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 (Reissue 1999, Cum. Supp. 2006) 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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