

IN THE DISTRICT COURT OF CHERRY COUNTY, NEBRASKA

STATE OF NEBRASKA,

Case No. 04-100

Plaintiff,

v.

**FIRST AMENDED COMPLAINT**

WILLIAM WARD,

Defendant.

COMES NOW the Plaintiff, the State of Nebraska, and amends its Complaint in this matter. Pursuant to Nebraska Supreme Court Rules of Pleading in Civil Cases, Rule 15(a), as no responsive pleading has yet been served to Plaintiff's original Complaint, Plaintiff may submit this First Amended Complaint without leave of the Court. For its First Amended Complaint, Plaintiff alleges and states as follows:

**FIRST CAUSE OF ACTION**

1. At all times material herein the Defendant, William Ward, was a resident of Cherry County, Nebraska.
2. Commencing on or about August 18, 2004, and continuing daily thereafter, Defendant handled and/or removed construction and demolition building debris (hereinafter "debris") from 424 E. Highway 20, Valentine, Cherry County, Nebraska (also known as Evergreen subdivision, lot 31, Valentine, Nebraska) (hereinafter "the Property").
3. A portion of the debris removed to date has been removed and disposed of unlawfully by Defendant in Cherry County, Nebraska.



4. On or about August 30, 2004, the State confirmed that the debris contained asbestos exceeding lawful limits, subjecting the handling and removal thereof to State and federal regulations.

5. In particular, the debris contained pulverized asbestos exceeding 160 lineal feet.

6. Removal of said asbestos-containing construction debris must be performed by a licensed entity pursuant to the Asbestos Control Act, Neb. Rev. Stat. § 71-6302.

7. Defendant William Ward is not a licensed entity under the Asbestos Control Act.

8. Pursuant to Neb. Rev. Stat. § 71-6312, such violations of the Asbestos Control Act are subject to civil penalties of not less than five thousand dollars nor more than twenty-five thousand dollars for a first offense, with each day a violation continues constituting a separate offense. Second or subsequent offenses are subject to civil penalties of not less than twenty-five thousand dollars nor more than one hundred thousand dollars.

9. Pursuant to Neb. Rev. Stat. § 71-6312, the State may seek an injunction for violations of the Asbestos Control Act.

### **SECOND CAUSE OF ACTION**

10. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 9 herein.

11. Commencing on or about August 18, 2004, and continuing daily thereafter, at the Property, Defendant was the owner or operator of a demolition

activity containing regulated asbestos-containing material ("RACM") as defined by Nebraska Administrative Code Title 129, Chapter 23 §001.08 and 40 C.F.R. Part 61.141 (July 1, 2001).

12. Defendant unlawfully failed to provide written notice at least ten working days before any asbestos demolition operation occurred, as required by Neb. Admin. Code Title 129, Chapter 23 §001.08 and 40 C.F.R. Part 61.145(b).

13. Nebraska Administrative Code Title 129 and 40 C.F.R. Part 61, Subpart M (effective July 1, 2001) are air quality standards established by the Environmental Quality Council ("Council") pursuant to Neb. Rev. Stat. §81-1505(1) and (12)(g).

14. Neb. Rev. Stat. §81-1506(4)(c) makes it unlawful for any person to violate any emission limit or air quality standard established by the Council. Commencing on or about August 18, 2004, and continuing daily thereafter, Defendant has unlawfully violated an air quality standard established by the Council.

15. Pursuant to Neb. Rev. Stat. § 81-1508.02(1) and (2), Defendant is subject to a civil penalty of no more than ten thousand dollars per day, and in case of a continuing violation, each day shall constitute a separate offense.

### **THIRD CAUSE OF ACTION**

16. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 15 herein.

17. Defendant, as the owner or operator of a demolition activity containing RACM, unlawfully failed to remove all RACM from the Property being

demolished before beginning any activity that would break up, dislodge or disturb such material, as required by Neb. Admin. Code Title 129, Chapter 23 §001.08 and 40 C.F.R. Part 61.145(c)(1).

18. Commencing on or about August 18, 2004, and continuing daily thereafter, Defendant has unlawfully violated an air quality standard established by the Council.

19. Pursuant to Neb. Rev. Stat. § 81-1508.02(1) and (2), Defendant is subject to a civil penalty of no more than ten thousand dollars per day, and in case of a continuing violation, each day shall constitute a separate offense.

#### **FOURTH CAUSE OF ACTION**

20. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 19 herein.

21. Defendant generated asbestos-containing waste materials as defined by Neb. Admin. Code Title 129, Chapter 23 §001.08 and 40 C.F.R. Part 61.141 at the Property.

22. Commencing on or about August 18, 2004, and continuing daily thereafter, Defendant has unlawfully violated an air quality standard established by the Council by unlawfully failing to maintain all asbestos-containing waste materials in an adequate wetted state as required by Neb. Admin. Code Title 129, Chapter 23 §001.08A.

23. Pursuant to Neb. Rev. Stat. § 81-1508.02(1) and (2), Defendant is subject to a civil penalty of no more than ten thousand dollars per day, and in case of a continuing violation, each day shall constitute a separate offense.

### **FIFTH CAUSE OF ACTION**

24. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 23 herein.

25. Defendant has transported asbestos-containing waste material in vehicles without required marking from the Property to at least two unpermitted and unlicensed dump sites located on his property in part of the East ½ of Section 20, Township 34 North, Range 27 West of the 6<sup>th</sup> P.M.; the West ½ of Section 21, Township 34 North, Range 27 West of the 6<sup>th</sup> P.M.; and the West ½ of Section 28, Township 34 North, Range 27 West of the 6<sup>th</sup> P.M., all located in Cherry County, Nebraska (the "Dump Sites").

26. Commencing on or about August 18, 2004, and continuing daily thereafter, Defendant has unlawfully violated an air quality standard established by the Council by unlawfully transporting asbestos-containing waste material in unmarked vehicles in violation of Neb. Admin. Code Title 129, Chapter 23 §001.08 and 40 C.F.R. Part 61.150(c).

27. Pursuant to Neb. Rev. Stat. § 81-1508.02(1) and (2), Defendant is subject to a civil penalty of no more than ten thousand dollars per day, and in case of a continuing violation, each day shall constitute a separate offense.

### **SIXTH CAUSE OF ACTION**

28. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 27 herein.

29. None of Defendant's Dump Sites are acceptable for waste disposal in accordance with law or regulation.

30. Commencing on or about August 18, 2004, and continuing daily thereafter, Defendant has unlawfully violated an air quality standard established by the Council by failing to properly dispose of asbestos-containing waste material as required by Neb. Admin. Code Title 129, Chapter 23 §001.08 and 40 C.F.R. Part 61.150(b).

31. Pursuant to Neb. Rev. Stat. § 81-1508.02(1) and (2), Defendant is subject to a civil penalty of no more than ten thousand dollars per day, and in case of a continuing violation, each day shall constitute a separate offense.

#### **SEVENTH CAUSE OF ACTION**

32. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 31 herein.

33. Defendant's demolition activities at the Property generated solid waste, specifically construction and demolition waste, as defined by Neb. Admin. Code Title 132, Chapter 1.

34. Defendant dumped and disposed of such solid wastes at the Dump Sites located in Cherry County, Nebraska.

35. Defendant's Dump Sites are not a solid waste management facility holding a current permit issued by the Nebraska Department of Environmental Quality pursuant to the Integrated Solid Waste Management Act.

36. Commencing on or about August 18, 2004, and continuing daily thereafter, Defendant has unlawfully violated Neb. Rev. Stat. §81-1506(3)(d) by disposing of solid waste at a location other than a solid waste management facility holding a current permit, and Defendant has additionally constructed or

operated a solid waste management facility on his property in part of the East ½ of Section 20, Township 34 North, Range 27 West of the 6<sup>th</sup> P.M.; the West ½ of Section 21, Township 34 North, Range 27 West of the 6<sup>th</sup> P.M.; and the West ½ of Section 28, Township 34 North, Range 27 West of the 6<sup>th</sup> P.M., all located in Cherry County, Nebraska without first obtaining a required permit in violation of Neb. Rev. Stat. §81-1506(3)(a).

37. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Defendant is subject to a civil penalty of no more than ten thousand dollars per day, and in case of a continuing violation, each day shall constitute a separate offense.

**BASIS FOR INJUNCTIVE RELIEF**

38. Pursuant to Neb. Rev. Stat. §81-1508, violations of the Environmental Protection Act subject the Defendant to an injunction to cease improper and illegal disposal of solid waste and asbestos-containing waste materials and to remove and properly dispose of solid waste and asbestos-containing waste materials previously disposed of in violation of state law.

**PRAYER FOR RELIEF**

WHEREFORE, the State respectfully requests the Court enter judgment in favor of the Plaintiff and against the Defendant for:

- A. Civil penalties as provided for in Neb. Rev. Stat. §§ 81-1508.02 and 71-6312, and
- B. An injunction prohibiting Defendant from further improper handling and disposal of all asbestos-containing waste materials, and

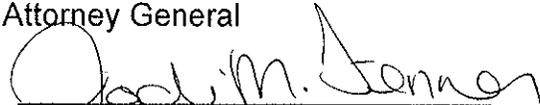
- C. An order requiring Defendant to maintain all asbestos-containing waste materials in a wetted state until it is disposed of by a properly licensed entity, and equiring Defendant to hire a licensed person to remove all asbestos-containing waste materials from the Property and the Dump Sites in compliance with Title 129 and 40 C.F.R. Part 61 (including 40 C.F.R. Part 61.151(d)), and dispose of it at a properly permitted and licensed facility, and
- D. An Order requiring Defendant to remove all solid waste from the Property and Dump Sites dispose of it at a properly permitted and licensed facility, and
- E. An injunction prohibiting Defendant from unlawfully handling, burning, or disposing of solid waste at unlicensed and unpermitted locations, and
- F. For all costs of this action, and
- G. For such other and further relief as the court deems just and equitable.

DATED THIS 27<sup>th</sup> day of September, 2004

STATE OF NEBRASKA,  
Defendant.

By JON C. BRUNING, #20351  
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By



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