

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	Case No. _____
MICHAEL J. LINDER, Director)	
DEPARTMENT OF ENVIRONMENTAL)	
QUALITY,)	
)	
Plaintiff,)	COMPLAINT
v.)	
)	
KAWASAKI MOTORS)	
MANUFACTURING CORP., U.S.A.)	
)	
Defendant.)	
)	

COMES NOW Michael J. Linder, Director of the State of Nebraska Department of Environmental Quality, who institutes this action through Jon C. Bruning, Attorney General, and alleges and states as follows:

FIRST CLAIM

1. At all times alleged herein, the Nebraska Department of Environmental Quality, (hereinafter "NDEQ") is and was the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. §81-1504 (1) (Reissue 1999) of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §81-1501 et seq. (Reissue 1999 and Cum. Supp. 2006, Supp. 2007), and all rules and regulations and orders promulgated under such Act.

2. Nebraska Administrative Code Title 128, "Nebraska Hazardous Waste Regulations" (hereinafter "Title 128") was promulgated pursuant to such act, and at all times material herein, such regulations were in full force and effect.

3. Defendant, Kawasaki Motors Manufacturing Corp., U.S.A. (hereinafter "Kawasaki"), is a Nebraska Corporation whose principal office is located at 6600 NW

27th Street, Lincoln, Lancaster County, Nebraska 68524 and is a large quantity generator of hazardous waste, as defined by Title 128 Chapter 1, Section 079.

4. Neb. Rev. Stat. § 81-1508.02 (1)(e) (Reissue 1999) makes it unlawful for any person to violate any provisions of or fail to perform any duties imposed by the Nebraska Environmental Protection Act or any rules or regulations.

5. Pursuant to Title 128, Chapter 4, Section 002, Kawasaki is required to determine whether the waste it generates is a hazardous waste.

6. On December 20, 2007, Kawasaki failed to determine that spent aerosol spray cans containing waste product were a D003 hazardous waste, in violation of the duty imposed by Title 128, Chapter 4, Section 002.

7. 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 per day, and in a case on continuing violation, each day shall constitute a separate offense.

SECOND CLAIM

8. Plaintiff incorporates each and every allegation contained in paragraph 1 through 7 of its Complaint into this claim as if fully set forth herein.

9. On or about September 4, 2007, October 10, 2007, November 11, 2007, December 5, 2007, January 11, 2008, February 4, 2008, and March 6, 2008, Kawasaki failed to determine that a certain waste, known as spent filter pads from the ozzy juice parts washer was a hazardous waste, in violation of the duty imposed by Title 128, Chapter 4, Section 002.

THIRD CLAIM

10. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 9 of its Complaint into this claim as if fully set forth herein.

11. Pursuant to Title 128, Chapter 10, Section 002, Kawasaki was required to prepare a manifest according to the instructions provided in the regulations any time it offered a hazardous waste for transport for offsite treatment, storage, or disposal.

12. From January 2006 through March 2008, Kawasaki, on several occasions, offered hazardous waste for transport for offsite, treatment, storage, or disposal, without preparing a manifest in violation of Title 128, Chapter 10, Section 002.

FOURTH CLAIM

13. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 12 of its Complaint into this claim as if fully set forth herein.

14. Pursuant to Title 128, Chapter 4, Section 004.02, Kawasaki was prohibited from offering hazardous waste to a transporter or to a treatment, storage, or disposal facility which did not have a DEQ/EPA identification number or equivalent authorization to accept such hazardous waste.

15. From January 2006 through March 2008, Kawasaki, on various occasions, offered hazardous waste to a transporter or a treatment, storage, or disposal facility which did not have a DEQ/EPA identification number or other authorization for transporting or treating, storing, or disposing of hazardous waste in violation of Title 128, Chapter 4, Section 004.02.

FIFTH CLAIM

16. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 15 of its Complaint into this claim as if fully set forth herein.

17. Pursuant to Title 128, Chapter 4, Section 004.01 A2, Kawasaki was required to accumulate hazardous waste in a container that is closed during storage, except when it is necessary to add or remove waste.

18. On or about December 20, 2007, Kawasaki accumulated and stored hazardous waste in a container that was not closed, in violation of Title 128, Chapter 10, Section 004.01 A2.

SIXTH CLAIM

19. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 18 of its Complaint into this claim as if fully set forth herein.

20. Pursuant to Title 128, Chapter 25, Kawasaki is allowed to follow the management standards of said chapter to manage certain hazardous wastes, specifically mercury-containing items (fluorescent tubes), in lieu of the specific hazardous waste regulations of Title 128, Chapter 1 through 24.

21. On or about December 21, 2007, Kawasaki failed to follow management standards of Title 128, Chapter 25, Section 013.05 by failing to contain any universal waste lamps in containers that are structurally sound with each container or individual waste lamp clearly labeled or marked as to the contents and beginning date of accumulation.

SEVENTH CLAIM

22. Plaintiff incorporates each and every allegation contained in paragraphs 1 through 21 of its Complaint into this claim as if fully set forth herein.

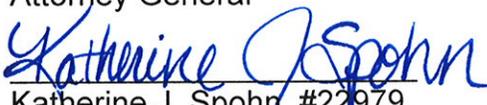
23. Pursuant to Title 128, Chapter 19, Sections 003 and 004.04 Kawasaki is required to ensure that its hazardous waste personnel annually take part in review training, and Kawasaki is required to document that the annual review training has been given to, and completed by, facility personnel

24. Kawasaki, for the 2007 year, did not complete annual training for six of its employees involved in hazardous waste management, in violation of Title 128, Chapter 19, Sections 003 and 004.04.

WHEREFORE, Plaintiff prays that this Court enter judgment in favor of Plaintiff and against the Defendant Kawasaki on each and every claim in this Complaint, and award civil penalties pursuant to Neb. Rev. Stat. §81-1508.02. Plaintiff further requests the Court order Defendant to pay all costs associated with this action and such further 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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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on this 31st day of March, 2010, addressed to the Defendant's attorney of record as follows:

Stephen M. Bruckner
Fraser Stryker P.C. L.L.O.
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Katherine J. Spohn
Assistant Attorney General