

IN THE DISTRICT COURT OF LANCASTER COUNTY, NEBRASKA		
STATE OF NEBRASKA, ex rel.,	)	Case No. _____
MICHAEL J. LINDER, Director	)	
DEPARTMENT OF ENVIRONMENTAL	)	
QUALITY,	)	
	)	<b>COMPLAINT</b>
Plaintiff,	)	
v.	)	
	)	
TELEX COMMUNICATIONS, INC.,	)	
A Delaware Corporation,	)	
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, 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, and permits created 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, Telex Communications, Inc., (hereinafter "Telex") is a Delaware corporation authorized to do business in the State of Nebraska.

4. Telex, at all times relevant herein, operated, and continues to operate, a facility at 8601 Cornhusker Highway, Lincoln, Lancaster County, Nebraska (hereinafter "the facility.")

5. At all times relevant herein, Telex was engaged in the manufacture of electronic devices including, but not necessarily limited to, headsets, wireless microphones, stadium speakers, and digital wireless communications.

6. At all times material herein, Telex engaged in industrial processes, including, but not necessarily limited to, painting, powder coating, silk screening, machining, fiberglass open molding, aqueous and solvent cleaning, and facility maintenance.

7. Telex is, and was at all times relevant herein, a "person" for purposes of the Environmental Protection Act and Title 128.

8. As a result of its manufacturing and industrial activities, Telex was, and is, classified as a "large quantity generator" of hazardous waste, as that term is defined in Title 128, Chapter 19, Section 001.

9. Title 128, Chapter 4, Section 004.02, as referenced by Title 128, Chapter 10, Section 001.05, provides that a large quantity generator of hazardous waste must not offer hazardous waste to a transporter or to treatment, storage, or disposal facilities that have not notified in accordance with Title 128, Chapter 4, Section 003 and received a DEQ/EPA identification number.

10. On or about May 3, 2005, the NDEQ discovered through a routine inspection of the Telex facility, that Telex had sent hazardous paint waste, mixed with the general trash, to the Lincoln Bluff Road Municipal Solid Waste Landfill, Lancaster County, Nebraska.

11. The Lincoln Bluff Road Municipal Solid Waste Landfill had not notified in accordance with Title 128, Chapter 4, Section 003.

12. The Lincoln Bluff Road Municipal Solid Waste Landfill had not received a DEQ/EPA identification number.

13. Telex violated Title 128, Chapter 4, Section 004.02 by and through its activities in paragraph 10 herein.

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

### **SECOND CLAIM**

18. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 17 of this Complaint as if fully set forth herein.

19. Title 128, Chapter 12, Section 001.01, as referenced by Title 128, Chapter 10, Section 001.06, requires a permit for the treatment, storage, or disposal of any hazardous waste.

20. On or about May 3, 2005, the NDEQ discovered, through a routine inspection of the Telex facility, that Telex was treating and disposing of hazardous paint waste without obtaining a permit for the treatment, storage, or disposal of hazardous waste, in violation of Title 128, Chapter 12, Section 001.01.

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 one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

### **THIRD CLAIM**

25. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 24 of this Complaint as if fully set forth herein.

26. Title 128, Chapter 4, Section 002, as referenced by Title 128, Chapter 10, Section 001.05 requires a large quantity generator of solid waste to determine if that waste is hazardous.

27. On or about May 3, 2005, Plaintiff discovered through a routine inspection, that Telex had failed to determine if solid waste in the form of aerosol cans was hazardous in violation of Title 128, Chapter 4, Section 002.

28. On or about May 3, 2005, Plaintiff discovered through a routine inspection, that Telex had failed to determine if solid waste in the form of bead blast dust and grit was hazardous, in violation of Title 128, Chapter 4, Section 002.

29. On or about May 3, 2005, Plaintiff discovered through a routine inspection, that Telex had failed to determine if solid waste in the form of

production sawdust was hazardous, in violation of Title 128, Chapter 4, Section 002.

30. On or about May 3, 2005, Plaintiff discovered through a routine inspection, that Telex had failed to determine if solid waste in the form of oil dry was hazardous, in violation of Title 128, Chapter 4, Section 002.

31. 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.

32. 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.

33. 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.

34. Plaintiff's allegations in paragraphs 25 through 33 of the Complaint constitute four (4) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

#### **FOURTH CLAIM**

35. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 34 of this Complaint as if fully set forth herein.

36. Pursuant to Title 128, Chapter 10, Section 004.01F, a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having "interim status," provided that the date upon which each period of accumulation begins is clearly marked and visible for inspection on each container.

37. On or about May 3, 2005, the NDEQ discovered through a routine inspection, that Telex failed to mark the start accumulation date on hazardous waste containers in two locations at the facility, in violation of Title 128, Chapter 10, Section 004.01F.

38. 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.

39. 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.

40. Plaintiff's allegations in paragraphs 35 through 39 of the Complaint constitute two (2) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

## **FIFTH CLAIM**

41. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 40 of this Complaint as if fully set forth herein.

42. Title 128, Chapter 10, Section 004.01G provides that a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having "interim status," provided that each container and tank is clearly labeled or marked with the words "Hazardous Waste."

43. On or about May 3, 2005, the NDEQ discovered, through a routine inspection, that Telex had failed to clearly mark containers of hazardous paint waste with the words "Hazardous Waste," in violation of Title 128, Chapter 10, Section 004.01G.

44. 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.

45. 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.

46. 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.

47. Plaintiff's allegations in paragraphs 41 through 46 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

### **SIXTH CLAIM**

48. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 47 of this Complaint as if fully set forth herein.

49. Title 128, Chapter 10, Section 004.01A2 provides that a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having "interim status," provided that each container holding hazardous waste is always kept closed during storage, except when it is necessary to add or remove waste.

50. On or about May 3, 2005, the NDEQ discovered, through a routine inspection, that Telex had failed to keep accumulation containers of hazardous waste in three separate locations at the facility closed at all times, unless adding or removing waste, in violation of Title 128, Chapter 10, Section 004.01A2.

51. 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.

52. 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.

53. 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.

54. Plaintiff's allegations in paragraphs 48 through 53 of the Complaint constitute three (3) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

#### **SEVENTH CLAIM**

55. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 54 of this Complaint as if fully set forth herein.

56. Title 128, Chapter 18, Section 003.05, as referenced by Title 128, Chapter 10, Section 004.01H, requires that a large quantity generator have a Contingency Plan, which includes a list of all emergency equipment at the facility, where this equipment is required. The types of emergency equipment that may be required include, but are not limited, to, fire extinguishing systems, spill control equipment, communication systems, internal and external alarm systems, and decontamination equipment. This list of emergency equipment must be kept up to date. In addition, the Contingency Plan must include the location and a physical description of each item on the list, and a brief outline of its capabilities.

57. On or about May 3, 2005, the NDEQ discovered, through a routine inspection, that Telex had failed to describe the location, physical description, and capabilities of the spill equipment listed in the contingency plan, in violation of Title 128, Chapter 18, Section 003.05, as referenced by Title 128, Chapter 10, Section 004.01H.

58. 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.

59. 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.

60. 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.

61. Plaintiff's allegations in paragraphs 55 through 60 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

## **EIGHTH CLAIM**

62. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 61 of this Complaint as if fully set forth herein.

63. Title 128, Chapter 18, Section 004.02 provides that a copy of the Contingency Plan and all revisions must be submitted to the Director of the NDEQ.

64. On or about May 3, 2005, the NDEQ discovered, through a routine inspection, that Telex had failed to provide a copy of the revised Contingency Plan to the Director of the NDEQ.

65. 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.

66. 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.

67. 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.

68. Plaintiff's allegations in paragraphs 62 through 67 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

#### **NINTH CLAIM**

69. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 68 of this Complaint as if fully set forth herein.

70. Title 128, Chapter 18, Section 003.03 requires that the Contingency Plan describe arrangements with local police and/or fire departments, hospitals, contractors, and state and local emergency response teams to coordinate emergency services.

71. On or about May 3, 2005, the NDEQ discovered, through a routine inspection, that Telex had failed to adequately describe agreements with local police, fire departments and hospitals in the Contingency Plan, in violation of Title 128, Chapter 18, Section 003.03.

72. 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.

73. 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.

74. 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.

75. Plaintiff's allegations in paragraphs 69 through 74 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

#### **TENTH CLAIM**

76. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 75 of this Complaint as if fully set forth herein.

77. Title 128, Chapter 10, Section 003.06 requires that the Contingency Plan include an evacuation plan for personnel where there is a possibility that evacuation could be necessary. The plan must describe the signal(s) to be used to begin evacuation.

78. On or about May 3, 2005, the NDEQ discovered, through a routine inspection, that Telex had failed to describe the signals for evacuation in the Contingency Plan, in violation of Title 128, Chapter 18, Section 003.06.

79. 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.

80. 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.

81. 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.

82. Plaintiff's allegations in paragraphs 76 through 81 of the Complaint constitute one (1) violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

#### **ELEVENTH CLAIM**

83. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 82 of this Complaint as if fully set forth herein.

84. Title 128, Chapter 19, Section 004.03, as referenced by Title 128, Chapter 10, Section 004.01H, requires a large quantity generator to maintain a written description of the type and amount of both introductory and continuing training that has been, or will be given, to each person filling a position relating to hazardous waste management at the facility.

85. On or about May 3, 2005, the NDEQ discovered, through a routine inspection, that Telex had failed to provide a written description of the type and amount of training for two positions relating to hazardous waste management at the facility.

86. 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.

87. 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.

88. 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.

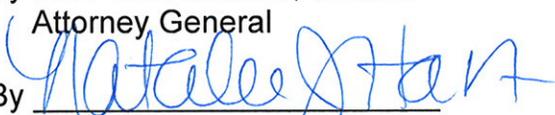
89. Plaintiff's allegations in paragraphs 83 through 88 of the Complaint constitute two (2) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of a civil penalty as provided in Neb. Rev. Stat. § 81-1508.02, 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 this court deems just and equitable.

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

By JON C. BRUNING, #20351  
Attorney General

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