

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

and

the STATE OF NEBRASKA

Plaintiffs,

v.

CLEAN HARBORS ENVIRONMENTAL
SERVICES, INC.

Defendant.

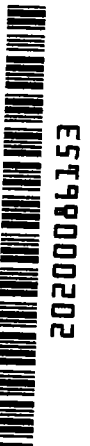
Civil Action No. 8:20-cv-351

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorney, acting at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), and the State of Nebraska, by authority of the Attorney General of Nebraska, on behalf of the Nebraska Department of Environment and Energy (“NDEE”), formerly known as the Nebraska Department of Environmental Quality (“NDEQ”), file this Complaint, and allege as follows:

NATURE OF ACTION

1. This is a civil action brought against Clean Harbors Environmental Services, Inc. (“Clean Harbors”) to obtain injunctive relief and civil penalties under the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. § 6901, *et seq.*, the Clean Air Act (“CAA”), 42 U.S.C. § 7401, *et seq.*, the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42



U.S.C. § 11001, *et seq.*, and the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.*

JURISDICTION, VENUE, AUTHORITY AND NOTICE

2. This Court has jurisdiction over the parties and subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355. In addition, this Court has jurisdiction over the subject matter of this action pursuant to Sections 113(b) and 167 of the CAA, 42 U.S.C. §§ 7413(b) and 7477, Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), and Section 3008(a)(1) and (g) of RCRA, 42 U.S.C. § 6928(a)(1) and (g).

3. Venue is proper in the District of Nebraska pursuant to 28 U.S.C. §§ 1391(b), (c), and 1395(a); and RCRA Sections 3008(a) and (g), 42 U.S.C. §§ 6928(a) and (g); EPCRA Sections 325(b)(3) and (c)(4), 42 U.S.C. §§ 11045(b)(3) and (c)(4), and Section 113(b) of the CAA, 42 U.S.C. § 7413(b), because it is the judicial district where the Defendant is located, where a substantial part of the events or omissions giving rise to the claims occurred, and where the alleged violations occurred.

4. Authority to bring this civil action on behalf of the United States is vested in the Attorney General of the United States pursuant to Section 305 of the CAA, 42 U.S.C. § 7605, Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Section 325(c)(4) of EPCRA, 42 U.S.C. § 11045(c)(4), and 28 U.S.C. §§ 516 and 519.

5. Notice of the commencement of this action has been given to the State of Nebraska in accordance with Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), and as required by Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

DEFENDANT

6. Defendant Clean Harbors is a Massachusetts corporation doing business in Nebraska.

7. Defendant operates a commercial hazardous waste incinerator located at 2247 South Highway 71 in Kimball, Nebraska (hereinafter “Facility”). As a result, Defendant treats and stores hazardous waste as defined in Title 128 Neb. Admin. Code §§ 1-062 (previously codified at § 1-060 before the 2016 amendments), 2-001 *et seq.*, and 3-001 *et seq.*

8. Defendant is, and at all times relevant to this action has been, a “person” within the meaning of Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), Section 302(e) of CAA, 42 U.S.C. § 7602(e), and NEPA, Neb. Rev. Stat. § 81-1502(10).

STATUTORY AND REGULATORY FRAMEWORK

Resource Conservation and Recovery Act

9. Federal regulation of hazardous waste is primarily based on RCRA, enacted on October 21, 1976, to amend the Solid Waste Disposal Act, and on the Hazardous and Solid Waste Amendments (“HSWA”), enacted by Congress in 1984 to further amend the Solid Waste Disposal Act. RCRA establishes a “cradle-to-grave” program to be administered by the Administrator of EPA and authorized states for regulating the generation, transportation, treatment, storage, and disposal of hazardous waste. *See* 42 U.S.C. § 6901 *et seq.*

10. RCRA’s Subchapter III (RCRA §§ 3001-3023, 42 U.S.C. §§ 6921-6940, known as “Subtitle C”) required EPA to promulgate regulations establishing performance standards applicable to facilities that generate, transport, treat, store, or dispose of hazardous wastes. Together, RCRA Subtitle C and its implementing regulations, set forth at 40 C.F.R. Parts 260 – 279, comprise EPA’s RCRA hazardous waste program.

11. Section 3002 of RCRA, 42 U.S.C. § 6922, and the regulations promulgated thereunder at 40 C.F.R. Part 262, establish standards applicable to generators of hazardous waste.

12. Section 3004 of RCRA, 42 U.S.C. § 6924, and the regulations promulgated thereunder at 40 C.F.R. Part 264, establish standards applicable to owners and operators of hazardous waste treatment, storage, and disposal (“TSD”) facilities.

13. Subparts BB and CC of 40 C.F.R. Part 264 contain air emission standards applicable to owners and operators of TSD facilities.

14. Section 3004(d) through (o) of RCRA, 42 U.S.C. § 6924(d)-(o), and the regulations promulgated thereunder at 40 C.F.R. Part 268, establish pre-disposal treatment requirements for land disposal of certain hazardous wastes.

15. Section 3005 of RCRA, 42 U.S.C. § 6925, and the regulations promulgated thereunder at 40 C.F.R. Part 270, require the owner or operator of a TSD facility to obtain an operating permit.

16. RCRA Section 3006, 42 U.S.C. § 6926, allows the Administrator to authorize a state to administer its own hazardous waste program in lieu of the federal program when the Administrator deems the state program to be equivalent to and consistent with the federal program. When the Administrator has authorized a state to administer its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

17. The State of Nebraska has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Nebraska has adopted by reference the federal regulations cited herein at pertinent parts of Title 128 of the Nebraska Administrative Code - *Rules and Regulations Governing Hazardous Waste*

Management (hereinafter “Title 128”). January 24, 1985, effective February 7, 1985 (50 FR 3345). Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. The State of Nebraska has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

18. The Facility operates under a RCRA Part I Hazardous Waste Treatment and Storage Permit, EPA/NDEQ I.D. Number: NED981723513, issued pursuant to Title 128 by NDEQ, the predecessor agency to NDEE (“Part I Permit”). For purposes of this Complaint, references to Defendant’s Part I Permit include the Part I Permit issued on or about June 1, 2009, by NDEQ, expiring on May 31, 2014, the conditions of which were applicable until the Part I Permit was renewed on December 1, 2015, and all subsequent modifications.

19. The Facility also operates under a RCRA Part II Hazardous Waste Treatment and Storage Permit, EPA/NDEQ I.D. Number: NED981723513, issued pursuant to Section 3005 of RCRA by the EPA (“Part II Permit”). For purposes of this Complaint, references to Defendant’s Part II Permit include the Part II Permit issued May 29, 2009, expiring on May 29, 2019, the conditions of which are continued in accordance with 40 C.F.R. 270.51(a) or (d), and all subsequent modifications.

20. Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), authorizes the United States to commence a civil action in United States District Court to seek appropriate relief, including a temporary or permanent injunction, in the event of a violation of RCRA, the regulations

promulgated thereunder, the requirements of a federally-approved state hazardous waste program, including the Nebraska program and the regulations promulgated at Title 128, and any permit issued pursuant to a federally-approved state hazardous waste program, including the Permit. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), imposes a civil penalty for each such violation. In addition, Neb. Rev. Stat. §§ 81-1508.02(1)(b) and (e) make it unlawful to violate any permit condition or limitation and any provision of NDEE's rules and regulations and, thus, subject to a civil penalty under NEPA.

21. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for each violation of Subchapter III of RCRA (Hazardous Waste Management). The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased this statutory maximum penalty to \$37,500 per day for each violation occurring after January 12, 2009 through December 6, 2013; \$71,264 per day for each violation occurring between December 7, 2013 and November 2, 2015; \$74,552 per day for each violation that occurred after November 2, 2015, where penalties were assessed on or after February 6, 2019 but before January 13, 2020; and \$75,867 per day for each violation that occurred after November 2, 2015 where penalties are assessed on or after January 13, 2020.

Clean Air Act

22. The CAA establishes a regulatory framework designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the productive capacity of its population. 42 U.S.C. § 7401.

A. National Ambient Air Quality Standards and Prevention of Significant Deterioration

23. Section 110 of the CAA, 42 U.S.C. § 7410, grants the Administrator of EPA authority to approve a state plan which provides for implementation, maintenance, and enforcement of a standard in each air quality control region within the state.

24. Title 129 of the Nebraska Administrative Code – *Nebraska Air Quality Regulations* contains regulations that govern air quality in Nebraska, promulgated pursuant to the NEPA, Neb. Rev. Stat. § 81-1501 *et seq.*

25. Nebraska’s prevention of significant deterioration permit program is part of the federally-approved state implementation plan (“SIP”). *See* 129 Neb. Admin. Code § 19-001 *et seq.*

26. Pursuant to 129 Neb. Admin. Code § 19-001 *et seq.*, the Facility was issued Air Quality Construction Permit #CP-13-008, effective May 20, 2013, based on modifications to the Facility that caused the Area 58 Tank Farm to be subject to 40 C.F.R. Part 61, Subpart V, which has been adopted by reference in 129 Neb. Admin. Code § 23-001.12.

27. Pursuant to Section 113 of the Act, 42 U.S.C. § 7413, the requirements of the Nebraska SIP, as approved by EPA, are enforceable by EPA. In addition, Neb. Rev. Stat. § 81-1506(4)(b) and (c) make it unlawful to violate any term or condition of an air pollution permit or any emission limit set in the permit; or violate any emission limit or air quality standard established by the Nebraska Environmental Quality Council.

B. Title V Operating Permits

28. Title V of the CAA, 42 U.S.C. §§ 7661-7661f, establishes an operating permit program for certain sources, including “major sources.” The purpose of Title V is to ensure that

all “applicable requirements” for compliance with the CAA, including PSD requirements, are collected in one place.

29. Pursuant to Section 502(a) of the Act, 42 U.S.C. § 7661a, it is unlawful for a major source to operate without or in violation of a permit issued pursuant to Title V of the Act, 42 U.S.C. § 7661 *et seq.* See also 40 C.F.R. § 70.7(b) and 129 Neb. Admin. Code § 8-007.01 and 129 Neb. Admin. Code § 5-001 *et seq.* In addition, Neb. Rev. Stat. § 81-1506(4)(b) and (c) make it unlawful to violate any term or condition of an air pollution permit or any emission limit set in the permit; or violate any emission limit or air quality standard established by the Nebraska Environmental Quality Council.

30. The Nebraska Title V operating permit program was fully approved by EPA on October 18, 1995. These regulations are currently codified at 129 Neb. Admin. Code, Chapters 1, 2, 5–15, 29, 40–43, insofar as they apply to Title V.

31. A “Permit to Operate (Permit # 03R1-001) An Air Contaminant Source” was issued by NDEE, pursuant to its approved Title V Program, to Defendant on or about August 6, 2009, and subsequently modified, including a modification effective August 11, 2011. The permit expired August 5, 2014, however, the conditions of the permit continued until the effective date of a new permit pursuant to 129 Neb. Admin. Code § 8-003. For purposes of this Complaint, all references to Nebraska Operating Permit #03R1-001 mean the Operating Permit effective August 11, 2011 (“Air Operating Permit #03R1-001”).

C. Clean Air Act Section 112 Regulation of HAPs Pre-1990

32. CAA Section 112 contains requirements to control certain hazardous air pollutants (“HAPs,”), such as benzene and vinyl chloride. These requirements are known as

“National Emissions Standards for Hazardous Air Pollutants” (“NESHAPS”). NESHAPS established before the CAA was amended in 1990 are promulgated at 40 C.F.R. Part 61.

33. Pursuant to CAA Section 112, 42 U.S.C. § 7412, before it was amended on November 15, 1990 (the “1990 CAA Amendments”), the EPA promulgated NESHAPS for categories of stationary sources. Among these source categories, the EPA promulgated the National Emission Standard for Equipment Leaks (Fugitive Emission Sources) found at 40 C.F.R. Part 61, Subpart V.

34. 40 C.F.R. Part 61, Subpart V, establishes, *inter alia*, standards for volatile hazardous air pollutant leaks from pumps, compressors, pressure relief devices in gas/vapor service, sampling connecting systems, open-ended valves or lines, valves, pressure relief services in liquid service and connectors, surge control vessels and bottoms receivers, delay of repair, and closed-vent systems and control devices that are intended to operate in volatile hazardous air pollutant (“VHAP”) service. In addition, Subpart V establishes test methods and procedures, recordkeeping and reporting requirements.

D. Clean Air Act Section 112 Regulation of HAPs Post-1990

35. Through the 1990 Amendments, Congress established a list of 188 HAPs believed to cause adverse health or environmental effects, 42 U.S.C. § 7412(b)(1), and directed EPA to publish a list of all “categories and subcategories” of “major sources” of HAPs. 42 U.S.C. § 7412(c).

36. Congress directed EPA to promulgate regulations establishing emission standards for each category or subcategory of major sources of HAPs. 42 U.S.C. § 7412(d)(1). These emission standards must require the maximum degree of reduction in emissions of HAPs that the Administrator, taking into consideration the cost of achieving such emission reduction, and any

non-air quality health and environmental impacts and energy requirements, determines is achievable for the new or existing sources in the category or subcategory to which the emission standard applies. 42 U.S.C. § 7412(d)(2).

37. The emission standards promulgated under Section 112 of the CAA, 42 U.S.C. § 7412, are known as the NESHAPs for Source Categories. These emission standards are found in Part 63 of Title 40 of the Code of Federal Regulations.

38. After the effective date of any emission standard, limitation, or regulation promulgated pursuant to Section 112 of the CAA, no person may operate a source in violation of such standard, limitation, or regulation. 42 U.S.C. § 7412(i)(3).

39. For the hazardous waste combustor industry, EPA promulgated the NESHAPs pursuant to 42 U.S.C. § 7412 at 40 C.F.R. Part 63, Subpart EEE (“Subpart EEE”), effective September 30, 1999. Subpart EEE establishes emission standards, operating limits, monitoring and compliance provisions, notification, reporting and recordkeeping requirements applicable to all hazardous waste combustors, including hazardous waste incinerators.

E. Clean Air Act 112(r)

40. In 1990, Congress enacted Section 112(r) of the CAA, 42 U.S.C. § 7412(r)(1), to prevent accidental release and to minimize the consequences of any such release that may cause death, injury or property damage.

41. Section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), authorizes EPA to promulgate release prevention, detection, and correction requirements to prevent accidental releases of “regulated substances,” and requires a prompt emergency response to any such releases in order to protect human health and the environment. EPA promulgated regulations to implement Section 112(r)(7), codified at 40 C.F.R. Part 68 and known as the Risk Management

Program (“RMP”) regulations, which apply to the owners and operators of stationary sources that have more than a threshold quantity of a regulated substance in a “process.” *See* 40 C.F.R. § 68.10.

42. 40 C.F.R. § 68.3 defines “process” to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or any combination of these activities.” “Covered process” means “a process that has a regulated hazardous substance present in more than a threshold quantity as determined under [40 C.F.R.] § 68.115.”

43. Section 112(r)(2)(B) of the CAA, 42 U.S.C. § 7412(r)(2)(B), defines “regulated substance” as any substance listed by EPA under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(3). Pursuant to Section 112(r)(3), 42 U.S.C. § 7412(r)(3), EPA promulgated a list of “regulated substances.” *See* 40 C.F.R. § 68.130.

44. Whenever any person has violated, or is in violation of, any requirement or prohibition of the CAA and its implementing regulations, including any requirement or prohibition of an applicable implementation plan or permit, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and/or for civil penalties.

45. Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes a civil penalty of not more than \$25,000 per day for each violation. The Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased this statutory maximum penalty to \$37,500 per day for each violation occurring after January 12, 2009 through December 6, 2013; \$71,264 for each violation occurring between

December 7, 2013 and November 2, 2015; \$99,681 for violations that occurred after November 2, 2015, where penalties were assessed on or after February 6, 2019 but before January 13, 2020; and \$101,439 per day for each violation that occurred after November 2, 2015 where penalties are assessed on or after January 13, 2020.

Emergency Planning and Community Right -to -Know Act

46. EPCRA was enacted on October 17, 1986 as Title III of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 (1986) (codified at 42 U.S.C. §§ 11001-11050).

47. Pursuant to Section 311(a) of EPCRA, 42 U.S.C. § 11021(a), the owner or operator of any facility that is required to prepare or to have available a material safety data sheet (“MSDS”) for a hazardous chemical in accordance with the Occupational Safety and Health Act (“OSHA”) and its implementing regulations must submit to the appropriate local emergency planning committee, state emergency planning committee, and fire department, for those chemicals present at the facility in quantities equal to or greater than the minimum threshold level set by EPA pursuant to 40 C.F.R. § 370.10, a copy of the MSDSs for such chemicals or a list of all such chemicals.

48. Pursuant to Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), the owner or operator of any facility that is required to prepare or to have available a MSDS for a hazardous chemical in accordance with the OSHA and its implementing regulations must prepare and submit annually, to the appropriate local emergency planning committee, state emergency planning committee, and fire department, for each such chemical present at the facility in an amount equal to or greater than the minimum threshold level set by EPA for such chemical, pursuant to 40 C.F.R. § 370.10, an emergency and hazardous chemical inventory form.

49. Pursuant to Section 313(a) of EPCRA, 42 U.S.C. § 11023(a), and 40 C.F.R. § 372.22, the owner or operator of any facility that 1) has 10 or more full-time employees, 2) is in standard industrial codes (“SIC”) 20 through 39 or one of the codes specified in 40 C.F.R. § 372.23(a), which includes code 4953, and 3) manufactured, processed, or otherwise used a toxic chemical listed under Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65 in excess of the threshold quantity established under Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25 during the preceding calendar year, is required to submit annually to EPA and the state in which the subject facility is located a Toxic Chemical Release Inventory (“TRI”) Reporting Form for such chemical.

50. According to Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, the threshold amount for reporting under Section 313(b) of EPCRA, 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.30, is 25,000 pounds for any toxic chemical “manufactured or processed” and 10,000 pounds for any toxic chemical “otherwise used” for the applicable calendar year. Alternative reporting thresholds for certain other chemicals are set forth in 40 C.F.R. §§ 372.27 and 372.28.

51. Section 325(c) of EPCRA, 42 U.S.C. § 11023(c), authorizes the United States to commence a civil action in United States District Court to seek a civil penalty for any violation of Sections 311, 312, or 313 of EPCRA, 42 U.S.C. §§ 11021-23. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes a civil penalty not to exceed \$25,000 for each violation of Section 313 of EPCRA, 42 U.S.C. § 11021. The Debt Collection Improvements Act of 1996, 31 U.S.C. § 3701, as amended, and the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. § 2461, and implementing regulations at 40 C.F.R. Part 19, increased this statutory maximum penalty to \$37,500 for violations occurring after January

12, 2009 through November 2, 2015; \$57,317 for violations that occurred after November 2, 2015, where penalties were assessed on or after February 6, 2019 but before January 13, 2020; and \$58,328 for violations that occurred after November 2, 2015 where penalties are assessed on or after January 13, 2020.

GENERAL ALLEGATIONS

52. The Facility is a hazardous waste TSD facility that performs hazardous materials management and disposal services.

53. The Facility is, and at all times relevant to this action has been, a “facility” within the meaning of 40 C.F.R. § 260.10, Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), 40 C.F.R. § 372.3, and 128 Neb. Admin. Code § 1-052.

54. At all times relevant to this action, the Facility employed more than 10 “full-time employees” as that term is defined in Section 313(b)(1)(A) of EPCRA, 42 U.S.C. § 11023(b)(1)(A), and as defined by 40 C.F.R. § 372.3.

55. At all times relevant to this action, the Facility’s SIC was 4953.

56. At all times relevant to this action, Defendant was the “owner” and/or “operator” of the Facility within the meaning of 40 C.F.R. § 260.10; Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9); 129 Neb. Admin. Code § 1-097; and 128 Neb. Admin. Code §§ 1-100, 1-101. The Facility is a “stationary source” within the meaning of 40 C.F.R. § 68.3; Sections 112(a)(3), 112(a)(9), and 112(r)(2)(C) of the CAA, 42 U.S.C. §§ 7412(r)(2)(C), 7412(a)(3), and 7412(a)(9); and 129 Neb. Admin. Code § 1-154. The Facility includes a “covered process” within the meaning of 40 C.F.R. § 68.3.

57. At all times relevant to this action, the Defendant owned and operated equipment, including pumps, compressors, pressure relief devices, sampling connection systems, open-

ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, and/or control devices or systems, that either contain or contact a liquid or gas that is at least 10 percent by weight a volatile HAP, as determined according to the provisions of 40 C.F.R. § 61.245(d), at the Facility. 40 C.F.R. § 61.240(a).

58. At all times relevant to this action, the Defendant owned and operated a “major source” of HAPs within the meaning of 42 U.S.C. § 7412(a)(1), and subject to Subpart EEE.

59. The Facility is, and at all times relevant to this action has been, used for treating, storing, or disposing of “hazardous waste” within the meaning of Section 1004 of RCRA, 42 U.S.C. § 6903(5), and 128 Neb. Admin. Code §§ 2-004 to 2-007.

60. At all times relevant to this action, the Facility produced, processed, handled, and/or stored one or more regulated substances listed under Section 112(r)(3) of the CAA, 42 U.S.C. § 7412(r)(3), above the thresholds set forth in 40 C.F.R. § 68.10, and used these substances in a “process” as defined by 40 C.F.R. § 68.3.

61. Defendant owns or operates a covered process that is subject to OSHA’s process safety management standard at 29 C.F.R. § 1910.119 and is therefore subject to the Program 3 requirements of 40 C.F.R. Part 68, Subpart D, as specified in 40 C.F.R. § 68.12(d).

62. The Facility consists of a hazardous waste incinerator, or thermal oxidation unit, with associated waste storage in tanks and containers, waste consolidation, and waste transfer operations. The Facility manages waste streams consisting of contaminated process wastewaters, soils, solids, residues from the chemical processing industry, oil, spent flammable solvents, paint residues, and chemical spill clean-up material.

63. The Facility receives bulk solid and hazardous wastes in 55-gallon drums and large roll-off containers, and liquid, solid, and hazardous wastes by tanker truck and 55-gallon

drums and stores these wastes in specific permitted areas of the Facility. The Facility also has one or more 90-day storage areas that are not subject to the requirements of the Part I and Part II Permit.

64. Incoming wastes are either incinerated on-site or shipped off-site to another designated facility.

65. Prior to incineration of the waste, it is treated and/or stored in tanks or containers.

66. Solid and hazardous wastes are incinerated by use of a thermal oxidation unit, also described as a fluidized bed incinerator. Liquid wastes are sprayed into the thermal oxidation unit, and solid wastes are transported into the incinerator via a conveyor belt. The fluidized bed incinerator has a feed capacity of approximately 18,000 pounds per hour.

67. Samples of ash generated by the thermal oxidation unit's baghouse are continuously collected, and these samples are analyzed for delisting parameters. If the ash meets the delisting criteria, it is no longer considered a hazardous waste, and it is disposed of in an on-site "monofill", which is a landfill designed for only one type of waste. If the ash fails to meet delisting criteria, it is either resampled or stabilized. If the ash continues to exceed delisting parameters following stabilization or resampling, it is transferred as a hazardous waste to a designated facility.

68. Since at least 2002, numerous fires and other reactions occurred in the shredder, conveyors, and hoppers in Building 55 as a result of mixing incompatible waste.

69. EPA conducted RCRA compliance inspections of the Facility on August 9-11, 2011 ("2011 EPA Inspection"), August 28-30, 2012 ("2012 EPA Inspection"), July 30-31, 2013 ("2013 EPA Inspection"), April 8-10, 2014 ("2014 EPA Inspection"), August 18-19, 2015 ("2015 EPA Inspection"), August 2-3, 2016 ("2016 EPA Inspection"), June 13-14, 2017 ("2017

EPA Inspection”), March 27, 2018 (“2018 EPA Inspection”) and on September 26, 2019 (“2019 EPA Inspection”). EPA also conducted an EPCRA compliance inspection of the Facility on June 13-14, 2017 (“2017 EPCRA Inspection”)

70. EPA conducted a CAA 112(r) Compliance Investigation of the Facility on October 28-31, 2013 (“2013 EPA 112(r) Inspection”). In addition, EPA issued a CAA Section 114 Request for Information to Clean Harbors on July 27, 2015. Clean Harbors responded to the information request on August 20, 2015 and September 15, 2015.

71. NDEQ (hereinafter referred to as “NDEE”) performed Hazardous Waste Compliance Evaluation Inspections of the Facility on March 28-April 1, 2016 (“2016 NDEE Inspection”), March 21-24, 2017 (“2017 NDEE Inspection”), September 25, 2018 (“2018 NDEE Inspection”), and March 26-29, 2019 (“2019 NDEE Inspection”). NDEE also performed an Air Compliance Evaluation of the Facility on August 11-13, 2015 (“2015 NDEE Air Inspection”).

FIRST CLAIM FOR RELIEF
(RCRA: Failure to Adequately Manage Containers)

72. Paragraphs 1-71 are incorporated herein by reference.

73. Defendant stores solid hazardous waste in several areas of the Facility in 55-gallon drums, satellite accumulation containers, and 20 and 30-cubic yard “roll-off” containers, which are large rectangular metal containers similar to residential construction debris dumpsters.

74. *Failure to store hazardous waste in containers that are in good condition.* Pursuant to 128 Neb. Admin. Code § 21-009, 40 C.F.R. § 264.171, and Section III.D. of Defendant’s Part I Permit, if a container holding hazardous waste is severely rusted or has apparent structural defects, or if it begins to leak, Defendant is required to transfer the hazardous waste to a container that is in good condition or place the leaking container in an overpack or otherwise manage the waste in compliance with the Part I Permit within 24 hours.

75. During the 2011, 2014, and 2015 EPA Inspections, Defendant stored hazardous waste in numerous containers that were in poor condition. During the 2019 EPA Inspection, a roll-off container was leaking liquid waste onto the cover of another container.

76. Pursuant to 128 Neb. Admin. Code § 10-004.A1, and 40 C.F.R. § 265.171, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, *inter alia*, if a container holding hazardous waste is not in good condition, or if it begins to leak, the generator must transfer the hazardous waste from this container to a container that is in good condition, or manage the waste in some other way that complies with the requirements of Chapter 10.

77. During the 2018 EPA Inspection, a 55-gallon drum of P-Listed waste in Defendant's less than 90-day accumulation area labeled "KP LAB DEBRIS" had a lid that was not in good condition and had visible stress points.

78. *Failure to close hazardous waste accumulation containers.* Pursuant to 128 Neb. Admin. Code § 21-009, 40 C.F.R. § 264.173(a), and Section III.F.1. of Defendant's Part I Permit, Defendant is required to manage hazardous waste containers so that they are always closed except when necessary to remove, add, or sample waste.

79. During the 2011, 2012, 2014, 2015, 2018, and 2019 EPA Inspections, roll-off containers either had hazardous waste on the outside lip of the containers, or on the concrete surrounding the containers. While the open tops of the roll-off containers were covered by a tarpaulin, the hazardous waste that had spilled onto the container and surrounding area was not covered. However, several roll-off containers were not completely covered with tarps. In addition, several containers were not closed.

80. *Failure to store hazardous waste containers in a manner that prevents leaks.*

Pursuant to 128 Neb. Admin. Code § 21-009, 40 C.F.R. § 264.173(b), and Sections III.F.2. and III.F.3 of Defendant's Part I Permit, Defendant is required to manage hazardous waste in a container that is not opened, handled, or stored in a manner that may rupture the container or cause it to leak and shall not stack hazardous waste containers more than the height in the approved Part B Permit Application.

81. During the 2015 EPA Inspection, Defendant stored a pallet of containers of hazardous waste that was not secure, was leaning and was stacked more than the height in the approved Part B Permit Application, creating a condition that could cause the containers to rupture or leak.

82. *Failure to maintain adequate aisle space.* Pursuant to 128 Neb. Admin. Code § 21-003, 40 C.F.R. § 264.35, and Sections II.I.4. and III.I.3. of Defendant's Part I Permit, Defendant is required by its Part I Permit to maintain adequate aisle space to allow unobstructed movement of personnel, including aisle space of no less than two feet.

83. During the 2013 EPA Inspection, inadequate aisle space of less than two feet for hazardous waste storage was documented.

84. *Failure to label hazardous waste satellite accumulation containers.* Pursuant to 128 Neb. Admin. Code § 10-005.01, referencing 128 Neb. Admin. Code §§ 10-004.01, 16-002.01C, and 40 C.F.R. § 262.34(c)(1)(i) and (ii)¹, Defendant is allowed to accumulate as much as 55 gallons of hazardous waste in a satellite accumulation area, provided the generator marks the containers either with the words, "Hazardous Waste," or with other words that identify the

¹ 40 C.F.R. Part 262.34 was reorganized and revised, effective May 30, 2017. 81 Fed. Reg. 85732. These requirements are now contained in 40 C.F.R. § 262.15(a)(4) and (5).

contents of the container and provided that the container holding hazardous waste is always closed during storage, except when it is necessary to add or remove waste.

85. During the 2014 EPA Inspection, Defendant stored a satellite accumulation container that was open and not labeled with the words “Hazardous Waste.” During the 2018 Inspection, a satellite accumulation container was open.

86. *Failure to label and date hazardous waste accumulation containers.* Pursuant to 128 Neb. Admin. Code § 20C-014.01B1, Defendant is required to clearly mark each container of hazardous waste to identify its contents and the date each period of accumulation begins.

87. During the 2018 NDEE Inspection, Defendant failed to clearly mark a container of hazardous waste to identify its contents and date of accumulation.

88. Pursuant to 128 Neb. Admin. Code § 10-004.01 and 40 C.F.R. § 265.171, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that, *inter alia*, Defendant visibly marks the date upon which each period of accumulation begins on each hazardous waste accumulation container. Pursuant to 128 Neb. Admin. Code § 10-004.01G, Defendant is required to clearly label each container and tank with the words “Hazardous Waste.”

89. During the 2018 EPA Inspection, an over-pack drum in Defendant’s less than 90-day accumulation area was not marked with the date of accumulation and not labeled with the words “Hazardous Waste.” During the 2019 NDEE Inspection, Defendant failed to clearly mark a bulk container of hazardous waste with the date of accumulation.

90. *Storage of Incompatible Wastes.* Pursuant to 128 Neb. Admin. Code § 21-009 and Section III.H.3 of Defendant’s Part I Permit, Defendant must ensure that storage containers holding a hazardous waste that is incompatible with any waste or other materials stored nearby in

other containers and tanks shall be separated from the other materials or protected from them by means of a dike, berm, wall, or other device.

91. During the 2018 NDEE Inspection, containers holding hazardous waste were inappropriately stored near incompatible wastes.

92. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each of the violations set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

SECOND CLAIM FOR RELIEF
(RCRA: Failure to Maintain Secondary Containment)

93. Paragraphs 1-71 are incorporated herein by reference.

94. 128 Neb. Admin. Code § 21-009, 40 C.F.R. § 264.175, and Section III.J.1. of Defendant's Part I Permit require that container storage areas at the Facility that are used to store free liquids have secondary containment that is free of cracks and gaps. 128 Neb. Admin. Code § 21-010, 40 C.F.R. § 264.193, and Section IV.D.6. of Defendant's Part I Permit require that tank secondary containment systems are free of cracks and gaps and provided with a chemical resistant sealant that is compatible with the stored waste.

95. During the 2011 EPA Inspection, cracks and peeling coating were observed in Areas 70 and 40. In the 2013 EPA Inspection, gaps were observed at area 25-aisle 31 and area 95-grid 34. The 2015 EPA Inspection documented cracks and gaps and/or missing or damaged coating in secondary containment in areas 25, 58, 70, 95 and the direct tank feed farm. The 2018 EPA Inspection noted unaddressed crack and gaps in secondary containment in Area 50E.

96. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2),

for each of the violations set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

THIRD CLAIM FOR RELIEF
(RCRA: Failure to Properly Maintain Air Emission Equipment)

97. Paragraphs 1-71 are incorporated herein by reference.

98. *Failure to Mark Equipment Subject to Subpart BB.* Pursuant to 128 Neb. Admin. Code § 21-020, 40 C.F.R. § 264.1050(d), and Section V.I of Defendant's Part I Permit, incineration equipment subject to the requirements of Subpart BB shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

99. The 2014 and 2015 EPA Inspections found numerous pieces of equipment on the thermal oxidation unit that were subject to Subpart BB that were not marked in such a manner that they could be readily distinguished from other pieces of equipment. Equipment was also found unmarked in the Area 70 South Tank Farm during the 2018 EPA Inspection.

100. *Failure to properly equip open-ended lines.* Pursuant to 128 Neb. Admin. Code § 21-020, 40 C.F.R. § 264.1056(a)(1), Section IV.K.1. of Defendant's Part I Permit, and Section IV.C.1. of Defendant's Part II Permit, each open-ended valve or line on Defendant's tank systems that is subject to the requirements of Subpart BB shall be equipped with a cap, blind flange, plug, or a second valve.

101. During the 2011 Inspection, an open-ended line in Area 50C that was subject to the requirements of 40 C.F.R. Subpart BB was not equipped with a cap, blind flange, plug, or a second valve. During the 2017 EPA Inspection, an open-ended line at the north unload pump in Area 70 was not equipped with a cap, blind flange, plug, or a second valve and found to be leaking.

102. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each of the violations set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

FOURTH CLAIM FOR RELIEF
(RCRA: Failure to Adequately Inspect Tanks)

103. Paragraphs 1-71 are incorporated herein by reference.

104. Pursuant to Section IV.A of Defendant's Part I Permit, all hazardous waste tanks at the Facility are subject to 40 C.F.R. 264 Subpart J, as incorporated by reference in 128 Neb. Admin. Code § 21-010. Pursuant to Section IV.H.1. of Defendant's Part I Permit, Defendant is required to inspect all tanks as specified in the approved Part B Permit Application and the Inspection Schedule in Appendix VI of the Part I Permit. Pursuant to 40 C.F.R. § 264.195(c), Defendant is required to inspect above ground portions of tank systems daily to detect corrosion or releases of waste.

105. During the 2015 EPA Inspection, corrosion was present on tanks in Area 58. During the 2016 EPA Inspection, there were corrosive rust spots on Tank-144.

106. Pursuant to 128 Neb. Admin. Code § 21-010, 40 C.F.R. § 264.195(c), and Section IV.H.2. of Defendant's Part I Permit, Defendant is required to inspect the low-end inspection port for leaks on Tanks H150A, H150B, H170A, and H170B on a daily basis.

107. At the time of the 2011 EPA Inspection, Defendant was not performing these inspections.

108. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2),

for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

FIFTH CLAIM FOR RELIEF
(RCRA: Failure to Minimize Releases into the Environment)

109. Paragraphs 1-71 are incorporated herein by reference.

110. Pursuant to 128 Neb. Admin. Code § 21-003, 40 C.F.R. § 264.31, and Section II.B. of Defendant's Part I Permit, Defendant is required to maintain and operate its Facility in a manner to minimize the possibility of fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to any media including: air, soil, surface water, subsurface water, or groundwater which could threaten human health or the environment.

111. During the 2011 EPA Inspection, a flange on the incinerator was leaking visible air emissions causing a release of hazardous waste constituents.

112. During the 2015 EPA Inspection, a release of hazardous waste constituents was noted when hazardous waste feedstock had leaked from two access hatches onto the outside of the incinerator, at waste conveyor K-390 and K-383.

113. During the 2019 EPA Inspection, a release of hazardous waste was observed from the feed line on level six of the incinerator.

114. Pursuant to Section IV.C.2.j. of Defendant's Part II Permit, Defendant must transfer hazardous waste into or out of the tanks identified in Sections IV.C.I.a through IV.C.I.c, of Defendant's Part II Permits using continuous hard-piping or another closed system that does not allow exposure of the hazardous waste to the atmosphere.

115. During the 2017 EPA Inspection, monitoring of the seal between Area 50C and the incinerator solid feed conveyor showed VOC emissions to the atmosphere.

116. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each of the violations set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

SIXTH CLAIM FOR RELIEF
(RCRA: Failure to Conduct Compatibility Tests)

117. Paragraphs 1-71 are incorporated herein by reference.

118. Pursuant to 128 Neb. Admin. Code § 21-002, 40 C.F.R. § 264.13, and Section II.D. of Defendant's Part I Permit, Defendant must obtain a detailed chemical and physical analysis of a representative sample of the wastes to be treated, stored, or disposed at the Facility by following its "Waste Analysis Plan" in the Part B Permit Application. The Waste Analysis Plan requires the Facility to conduct a "fingerprint analysis" to determine if waste conforms to the generator's Waste Material Profile Sheet ("WMPS"). The fingerprint analysis is conducted on the first load of waste that is shipped from the generator to the Facility. If the fingerprint analysis reveals that the waste conforms to the WMPS, the waste is accepted at the Facility. Subsequent shipments of waste are not tested for conformance unless the generator updates the WMPS.

119. The Waste Analysis Plan requires Defendant "[p]rior to undertaking any liquid waste mixing or commingling activities from bulk containers or between tanks," to "utilize compatibility test procedures based on ASTM D5058, and its updates, to evaluate compatibility." Compatibility assessments are conducted by combining small amounts of the materials in order to determine whether a reaction, such as heat, flame, smoke, off-gassing, or polymerization occurs through mixture of the wastes. If a reaction is observed, further testing is required.

120. On or about April 2, 2011, Defendant did not conduct a compatibility test prior to combining wastes in violation of its Waste Analysis Plan, and therefore its Permit.

121. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each of the violations set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

SEVENTH CLAIM FOR RELIEF
(RCRA: Failure to Operate Hazardous Waste Building as Tested)

122. Paragraphs 1-71 are incorporated herein by reference.

123. Pursuant to 128 Neb. Admin. Code § 21-021, 40 C.F.R. § 264.1084(i)(1), and Section IV.E.8. of Defendant's Part I Permit, Defendant is required to design and operate the building in Areas 50C and 55 as a total enclosure in accordance with the "Procedure T - Criteria for and Verification of a Permanent or Temporary Total Enclosure" specified in 40 C.F.R. § 52.741, Appendix B. Defendant is also required to perform annual certification procedures for the enclosures as specified in Section 5.0 to "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" under 40 C.F.R. § 52.741, in accordance with 40 C.F.R. § 264.1082(c)(5)(iii), and Section IV.L.2. of Defendant's Part I Permit.

124. During the 2011 EPA Inspection, hazardous waste was managed in the Area 50C outside the specifications for total enclosure required by "Procedure T-Criteria for and Verification of a Permanent or Temporary Total Enclosure" specified in 40 C.F.R. § 52.741, Appendix B; therefore, the building was not operating in accordance with 40 C.F.R. § 264.1082(c)(5)(iii).

125. During the 2015 EPA Inspection, hazardous waste was managed in the Area 50C and Area 55 buildings outside the specifications for total enclosure required by "Procedure T-

Criteria for and Verification of a Permanent or Temporary Total Enclosure” specified in 40 C.F.R. § 52.741, Appendix B; therefore, the building was not operating in accordance with 40 C.F.R. § 264.1082(c)(5)(iii).

126. Pursuant to Section 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each of the violations set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

EIGHTH CLAIM FOR RELIEF

(RCRA: Receiving, Storing, and Incinerating Wastes Exceeding Concentration Limits)

127. Paragraphs 1-71 are incorporated herein by reference.

128. Under its Part I Permit, Defendant cannot incinerate any waste containing a concentration of equal to or greater than 50 milligrams per kilogram polychlorinated-biphenyls (hereafter referred to as PCBs). Permit III.C.1 & V.B.2. From May 16, 2013, to June 12, 2013, Defendant stored and incinerated PCB waste in concentrations greater than those allowed, in violation of its Permit.

129. Under its Part I Permit, Defendant has metal feed limits for its incinerator. On or about July 7 and 8, 2013, Defendant exceeded the pound per hour feed rate of mercury-containing waste in violation of its Permit. Permit V.F.5.a.

130. Pursuant to Section III.C.8. of Defendant’s Part I Permit, the Defendant shall only accept, store, and accumulate in containers the hazardous wastes identified in Appendix I and as restricted by the Permit.

131. In the 2018 and 2019 NDEE Inspections, it was noted that Defendant accepted, stored, accumulated, and incinerated hazardous waste not included in Appendix I under the following manifest numbers: 006952281JJK (2018 NDEE Inspection); 007760329FLE (2018

NDEE Inspection); 010923766JJK (2019 NDEE Inspection); and 010923781JJK (2019 NDEE Inspection).

132. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

NINTH CLAIM FOR RELIEF

(RCRA: Failure to Properly Mark Miscellaneous Waste and Used Oil Containers)

133. Paragraphs 1-71 are incorporated herein by reference.

134. Pursuant to 128 Neb. Admin. Code § 21-018, 40 C.F.R. § 264.601, and Section VI.D.1. of Defendant's Part I Permit, Defendant is required to mark each piece of miscellaneous unit, consistent with the Tag # identified in Appendix VII of the Permit, in a manner that it can be distinguished readily from other pieces of equipment.

135. During the 2017 NDEE Inspection, miscellaneous unit S-103 failed to have the required tag.

136. 128 Neb. Admin. Code § 7-009.04A3 requires containers and above ground tanks (and other receptacles of used oil) with a volume of 25 gallons or greater, to be labeled or marked clearly with the words "Used Oil." 40 C.F.R. § 279.22(c)(1) requires containers and aboveground tanks used to store used oil to be labeled or marked clearly with the words "Used Oil."

137. During the 2019 EPA Inspection, a used oil collection drum in the Maintenance Shop was unlabeled.

138. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each of the

violations set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

TENTH CLAIM FOR RELIEF
(RCRA: Failure to Minimize Unauthorized Entry)

139. Paragraphs 1-71 are incorporated herein by reference.

140. Pursuant to 128 Neb. Admin. Code § 21-002 and Section II.E.I. of Defendant's Part I Permit, Defendant is required to prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock onto the active portions of this facility. A chain link security fence which completely surrounds the active storage and treatment portion of the facility, a manned guard station to control entry through gates or other entrances to the facility, and a twenty-four (24) hour surveillance shall be maintained at all times.

141. During the 2018 NDEE Inspection, an emergency exit on a security fence did not latch properly.

142. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each day of the violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

ELEVENTH CLAIM FOR RELIEF
(RCRA: Failure to Make Appropriate Hazardous Waste Determinations)

143. Paragraphs 1-71 are incorporated herein by reference.

144. Defendant is required by 128 Neb. Admin. Code § 4-002 and 40 C.F.R. § 262.11 to make a hazardous waste determination on waste generated using outlined methods.

145. During the 2018 NDEE Inspection, nine 55-gallon drums of waste were incorrectly labeled as non-hazardous waste after the determination improperly relied on an exclusion.

146. During the 2018 EPA Inspection, Defendant had not conducted a hazardous waste determination on six containers of waste.

147. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each of the violations set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

TWELFTH CLAIM FOR RELIEF
(RCRA: Failure to Maintain Continuous Monitoring)

148. Paragraphs 1-71 are incorporated herein by reference.

149. Pursuant to 128 Neb. Admin. Code § 21-015, 40 C.F.R. § 264.347(a)(1), (2) and (3), and Section V.H.1. of Defendant's Part I Permit, Defendant is required to maintain, calibrate, and operate monitoring equipment which continuously records operating parameters specified in Section V.H.1. of Defendant's Part I Permit.

150. During the 2018 NDEE Inspection, it was found that Defendant failed to maintain and operate a grain loading meter, which is a continuous monitor downstream of the baghouse outlet, to ensure compliance with particulate matter emissions as required by the Permit.

151. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

THIRTEENTH CLAIM FOR RELIEF
(CAA: Failure to Establish Management System)

152. Paragraphs 1-71 are incorporated herein by reference.

153. Defendant is required by 40 C.F.R. § 68.12(d)(1) and 40 C.F.R. § 68.15 to assign a qualified person or position that has the overall responsibility for the development,

implementation, and integration of the risk management program elements and to document the lines of authority defined through an organization chart or similar document for individually assigned areas.

154. Since at least June 6, 2014, Defendant failed to assign a person or name of a position responsible for the following RMP elements: management system, process safety information, process hazard analysis, operating procedures, training, compliance audits, employee participation, hot work permit, contractors, emergency response, and risk management plan.

155. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

FOURTEENTH CLAIM FOR RELIEF

(CAA: Failure to Compile and Document Compliance with Process Safety Information)

156. Paragraphs 1-71 are incorporated herein by reference.

157. Defendant is required by 40 C.F.R. § 68.12(d)(3), and 40 C.F.R. §§ 68.65(a) and 68.65(d)(2), to complete a compilation of written process safety information before conducting any process hazard analysis and document that equipment complies with recognized and generally accepted good engineering practices (“RAGAGEP”).

158. Defendant conducted a process hazard analysis (“PHA”) in March 2012, November 2014, and May 2016, but did not compile written information pertaining to equipment in the process, and did not document compliance with RAGAGEP.

159. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

FIFTEENTH CLAIM FOR RELIEF
(CAA: Failure to Conduct Adequate Process Hazard Analyses)

160. Paragraphs 1-71 are incorporated herein by reference.

161. After conducting a PHA, Defendant was required by 40 C.F.R. § 68.12(d)(3) and 40 C.F.R. § 68.67(e) to “establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; [and] develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.”

162. Defendant failed to establish a system to promptly address and document resolution of the March 2012 and November 2014 PHA findings.

163. The PHA is also required to identify and address all hazards in the process, as required by 40 C.F.R. § 68.67(c)(1), but Defendant conducted inadequate PHAs in March 2012, November 2014, and May 2016 by failing to identify all hazards in the process in Building 55, such as fires in the hoppers related to the processing of incompatible materials, including household hazardous waste, and included invalid safeguards which could alter the significance of the risks of hazards in Building 55, and did not address the interaction and compatibility of materials in Building 55.

164. Defendant also failed to include 18 fires between 2010 and 2013 in the November 2014 PHA, which hampered Defendant’s ability to evaluate the risk of fires in Building 55 and examine the effectiveness of safeguards and corrective actions.

165. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

SIXTEENTH CLAIM FOR RELIEF
(CAA: Failure to Update Risk Management Plan)

166. Paragraphs 1-71 are incorporated herein by reference.

167. Defendant was required by 40 C.F.R. § 68.190(b)(3) to update its RMP no later than the date when the regulated substance was first present above a threshold quantity and update the RMP within 6 months, but failed to do so for: Butane; 1,1-Dichloroethylene; Dimethyl Ether; Isobutane; Isopentane; Propane; and Vinyl Chloride.

168. Defendant was required by 40 C.F.R. §§ 68.190(b)(5) and (b)(6) to update its RMP within 6 months of a change that requires a revised PHA or hazard review or revised offsite consequences analysis because it exceeded its maximum intended inventory for: Chloroform; Ethyl Ether; and Pentane, but failed to do so.

169. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

SEVENTEETH CLAIM FOR RELIEF
(CAA: Failure to Maintain Records)

170. Paragraphs 1-71 are incorporated herein by reference.

171. Defendant is required to maintain records regarding implementation of the RMP for five years by 40 C.F.R. § 68.200.

172. Until at least February 2015, Defendant failed to maintain records indicating whether threshold quantities of regulated substances have exceeded minimum thresholds.

173. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

EIGHTEENTH CLAIM FOR RELIEF
(CAA: Failure to Develop and Implement Written Operating Procedure)

174. Paragraphs 1-71 are incorporated herein by reference.

175. Defendant is required by 40 C.F.R. §§ 68.12(d)(3) and 68.69 to develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process.

176. Defendant failed to develop written operating procedures that provide clear instructions for ensuring incompatible wastes are not mixed in batches sent to Building 55. Clean Harbor's written standard operating procedures do not include segregation steps for incompatible materials, do not ensure that the proper batch has been selected for shredding, and do not address how purging is to be conducted between batches. Compatibility of household hazardous wastes is not addressed at all.

177. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), and 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

NINETEENTH CLAIM FOR RELIEF
(CAA: Failure to demonstrate compliance with emission limits)

178. Paragraphs 1-71 are incorporated herein by reference.

179. Section XXX of Defendant's Air Operating Permit #03R1-001, states that the Facility's thermal oxidation unit is subject to the requirements of 40 C.F.R. Part 63, Subpart EEE.

180. 40 C.F.R. § 63.1206(b)(12)(i) requires Defendant to conduct a performance test to document compliance with the emission standards of Subpart EEE. 40 C.F.R.

§ 63.1206(b)(12)(ii) requires Defendant to document compliance with the destruction removal efficiency (“DRE”) standard of Subpart EEE based on each run of the performance test.

Pursuant to 40 C.F.R. §§ 63.1203(c) and 63.1219(c), the DRE standard for the principal organic hazardous constituent (“POHC”) of tetrachloroethene in Subpart EEE is 99.99% as referenced in Section XXX (F)(2) of Defendant’s Air Operating Permit #03R1-001.

181. Neb. Rev. Stat. § 81-1506(4)(b) and (c) make it unlawful to violate any term or condition of an air pollution permit or any emission limit set in the permit; or violate any emission limit or air quality standard established by the Nebraska Environmental Quality Council.

182. From August 19-22, 2014, Defendant conducted a comprehensive performance test of the hazardous waste incinerator. During this performance test, Defendant failed the permit operating parameter for DRE performance standard of 99.99% for POHC, specifically for tetrachloroethene, for three of the six test runs. Defendant did not demonstrate compliance with the DRE performance standard for tetrachloroethene until November 19, 2014.

183. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

TWENTIETH CLAIM FOR RELIEF
(CAA: Failure to Control VOC Emissions)

184. Paragraphs 1-71 are incorporated herein by reference.

185. Condition XIII.(R) of Defendant's Construction Permit #CP13-008 requires VOC emissions from Area 58 to be captured and controlled by carbon adsorbers or the incinerator.

186. During the 2015 NDEE Air Inspection, inspectors observed that tanks in Area 58 at the Facility had been venting uncontrolled emissions through pressure relief devices instead of routing emissions to the incinerator or carbon adsorption units, from at least June 28, 2015, to at least August 25, 2015.

187. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

TWENTY-FIRST CLAIM FOR RELIEF
(CAA: Failure to Monitor and Confirm No Detectable Emissions from Pressure Relief Device in Gas/ Vapor Service)

188. Paragraphs 1-71 are incorporated herein by reference.

189. The Area 58 Tank Farm contains pressure relief devices, *inter alia*, that are intended to operate in VHAP service, and are subject to 40 C.F.R. Part 61, Subpart V.

190. 40 C.F.R. Part 61, Subpart V, 61-242-4(b)(2) and Subpart BB at 40 C.F.R. § 264.1054 require monitoring pressure relief devices within 5 days after a release to demonstrate the pressure relief device was not leaking.

191. From at least June 28, 2015, through at least August 25, 2015, Defendant failed to monitor the pressure relief device in tank system 58 within five calendar days of releases to confirm the condition of no detectable emissions.

192. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], and Neb. Rev. Stat. § 1508.02(2), for each day of

each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

TWENTY-SECOND CLAIM FOR RELIEF
(EPCRA: Failure to Submit Toxic Release Inventory)

193. Paragraphs 1-71 are incorporated herein by reference.

194. EPCRA Section 313 requires regulated facilities to complete and submit a toxic chemical release inventory Form R to the Administrator of EPA and to the State in which the subject facility is located by July 1, for the preceding calendar year, for each toxic chemical known by the owner or operator to be “manufactured, processed, or otherwise used” in quantities exceeding the established threshold quantity during that preceding calendar year. 40 C.F.R. §§ 372.22 and 372.30.

195. Hexachlorobenzene and Aldrin are listed chemicals pursuant to 40 C.F.R. § 372.65 and therefore “toxic chemicals” within the meaning of 40 C.F.R. § 372.3.

196. Defendant failed to timely report hexachlorobenzene that was “otherwise used” in 2013 and 2014, and failed to report Aldrin that was “otherwise used” for 2015.

197. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11023(c), 40 C.F.R. §§ 19.2 and 19.4 - Table, [85 FR 1753, Jan. 13, 2020], for each day of each violation set forth in this Claim For Relief, Defendant is subject to injunctive relief and civil penalties.

PRAYER FOR RELIEF

WHEREFORE, the United States of America and the State of Nebraska respectfully request that this Court grant the following relief:

1. Order Defendant to comply immediately with the statutory and regulatory requirements cited in this Complaint.

2. Order Defendant to take all steps necessary to achieve, demonstrate, and maintain compliance with the RCRA, CAA, EPCRA, NEPA, and all applicable requirements and permits established under these acts at the Facility.
3. Assess civil penalties against Defendant for each day of each violation alleged herein.
4. Award the United States and State of Nebraska their costs and disbursements in this action.
5. Grant such other and further relief as this Court deems appropriate.

Respectfully Submitted,

NATHANIEL DOUGLAS
DEPUTY SECTION CHIEF
Environmental Enforcement Section
Environment and Natural Resources Division

Dated: 8/31/20

/s/ Rachel A. Hankey
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Dated: 8/31/20

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