

IN THE DISTRICT COURT OF ADAMS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	
JIM MACY, Director,)	Case No. _____
NEBRASKA DEPARTMENT OF)	
ENVIRONMENT AND ENERGY,)	
)	
Plaintiff,)	COMPLAINT
)	
v.)	
)	
A-1 FIBERGLASS, INC.,)	
)	
Defendant.)	

COMES NOW Jim Macy, Director of the Nebraska Department of Environment and Energy, who institutes this action through Douglas J. Peterson, Nebraska Attorney General, on behalf of the State of Nebraska, as Plaintiff, and alleges as follows:

PARTIES AND INTERESTS

1. The Plaintiff Nebraska Department of Environment and Energy (“Department”) is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504, to administer and enforce the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.*, and all rules, regulations, orders, and permits issued pursuant to NEPA.
2. Under NEPA, the Department is further charged with the duty to act as the state solid waste pollution control agency for all purposes of the Resource Conservation and Recovery Act (“RCRA”), as amended, 42 U.S.C. § 6901 *et seq.* Neb. Rev. Stat. § 81-1504(4).
3. Defendant A-1 Fiberglass, Inc. (“A-1”) is an active domestic corporation incorporated in Nebraska. A-1’s principal office is in Hastings, Nebraska where A-1 owns and operates a facility (referred to as the “Hastings facility”).
4. A-1 custom manufactures fiberglass products and parts for various industries at its Hastings facility. In its manufacturing process, A-1 generates both solid and hazardous wastes.



5. A-1 is considered a “person” for purposes of NEPA. Neb. Rev. Stat. § 81-1502(10).

JURISDICTION AND VENUE

6. The District Court has jurisdiction over the subject-matter of this action, pursuant to Neb. Rev. Stat. § 24-302, and over the parties to this action.

7. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as A-1’s Hastings facility is located in Adams County and the events at issue took place in Adams County.

LEGAL BACKGROUND

A. General.

8. NEPA was enacted in 1971 to protect the water, land, and air of this State by, *inter alia*, making it unlawful “[t]o cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state” Neb. Rev. Stat. §§ 81-1501, 1506(1).

9. NEPA provides the Department with the power to act as the state solid waste pollution control agency for all purposes of RCRA. Neb. Rev. Stat. § 81-1504(4). The main purpose of RCRA is to ensure proper management of hazardous wastes from the point of generation until final disposal. *See* 42 U.S.C. § 6902.

10. Pursuant to its authority under Neb. Rev. Stat. § 81-1505, the Nebraska Environmental Quality Council (“council”) promulgated Title 128—Nebraska Hazardous Waste Regulations, to regulate hazardous waste management, storage, transport, and disposal for purposes of RCRA.

11. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c).

12. Under NEPA, it is “unlawful for any person to violate any other provision of or fail to perform any duty imposed by such acts, rules, or regulations.” Neb. Rev. Stat. § 81-1508.02(1)(e).

13. Pursuant to its authority in Neb. Rev. Stat. § 81-1505, the council promulgated the following relevant rules and regulations:

- a. Title 126 of the Nebraska Administrative Code, *Rules and Regulations Pertaining to Management of Waste*; and

b. Title 128 of the Nebraska Administrative Code, *Nebraska Hazardous Waste Regulations*.

14. Solid waste means “any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities” Neb. Rev. Stat. § 81-1502(26).

15. Hazardous waste means “a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or (b) pose a substantial present or potential hazard to human or animal health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.” Neb. Rev. Stat. § 81-1502(25).

B. Hazardous Waste Determinations.

16. Under Title 128, generators of solid waste are required to make hazardous waste determinations. 128 Neb. Rev. Stat. § 4-002; *id.* § 9-007.01. These hazardous waste determinations allow the Department to regulate the generation and disposal of hazardous waste, as well as help generators maintain compliance with Title 128 and RCRA.

17. A generator is “any person, by site, whose act or process produces hazardous waste identified or listed in Chapter 3 [of Title 128] or whose act first causes a hazardous waste to become subject to regulation.” 128 Neb. Admin. Code § 1-060. A generator may be considered a small quantity generator (“SQG”) or large quantity generator, depending on the quantity of hazardous waste generated in a calendar month. Neb. Admin. Code §§ 1-085 & 1-120. An SQG generates more than 100 kilograms (“kg”) and less than 1,000 kg of hazardous waste in a calendar month and a large quantity generator generates more than or equal to 1,000 kg of hazardous waste in a calendar month. *Id.*

18. Facility means “[a]ll contiguous land, and structures, other appurtenances, and improvements on the land, used for treating, storing, or disposing of hazardous waste, or for managing hazardous secondary materials prior to reclamation.” 128 Neb. Admin. Code § 1-052.01.

C. 180-Day Storage of Hazardous Waste.

19. Under Title 128, an SQG “may accumulate hazardous waste on-site for 180 days or less (or for 270 days if the generator must transport the waste, or offer that waste for transportation, over a distance of 200 miles or more) without a permit or without having interim status provided that,” *inter alia*, “[t]he generator complies with the container requirements of Section 004.01A of Chapter 10” and “complies with the dating and labeling requirements of Sections 004.01F and 004.01G of Chapter 10” 128 Neb. Admin. Code § 9-007.03. The requirements in Chapter 10 include keeping containers holding hazardous waste closed, as well as clearly marking and labeling the containers with the words “hazardous waste” and “the date upon which each period of accumulation begins” *Id.* §§ 10-004.01F & 10-004.01G.

20. If an SQG accumulates hazardous waste exceeding 6,000 kg or for longer than 180 days, then the SQG is operating a hazardous waste storage facility and must have a storage permit. *See* 128 Neb. Admin. Code §§ 9-008 & 12-001.01.

D. Satellite Accumulation of Hazardous Waste.

21. Under Title 128, a generator “may accumulate as much as 55 gallons of hazardous waste, or one quart of acute hazardous waste listed in Chapter 3, 015, in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste” 128 Neb. Admin. Code § 9-007.04A. This is known as satellite accumulation. *See id.* § 9-007.04. A satellite accumulation area is where hazardous waste is generated and stored, usually the same room, before moving to an 180-day or 90-day storage area.

22. Satellite accumulation containers must, *inter alia*, be kept “closed during storage, except when it is necessary to add or remove waste” and be marked “with the words ‘Hazardous Waste’ or with other words that identify the contents of the container.” 128 Neb. Admin. Code §§ 9-007.04A1, 9-007.04A2, & 10-004.01A2.

E. Other Regulatory Requirements.

23. Under Title 128, a generator must test and maintain fire protection equipment, including fire extinguishers, on an annual basis. 128 Neb. Admin. Code § 17-004.

24. Under Title 126, “[n]o person shall release, cause to be released or allow the release of an oil or hazardous substance or residuary products thereof, into, or upon the waters or land of the state, except in quantities, and at times and locations, or under circumstances and conditions as the Department approves.” 126 Neb. Admin. Code § 18-001.01.

25. “Release” means, but is not limited to, “any discharging, spilling, leaking, pumping, emitting, emptying or dumping of oil or hazardous substances upon land, beneath the surface of the land, or into waters of the State, either by accident or otherwise.” 126 Neb. Admin. Code § 1-036.

F. Enforcement.

26. Under NEPA, the Department, through the Attorney General’s Office, is empowered to file an enforcement action seeking civil penalties and/or injunctive relief. *See* Neb. Rev. Stat. §§ 81-1508 & 81-1508.02.

27. Each violation of NEPA subjects “a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.” Neb. Rev. Stat. § 81-1508.02(2).

FACTUAL BACKGROUND

28. At all times relevant to this Complaint, A-1 owned and operated a fiberglass manufacturing facility in Hastings, Nebraska. A-1 was a small quantity generator (“SQG”) of hazardous waste.

29. As part of its manufacturing operations at the Hastings facility, A-1 generated both solid and hazardous wastes that are subject to regulation by the Department.

30. A-1 used Building 18 as its 180-Day accumulation area for hazardous wastes.

31. A-1 used Buildings 1, 2, and 3 as its satellite accumulation areas for hazardous wastes.

32. A-1 used gel coats and resins in its manufacturing process. After use, the unused or leftover gel coats and resins (collectively, “waste resins”) were disposed of as waste.

33. When generated in liquid form, waste resin exhibits the characteristic of ignitability (D001), which make it a hazardous waste.

34. When cured and hardened, waste resins no longer exhibit the characteristic of ignitability and are not hazardous wastes.

35. A-1 used acetone as a solvent to clean gel coat and resin application during its manufacturing process taking place in Buildings 1, 2, and 3. Acetone was used twice then transferred to 55-gallon satellite accumulation containers (metal drums). When the satellite accumulation containers became full, containers with the used acetone (referred to as “waste acetone”) were moved to Building 18 for storage before being transported off-site for disposal.

36. Acetone exhibits the characteristic of ignitability (DEQ/EPA Hazardous Waste Number D001), which makes it a hazardous waste. Acetone is also a listed hazardous waste (DEQ/EPA Hazardous Waste Number F003) in Title 128 of the Nebraska Administrative Code.

37. On February 27, 2020, the Department received a Notice of Environmental Concern that alleged hazardous waste had been stored onsite in van trucks for over a year and there had been spills of hazardous waste at A-1’s Hastings facility that were not reported.

38. On March 17, 2020, the Department conducted a Compliance Evaluation Inspection and Complaint Investigation at A-1’s Hastings facility.

39. During the inspection, the Department inspectors, *inter alia*, conducted a visual inspection of the facility and inspected the inside and outside of Buildings 1, 3, and 18 and the outside of Building 2.

40. In Building 1, the Department inspectors found one open and unlabeled 55-gallon metal drum containing waste acetone. Waste acetone was not being removed from or added to the drum at the time.

41. Outside of Building 2, the Department inspectors found one open and unlabeled 55-gallon drum containing waste acetone, which also was not located at or near the point of generation, which was inside Building 2. Waste acetone was not being removed from or added to the drum at the time.

42. In Building 3, the Department inspectors found an open 55-gallon drum that was dated and labeled as containing waste acetone. Waste acetone was not being removed from or added to the drum at the time.

43. West of Building 18, the Department inspectors found two areas of spilled waste resins on the ground.

44. Southwest of Building 18, the Department inspectors found four closed and unlabeled 55-gallon drums with unknown contents, but the A-1 employee thought the contents could be waste resin waiting to be hardened.

45. Also southwest of Building 18, the Department inspectors found ten closed, but unlabeled 55-gallon drums on pallets and six closed, but unlabeled 5-gallon buckets and several paint cans. At the time, an employee with A-1 accompanying the inspectors did not know what waste materials were in the containers. The Department inspectors informed the A-1 employee that hazardous waste determinations needed to be performed on the containers with unknown waste materials.

46. Inside Building 18, the Department inspectors found eight 55-gallon drums containing waste acetone that were closed, labeled with "Hazardous Waste," and dated. One of the eight 55-gallon drums containing waste acetone was dated 9/13/19, which exceeded the 180-day storage limit. The Department inspectors also found three 55-gallon drums containing waste acetone that were unlabeled and undated.

47. During the inspection, the Department inspectors examined the tags on fire extinguishers in the buildings at the facility. The Department inspectors found two fire extinguishers in Building 18. One of the fire extinguishers in Building 18 had not been inspected since December 2016 and the other fire extinguisher in Building 18 had not been inspected since December 2017. There were at least two fire extinguishers in Buildings 1 and 3 that had not been inspected since December 2018.

48. During the inspection, the Department inspectors observed two van trucks parked along a road within the boundaries of A-1's Hastings facility, which were a subject of the Notice of Environmental Concern received by the Department in February 2020.

49. Upon reaching the van trucks, the Department inspectors noticed both van trucks had been zip-tied shut. An A-1 employee cut the zip-ties to the van trucks so the Department inspectors could view the contents.

50. Inside the first van truck, the Department inspectors observed 14 closed, unlabeled, and undated 55-gallon drums. Twelve of the 55-gallon drums

appeared to contain varying amounts of waste resin in liquid form, which in the aggregate totaled at least ten full 55-gallon drums of liquid waste resin.

51. Inside the second van truck, the Department inspectors observed 23 unlabeled and undated 55-gallon drums. Three of the 55-gallon drums were open, but the rest were closed. Twelve of the 55-gallon drums contained varying amounts of waste resin in liquid form, which in the aggregate totaled at least seven full 55-gallon drums of liquid waste resin.

52. At the end of the inspection, the Department inspectors informed A-1 that it was likely accumulating hazardous waste in amounts higher than, and for longer than, the limits allowed for an SQG.

53. At all times relevant to the Complaint, A-1 did not have a permit to operate a hazardous waste storage facility.

54. On April 13, 2020, the Department issued a notice of violation (“NOV”) to A-1, which alleged nine violations as follows:

- a. Failure to keep a satellite accumulation container of hazardous waste closed;
- b. Failure to mark satellite accumulation containers with the words “Hazardous Waste;”
- c. Failure to accumulate hazardous waste at or near the point of generation where wastes initially accumulate;
- d. Allowing the release of an oil or hazardous substance or residuary product thereof into or upon waters or land of the state;
- e. Failure to clearly mark and label each container of hazardous waste being accumulated onsite with the words: “Hazardous Waste;”
- f. Failure to clearly mark the date upon which the period of accumulation begins on each container when accumulating hazardous waste onsite;
- g. Accumulating hazardous waste in quantities exceeding 6,000 kg or accumulating more than 180 days without a storage permit;
- h. Failure to determine whether a waste is a hazardous waste; and

- i. Failure to test and maintain fire extinguishers on an annual basis.

55. The April 13, 2020 NOV required A-1 to perform corrective actions and provide written confirmation of completion within thirty days of receipt of the NOV. A-1 received the NOV on April 15, 2020.

56. A-1 submitted a response to the April 13, 2020 NOV on May 15, 2020, which described how A-1 addressed the violations alleged in the NOV and the requested corrective actions. A-1 performed, *inter alia*, the following corrective actions:

- a. Cleaned up the spilled waste resin west of Building 18;
- b. Conducted a hazardous waste determination on contents of the four closed and unlabeled 55-gallon drums located southwest of Building 18, which showed the contents were not hazardous waste;
- c. Conducted hazardous waste determinations on the ten closed, but unlabeled 55-gallon metal drums on pallets and the six closed, but unlabeled 5-gallon buckets and several paint cans; and
- d. Prepared a manifest and shipped off 6,750 lbs of hazardous waste, including the hazardous waste being accumulated for longer than 180 days.

57. One of the corrective actions required was the submittal of a closure plan to the Department regarding Building 18 and the areas where the two van trucks were parked. A-1 submitted a revised Closure Plan in March 2021, which was approved by the Department on January 27, 2022. The closure activities in the approved Closure Plan must be completed no later than July 26, 2022.

58. Other than completion of closure activities pursuant to the approved Closure Plan, which is underway, A-1 has addressed the violations outlined in the April 13, 2020 NOV and completed the requested corrective actions.

FIRST CAUSE OF ACTION

ACCUMULATING HAZARDOUS WASTE IN QUANTITIES EXCEEDING 6,000 KG OR ACCUMULATING HAZARDOUS WASTE FOR MORE THAN 180 DAYS WITHOUT A STORAGE PERMIT IN VIOLATION OF NEB. REV. STAT. § 81-1506(3)(c) AND 128 NEB. ADMIN. CODE § 9-008.

59. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–58 as though fully set forth herein.

60. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c); *see also id.* § 81-1508.02(1)(e).

61. 128 Neb. Admin. Code § 9-008 provides: “A small quantity generator who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if the generator must transport the waste, or offer the waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of Chapters 12 through 15 and Chapters 21 or 22 unless the generator is granted an extension”

62. One of the requirements set forth in Chapter 12 is that an operator of a storage facility for hazardous waste must have a storage permit. 128 Neb. Admin. Code § 12-001.01.

63. At all times relevant to this Complaint, A-1 was an SQG, as defined in 128 Neb. Admin. Code § 1-120, and accumulated hazardous wastes.

64. As part of its manufacturing process, A-1 generates waste acetone and waste resins.

65. During the March 17, 2020 inspection, the Department inspectors observed eleven 55-gallon drums containing waste acetone in the 180-day accumulation area of Building 18. One of the 55-gallon drums containing waste acetone was dated September 13, 2019.

66. During the March 17, 2020 inspection, the Department inspectors found two van trucks that were zip-tied shut and parked at A-1’s Hastings facility. Inside the van trucks, the Department inspectors observed there were 24 55-gallon drums containing varying amounts of waste resin in liquid form, which in the aggregate totaled at least 17 full 55-gallon drums of liquid waste resin.

67. During the March 17, 2020 inspection, the Department inspectors also observed three 55-gallon drums containing waste acetone inside Buildings 1 and 3, and outside Building 2.

68. Acetone is a hazardous waste pursuant to 128 Neb. Admin. Code § 3-007 and 128 Neb. Admin. Code § 3-013.01 (Table 4).

69. Gel coats and resins (waste resins) in liquid form are hazardous wastes pursuant to 128 Neb. Admin. Code § 3-007.

70. On March 17, 2020, A-1 was accumulating hazardous waste in quantities exceeding 6,000 kg because there were eleven 55-gallon drums containing waste acetone in Building 18, at least 17 full 55-gallon drums containing liquid waste resin in the two van trucks, and three 55-gallon drums containing waste acetone inside or outside Buildings 1, 2, and 3.

71. As of March 17, 2020, A-1 was accumulating hazardous waste for more than 180 days because at least one 55-gallon drum containing waste acetone was dated September 13, 2019, which was six days past the 180-day storage limit and, upon information and belief, the 55-gallon drums containing liquid waste resin in the two van trucks had been stored for more than 180 days.

72. On May 12, 2020, A-1 prepared a uniform hazardous waste manifest and shipped off 6,750 lbs of hazardous waste.

73. By accumulating hazardous waste for longer than 180 days and in quantities greater than 6,000 kg, A-1 was operating a hazardous waste storage facility from at least March 11, 2020 to May 12, 2020.

74. A-1 did not have a permit to operate a hazardous waste storage facility and had not been granted an extension.

75. Upon information and belief, A-1 did not meet any of the exceptions set forth in 128 Neb. Admin. Code § 9-008.

76. A-1 violated 128 Neb. Admin. Code §§ 9-008 and 12-001 when A-1 accumulated hazardous wastes in quantities in excess of 6,000 kg and for longer than 180 days without obtaining a storage permit to operate a hazardous waste storage facility.

77. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), A-1 is subject to a civil penalty of not more than \$10,000 per day for these violations.

SECOND CAUSE OF ACTION

RELEASE OF AN OIL OR HAZARDOUS SUBSTANCE INTO OR UPON THE LAND OF THE STATE IN VIOLATION OF § 81-1506(3)(c) AND 126 NEB. ADMIN. CODE § 18-001.

78. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–58 as though fully set forth herein.

79. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c); *see also id.* § 81-1508.02(1)(e).

80. 126 Neb. Admin. Code § 18-001.01 provides that “[n]o person shall release, cause to be released or allow the release of an oil or hazardous substance ... into, or upon the waters or land of the state ...”

81. A-1 is a “person,” as defined in Neb. Rev. Stat. § 81-1502(10).

82. “Release” means, but is not limited to, “any discharging, spilling, leaking, pumping, emitting, emptying or dumping of oil or hazardous substances upon land, beneath the surface of the land, or into waters of the State, either by accident or otherwise.” 126 Neb. Admin. Code § 1-036.

83. During the March 3, 2020 inspection, the Department inspectors observed two areas west of Building 18 where gel coat and waste resin had been released onto the ground.

84. Gel coat and waste resin in liquid form are hazardous wastes pursuant to 128 Neb. Admin. Code § 3-007.

85. A-1 violated 126 Neb. Admin. Code § 18-001 because A-1 released, caused to be released, or allowed the release of hazardous waste onto land of the state.

86. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), A-1 is subject to a civil penalty of not more than \$10,000 per day for these violations.

THIRD CAUSE OF ACTION

FAILURE TO DETERMINE WHETHER A WASTE IS A HAZARDOUS WASTE IN VIOLATION OF NEB. REV. STAT. § 81-1506(3)(c) AND 128 NEB. ADMIN. CODE § 4-002.

87. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–58 as though fully set forth herein.

88. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA] ...” Neb. Rev. Stat. § 81-1506(3)(c); *see also id.* § 81-1508.02(1)(e).

89. 128 Neb. Admin. Code § 4-002 provides: “A person who generates a solid waste, as defined in Chapter 2, 003 must determine if that waste is a hazardous waste ...” An SQG must make hazardous waste determinations. 128 Neb. Admin. Code § 9-007.01.

90. At all times relevant to this Complaint, A-1 was an SQG, as defined in 128 Neb. Admin. Code § 1-120.

91. During the March 17, 2020 inspection, the Department inspectors found four closed and unlabeled 55-gallon drums with unknown contents southwest of Building 18. The contents were thought to be liquid waste resin. Also southwest of Building 18, the Department inspectors found ten closed and unlabeled 55-gallon drums with unknown contents, six closed and unlabeled 5-gallon buckets with unknown contents, and several paint cans with unknown contents.

92. At the time of the inspection, A-1 did not know the contents of at least 20 unlabeled containers southwest of Building 18 and had not determined whether the wastes in those containers were hazardous wastes.

93. Since March 17, 2020, A-1 has conducted hazardous waste determinations on those drums, buckets, and paint cans with unknown contents.

94. A-1 violated 128 Neb. Admin. Code § 4-002 by failing to determine whether the waste stored in the drums, buckets, and paint cans was hazardous waste.

95. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), A-1 is subject to a civil penalty of not more than \$10,000 per day for each of these violations.

FOURTH CAUSE OF ACTION

FAILURE TO KEEP CLOSED AND CLEARLY MARK AND LABEL EACH CONTAINER OF HAZARDOUS WASTE BEING ACCUMULATED ON-SITE IN VIOLATION OF NEB. REV. STAT. § 81-1506(3)(c) AND 128 NEB. ADMIN. CODE § 9-007.03.

96. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–58 as though fully set forth herein.

97. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c); *see also id.* § 81-1508.02(1)(e).

98. 128 Neb. Admin. Code § 9-007.03 requires that an SQG may accumulate hazardous waste on site for 180 days or less without a permit or interim status as long as, *inter alia*, it “never exceeds 6,000 kilograms[,]” “complies with the container requirements of Section 004.01A of Chapter 10[,]” and “complies with the dating and labeling requirements of Sections 004.01F and 004.01G of Chapter 10”

99. Section 004.01A requires, *inter alia*, containers holding hazardous waste to “always be closed during storage, except when necessary to add or remove waste[.]” 128 Neb. Admin. Code § 10-004.01A2.

100. Section 004.01F requires “[t]he date upon which each period of accumulation begins must be clearly marked and visible for inspection on each container[.]” 128 Neb. Admin. Code § 10-004.01F.

101. Section 004.01G requires that “each container and tank must be labeled or marked clearly with the words ‘Hazardous Waste[.]’” 128 Neb. Admin. Code § 10-004.01G.

102. At all times relevant to this Complaint, A-1 was an SQG, as defined in 128 Neb. Admin. Code § 1-120.

103. A-1 uses Building 18 as its 180-day accumulation area for hazardous wastes.

104. During the March 17, 2020 inspection, the Department inspectors found three 55-gallon drums inside of Building 18 containing waste acetone that were not dated and were not labeled with the words “hazardous waste.”

105. During the March 17, 2020 inspection, the Department inspectors found 37 unlabeled and undated 55-gallon drums in two van trucks that had been zip-tied shut on A-1’s property. 24 of the 55-gallon drums contained liquid waste resin but were not labeled with the words “hazardous waste” and were not dated. Three of the 55-gallon drums were open while being stored in the van trucks.

106. Acetone is a hazardous waste pursuant to 128 Neb. Admin. Code § 3-007 and 128 Neb. Admin. Code § 3-013.01 (Table 4).

107. Waste resins in liquid form are hazardous wastes pursuant to 128 Neb. Admin. Code § 3-007.

108. As an SQG accumulating hazardous waste on site for 180 days or less, A-1 must keep each container closed during storage and clearly mark each container of hazardous waste being accumulated onsite with the date upon which accumulation began and with the words “hazardous waste.”

109. A-1 violated 128 Neb. Admin. Code §§ 9-007.03D & 10-004.01F by failing to properly mark and label at least 27 containers containing hazardous waste and by failing to keep three containers containing hazardous waste closed during storage.

110. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), A-1 is subject to a civil penalty of not more than \$10,000 per day for these violations.

FIFTH CAUSE OF ACTION

FAILURE TO ACCUMULATE HAZARDOUS WASTE AT OR NEAR A POINT OF GENERATION WHERE WASTES INITIALLY ACCUMULATE IN VIOLATION OF NEB. REV. STAT. § 81-1506(3)(c) AND 128 NEB. ADMIN. CODE § 9-007.04A.

111. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–58 as though fully set forth herein.

112. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c); *see also id.* § 81-1508.02(1)(e).

113. 128 Neb. Admin. Code § 9-007.04A provides: “A generator may accumulate as much as 55 gallons of hazardous waste ... in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Section 007.03 of this Chapter provided the generator” complies with other specified requirements in the regulation.

114. At all times relevant to this Complaint, A-1 was an SQG, as defined in 128 Neb. Admin. Code § 1-120.

115. A-1 used Building 2 as a satellite accumulation area for hazardous wastes, which was where waste acetone was generated.

116. During the March 17, 2020 inspection, the Department inspectors found an open and unlabeled 55-gallon drum containing waste acetone that was located outside of Building 2 away from the point of generation of waste acetone.

117. Acetone is a hazardous waste pursuant to 128 Neb. Admin. Code § 3-007 and 128 Neb. Admin. Code § 3-013.01 (Table 4).

118. A-1 was accumulating waste acetone in a 55-gallon drum that was not at or near the point of generation where the waste acetone initially accumulates, which was inside Building 2.

119. A-1 did not have a permit, interim status, and did not comply with the other requirements in 128 Neb. Admin. Code § 9-007.04A.

120. A-1 violated 128 Neb. Admin. Code § 9-007.04A by failing to accumulate hazardous waste at or near the point of generation where the wastes initially accumulate.

121. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), A-1 is subject to a civil penalty of not more than \$10,000 per day for each of this violation.

SIXTH CAUSE OF ACTION

FAILURE TO MARK SATELLITE ACCUMULATION CONTAINERS WITH THE WORDS “HAZARDOUS WASTE” OR WITH OTHER WORDS IDENTIFYING THE CONTENTS IN VIOLATION OF NEB. REV. STAT. § 81-1506(3)(c) AND 128 NEB. ADMIN. CODE § 9-007.04A2.

122. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–58 as though fully set forth herein.

123. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA] ...” Neb. Rev. Stat. § 81-1506(3)(c); *see also id.* § 81-1508.02(1)(e).

124. 128 Neb. Admin. Code § 9-007.04A provides: “A generator may accumulate as much as 55 gallons of hazardous waste ... in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Section 007.03 of this Chapter provided the generator” and, *inter alia*, “marks the containers with the words ‘Hazardous Waste’ or with other words that identify the contents of the containers.” 128 Neb. Admin. Code § 9-007.04A2.

125. At all times relevant to this Complaint, A-1 was an SQG, as defined in 128 Neb. Admin. Code § 1-120.

126. During the March 17, 2020 inspection, the Department inspectors found one open 55-gallon drum containing waste acetone in Building 1 that was not labeled with “hazardous waste” or any other words identifying the contents.

127. Acetone is a hazardous waste pursuant to 128 Neb. Admin. Code § 3-007 and 128 Neb. Admin. Code § 3-013.01 (Table 4).

128. Building 1 is a satellite accumulation area for A-1.

129. A-1 was accumulating waste acetone in an open 55-gallon drum at or near the point of generation where waste acetone initially accumulates, which was inside Building 1, but did not mark that container with “hazardous waste” or any other words identifying the contents.

130. A-1 violated 128 Neb. Admin. Code § 9-007.04A2 by failing to label its satellite accumulation container with the words “Hazardous Waste” or any other words to identify the contents of the container.

131. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), A-1 is subject to a civil penalty of not more than \$10,000 per day for each of this violation.

SEVENTH CAUSE OF ACTION

FAILURE TO KEEP SATELLITE ACCUMULATION CONTAINERS OF HAZARDOUS WASTE CLOSED EXCEPT WHEN ADDING OR REMOVING WASTE IN VIOLATION OF NEB. REV. STAT. § 81-1506(3)(c) AND 128 NEB. ADMIN. CODE § 10-004.01A2.

132. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–58 as though fully set forth herein.

133. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA] ...” Neb. Rev. Stat. § 81-1506(3)(c); *see also id.* § 81-1508.02(1)(e).

134. 128 Neb. Admin. Code § 9-007.04A provides: “A generator may accumulate as much as 55 gallons of hazardous waste ... in containers at or near any point of generation where wastes initially accumulate, which is under the control of the operator of the process generating the waste, without a permit or interim status and without complying with Section 007.03 of this Chapter provided the generator” and, *inter alia*, the “container holding hazardous waste

must always be closed during storage, except when it is necessary to add or remove waste[.]” 128 Neb. Admin. Code § 10-004.01A2.

135. At all times relevant to this Complaint, A-1 was an SQG, as defined in 128 Neb. Admin. Code § 1-120.

136. During the March 17, 2020 inspection, the Department inspectors found one open 55-gallon drum containing waste acetone inside of Building 1 and another open 55-gallon drum containing waste acetone inside of Building 3.

137. Acetone is a hazardous waste pursuant to 128 Neb. Admin. Code § 3-007 and 128 Neb. Admin. Code § 3-013.01 (Table 4).

138. Both Buildings 1 and 3 are satellite accumulation areas for A-1.

139. A-1 was accumulating waste acetone in two open 55-gallon drums at or near the point of generation where waste acetone initially accumulates, which were inside Buildings 1 and 3, but did not keep those containers closed during storage and, at the time, was not adding or removing the waste in the drums.

140. A-1 violated 128 Neb. Admin. Code § 10-004.01A2 by failing to keep the two satellite containers of hazardous waste in Buildings 1 and 3 closed during storage.

141. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), A-1 is subject to a civil penalty of not more than \$10,000 per day for each of these violations.

EIGHTH CAUSE OF ACTION

FAILURE TO TEST AND MAINTAIN FIRE EXTINGUISHERS ON AN ANNUAL BASIS IN VIOLATION OF NEB. REV. STAT. § 81-1506(3)(c) AND 128 NEB. ADMIN. CODE §§ 25-012, 25-013, & 25-014.

142. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–58 as though fully set forth herein.

143. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA]” Neb. Rev. Stat. § 81-1506(3)(c); *see also id.* § 81-1508.02(1)(e).

144. 128 Neb. Admin. Code § 17-004 requires that “all facility communications or alarm systems, fire protection equipment, safety equipment, spill control equipment, and decontamination equipment, where required, must be tested and maintained on an annual basis”

145. During the March 17, 2020 inspection, the Department inspectors found fire extinguishers that had not been inspected within the last year. Two fire extinguishers in Building 18 had not been inspected since December 2016 and December 2017, respectively. At least two fire extinguishers in Buildings 1 and 3 also had not been inspected since December 2018.

146. A-1 was required to have its fire extinguishers tested and maintained on an annual basis but had not done so since December 2018 or earlier.

147. A-1 violated 128 Neb. Admin. Code § 17-004 by failing to have at least four of its fire extinguishers tested and maintained on an annual basis.

148. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), A-1 is subject to a civil penalty of not more than \$10,000 per day for each of these violations.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests this Court to enter judgment on this Complaint in its favor and grant the following relief:

- A. Declare A-1 violated the Nebraska Environmental Protection Act and/or Title 128 and/or Title 126 of the Nebraska Administrative Code;
- B. Enter the statutory maximum civil penalty against A-1, as provided under Neb. Rev. Stat. § 81-1508.02(2), for each day of each violation;
- C. Tax all court costs herein to A-1; and
- D. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 1st day of June 2022.

STATE OF NEBRASKA, ex rel., JIM MACY,
Director, NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY, Plaintiff

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