

IN THE DISTRICT COURT FOR HALL COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	Case No. CI _____
JIM MACY, Director)	
NEBRASKA DEPARTMENT)	
OF ENVIRONMENT AND ENERGY,)	
)	COMPLAINT
Plaintiff,)	
v.)	
)	
HORNADY MANUFACTURING)	
COMPANY,)	
)	
Defendant.)	

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

PARTIES

1. Plaintiff, the Nebraska Department of Environment and Energy (“NDEE”) is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504 (1), to administer and enforce the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501-1532 (Reissue 2014; Cum. Supp. 2016), and all rules, regulations, orders, and permits created thereunder.

2. NDEE is further charged pursuant to Neb. Rev. Stat. § 81-1504(4) with the duty to act as the state solid and hazardous waste pollution control agency for all purposes of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6901 *et seq.*

3. Defendant Hornady Manufacturing Company (“Defendant”) is an active domestic corporation registered in Nebraska. At all times material herein, Defendant has owned and operated a small arms ammunition manufacturing facility at 3625 West Old Potash Hwy, Grand



Island, NE 68803. The legal description in NW 1/4 of NE 1/4, Section 24, Township N 11, Range W 10, Hall County, Nebraska.

JURISDICTION AND VENUE

4. The District Court has subject matter jurisdiction pursuant to Neb. Rev. Stat. § 24-302 (Reissue 2016).

5. Venue is proper in Hall County pursuant to Neb. Rev. Stat. § 25-403.01 (Reissue 2016) as Defendant is located primarily in Hall County and a significant part of the actions leading to the causes of action arose in Hall County.

FACTUAL ALLEGATIONS

6. Pursuant to 128 Neb. Admin. Code § 4-003, Defendant has filed past notification of regulated waste activity with NDEE indicating its generator status to be a Small Quantity Generator (SQG) of hazardous waste.

7. Upon information and belief, during the relevant time period, Defendant generated scrap smokeless gunpowder at a rate of approximately 70-75 pounds per week.

8. Up to and until March 30, 2006, Defendant disposed of its scrap smokeless gunpowder as D003 hazardous waste at a permitted RCRA hazardous waste disposal facility in Colfax, Louisiana.

9. Upon information and belief, from March 30, 2006 until June 19, 2016, Defendant illegally stored and accumulated scrap smokeless gunpowder as a waste on site without a permit.

10. Under 128 Neb. Admin. Code § 3-009.02, the D003 hazardous waste code denotes a solid waste that exhibits the hazardous characteristic of reactivity.

11. Under 128 Neb. Admin. Code § 3-009.01F, a solid waste exhibits the hazardous characteristic of reactivity if it is capable of detonation or explosive reaction when subjected to a strong initiating source or it is heated under confinement.

12. Under 128 Neb. Admin. Code § 3-009.01G, a solid waste exhibits the hazardous characteristic of reactivity if it is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

13. Scrap smokeless gunpowder as generated and stored by Defendant from March 30, 2006 until June 19, 2016 was a hazardous waste under Title 128 of the Nebraska Administrative Code.

14. On June 19, 2016, approximately 10,000 pounds of scrap smokeless gunpowder waste, stored by Defendant in a shipping container on the grounds of its small arms ammunition manufacturing facility, detonated, decomposed, reacted, exploded, or burned launching the 40-foot shipping container into the air and 75 feet away before landing on a public road.

15. On January 18 and 26, 2017, two NDEE inspectors conducted a RCRA hazardous waste compliance inspection at Defendant's manufacturing facility. Through review of RCRA hazardous waste manifest and discussions with facility staff, the inspectors observed that between March 30, 2006, and June 19, 2016, scrap smokeless gunpowder waste had ceased being disposed of at a permitted RCRA hazardous waste disposal facility and had been accumulated and stored by Defendant in shipping containers located outside of its production buildings at 3625 West Old Potash Hwy, Grand Island, NE 68803.

16. Pursuant to Neb. Rev. Stat. § 81-1508.02, a civil penalty is provided for violation of the Environmental Protection Act and rules and regulations adopted and promulgated pursuant to the Environmental Protection Act. Any person found liable shall be subject to a civil penalty in

an amount not to exceed ten thousand dollars (\$10,000) per day, with each continuing day of violation constituting a separate offense.

CAUSES OF ACTION

FIRST CAUSE OF ACTION –

STORAGE OF HAZARDOUS WASTE IN EXCESS OF 180 DAYS

WITHOUT A PERMIT

17. Plaintiff hereby incorporates by reference paragraphs 1 through 16.
18. As a Small Quantity Generator of hazardous waste, Defendant is subject to the regulatory requirements of Title 128, Chapter 9 of the Nebraska Administrative Code.
19. Among the requirements of Title 128, Chapter 9 of the Nebraska Administrative Code is the requirement in Section 007.03 that prohibits a Small Quantity Generator from accumulating hazardous waste onsite for more than 180 days without a permit or without an applicable interim status.
20. Under 128 Neb. Admin. Code § 9-008, a Small Quantity Generator that accumulates hazardous waste for more than 180 days is an operator of a storage facility and is subject to the RCRA permitting requirements of Title 128, Chapters 12 through 15 and 21 or 22 of the Nebraska Administrative Code.
21. Upon information and belief, Defendant stored scrap smokeless gunpowder waste on site from March 30, 2006 until June 19, 2016 without a permit or an applicable interim status.
22. Defendant's unpermitted accumulation of scrap smokeless gunpowder waste – a DOO3 hazardous waste – for longer than 180 days without a permit and unpermitted operation of a hazardous waste storage facility between approximately September, 2006, and June 19, 2016, are violations of 128 Neb. Admin. Code §9-007.03 & 008.

SECOND CAUSE OF ACTION –

IMPROPER SPECULATIVE ACCUMULATION

23. Plaintiff hereby incorporates by reference paragraphs 1 through 16.

24. To the extent Defendant claims that the scrap smokeless gunpowder waste stored on site was not a waste, but was rather a recyclable product, the scrap smokeless gunpowder was improperly speculatively accumulated in violation of 128 Neb. Admin. Code § 2-003.05B.

25. Under 128 Neb. Admin. Code § 2-003.05B, “the following materials are solid wastes, even if recycling involves use, reuse, or return to the original process,” including, in 003.05B3, “[m]aterials accumulated speculatively.”

26. Under 128 Neb. Admin. Code § 2-002.07, “A material is ‘accumulated speculatively’ if it is accumulated before being recycled,” unless “the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that – during the calendar year (commencing on January 1) – the amount of the material that is recycled, or transferred to a different site for recycling, equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period.”

27. Defendant has made no showing that the scrap smokeless gunpowder waste was intended to be recycled, that it was potentially recyclable, or that 75 percent by weight or volume of the material was recycled during the required time periods.

28. The scrap smokeless gunpowder waste was not intended to be recycled, was not potentially recyclable, and 75 percent by weight or volume of the material was not recycled within the required time periods.

29. To the extent that Defendant claims that the scrap smokeless gunpowder was a recyclable product, Defendant illegally speculatively accumulated the scrap smokeless gunpowder on site from 2006 until 2016.

THIRD CAUSE OF ACTION –

**FAILURE TO TAKE PRECAUTIONS TO PREVENT ACCIDENTAL
IGNITION OR REACTION OF IGNITABLE OR REACTIVE WASTE**

30. Plaintiff hereby incorporates by reference paragraphs 1 through 16.

31. 128 Neb. Admin. Code § 9-007.03E requires that a Small Quantity Generator comply with the requirements of Title 128, Chapter 16.

32. Under 128 Neb. Admin. Code § 16-001.01, a Small Quantity Generator “must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste.”

33. Defendant failed to take precautions to prevent accidental ignition or reaction of ignitable or reactive waste from 2006 until June 19, 2016, resulting in the detonation, decomposition, reaction, explosion, or burning of approximately 10,000 pounds of scrap smokeless gunpowder waste stored by Defendant in a shipping container on the grounds of its small arms ammunition manufacturing facility, which launched the 40-foot shipping container into the air and 75 feet away before landing on a public street.

34. Upon information and belief, the storage conditions that led to the detonation, decomposition, reaction, explosion, or burning of approximately 10,000 pounds of scrap smokeless gunpowder waste stored by Defendant on site were the same for the entire period between 2006 and June 19, 2016.

35. Defendant’s failure to take precautions to prevent accidental ignition or reaction of ignitable or reactive waste and failure to store ignitable or reactive waste so that it did not

generate extreme heat, pressure, fire, explosion, or violent reaction was in violation of 128 Neb. Admin. Code 9-007.03E and 16-001.01, 001.02, & 001.02A.

PRAYER FOR RELIEF

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

A. Declare that Defendant illegally stored hazardous waste on site for longer than 180 days without a permit from approximately March 30, 2006 until June 19, 2016;

B. Declare that Defendant engaged in improper speculative accumulation of a hazardous waste without a permit from approximately March 30, 2006 until June 19, 2016.

C. Declare that Defendant failed to take precautions to prevent the accidental ignition or reaction of ignitable or reactive waste from approximately March 30, 2006 until June 19, 2016.

D. Enter the statutory maximum civil penalty against Defendant, as provided in Neb. Rev. Stat. § 81-1508.02;

E. Tax all court costs herein to Defendant; and

F. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 17th day of April, 2020.

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

By: Douglas J. Peterson, #18146
Attorney General

By: s/ Joshua E. Dethlefsen
Joshua E. Dethlefsen, #24667
Justin D. Lavene, #22178
Assistant Attorney General
2115 State Capitol Building
Lincoln, Nebraska 68509-8920
Telephone: (402) 471-1813
joshua.dethlefsen@nebraska.gov