

**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

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