

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF  
JAMES P. MAJERUS,  
d/b/a Albion Tire & Oil  
FID # 01425  
Respondent.

Case No. 3209

CONSENT ORDER

I. INTRODUCTION

1. The Department of Environmental Quality (DEQ) and the Respondent, James P. Majerus, doing business as Albion Tire & Oil, voluntarily enter into this Consent Order. The Consent Order establishes a schedule of compliance with Neb. Rev. Stat. § 81-15,124 (Reissue 2008, Cum. Supp. 2012) including submission of a remedial action plan in accordance with Neb. Admin. Code Title 118, Appendix B.

II. JURISDICTION

2. The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality ("Department" or "NDEQ"). The Respondent is James P. Majerus, doing business as Albion Tire & Oil, a resident of Boone County, Nebraska. NDEQ is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) & (4), of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to - 1532, and all rules, regulations, and permits promulgated thereunder. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. § 81-1504 (7) and § 81-1507.

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3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent agrees that it will not contest the basis or validity of this Consent Order in any proceedings by the NDEQ to enforce this Consent Order.

### III. PARTIES

4. This Consent Order is binding on the NDEQ and the Respondent and its successors and assigns.

5. The Respondent shall ensure that any contractors, sub-contractors, and representatives implementing any provision of this Consent Order receive a copy of this Consent Order. The Respondent shall be responsible for any noncompliance with this Consent Order.

### IV. FINDINGS OF FACT

6. From July 2006 to September 2009, the Respondent owned four (4) underground storage tanks in Boone County, Nebraska. Following September 2009, the tanks were removed at which time it was observed that there had been a release of diesel or gasoline from the tanks. On or about June 18, 2010, the Department determined that the Respondent was the owner and partly responsible for the tanks and all resulting contamination.

7. Neb. Rev. Stat. §81-15,124 requires the Department to investigate "[a]ny reported or suspected release of a regulated substance from any tank." If the investigation yields evidence of "an adverse effect caused by a release of a regulated substance from a tank," the statute authorizes the Department to order the owner or operator of the tank to secure the source of the release and

“develop a plan for remedial action to be approved by the department.” The statute then mandates that “[t]he approved remedial action plan shall then be carried out by the owner or operator of the tank causing the release.”

8. Nebraska Administrative Code Title 118, *Groundwater Quality Standards and Use Classification*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505. Neb. Admin. Code Title 118, Appendix B, *Remedial Action Protocol for Petroleum Releases*, is intended to assist responsible parties in complying with Neb. Rev. Stat. § 81-15,124. Appendix B includes instructions for conducting a Tier 1 Site Assessment, if required by the Department. On June 18, 2010, the Department notified Respondent by certified mail that remedial activities, beginning with a Tier 1 Site Assessment, were required to address contamination caused by the tanks. The Department included forms to assist Respondent in initiating the Tier 1 Site Assessment process. On March 28, 2012, the Department again contacted Respondent by certified mail, requiring a Tier 1 Site Assessment. Respondent failed to conduct the Tier 1 Site Assessment, including submittal of the requested forms.

## V. AGREEMENTS

9. The Respondent is a “person” as defined in Neb. Rev. Stat. §81-1502(10).

10. Respondent agrees to move towards compliance with Title 118 and Neb. Rev. Stat. § 81-15,124 and agrees to the following compliance schedule

and activities. DEQ agrees not to pursue any further actions as long as Respondent is complying with the below compliance schedule and activities.

11. This Consent Order shall have the force and effect of a final order of the Director of the NDEQ issued pursuant to NEPA.

#### VI. COMPLIANCE SCHEDULE

12. The Respondent agrees to perform the following activities:

- a. Within thirty (30) days of receipt of this Compliance Order, submit to the Department a completed Tier 1 Pre-Investigation Assessment Work Plan Form (Attachment A)
- b. Within thirty (30) days of receipt from NDEQ of its approval of the Tier 1 Pre-Investigation Assessment Work Plan Form, submit to NDEQ a completed Tier 1 Site Investigation Work Plan Form.
- c. Within sixty (60) days of receipt from NDEQ of its approval of the Tier 1 Site Investigation Work Plan Form, submit to NDEQ a completed Tier 1 Assessment Report, which shall include at a minimum, the information outlined in "Risk Based Corrective Action (RCBA) at Petroleum Release Sites: Guidance Document for Tier1/Tier2 Assessments & Reports", May 2009.
- d. If determined necessary by NDEQ, conduct any further investigation of the release in accordance with Title 118, Appendix B.
- e. If determined necessary by NDEQ, conduct any remediation and monitoring based on the above information.
- f. In a format and schedule established by NDEQ, submit written reports of all monitoring, investigation, and remedial action.
- g. Accept all mail from NDEQ and respond to any questions from NDEQ within ten (10) days of receipt.
- h. Information to be submitted under this Order shall be sent to:

John Fogerty,  
Petroleum Remediation Section  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922  
Telephone number: (402) 471-2186

13. The Respondent shall respond promptly to any written communication by the NDEQ to modify any submitted documents and by making the required modifications or changes no later than 30 days after receipt or date specified in written comments by NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Consent Order.

#### VII. COMPLIANCE WITH OTHER LAWS

14. The Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permits.

#### VIII. FORCE MAJEURE

15. Force majeure for the purposes of this Consent Order means any event arising from causes entirely beyond the control of the Respondent and any entity controlled by the Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order. The Respondent shall exercise best efforts to anticipate any potential force majeure events and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable.

16. If any event occurs that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the

Respondent shall notify the NDEQ by telephone within 24 hours of learning of the event. The Respondent shall provide, in writing within 7 days, the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any action.

17. If the NDEQ agrees that the delay is attributable to a force majeure, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay.

18. The NDEQ, in its discretion, may agree to an extension caused by any other event.

#### IX. RESERVATION OF RIGHTS

19. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEQ, now or in the future, to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA and any rules, regulations, orders, or permits issued pursuant to NEPA.

#### X. NEGATION OF AGENCY RELATIONSHIP

20. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the NDEQ and the Respondent.

#### XI. AMENDMENT

21. This Consent Order may be modified and amended in writing by mutual agreement of the NDEQ and the Respondent.

#### XII. EFFECTIVE DATE

22. This Consent Order shall become effective on the date it is signed by the Director of the NDEQ or his designee.

### XIII. SEVERABILITY

23. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

### XIV. SIGNATURES

24. For the Respondent: The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By: James P. Majors

Title: \_\_\_\_\_

Date: Sept 26 13

25. IT IS ORDERED and agreed this 2<sup>nd</sup> day of October, 2013.

By: Michael J. Linder  
Michael J. Linder  
Director  
Department of Environmental Quality



## Nebraska Department of Environmental Quality Petroleum Remediation Section

### Tier 1 Pre-Investigation Assessment Work Plan Form

The Department has developed this document to simplify the petroleum release site investigation work plan review process. The completed form must be signed and dated by representatives of both the responsible party and the consulting firm selected to perform the work.

The Department requires that a pre-investigation assessment, including a site visit, be conducted prior to conducting a Tier 1 site investigation in accordance with the Department's environmental guidance document, *Risk-Based Corrective Action (RBCA) at Petroleum Release Sites: Tier 1/Tier 2 Assessments and Reports* (May 2009), Section 3. The methods outlined in the guidance document must be followed unless alternatives are approved in advance by the Department. The purposes of this assessment include, but are not limited to:

1. Conduct an on-site reconnaissance to determine potential source areas and potential complications for sampling the source areas;
2. Locate any water supply wells and surface water bodies within 500 feet of the site;
3. Locate utilities, buildings, and basements within 200 feet of the site as an aid in determining potential site complications;
4. Determine the appropriate sampling and/or drilling locations to obtain the required Tier 1 information;
5. Prepare a site diagram (to scale) showing the potential source area(s), selected sampling and/or drilling locations, and on-site water supply wells, basements, and utilities;
6. Prepare a proposed cost estimate for the planned site investigation; and
7. Prepare a separate, per-well cost estimate for additional monitoring wells to be installed if free product is encountered.

Estimated total cost for conducting the pre-investigation assessment: \$ \_\_\_\_\_

You must receive written notification from the Department before the pre-investigation assessment may begin.

**Site name:** Former Albion Tire and Oil, 119 S. 5th Street, Albion

**NDEQ release number:** LST 030910-TH-0935, IIS 1425

_____ <i>Responsible party signature</i>	_____ <i>Responsible party (printed)</i>	_____ <i>date</i>
_____ <i>Consultant company name</i>		
_____ <i>Consultant mailing address or PO Box</i>	_____ <i>Consultant signature</i>	
_____ <i>Consultant city, state, and ZIP code</i>	_____ <i>Consultant name (printed)</i>	_____ <i>date</i>

The completed form should be mailed to John Fogerty, NDEQ Petroleum Remediation Section, Box 98922, Lincoln, NE 68509-8922 on or before within thirty (30) days of receipt of the Compliance Order. The form may also be faxed to (402)471-2909, with the signed original following by mail.



AFFIDAVIT

State of Nebraska            |  
                                  | ss  
County of Lancaster        |


Comes now Steven J. Moeller, an employee of the Nebraska Department of Environmental Quality, being first duly sworn on oath, deposes that on the 7th day of October 2013, he caused an exact copy of the foregoing Consent Order in Case 3209 to be mailed by regular United States Mail, first class, postage prepaid, to the below individuals:

James Majerus  
2291 240<sup>th</sup> Ave  
Albion, Nebraska 68652

James G. Egley  
Attorney at Law  
2424 Taylor Ave.  
P.O. box 33  
Norfolk, Nebraska 68702-0033

  
Steven J. Moeller, Affiant

Subscribed and sworn to before me, a Notary Public, on this 7 day  
of October, 2013.

  
Notary Public

