

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF)	Case No. 3287
Nebraska Department)	
of Correctional Services:)	
Nebraska State Penitentiary)	COMPLAINT, COMPLIANCE ORDER
4201 S. 14 th Street)	AND NOTICE OF
P. O. Box 2500, Lincoln, NE.)	OPPORTUNITY FOR HEARING
FID #28911)	
)	
Respondent.)	

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 1532. The Complainant is Patrick W. Rice, Acting Director of the Nebraska Department of Environmental Quality (NDEQ). The Respondent is the Nebraska Department of Correctional Services, Nebraska State Penitentiary. The Complaint below establishes the violations of the act.

COMPLAINT

2. The 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, 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.

3. The Respondent is also an agency of the State of Nebraska and runs a correctional facility for adult offenders known as the Nebraska State Penitentiary (The Penitentiary) located at 4201 S. 14th St., P.O. Box 2500, Lincoln, Nebraska. For about the last 30 years the penitentiary has been dumping, disposing or depositing bottom ash and fly ash from its coal burning power plant on land located about ½ mile south of the power plant.

4. Neb. Rev. Stat. § 81-1502(10) defines Respondent as a "person."



5. Neb. Rev. Stat. § 13-2033(1) provides in pertinent part as follows: "...no person shall dump or deposit any solid waste at any place other than a landfill approved by the director unless the department has granted a permit which allows the dumping or depositing of solid waste at any other facility." Neb. Rev. Stat. § 81-1506(3) states that: "It shall be unlawful for any person to: ... (d) After October 1, 1993, dispose of any solid waste at a location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act." Title 132, Integrated Solid Waste Management Regulations, Chapter 2, Section 001, prohibits operating a solid waste management facility without a permit.

6. For about the last 30 years ash debris was dumped, deposited or disposed without a permit by Respondent, contrary to §§ 13-2033 (1) and 81-1506(3) and the Respondent was operating a solid waste disposal facility without a permit as required by Title 132, Chapter 2, Section 001.

7. The Director finds that Respondent has violated Neb. Rev. Stat. §§ 13-2033, 81-1506 (3)(d) and Title 132, Chapter 2, Section 001.

8. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) to issue this order requiring Respondents to cease unlawful dumping, depositing or disposing of solid waste.

COMPLIANCE ORDER

9. IT IS THEREFORE ORDERED that the Respondent shall perform, within the following time frames, the following activities:

- a. On or before April 1, 2015, the Respondent shall properly dispose of all solid wastes located as described in paragraph 3 above, at a permitted solid waste landfill in accordance with the plan approved September 20, 2013 and take all necessary precautions during storage, removal and transportation to minimize the spread of ash into the environment. Respondent shall send proof of proper disposal to the NDEQ by April 15, 2015.
- b. By September 1, 2015, Respondent shall conduct an on-site investigation of the soil and groundwater as set out in a plan to be

approved by the NDEQ and file a complete report concerning said investigation by November 1, 2015.

10. Any information to be submitted under this Order shall be sent to:

William C. Gidley
Waste Management Section Supervisor
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number: (402) 471-2186

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

11. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files an answer and request, in writing, a hearing no later than thirty days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

12. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Neb. Admin. Code, Rules of Practice and Procedure, Chapter 7. The answer and request for hearing may be filed by mail to:

Patrick W. Rice, Acting Director
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922

or may be delivered to the NDEQ's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

SETTLEMENT CONFERENCE

13. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Steven J. Moeller, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

14. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

INJUNCTIVE RELIEF AND PENALTY PROVISIONS

15. The NDEQ reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil or criminal penalties for any violations that are the subject of this Complaint, Compliance Order and Notice of Opportunity for Hearing. Nothing in this Complaint, Compliance Order and Notice of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement. Failure to obey this order may result in fines up to \$10,000, per violation, per day, as set out in Neb. Rev. Stat. § 81-1508.02.

12/15/2014

Date

Patrick W. Rice

Patrick W. Rice, Acting Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, was served by certified United States mail, postage prepaid, return receipt requested this 15th day of December 2014 upon the Respondent's Director and its attorney listed below:

Jon Bruning
Attorney General
P.O. Box 98920
Lincoln, Nebraska
68509-8920

Mike Kenney, Director
Department of Correctional Services
P.O. Box 94661
Lincoln, Nebraska
68509-4661

Steve J. Moeller

Attorney