

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF )  
**Leo Porter**, Tire Hauler and )  
and **Judith Porter**, Landowner, )  
Garden County, Nebraska, )  
FID #72350 )  
Respondents. )

Case No. 3316

CONSENT ORDER

1. The Department of Environmental Quality (DEQ or NDEQ) and Leo and Judith Porter, husband and wife, (Respondents) Garden County, Nebraska voluntarily enter into this Consent Order. This Consent Order establishes a new schedule of compliance for changes to the Respondents' compliance with Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 1532 (Reissue 2014) and Neb. Rev. Stat. §13-2033 (Reissue 2012, Cum. Supp. 2014). The previously entered Administrative Order in this case shall stay in full force and effect, until this Consent Order is filed, at which time the previously entered Administrative Order is null and void. Respondents withdraw their current request for a hearing in this matter and agree not to challenge this Consent Order.

COMPLAINT

2. At all times material herein the Respondents operated a waste tire hauling business around Oshkosh, Nebraska that is currently permitted by the Department and are storing tires at a "re-haul yard" located in the SE1/4 of Section 21, Township 16 North, Range 44 West, Garden County Nebraska.



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3. On or about January 1, 2013 Respondents had about 406 tons of waste tires being stored at the "re-haul yard", and at the end of December 2013, Respondents had over 650 tons of waste tires being stored at the "re-haul yard". Further in 2013, Respondents collected 327 tons of waste tires and properly disposed of only 80 tons of tires.

4. Pursuant to Neb. Rev. Stat. §81-1508.02 (1) (e) it is unlawful to violate any provision of or fail to perform any other duty imposed by such acts, rules or regulations. Neb. Rev. Stat. §13-2033 (3) (Reissue 2012, Cum. Supp. 2014) states that storage of passenger tire equivalents of waste tires for more than one year without reuse, recycling, or shipment out of state is presumed to constitute disposal of solid waste under section 13-2033(1). Speculative accumulation of more than five hundred passenger tire equivalents of waste tires shall be deemed disposal of solid waste and is prohibited. Speculative accumulation is defined in Title 132, INTEGRATED SOLID WASTE MANAGEMENT REGULATIONS, Chapter 14, Section 001.02A, as failure to reuse, recycle, or ship out of state, seventy-five percent (75%) by weight of waste tire material in one (1) calendar year and is prohibited. Land disposal of recyclable waste tires in any form is prohibited in Title 132, Chapter 14, Section 001. Disposal of solid waste after October 1, 1993 at a location other than a solid waste management facility holding a current permit issued by the Department is a violation of Neb. Rev. Stat. 81-1506 (3)(d). That the tire hauling permit issued to Respondent Leo Porter

requires that waste tires collected are to be hauled to a site for reprocessing, recycling, or disposal.

5. On or about December 31, 2013, Respondents were speculatively accumulating individual tires in violation of Neb. Rev. Stat. §13-2033 (3) and Title 132, Chapter 14, Section 001.02A.

6. On or about December 31, 2013, Respondents were land disposing waste tires in violation of Title 132, Chapter 14, Section 001 and Neb. Rev. Stat. 81-1506 (3)(d).

7. During 2013 and 2014, Respondent Leo Porter was violating his tire hauling permit by not hauling all waste tires being collected to a proper reuse, recycling or disposal facility in violation of Neb. Rev. Stat. 81-1508.02(1) (b).

8. The Director of the DEQ is authorized pursuant to Neb. Rev. Stat. §81-1504(7) and 81-1507 (1) to issue this order to prohibit or abate discharges of wastes into the air, waters or land of the state and to take necessary corrective action.

#### COMPLIANCE ORDER

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

- A. Immediately stop placing or putting scrap tires and waste tire materials on the property identified in paragraph No. 2 above.
- B. Place No trespass-No Dumping signs in effective locations on the property identified in paragraph No. 2 above by February 1, 2016.

- C. Provide complete site access for DEQ employees during daylight hours.
- D. By April 1, 2017, remove and properly dispose, recycle or reuse all waste, scrap tires, and all waste tire materials on the property identified in paragraph No. 2 above. Respondents shall send proof of proper disposal (affidavit with attached receipts/scale tickets) to the Department beginning January 1, 2016 and every two months thereafter. Respondents may be eligible for payments, in a timely and reasonable manner as directed and approved by the Director of the Department of Environmental Quality, from financial assurance funds for the removal and proper disposal of scrap tires and all waste tire materials on the property identified in paragraph No. 2 above.
- E. Respondents shall, every two months beginning January 1, 2016, file a written report with DEQ outlining progress in fulfilling compliance with this Consent Order.
- F. Respondents shall enter into a new financial assurance agreement with the Department by January 31, 2016. This financial assurance for the property identified in paragraph No. 2 above shall be in the total amount of \$70,000.00 (Seventy-five thousand dollars).

10. All 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

#### COMPLIANCE WITH OTHER LAWS

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

#### FORCE MAJEURE

12. Force majeure for the purposes of this Consent Order means any event arising from causes entirely beyond the control of the Respondents and any entity controlled by the Respondents, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order. The Respondents 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.

13. 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 Respondents shall notify the DEQ by telephone within 24 hours of learning of the event. The Respondents 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.

14. If the DEQ 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.

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

#### RESERVATION OF RIGHTS

16. Nothing in this Consent Order shall be construed to limit the power and authority of the DEQ 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. Respondents waive their right to appeal or contest this Consent Order.

#### NEGATION OF AGENCY RELATIONSHIP

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

#### AMENDMENT

18. This Consent Order may be modified and amended in writing by mutual agreement of the DEQ and the Respondents.

#### EFFECTIVE DATE

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

## SEVERABILITY

20. 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.

## SIGNATURES

21. For the Respondents: The undersigned representative of the Respondents certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondents. Respondents waive any further notice as to the filing of the Consent Order.

By: Leo E. Porter

Title: Tire Hauler, Permit # 98-055-0004

Date: Jan. 5, 2016

Attorney: \_\_\_\_\_

Leo Porter Leo E. Porter

Judith Porter Judith Porter

22. For the DEQ: IT IS ORDERED and agreed this 17<sup>th</sup> day of January, 2016.

By: Jim Macy

Jim Macy  
Director  
Department of Environmental Quality