

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF)	Case No. 3102
Donna F. Bamford, and Triangle)	
East Properties, L.L.C.)	COMPLAINT, COMPLIANCE ORDER
4413 East US Hwy. 30)	AND NOTICE OF
Grand Island, Nebraska,)	OPPORTUNITY FOR HEARING
FID #97275)	
)	
Respondents.)	

PRELIMINARY STATEMENT

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to *Neb. Rev. Stat. § 81-1507* (Reissue. 2008), and in accordance with Title 115 - *Rules of Practice and Procedure* for the Department of Environmental Quality. The Complainant is the Department of Environmental Quality (Department). The Respondents are Donna Bamford and Triangle East Properties, L.L.C. The Complaint below establishes the violations of the Act.

COMPLAINT

1. Between 2006 and October 27, 2010 the Respondent Donna Bamford owned commercial property located at 4413 East US Hwy. 30, Grand Island, Nebraska and Respondent Triangle East Properties, L.L.C. owned this same commercial property beginning October 27, 2010 to the present day.

2. The Director of the Department of Environmental Quality has the authority pursuant to *Neb. Rev. Stat. § 81-1507(1)* to issue this order. Pursuant to *Neb. Rev. Stat. § 81-1508.02 (1) (e)*, it is unlawful for any person to violate any rule or regulation.



3. Nebraska Administrative Code, Title 126, *Rules and Regulations Pertaining to the Management of Wastes*, Chapter 18, Section 001 and 002, states that no person shall allow the release of oil or hazardous substance or residuary products thereof upon the land of the state and any release or suspected release must be reported to the Department regardless of quantity. Further under Section 003 containment of the release must take place, under Section 004 an investigation of the release must take place and under Section 005 remedial action to clean up the spill may be required.

4. On October 25, 2010 the Department received a complaint alleging the dumping of chemicals at the property located a 4413 East US Hwy. 30, Grand Island, Nebraska.

5. On November 2, 2010 a site investigation was performed by the Department. The Department observed numerous 55 gallon steel drums, most empty and in poor condition scattered about the property. Several drums appeared to be leaking liquids and the ground in the area of the drums appeared to be stained from prior leakage. The prior contents of several drums appeared to be methylene disocyanate, used oil and lacquer thinner; all of which would be considered an oil or hazardous substance under Title 126.

6. On November 3, 2010, telephone contact was made with Donna Bamford concerning the Department's observations on November 2, 2010. A Letter of Warning was issued to the Respondents on November 9, 2010 asking for action to be taken to stop the leaking, indentify the materials being stored, excavation of contaminated soil in the spill area and analysis of the excavated

soil. No response was made to the Department by Respondents to this letter and the actions requested were not done. A Notice of Violation was issued to the Respondents on January 6, 2011 repeating the requests made in the earlier Letter of Warning. Once again there was no response made to the Department by Respondents to this letter and the actions requested were not done.

7. Respondents since November 2, 2010 have taken some action to stop some drums from leaking and have removed some empty drums but have not identified the materials, have not excavated the spill area and have not provided analysis of the excavated soil to the Department.

8. Sampling and analysis conducted by a contractor for the Department on December 20, 2011 identified total extractable hydrocarbons in the form of diesel and waste oil in excess of the risk-based corrective action levels used to determine when remedial actions are required.

9. Respondents were storing an oil or hazardous substance and are a "Responsible Person" as defined in Title 126, Chapter 1.

10. Respondents have violated Title 126, Chapter 18, Sections 001 and 002.

COMPLIANCE ORDER

IT IS HEREBY ORDERED THAT THE RESPONDENTS SHALL:

11. Transfer any remaining liquids into a container or containers that are in good condition. If the liquid is used oil, arrange to have the used oil properly disposed through a legitimate used oil marketer. If the liquid is not used oil, it must be properly characterized using knowledge or testing prior to disposal.

Provide proof of proper disposal in the form of receipts or a waste disposal manifest.

12. Provide a description of the type and amount of materials that were being stored, and what has been done with them. This includes the following:

- i. The disposition of the materials that were contained in the fifteen empty 55-gallon drums that were abandoned on the east end of the property. Provide disposal receipts that are available.
- ii. Identify the contents of the two green 55-gallon drums abandoned on the east end of the property that are full of an unknown solid material and describe your plans for properly disposing of the material.
- iii. The disposition of any other materials that have been disposed from the southwest side of the main building. Provide disposal receipts that are available. Information obtained during the investigation suggests there were many more drums at that area in the past.

13. Excavate all contaminated soil from the spill area near the southwest corner of the building, and any spillage around the abandoned drums at the east end of the property and containerize it. A representative sample of the contaminated soil must be analyzed for RCRA metals using a toxicity characteristic leaching procedure (TCLP) test by a laboratory capable of conducting this analysis. Provide a copy of the analytical results to this department. Be sure when selecting an analytical laboratory, that they are capable of producing analytical results that are below the regulatory levels

specified in Title 128 – Nebraska Hazardous Waste Regulations, Chapter 3,
Table 3.

14. If the analysis shows the excavated soil displays no hazardous waste characteristics, the soil must be disposed at a permitted solid waste management facility. Copies of the scale tickets must be provided to document proper disposal. If the analysis shows the excavated soil does display hazardous waste characteristics, the soil must be managed and disposed as a hazardous waste at a permitted treatment, storage or disposal facility using a legitimate hazardous waste transporter and hazardous waste manifest. A temporary generator identification number will be issued by this department and a copy of the manifest must be submitted.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

15. In accordance with *Neb. Rev. Stat. §81-1507(1)*, this Order shall become final unless the Respondents file an answer and requests a hearing in writing no later than 30 days after receipt of the Complaint, Compliance Order and Notice of Opportunity for Hearing.

16. If the Respondents decide to contest this Order, a written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Chapter 7. The answer and request for hearing must be filed with the Director, Department of Environmental Quality, P.O. BOX 98922, Lincoln, Nebraska 68509-8922.

17. Failure to answer shall be deemed an admission of the facts of the Complaint. Violation of this Order may result in penalties of up to \$10,000 per day.

18. This Complaint, Compliance Order and Notice of Opportunity for Hearing does not preclude the Department of Environmental Quality from pursuing enforcement in the proper court for injunctive relief and penalties based on violations of state statutes or regulations.

Dated this 9th day of March, 2012.

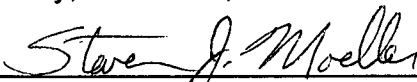


Michael J. Linder
Director
Department of Environmental Quality

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 12th day of March 2012 upon the persons listed below:

Donna F. Bamford, 10 Grandview Heights, Kearney, Nebraska, 68845
Triangle East Properties, L.L.C., Donna F. Bamford, Registered Agent,
10 Grandview Heights, Kearney, Nebraska, 68845.



Steven J. Moeller
Attorney