

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF  
**Richard A. Sargent,**  
and **Richard C. Sargent**  
Lincoln County, Nebraska,  
FID #106363

Respondents.

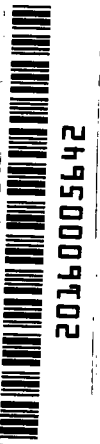
Case No. 3329

CONSENT ORDER

1. The Department of Environmental Quality (DEQ or NDEQ) and Richard C. Sargent, and his son Richard A. Sargent, both reside in Lincoln 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 and Neb. Rev. Stat. §§ 13-2033. 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.

COMPLAINT

2. 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 Richard C. Sargent, and his son, Respondent Richard A. Sargent, own or operate property located in NE1/4 of Section 20-Township 12- Range 29W and the SE1/4 of Section 17- Township 12- Range 29W, Lincoln County, Nebraska. Said property is not a solid waste management facility permitted by the Department and the Respondents do not have a permit to operate a solid waste management facility.

4. Neb. Rev. Stat. § 81-1502(10) defines Respondents 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. On or about June 16, 2015 Respondents disposed or allowed to be disposed solid waste at the property described above which did not have a permit, contrary to Neb. Rev. Stat. §§ 13-2033 and 81-1506(3) and the

Respondents were operating a solid waste disposal facility without a permit as required by Title 132, Chapter 2, Section 001.

7. The Director finds that Respondents have 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 disposal of solid waste.

### COMPLIANCE ORDER

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

a. The Respondents shall immediately cease disposal of solid wastes on their property and properly dispose of all solid waste pursuant to the current plan approved by the Department.

Respondents shall also perform the following:

1. Place No trespass-No Dumping signs in effective locations by January 15, 2016.
2. Provide complete site access for DEQ or Department of Health and Human Services employees during daylight hours.
3. Properly dispose of all waste by December 31, 2016.

b. Respondents shall take all necessary precautions during storage, removal and transportation to minimize the spread of solid waste into the environment. Respondents shall send proof of

proper disposal (scale tickets) to the Department beginning January 1, 2016 and every two months thereafter.

c. Respondents shall, every two months beginning January 1, 2016, file a written report with DEQ outlining progress in fulfilling compliance with this Consent Order.

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 Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondents.

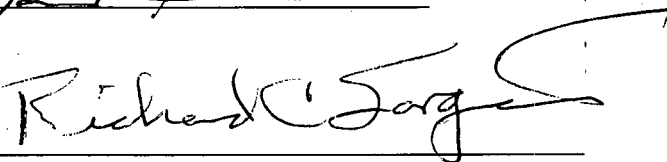
By: \_\_\_\_\_

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

Date: \_\_\_\_\_

Attorney: 

Richard C. Sargent



Richard A. Sargent

\_\_\_\_\_

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21. For the Respondents: 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 Respondents.

By: \_\_\_\_\_

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

Date: \_\_\_\_\_

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

Richard C. Sargent \_\_\_\_\_

Richard A. Sargent \_\_\_\_\_

22. For the DEQ: IT IS ORDERED and agreed this 21<sup>st</sup> day of

JANUARY, 2016.

By: 

Jim Macy

Director

Department of Environmental Quality