

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF	)	Case No. 3316
Leo Porter, Tire Hauler	)	
Garden County, Nebraska	)	
IIS NO. 072350	)	COMPLAINT, COMPLIANCE
	)	ORDER AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent.	)	

This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued by the Director of the Department of Environmental Quality (hereinafter referred to as "Department" or "DEQ") pursuant to *Neb. Rev. Stat. §81-1507 (1)* of the Environmental Protection Act (Act), *Neb. Rev. Stat. §81-1501 et seq.* (Reissue 2014). The Respondent is Leo Porter, 17775 Hwy 26, Oshkosh, NE 69154. The Complaint below establishes violations of State law and violations of Nebraska Rules and Regulations, Title 132 – *Integrated Solid Waste Management Regulations*.

COMPLAINT

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

2. On or about January 1, 2013 Respondent had about 406 tons of waste tires being stored at the "re-haul yard", and at the end of December 2013, Respondent had over 650 tons of waste tires being stored at the "re-haul yard".



Further in 2013, Respondent collected 327 tons of waste tires and properly disposed of only 80 tons of tires.

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

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

5. On or about December 31, 2013, Respondent was land disposing waste tire in violation of Title 132, Chapter 14, Section 001 and Neb. Rev. Stat. 81-1506 (3)(d).

6. During 2013 and 2014, Respondent 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).

7. 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

8. IT IS HEREBY ORDERED that the Respondent shall:

- A. By December 31, 2015, remove and properly dispose, recycle or reuse all waste or scrap tires and all waste tire materials on the property identified in paragraph No. 1 above.
- B. Immediately cease all hauling of waste tires except those tires being transported to proper reuse, recycling or disposal facilities, until such time as written permission from the Department to resume such hauling is obtained.

#### NOTICE OF OPPORTUNITY TO REQUEST A HEARING

9. In accordance with Neb. Rev. Stat. §81-1507(1), this Complaint and Compliance Order shall become final unless the Respondent requests, in writing,

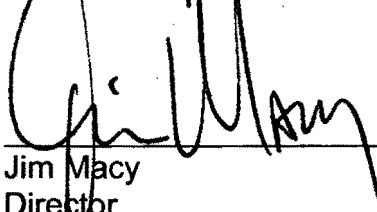
a hearing before the Director no later than 30 days after the date such order is received.

10. The request for hearing and an answer may be filed by mail to: Jim Macy, Director, State of Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the DEQ's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska. 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.

11. 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 per violation.

12. This Complaint and Compliance Order does not preclude the DEQ from ordering any other action authorized by law or pursuing additional enforcement in the proper court for injunctive relief and penalties or entering further administrative orders based on violations of the Act. The DEQ further reserves the right to impose additional requirements to protect public health and welfare and the environment.

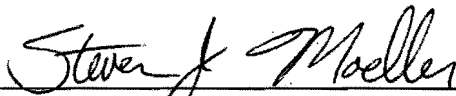
Dated this 14<sup>th</sup> day of July, 2015.

  
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Jim Macy  
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 16<sup>th</sup> day of July 2015 upon the person listed below:

Leo Porter  
17775 Hwy 26  
Oshkosh, NE 69154

  
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Steven J. Moeller  
Staff Attorney