

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
KRAMER'S AUTO PARTS AND
IRON CO., INC., LEROY KRAMER,
and ARLENE KRAMER, d/b/a
NORTHSIDE STORAGE
Respondents.
FID#24683

Case No. 3206
COMPLAINT, COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR HEARING

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 Michael J. Linder, Director of the Nebraska Department of Environmental Quality (NDEQ). The Respondents are Kramer's Auto Parts and Iron Co., Inc., a corporation authorized to do business in Nebraska, and Leroy and Arlene Kramer, residents of Hall County, Nebraska, doing business as Northside Storage.

FIRST CLAIM

2. The Complainant, the Department, 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. Respondent Kramer's Auto Parts and Iron Co., Inc. owns and operates a business located at 3405 North Highway 281, north of Grand Island in Hall County, Nebraska ("Kramer's Auto property"). The Kramer's Auto property is legally described as Lake Township PT SW ¼, and W ½ SW ¼, Section 33, Township N 12, Range W 09 (Parcels 400187272 and 400187299). In the course of business, Kramer's Auto Parts makes use of property owned by co-Respondent Leroy Kramer, located at 3447 North Highway 281, north of Grand Island in Hall County, Nebraska ("Northside property"). The Northside property is legally described as Lake Township PT SW ¼ Section 33, Township N 12, Range W 09 (Parcel 400187272). In correspondence with the



Department, co-Respondent Arlene Kramer, a registered director of Kramer Auto Parts and Iron Co., Inc., has identified herself as owner of Northside Storage, an unregistered business that operates on the Northside property.

4. Neb. Rev. Stat. § 81-1502(10) defines Respondents as “persons.”

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.”

6. Prior to May 3, 2012 and on or prior to October 24, 2012, Respondents dumped and deposited solid waste on the Kramer’s Auto property and the Northside property respectively, each without a permit, contrary to §§ 13-2033 and 81-1506(3).

7. The Director finds that Respondents have violated Neb. Rev. Stat. §§ 13-2033 and 81-1506(3).

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.

SECOND CLAIM

9. Complainant hereby incorporates by reference each allegation contained in the paragraphs above.

10. Neb. Rev. Stat. § 81-1508.02(1)(b) states that it is unlawful to violate any regulations promulgated pursuant to the Environmental Protection Act. Pursuant to Neb. Rev. Stat. §81-1505 (Reissue 2008), the Nebraska Environmental Quality Council adopted and promulgated Title 129 of the Nebraska Administrative Code, *Nebraska Air Quality Regulations*. At all times material herein, Title 129 provided in part as follows: “Chapter 30 ... 001 No person shall cause or allow any open fires.”

11. On or prior to May 3, 2012 and on or around October 24, 2012, Respondents caused or allowed an open fire on the Kramer’s Auto property and the Northside property respectively, contrary to Title 129, Chapter 30, 001.

12. The Director finds that Respondents have violated Title 129.

13. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) to issue this order requiring Respondents to comply with Title 129.

THIRD CLAIM

14. Complainant hereby incorporates by reference each allegation contained in the paragraphs above.

15. Pursuant to Neb. Rev. Stat. §81-1505, the Nebraska Environmental Quality Council adopted and promulgated Title 128 of the Nebraska Administrative Code, *Nebraska Hazardous Waste Regulations*. At all times material herein, Title 128 provides in part as follows: “Chapter 4 ... 002 ... A person who generates a solid waste, ... must determine if that waste is a hazardous waste...”

16. On or around October 24, 2012, Respondents disposed of solid waste without making a hazardous waste determination, contrary to Title 128, Chapter 4, 002.

17. The Director finds that Respondents have violated Title 128.

18. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) to issue this order requiring Respondent to comply with Title 128.

COMPLIANCE ORDER

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

- a. Immediately, Respondents shall cease disposal of solid waste on the properties and will cease any open burning.
- b. On or before November 1, 2013, the Respondents shall properly dispose of all solid wastes generated at the properties, including making all necessary hazardous waste determinations prior to any disposal.
- c. Respondents shall continue to operate in compliance with Neb. Rev. Stat. §§ 13-2033 and 81-1506(3), Titles 128 & 129, and all other relevant statutes and regulations.

20. 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

21. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent(s) file 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.

22. 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:

Michael J. Linder, Director
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922

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

SETTLEMENT CONFERENCE

23. Whether or not Respondents request 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.

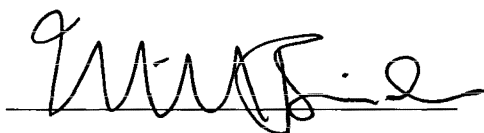
24. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

INJUNCTIVE RELIEF AND PENALTY PROVISIONS

25. 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 fine up to \$10,000 per day as set out in Neb. Rev. Stat. § 81-1508.02.

August 20 2013

Date



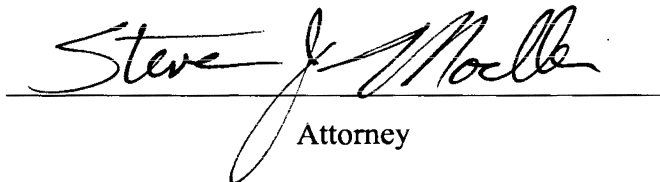
Michael J. Linder, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

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 20th day of August 2013 upon the Respondents listed below:

Kramer Auto Parts and Iron Co., Inc.
c/o Lisa A. Bartz, Registered Agent
3405 North US Highway 281
Grand Island, NE 68803

Leroy and Arlene Kramer
3345 North US Highway 281
Grand Island, NE 68803



Attorney