

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF:	)	Case No. 3066
	)	
	)	
Osmond Farm Supply Center, Inc.	)	COMPLAINT, COMPLIANCE ORDER
D/B/A Osmond Mini Mart,	)	AND NOTICE OF OPPORTUNITY
Osmond, Nebraska	)	FOR HEARING
FID No. 95601	)	
RESPONDENT.	)	

PRELIMINARY STATEMENT

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 2008) of the *Nebraska Environmental Protection Act*, Neb. Rev. Stat. §81-1501 et. seq. and the *Petroleum Products and Hazardous Substances Storage and Handling Act*, Neb. Rev. Stat. §81-15,117 et. seq. (Reissue 2008, Cum. Supp. 2010). The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter “NDEQ” or “Department”). The Respondent is Osmond Farm Supply Center, Inc. doing business as Osmond Mini Mart, Osmond, Nebraska.

The Complainant has determined that Respondent is in violation of Neb. Rev. Stat. §81-1506(1)(a); Neb. Rev. Stat. §81-15,124; and Title 126 Nebraska Administrative Code, *Rules and Regulations Pertaining to the Management of Wastes* (hereinafter “Title 126”) and Title 118 Nebraska Administrative Code, *Ground Water Quality Standards and Use Classification* (hereinafter “Title 118”) . Moreover, Respondent is failing to conduct the remedial action required by Title 118, Appendix B-

20110001999

Remedial Action Protocol for Petroleum Releases. The Complaint below establishes the violations.

### COMPLAINT

1. Respondent owned or operated a business commonly referred to as Osmond Mini Mart, Osmond, Nebraska (the "Site"). At the Site, as part of this business, Respondent sold gasoline and fuel oils from underground petroleum storage tanks. Respondent owned or operated "tanks" as defined by Neb. Rev. Stat. §81-15,119(10) containing "regulated substances" as defined by Neb. Rev. Stat. §81-15,119(6) at the Site.

2. On or about January 15, 2010 a leak at the Site was reported to the Nebraska State Fire Marshal and petroleum contamination of the soil and ground water was later observed, with further investigation showing that free petroleum product approximately 4-7 feet thick was upgradient from the drinking water well for the Village of Osmond which was located approximately 2 blocks from the Site.

3. In March 2010, Respondent began the required investigation and remediation but then stopped all activity in February 2011 after recovering less than 300 gallons of the estimated 6000 gallons of released petroleum product.

4. Respondent has a duty under Title 126 and Title 118 to conduct necessary investigation and remedial action to recover the petroleum product and to restore and protect ground water. Respondent has failed and refused to complete the remedial action required by Title 126, Chapter 18, and Title 118, Appendix B.

5. Respondent is in violation of Title 126, Chapter 18; Title 118, Appendix B; Neb. Rev. Stat. §81-15,124 and 81-1506 (1) (a), and these violations are continuing.

### COMPLIANCE ORDER

6. IT IS HEREBY ORDERED that Respondent immediately resume work in accordance with the current approved remedial action work plan to recover released

petroleum product and take any additional steps, approved by the Department, necessary to protect the Village of Osmond drinking water supply.

7. IT IS FURTHER ORDERED that reports of the work to recover released petroleum product be made as required to the project manager listed in paragraph No. 10 below.

8. NDEQ reserves its rights to order Respondent to conduct further investigation, remediation and monitoring based on the above information. Pursuant to Neb. Rev. Stat. §81- 15,124.02, Respondent shall allow access to the Department for the performance of any reasonable steps for remedial action to prevent further spread of the petroleum product.

9. Any failure by Respondent to carry out paragraphs 6, 7, or further orders as set out in paragraph 8, will result in the Department undertaking remedial actions pursuant to Neb. Rev. Stat. 66-1529.02 (1)(b) and (4). Any funds expended are Respondent's responsibility and subject to being recovered by the Department, including court costs and attorney's fees.

10. Information to be submitted under this Order shall be sent to:

Phil Hargis  
Petroleum Remediation Section  
Water Quality Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922  
Telephone number (402)471-3150

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

11. This Order shall become final, pursuant to Neb. Rev. Stat. §81-1507(1), unless Respondent files an answer and requests, 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.

12. 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, State of 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

13. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Steve Moeller, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or by directing your attorney to make such a request.

14. 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

15. 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.

February 15, 2011  
Date

/s/ Michael J. Linder  
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 16<sup>th</sup> day of February 2011 upon the Respondents listed below:

Kent Gansebom, Registered Agent  
1<sup>st</sup> State St.  
Osmond, NE 68765

/s/ Steven J. Moeller  
Steven J. Moeller  
Staff Attorney