

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)	Case No. 3576
TFL, INC., dba MEGA SAVER,)	
and R.S. HOLDINGS I, LLC)	COMPLAINT, COMPLIANCE ORDER
)	AND NOTICE OF
FID ## 84092 and 60518)	OPPORTUNITY FOR HEARING
)	
Respondents.)	

I. INTRODUCTION

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §§ 81-1507 and 81-15,124(2).
2. Complainant is the Director of the Nebraska Department of Environment and Energy (NDEE or Department).
3. Respondents are TFL, Inc. (TFL), a domestic corporation doing business as Mega Saver, that operates convenience stores located at 12005 Pacific St., Omaha in Douglas County, Nebraska, and 10780 Q St., Omaha in Douglas County, Nebraska, and R.S. Holdings I, LLC. (RSH), which owns the real property located at 12005 Pacific St., Omaha in Douglas County, Nebraska, and 10780 Q St., Omaha in Douglas County, Nebraska.
4. Complainant has determined the Respondents are in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532; the Petroleum Products and Hazardous Substances Storage and Handling Act, Neb. Rev. Stat. §§ 81-15,117 to 81-15,127; and Neb. Admin. Code, Title 126, Rules and Regulation Pertaining to Management of Waste.

II. JURISDICTION

5. NDEE is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1), of exercising exclusive general supervision, administration, and enforcement of NEPA and all rules and regulations promulgated under such acts.



6. NDEE is further charged with the primary responsibility to administer the Petroleum Products and Hazardous Substances Storage and Handling Act. Neb. Rev. Stat. § 81-15,118.

7. Pursuant to the Nebraska Environmental Quality Council's authority to adopt and promulgate rules and regulations as expressed in Neb. Rev. Stat. §§ 81-1505(1), (2), and (14) and 81-15,124.01, the Council adopted rules and regulations codified as Neb. Admin. Code, Title 126, Rules and Regulations Pertaining to Management of Waste (Title 126) and Neb. Admin. Code, Title 118, Ground Water Quality Standards and Use Classification.

III. FIRST COMPLAINT

8. The Complaint below establishes the violations, and the Compliance Order establishes a schedule for corrective actions to be taken by the Respondents.

9. RSH purchased the property located at 12005 Pacific St., Omaha, NE 68154 (abbreviated legal description: 30-15-12 -EX H/W- N 200 E 200 FT N ½ NE ¼ NE ¼ - 0.92 AC) on August 8, 2017.

10. On August 16, 2019, NDEE received an email from General Excavating (NDEE document #: 20100095126) notifying the Department that four tanks, product lines, and dispenser islands were removed from 12005 Pacific St. and soil samples taken at the site revealed the presence of Total Extractable Hydrocarbons as Diesel.

11. On September 10, 2019, NDEE received a Closure Assessment Report from the State Fire Marshal (NDEE document #: 20190047102) which identified TFL on the form's line for "Owner/Operator last operated." The report contained a closure assessment prepared by General Excavating. The closure assessment stated that "petroleum constituents were detected in the native soils beneath the tanks and islands."

12. On October 3, 2019, NDEE sent a letter to TFL which required the submittal of a completed Tier 1 Pre-Investigation Assessment Work Plan Form by November 1, 2019. The required submittal was not received by the Department.

13. On July 22, 2021, NDEE sent a Letter of Noncompliance to TFL which required the submittal of a completed Tier 1 Pre-Investigation Assessment Work Plan Form by August 20, 2021. The required submittal was not received by the Department.

14. Neb. Rev. Stat. § 81-15,119(4) defines person as “any individual, firm, joint venture, partnership, limited liability company, corporation, association, political subdivision, cooperative association, or joint-stock association and includes any trustee, receiver, assignee, or personal representative thereof owning or operating a tank.” Both RSH and TFL are persons.

15. Neb. Rev. Stat. § 81-15,119(2) defines owner as “[i]n the case of a tank in use on July 17, 1986, or brought into use after such date, any person who owns a tank used for the storage or dispensing of regulated substances.”

16. At all times relevant RSH was the owner of the tanks removed at 12005 Pacific St., Omaha, NE 68154.

17. Neb. Rev. Stat. § 81-15,119(1) defines operator as “any person in control of, or having responsibility for, the daily operation of a tank.”

18. At all times relevant TFL was the operator of the tanks removed at 12005 Pacific St., Omaha, NE 68154.

19. Neb. Rev. Stat. § 81-15,124(2) requires that “[b]y order of the Department, the owner or operator of the tank causing the release shall, after securing the source of the release, develop a plan for remedial action to be approved by the Department.”

20. Title 126, Ch. 18.005.01 states that “[a]t any time after notification of a release, the Department may require the responsible person to develop and submit a written remedial action plan in accordance to a schedule and format established by the Department.”

21. TFL violated Neb. Rev. Stat. § 81-15,124(2) and Title 126, Ch. 18.005.01 when it failed to submit Tier 1 Pre-Investigation Assessment Work Plan Form on November 1, 2019, and again on August 20, 2021.

22. Neb. Rev. Stat. § 81-1506(1)(a) makes it unlawful to cause pollution of any waters or land of the state or place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters or land of the state.

23. The release of petroleum products, from tanks owned by RSH and operated by TFL, to land of the state and in a place where they are likely to cause pollution to waters of the state is an unlawful act under Neb. Rev. Stat. § 81-1506(1)(a).

IV. SECOND COMPLAINT

24. Paragraphs 1 through 23 are incorporated by reference.

25. RSH purchased the property located at 10780 Q St., Omaha, NE 68127 (abbreviated legal description: MOCKINGBIRD HILLS WEST LOT 1 BLOCK 0 IRREG E 190 W 200 N 190 S 200 FT LOT 1 IRREG) on August 30, 2016.

26. On, or about, April 19, 2021, NDEE was informed that the underground tank system located at 10780 Q St. failed a tightness test in November 2020, and that on April 19, 2021, petroleum, in the form of gasoline, was observed 2.5 feet below ground level.

27. On May 12, 2021, NDEE sent a letter to TFL which required the submittal of a completed Tier 1 Pre-Investigation Assessment Work Plan Form by June 17, 2021. The required submittal was not received by the Department.

28. On August 9, 2021, NDEE sent another letter to TFL which required the submittal of a completed Tier 1 Pre-Investigation Assessment Work Plan Form by September 15, 2021. The required submittal was not received by the Department.

29. On October 22, 2021, NDEE received a Closure Assessment Report from the State Fire Marshal (NDEE document #: 2021604222) for tanks 1 and 3 at 10780 Q St. The report contained a Tank Closure Inspector Checklist stating that contamination to soils and groundwater was observed.

30. On January 24, 2022, NDEE received a Closure Assessment Report from the State Fire Marshal (NDEE document #: 20220023498) for tanks 2 and 4 at 10780 Q St. The report contained a Tank Closure Inspector Checklist stating that contamination to soils and groundwater was observed. The report contained a letter dated December 16, 2021, to the State Fire Marshal requesting to omit closure samples for the underground storage tanks because “the [NDEE] had requested a Tier 1 Site Assessment be completed as a result of the free product on the ground water in the tank pit.”

31. On January 27, 2022, NDEE sent a letter to TFL notifying TFL that the Department received the Closure Assessment Report for tanks 2 and 4 and that the Department would be combining the Closure Assessment with the previous incident, and the entire site would remain in the investigation phase.

32. On May 24, 2022, NDEE sent a Letter of Noncompliance to TFL which required the submittal of a completed Tier 1 Pre-Investigation Assessment Work Plan Form by June 27, 2022. The required submittal was not received by the Department.

33. At all times relevant RSH was the owner of the tanks removed at 10780 Q St., Omaha, NE 68127.

34. At all times relevant TFL was the operator of the tanks removed at 10780 Q St., Omaha, NE 68127.

35. TFL violated Neb. Rev. Stat. § 81-15,124(2) and Title 126, Ch. 18.005.01 when it failed to submit Tier 1 Pre-Investigation Assessment Work Plan Forms on June 17, 2021, September 15, 2021, and on June 27, 2022.

36. The release of petroleum products from tanks located at 10780 Q St., Omaha, NE 68127, owned by RSH and operated by TFL, to land of the state and in a place where they are likely to cause pollution to waters of the state is an unlawful act under Neb. Rev. Stat. § 81-1506(1)(a).

V. COMPLIANCE ORDER

37. For the property located at 12005 Pacific St., Omaha, NE 68154, Respondent shall:

- a.** Within 45 days of receipt of this order, Respondents shall submit a completed Tier 1 Pre-Investigation Assessment Work Plan Form.
- b.** Within 90 days of receipt of this order, Respondents shall submit for the Department's approval a completed Tier 1 Site Investigation Work Plan Form.
- c.** Within 60 days of the approval by the Department of a Tier 1 Work Plan, Respondents shall submit a completed Tier 1 Report satisfying the requirements of Title 118, Appendix B, Step 6.

38. Within 45 days of receipt of this order, Respondents shall submit a completed Tier 1 Pre-Investigation Assessment Work Plan Form for the property located at 10780 Q St., Omaha, NE 68127

- a.** Within 45 days of receipt of this order, Respondents shall submit a completed Tier 1 Pre-Investigation Assessment Work Plan Form.

- b. Within 90 days of receipt of this order, Respondents shall submit for the Department's approval a completed Tier 1 Site Investigation Work Plan Form.
- c. Within 60 days of the approval by the Department of a Tier 1 Work Plan, Respondents shall submit a completed Tier 1 Report satisfying the requirements of Title 118, Appendix B, Step 6.

39. Submissions to the Department under this Order shall refer to FID ## 84092 and 60518 and shall be sent to:

Nancy Mann
Petroleum Remediation Section Supervisor
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

40. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondents 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.

41. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Neb. Admin. Code, Title 115, Rules of Practice and Procedure. The answer and request for hearing may be filed by mail to: Jim Macy, Director, State of Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the Department's Lincoln office located at 245 Fallbrook Blvd., Lincoln, Nebraska.

V. SETTLEMENT CONFERENCE

42. Whether or not Respondents request a hearing, an informal settlement conference may be requested by writing to Steve Thomas, Attorney, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

43. 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.

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

44. The NDEE 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 NDEE from pursuing such enforcement.

Dated this 10th day of January, 2023.

BY THE DIRECTOR



Jim Macy, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, was served by certified United States mail, postage prepaid, return receipt requested this 12th day of January, 2023, upon the Respondents listed below:

R.S. Holdings I, LLC
c/o Abdurashid Samiev
2020 South 73rd St.
Omaha, NE 68114
USPS Label # 9414811898765839971662

TFL, Inc.
c/o Abdurashid Samiev
2020 South 73rd St.
Omaha, NE 68114
USPS Label # 9414811898765839971112



Lauren Triplett
Paralegal