

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	
JIM MACY, Director,)	Case No. _____
NEBRASKA DEPARTMENT OF)	
ENVIRONMENT AND ENERGY,)	
)	
Plaintiff,)	COMPLAINT
)	(law and equity)
v.)	
)	
TFL, INC., d/b/a MEGA SAVER, and)	
R.S. HOLDINGS I, LLC,)	
)	
Defendants.)	

COMES NOW Jim Macy, Director of the Nebraska Department of Environment and Energy, who initiates this action through Michael T. Hilgers, Nebraska Attorney General, on behalf of the State of Nebraska, as Plaintiff, and alleges as follows:

PARTIES AND INTERESTS

1. Plaintiff Nebraska Department of Environment and Energy (“Department”) is the agency of the State of Nebraska charged with the duties, pursuant to Neb. Rev. Stat. §§ 81- 1504 & 81-15,118, to administer and enforce the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.*, the Petroleum Products and Hazardous Substances Storage and Handling Act (“the Petroleum Products Act”), Neb. Rev. Stat. § 81-15,117 *et seq.*, and all rules, regulations, orders, and permits issued pursuant to those Acts.

2. Defendant TFL, Inc. (“TFL”) is a Nebraska corporation that does business as Mega Saver and operates convenience stores and gas stations, including locations at 12005 Pacific Street in Omaha, Nebraska, Douglas County, and 10780 Q Street in Omaha, Nebraska, Douglas County (collectively, “Properties”).

3. Defendant R.S. Holdings I, LLC (“RSH”) is a Nebraska limited liability company that owns the real property located at 12005 Pacific Street in

Omaha, Nebraska, Douglas County, and 10780 Q Street in Omaha, Nebraska, Douglas County.

4. At all times relevant to this Complaint, the Properties owned and operated by Defendants contained underground tanks, product lines, and dispensers (collectively referred to as “tank system”) for the storage and dispensing of gasoline and diesel.

5. Defendants are each considered a “person” for purposes of NEPA and the Petroleum Products Act. Neb. Rev. Stat. §§ 81-1502(10) & 81-15,119(4).

JURISDICTION AND VENUE

6. The District Court has jurisdiction over the subject matter of this action, pursuant to Neb. Rev. Stat. § 24-302, and over the parties to this action.

7. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as the tank system owned and operated by Defendants was located in Douglas County and the events at issue took place in Douglas County.

LEGAL BACKGROUND

A. Nebraska Environmental Protection Act

8. NEPA was enacted in 1971 to protect the water, land, and air of this State by, *inter alia*, making it unlawful “[t]o cause pollution of any air, waters, or land of the state or to place any wastes in a location where they are likely to cause pollution of the air, waters, or land of the state” Neb. Rev. Stat. §§ 81- 1501, 1506(1).

9. Land pollution is “the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state[.]” Neb. Rev. Stat. § 81-1502(19).

10. Water pollution is “the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water[.]” Neb. Rev. Stat. § 81-1502(20).

11. Wastes are defined as “sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute any air, land, or waters of the state[.]” Neb. Rev. Stat. § 81-1502(14).

12. NEPA also makes it unlawful to “violate ... any order of the director” of the Department. Neb. Rev. Stat. § 81-1508.02(1)(b).

13. Each violation of NEPA subjects “a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.” Neb. Rev. Stat. § 81-1508.02(2).

14. Under NEPA, the Department may also seek an injunction when any person is violating or threatening to violate the Act, rules and regulations, or an order of the Department. Neb. Rev. Stat. § 81-1508(2).

B. The Petroleum Products and Hazardous Substances Storage and Handling Act

15. The Petroleum Products Act was passed to “provide a program of storage tank registration and inspection as a preventative measure and a comprehensive leak cleanup program as a responsive measure.” Neb. Rev. Stat. § 81-15,118. The Legislature had found “the number of leaking underground storage tanks throughout the state [was] increasing and that there exists a serious threat to the health and safety of citizens because substances contained in leaking storage tanks are often potential ground water contaminants and major fire and explosive hazards.” *Id.*

16. Tank is defined as “any tank or combination of tanks, including underground pipes connected to such tank or tanks, which is used to contain an accumulation of regulated substances and the volume of which is ten percent or more beneath the surface of the ground.” Neb. Rev. Stat. § 81-15,119(10). The definition includes some exceptions, such as farm or residential tanks that can

hold 1,100 gallons or less, septic tanks, pipeline facilities, and surface impoundments. *Id.* §§ 81-15,119(10)(a) through (i).

17. The Department has “[p]rimary responsibility” in administering the Petroleum Products Act, including cleanup of leaks from underground tanks containing gasoline, diesel, and other petroleum products. Neb. Rev. Stat. § 81-15,118.

18. The Petroleum Products Act makes it unlawful for any person to violate the Act, rules and regulations promulgated pursuant to it, and Department orders issued pursuant to it. Neb. Rev. Stat. § 81-15,125.

19. Under the Petroleum Products Act, the Nebraska Environmental Quality Council (“Council”) is required to adopt and promulgate rules and regulations “consistent with principles of risk-based corrective action governing all phases of remedial action to be taken by owners, operators, and other persons in response to a release or suspected release of a regulated substance from a tank.” Neb. Rev. Stat. § 81-15,124.01(1). Rules and regulations must include, *inter alia*, “[p]rovisions governing remedial action to be taken by owners and operators[,]” as well as other “provisions necessary” to carry out the Act. *Id.* §§ 81-15,124.01(1)(a) & (c). Pursuant to this authority and authority under NEPA, the Council adopted and promulgated Title 118—*Groundwater Quality Standards and Use Classification*, and Title 126—*Rules and Regulations Pertaining to Management of Waste*.

20. Title 118, Appendix B—*Remedial Action Protocol for Petroleum Releases*, provides the procedures for determining necessary action for oil releases using risk-based corrective action (“RBCA”). It provides twelve steps to address oil releases, including a preliminary assessment (Step 5), an RBCA Tier 1 site assessment (Step 6), evaluation of the RBCA Tier 1 site assessment (Step 7), implementation of approved remedial actions (Step 10), final review (Step 11), and closure (Step 12). Step 6 involves the submittal of a completed Tier 1 Pre-Investigation Work Plan Form, a completed Tier 1 Site Investigation Work Plan Form, and a Tier 1 Report for Department review.

21. 126 Neb. Admin. Code § 18-001 provides:

No person shall release, cause to be released or allow the release of an oil or hazardous substance or residuary products thereof, into, or upon the waters or land of the state, except in quantities, and at times and locations, or under circumstances and conditions as the Department approves.

Id. § 18-001.01.

22. “‘Release’ means, but is not limited to, any discharging, spilling, leaking, pumping, emitting, emptying or dumping of oil or hazardous substances upon land, beneath the surface of the land, or into waters of the State, either by accident or otherwise.” 126 Neb. Admin. Code § 1-036; *see also* Neb. Rev. Stat. § 81-15,119(7) (similarly defining “release”).

23. “Oil” is defined as “oil of any kind or in any form, including, but not limited to ... petroleum, fuel oil, oil refuse, and oil mixed with wastes other than dredged spoil[.]” 126 Neb. Admin. Code § 1-030. When oil is “present as a non-aqueous phase liquid (e.g., liquid not dissolved in water)” it is called “free product.” 126 Neb. Admin. Code § 1-018.

24. When a release occurs, Title 126 places the duty on the “responsible person to determine all of the affected environment and to provide other pertinent information deemed necessary by the Department to fully assess the impacts of the release” 126 Neb. Admin. Code § 18-004.01. This release investigation must “be conducted in a timely and diligent manner and in accordance with a schedule established by the Department.” *Id.*

25. The Petroleum Products Act further provides the Department may issue an order to the owner or operator of the tank causing the release to develop a plan for remedial action to be approved by the Department. Neb. Rev. Stat. § 81-15,124(2); *see also* 126 Neb. Admin. Code § 18-005.01.

26. An “operator” is generally “any person in control of, or having responsibility for, the daily operation of a tank[.]” Neb. Rev. Stat. § 81-15,119(1).

27. For tanks in use on July 17, 1986 or later, an “owner” is generally “any person who owns a tank used for the storage or dispensing of regulated

substances.” Neb. Rev. Stat. § 81-15,119(2)(a)(i); *see also* 126 Neb. Admin. Code 1-031 (defining “owner” as “the person who owns a facility or land or part of a facility or land”).

28. Under the Petroleum Products Act, “[a]ny person violating the ... Act or the rules, regulations, or orders of the State Fire Marshal or the Department ... adopted and promulgated or issued pursuant to such act shall be subject to a civil fine of not more than five thousand dollars for each offense and, in the case of a continuing violation, each day of violation shall constitute a separate offense.” Neb. Rev. Stat. § 81-15,125. “In assessing the amount of the fine, the court shall consider the size of operation and the degree and extent of the pollution.” *Id.*

29. The Petroleum Products Act also gives the Department authority to seek “a restraining order, a temporary or permanent injunction, or a mandatory injunction against the person violating or threatening to violate” the Act, rules and regulations, or Department order. Neb. Rev. Stat. § 81-15,126.

FACTUAL BACKGROUND

30. At all times relevant to the Complaint, Defendants owned and operated the tank system at 12005 Pacific Street and 10780 Q Street in Omaha, Nebraska, Douglas County.

31. At all times relevant to the Complaint, Defendants also shared the same registered agent and the same principal office address.

A. 12005 Pacific Street Property

32. 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 $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ - 0.92 AC) on or about August 8, 2017. At all times relevant to the Complaint, RSH was the owner of real property at 12005 Pacific Street. Upon information and belief, RSH also owned the tank system located at 12005 Pacific Street.

33. At all times relevant to this Complaint, the property at 12005 Pacific Street contained four underground tanks, various product lines or piping, and dispensers for gasoline and diesel.

34. At all times relevant to the Complaint, TFL was the operator of the convenience store and gas station and the tank system located at 12005 Pacific Street. TFL was responsible for the daily operation of this tank system.

35. Prior to August 2019, TFL and/or RSH hired a contractor for removal and closure of the tank system at 12005 Pacific Street.

36. During the removal and closure process, the contractor took soil samples to determine the presence of gasoline and diesel in the ground by the underground tanks, product lines, and dispensers.

37. Constituents found in gasoline and diesel are benzene, toluene, ethylbenzene, xylenes, n-hexane, MTBE (methyl tert-butyl ether), and naphthalene and TEH (Total Extractable Hydrocarbons).

38. On August 16, 2019, the Department received notice from the contractor that the soil sample results showed constituents associated with gasoline and diesel were detected in the ground at a depth of about twelve feet.

39. On September 10, 2019, the Department received a Closure Assessment Report Review from the State Fire Marshal for 12005 Pacific Street.

40. The 12005 Pacific Street Closure Assessment Report provided information and the laboratory analysis done of the soil samples taken by the contractor. The 12005 Pacific Street Closure Assessment Report showed gasoline and diesel constituents were detected in the ground.

41. The 12005 Pacific Street Closure Assessment Report also provided that the depth to groundwater was approximately 15 feet.

42. The 12005 Pacific Street Closure Assessment Report further provided that the tank system was removed.

43. The Department reviewed the 12005 Pacific Street Closure Assessment Report and determined further investigation was necessary based on the presence of gasoline and diesel constituents in the ground.

44. On October 3, 2019, the Department sent TFL a letter. The October 3, 2019 letter informed TFL that the 12005 Pacific Street Closure Assessment Report shows there was a release of gasoline and diesel from the tank system and the sampling data shows contamination. The Department further

notified TLF that it was responsible for identifying the affected environment and for completing any remedial action required. The Department required TFL to prepare a Tier 1 site investigation, including submitting a Tier 1 Pre-Investigation Assessment Work Plan Form by November 1, 2019.

45. The October 3, 2019 letter was delivered to TFL's registered agent on October 5, 2019.

46. The Department did not receive a response or a completed Tier 1 Pre-Investigation Assessment Work Plan Form on or before November 1, 2019.

47. On July 22, 2021, the Department issued a Letter of Noncompliance ("LNC") to TFL, which required TFL to complete and return a Tier 1 Pre-Investigation Assessment Work Plan Form by August 20, 2021.

48. The July 22, 2021 LNC was delivered to TFL's registered agent on July 26, 2021.

49. The Department did not receive a response or a completed Tier 1 Pre-Investigation Assessment Work Plan Form on or before August 20, 2021.

B. 10780 Q Street Property

50. RSH purchased the property located at 10780 Q Street, Omaha, Nebraska 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 or about August 30, 2016. At all times relevant to the Complaint, RSH was the owner of real property at 10780 Q Street. Upon information and belief, RSH owned the tank system located at 10780 Q Street.

51. At all times relevant to this Complaint, the property at 10780 Q Street contained four underground tanks, various product lines or piping, and dispensers for gasoline and diesel.

52. At all times relevant to the Complaint, TFL was the operator of the convenience store and gas station and the tank system located at 10780 Q Street. TFL was responsible for the daily operation of this tank system.

53. Prior to April 2021, TFL and/or RSH hired a contractor for removal and closure of the tank system at 10780 Q Street.

54. On April 19, 2021, the Department received notice from the contractor that the contractor found free product in the form of gasoline and/or diesel in the ground when it drilled three auger holes near the tank pit. The Department also learned the facility had low flow and failed tightness tests for two product lines in November 2020.

55. On May 12, 2021, the Department sent TFL a letter. The May 12, 2021 letter informed TFL that a Tier 1 site investigation is required. The May 12, 2021 letter required TFL to complete and submit a Tier 1 Pre-Investigation Assessment Work Plan Form by June 17, 2021.

56. The May 12, 2021 letter was delivered to TFL's registered agent on May 14, 2021.

57. The Department did not receive a response or a completed Tier 1 Pre-Investigation Assessment Work Plan Form on or before June 17, 2021.

58. The Department sent the same letter again on August 9, 2021, but provided a new deadline. The August 9, 2021 letter required TFL to complete and submit a Tier 1 Pre-Investigation Assessment Work Plan Form by September 15, 2021.

59. The August 9, 2021 letter was delivered to TFL's registered agent on August 11, 2021.

60. The Department did not receive a response or a completed Tier 1 Pre-Investigation Assessment Work Plan Form on or before September 15, 2021.

61. On October 22, 2021, the Department received a Closure Assessment Report Review from the State Fire Marshal for the removal of tank #1 and tank #3 at 10780 Q Street.

62. The 10780 Q Street Closure Assessment Report provided, *inter alia*, that free product was observed in the ground, soils were discolored, and there were holes and cracks in tank #3.

63. On January 24, 2022, the Department received another Closure Assessment Report Review from the State Fire Marshal for the removal of tank #2 and tank #4 at 10780 Q Street.

64. The January 24, 2022 Closure Assessment Report included the same and additional information, including laboratory analysis of soil samples taken by the contractor by the product lines and dispensers. The Closure Assessment Report showed constituents of gasoline and diesel were detected in the ground at a depth of approximately three feet.

65. The January 24, 2022 Closure Assessment Report for 10780 Q Street also provided the depth to groundwater was between approximately fifteen and forty feet.

66. On January 27, 2022, the Department sent TFL a letter notifying TFL that the two incidents and Closure Assessment Reports would be combined. The Department also notified TFL that the Closure Assessment Reports indicate there were releases of gasoline and diesel from the tank system.

67. On May 24, 2022, the Department issued an LNC to TFL, which required TFL to complete and return a Tier 1 Pre-Investigation Assessment Work Plan Form by June 27, 2022.

68. The May 24, 2022 LNC was delivered to TFL's registered agent and other representative on May 26, 2022.

69. The Department did not receive a response or a completed Tier 1 Pre-Investigation Assessment Work Plan Form on or before June 27, 2022.

C. Administrative Order for Both Properties

70. On January 10, 2023, the Department issued an Administrative Order to Defendants regarding their responsibilities to identify the affected environment where the releases of gasoline and diesel occurred and to complete any remedial action necessary to clean up the releases at both Properties.

71. The Administrative Order informed Defendants that they violated NEPA, the Petroleum Products Act, and Title 126 of the Nebraska Administrative Code because of releases of oil to lands of the state and in places likely to pollute waters of the state at both Properties

72. For both Properties, the Department ordered Defendants as follows:

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

73. The Administrative Order further informed Defendants that the order would become final unless a written answer and request for hearing were filed with the Department no later than 30 days after receipt of the Order. If no answer or request for hearing were filed, then the Administrative Order provided that a failure to answer would be deemed an admission of the allegations in the Order.

74. On February 3, 2023, the Administrative Order was delivered to TFL's registered agent.

75. On February 3, 2023, the Administrative Order was delivered to RSH's registered agent.

76. The Department did not receive an answer and request for hearing from Defendants within 30 days of February 3, 2023, which is the day Defendants each received the Administrative Order.

77. By failing to answer the Administrative Order, Defendants have admitted the allegations contained in the Order.

78. As of the filing of this Complaint, the Department has not received a completed Tier 1 Pre-Investigation Assessment Work Plan Form or a Tier 1 site investigation for either 12005 Pacific Street or 10780 Q Street from Defendants.

79. To date, the releases of gasoline and diesel to land of the state and in places likely to reach waters of the state have not been remediated at the Properties.

80. The releases of gasoline and diesel continue to be present in the lands of the state and continue to threaten to pollute waters of the state.

FIRST CAUSE OF ACTION

RELEASE OF OIL INTO OR UPON LAND AND WATER OF THE STATE IN VIOLATION OF NEB. REV. STAT. § 81-15,125 AND 126 NEB. ADMIN. CODE § 18-001

81. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–80 as though fully set forth herein.

82. Under the Petroleum Products Act, it is unlawful for any person to violate rules and regulations adopted and promulgated pursuant to the act. Neb. Rev. Stat. § 81-15,125. It is also unlawful under NEPA for any person to violate “any other provision of or fail to perform any other duty imposed by ... rules, or regulations.” *Id.* § 81-1508.02(1)(e).

83. Under Title 126, “[n]o person shall release, cause to be released or allow the release of an oil or hazardous substance or residuary products thereof, into, or upon the waters or land of the state, except in quantities, and at times and locations, or under circumstances and conditions as the Department approves.” 126 Neb. Admin. Code § 18-001.01.

84. Further, “[w]hen a release occurs, it shall be the duty of the responsible person to determine all of the affected environment and to provide other pertinent information deemed necessary by the Department to fully assess the impacts of the release.... The release investigation shall be conducted in a timely and diligent manner and in accordance with a schedule established by the Department.” 126 Neb. Admin. Code § 18-004.01.

85. Defendants are “responsible persons” as defined in 126 Neb. Admin. Code § 1-038 and “persons” as defined Neb. Rev. Stat. §§ 81-1502(10) & 81-15,119(4).

A. 12005 Pacific Street Property

86. The property at 12005 Pacific Street contained four underground tanks, various product lines or piping, and dispensers for gasoline and diesel.

87. RSH is the owner of real property and the tank system used for storage or dispensing of gasoline and diesel at 12005 Pacific Street.

88. TFL is the operator of the tank system used to provide gasoline and diesel to customers at 12005 Pacific Street. TFL has control and responsibility for the daily operation of the tank system at 12005 Pacific Street.

89. On August 16, 2019, the Department was notified by a contractor working for RSH and/or TFL that constituents from gasoline and diesel were detected in the ground at 12005 Pacific St.

90. Lab results from soil samples taken by the contractor show detectable concentrations of n-Hexane, benzene, toluene, ethylbenzene, xylenes, naphthalene, and TEH for gasoline and diesel in the ground by the tanks, product lines, and dispensers.

91. Gasoline and diesel and the constituents thereof are “oil” as defined in 126 Neb. Admin. Code § 1-030.

92. The detectable concentrations of gasoline and diesel in the ground are “releases” as defined in 126 Neb. Admin. Code § 1-036.

93. The ground where gasoline and diesel were found is “land” of the state as defined in 126 Neb. Admin. Code § 1-024.

94. Groundwater beneath the surface of the land at 12005 Pacific Street is “waters of the state” as defined in 126 Neb. Admin. Code § 1-045.

95. Defendants released or caused to be released or allowed the release of oil into or upon the land of the state and waters of the state at 12005 Pacific Street.

96. Defendants did not have approval from the Department to release oil to the land or water of the state at 12005 Pacific Street. The exception in 126 Neb. Admin. Code § 18-001.01 does not apply.

97. Defendants violated 126 Neb. Admin. Code § 18-001.01 by releasing, causing to be released, or allowing the release of oil into and upon the land and water of the state.

98. The Department sent Defendants an October 3, 2019 letter, a July 22, 2021 LNC, and a January 10, 2023 Administrative Order requiring Defendants to submit appropriate forms and to prepare and complete a Tier 1 Work Plan for the 12005 Pacific Street property.

99. Defendants had notice that they were required to submit appropriate forms and to prepare and complete a Tier 1 Work Plan for the 12005 Pacific Street property.

100. The Department has not received any of the appropriate forms or a completed Tier 1 Work Plan from Defendants.

101. Despite the Department's January 10, 2023 Administrative Order, Defendants have not determined "all of the affected environment" or "provide[d] other pertinent information deemed necessary by the Department to fully assess the impacts of the release[s]" at 12005 Pacific Street. 126 Neb. Admin. Code § 18-004.01.

102. Defendants violated 126 Neb. Admin. Code § 18-004.01 by failing to submit appropriate forms and complete a Tier 1 Work Plan needed to determine the environment affected by the releases and to allow the Department to fully assess the impacts of the releases at 12005 Pacific Street.

B. 10780 Q Street Property

103. The property at 10780 Q Street contained four underground tanks, various product lines or piping, and dispensers for gasoline and diesel.

104. RSH is the owner of the real property and the tank system used for storage or dispensing of gasoline and diesel at 10780 Q Street.

105. TFL is the operator of the tank system used to provide gasoline and diesel to customers at 10780 Q Street. TFL has control and responsibility for the daily operation of the tank system at 10780 Q Street.

106. On April 19, 2021, the Department was notified by a contractor working for RSH and/or TFL that gasoline and/or diesel was observed below

ground level in three auger holes by the underground tanks at 10780 Q Street.

107. Lab results from soil samples taken by the contractor show detectable concentrations of n-Hexane, benzene, toluene, ethylbenzene, xylenes, naphthalene, and TEH for gasoline and diesel in the ground by the product lines and dispensers.

108. Gasoline and diesel and the constituents thereof are “oil” as defined in 126 Neb. Admin. Code § 1-030.

109. The gasoline and diesel found in the ground by the tanks and the detectable concentrations of gasoline and diesel in the ground are “releases” as defined in 126 Neb. Admin. Code § 1-036.

110. The ground where gasoline and diesel was found is “land” of the state as defined in 126 Neb. Admin. Code § 1-024.

111. Groundwater beneath the surface of the land at 10780 Q Street is “waters of the state” as defined in 126 Neb. Admin. Code § 1-045.

112. Defendants released or caused to be released or allowed the release of oil into or upon the land of the state and waters of the state at 10780 Q Street.

113. Defendants did not have approval from the Department to release oil to the land or water of the state at 10780 Q Street. The exception in 126 Neb. Admin. Code § 18-001.01 does not apply.

114. Defendants violated 126 Neb. Admin. Code § 18-001.01 by releasing, causing to be released, or allowing the release of oil into and upon the land and water of the state.

115. The Department sent Defendants an October 3, 2019 letter, a July 22, 2021 LNC, and a January 10, 2023 Administrative Order requiring Defendants to submit appropriate forms and to prepare and complete a Tier 1 Work Plan for the 10780 Q Street property.

116. Defendants had notice that they were required to submit appropriate forms and to prepare and complete a Tier 1 Work Plan for the 10780 Q Street property.

117. The Department has not received any of the appropriate forms or a completed Tier 1 Work Plan from Defendants.

118. Despite the Department's January 10, 2023 Administrative Order, Defendants have not determined "all of the affected environment" or "provide[d] other pertinent information deemed necessary by the Department to fully assess the impacts of the release[s]" at 10780 Q Street. 126 Neb. Admin. Code § 18-004.01.

119. Defendants violated 126 Neb. Admin. Code § 18-004.01 by failing to submit appropriate forms and complete a Tier 1 Work Plan needed to determine the environment affected by the releases and to allow the Department to fully assess the impacts of the releases at 10780 Q Street.

120. Pursuant to Neb. Rev. Stat. § 81-15,125, Defendants, jointly and severally, are subject to a civil fine of not more than \$5,000 for each release of oil at each of the properties.

121. Pursuant to Neb. Rev. Stat. § 81-15,126, this Court should issue a restraining order, a temporary or permanent injunction, or a mandatory injunction against Defendants, jointly and severally, to submit the required forms and to prepare and complete a Tier 1 Work Plan, and the perform any remedial actions necessary to cleanup the releases at both Properties.

SECOND CAUSE OF ACTION

POLLUTION OF THE LAND AND/OR WATER OF THE STATE IN VIOLATION OF NEB. REV. STAT. § 81-1506(1)(a)

122. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–80 as though fully set forth herein.

123. Under NEPA, it is "unlawful for any person ... [t]o cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state." Neb. Rev. Stat. § 81-1506(1)(a).

A. 12005 Pacific Street Property

124. Defendants own and operate the property at 12005 Pacific Street, which contains four underground tanks, various product lines, and dispensers.

125. While Defendants owned and operated the convenience store and gas station at the 12005 Pacific Street Property, constituents from gasoline and diesel were found in detectable concentrations in the ground and in places likely to reach waters of the state.

126. The Department was notified constituents from gasoline and diesel were found in the ground at 12005 Pacific Street on August 16, 2019.

127. Defendants are “persons” as defined in Neb. Rev. Stat. § 81-1502(10).

128. Gasoline and diesel found in the ground or water of the state are “wastes,” as defined in Neb. Rev. Stat. § 81-1502(14), and contaminants and pollutants.

129. Gasoline and diesel and constituents thereof found in the soil is “land pollution” as defined in Neb. Rev. Stat. § 81-1502(19).

130. Gasoline and diesel found twelve feet in the ground where depth to groundwater is fifteen feet are wastes in a location likely to reach waters of the state and cause “water pollution” as defined in Neb. Rev. Stat. § 81-1502(20).

131. The ground at 12005 Pacific Street is a land of the state and the water below the ground at 12005 Pacific Street is “waters of the state” as defined in Neb. Rev. Stat. § 81-1502(21).

132. Upon information and belief, the gasoline and diesel found in the ground at 12005 Pacific Street is still there, has not been cleaned up, and continues to pollute the land of the state and is in places likely to reach waters of the state.

133. The Defendants violated Neb. Rev. Stat. § 81-1506(1)(a) by causing pollution to land of the state and by placing wastes in a location likely to reach waters of the state.

B. 10780 Q Street Property

134. Defendants own and operate the property at 10780 Q Street, which contains four underground tanks, various product lines, and dispensers.

135. While Defendants owned and operated the gas station at the 10780 Q Street Property, free product in the form of gasoline or diesel was observed and

constituents from gasoline and diesel were found in detectable concentrations in the ground and in places likely to reach waters of the state.

136. The Department was first notified of the gasoline and/or diesel in the ground at 10780 Q Street on April 19, 2021.

137. Defendants are “persons” as defined in Neb. Rev. Stat. § 81-1502(10).

138. Gasoline and diesel found in the ground and water of the state are “wastes,” as defined in Neb. Rev. Stat. § 81-1502(14), and contaminants and pollutants.

139. Gasoline and diesel found in the ground is “land pollution” as defined in Neb. Rev. Stat. § 81-1502(19).

140. Gasoline and diesel found in the ground where depth to groundwater is as shallow as fifteen feet are wastes in a location likely to reach waters of the state and cause “water pollution” as defined in Neb. Rev. Stat. § 81-1502(20).

141. The ground at 10780 Q Street is a land of the state and the water below the ground at 10780 Q Street is “waters of the state” as defined in Neb. Rev. Stat. § 81-1502(21).

142. Upon information and belief, the gasoline and diesel found in the ground at 10780 Q Street is still there, has not been cleaned up, and continues to pollute the land of the state and is in places likely to reach waters of the state.

143. The Defendants violated Neb. Rev. Stat. § 81-1506(1)(a) by causing pollution to land of the state and by placing wastes in a location likely to reach waters of the state.

144. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Defendants, jointly and severally, are subject to a civil penalty of not more than \$10,000 for each day pollution from gasoline and diesel at both Properties continues.

145. Pursuant to Neb. Rev. Stat. § 81-1508, this Court should issue a temporary and/or permanent injunction ordering Defendants, jointly and severally, to complete all investigations and remedial actions necessary to cleanup the pollution at both Properties in accordance with Appendix B in Title 118 of the Nebraska Administrative Code.

THIRD CAUSE OF ACTION

FAILURE TO COMPLY WITH AN ORDER OF THE DIRECTOR IN VIOLATION OF NEB. REV. STAT. § 81-1508.02(1)(b) AND § 81-15,125

146. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–80 as though fully set forth herein.

147. Under NEPA, it is “unlawful for any person ... [t]o violate ... any order of the director ... issued ... pursuant to” NEPA or rules and regulations. Neb. Rev. Stat. § 81-1508(1)(b).

148. Under the Petroleum Products Act, it is unlawful for “[a]ny person [to] violat[e] the ... Act, or the rules, regulations, or orders of the State Fire Marshal or the Department ... adopted and promulgated or issued pursuant to such act” Neb. Rev. Stat. § 81-15,125.

149. The Petroleum Products Act and Title 126 further require the owner or operator to “determine all of the affected environment and to provide other pertinent information deemed necessary by the Department to fully assess the impacts of the release” and to “develop a plan for remedial action to be approved by the Department.” Neb. Rev. Stat. § 81-15,124; 126 Neb. Admin. Code §§ 18-004.01 & 18-005.01.

A. 12005 Pacific Street Property

150. On October 3, 2019, the Department sent TFL a letter providing that a completed Tier 1 Pre-Investigation Work Plan Form for 12005 Pacific Street was required and needed to be submitted by November 1, 2019.

151. The October 3, 2019 letter was delivered to TFL’s registered agent on October 5, 2019.

152. The Department did not receive a completed Tier 1 Pre-Investigation Work Plan Form on or before November 1, 2019.

153. On July 22, 2021, the Department sent TFL an LNC, which required a completed Tier 1 Pre-Investigation Work Plan Form to be submitted for 12005 Pacific Street on or before August 20, 2021.

154. The July 22, 2021 LNC was delivered to TFL’s registered agent on July 26, 2021.

155. The Department did not receive a completed Tier 1 Pre-Investigation Work Plan Form on or before August 20, 2021.

156. On January 10, 2023, the Department issued an Administrative Order to Defendants, which required the following to be submitted to the Department for the 12005 Pacific Street property:

- a. A completed Tier 1 Pre-Investigation Assessment Work Plan Form within 45 days of receiving the order;
- b. A completed Tier 1 Site Investigation Work Plan Form for Department approval within 90 days of receiving the order; and
- c. A completed Tier 1 Report satisfying the requirement of Step 6, as set forth in Appendix B to Title 118 of the Nebraska Administrative Code within 60 days of the Department's approval of a Tier 1 Work Plan.

157. The January 10, 2023 Administrative Order was delivered to Defendants' registered agent (same for both TFL and RSH) on February 3, 2023.

158. The Department did not receive an answer or request for hearing from Defendants within 30 days of February 3, 2023. The Department has not received any of the forms, plans, or reports required by the January 10, 2023 Administrative Order.

159. The Tier 1 Pre-Investigation Work Plan Form, the Tier 1 Site Investigation Work Plan Form, and the Tier 1 Report are necessary for the Department to fully assess the impacts of the releases at 12005 Pacific Street and will inform whether remedial actions are necessary.

160. Defendants violated both Neb. Rev. Stat. § 81-1508.02(1)(b) and § 81-15,125 by failing to comply with the January 10, 2023 Administrative Order.

B. 10780 Q Street Property

161. On May 12, 2021, the Department sent TFL a letter providing that a completed Tier 1 Pre-Investigation Work Plan Form for 10780 Q Street was required and needed to be submitted by June 17, 2021.

162. The May 12, 2021 letter was delivered to TFL's registered agent on May 14, 2021.

163. The Department did not receive a completed Tier 1 Pre-Investigation Work Plan Form on or before June 17, 2021.

164. On August 9, 2021, the Department sent TFL another letter providing that a completed Tier 1 Pre-Investigation Work Plan Form for 10780 Q Street was required and needed to be submitted by September 15, 2021.

165. The August 9, 2021 letter was delivered to TFL's registered agent on August 11, 2021.

166. The Department did not receive a completed Tier 1 Pre-Investigation Work Plan Form on or before September 15, 2021.

167. On May 24, 2022, the Department sent TFL an LNC, which required a completed Tier 1 Pre-Investigation Work Plan Form to be submitted for 10780 Q Street on or before June 27, 2022.

168. The May 24, 2022 LNC was delivered to TFL's registered on May 26, 2022.

169. The Department did not receive a completed Tier 1 Pre-Investigation Work Plan Form on or before June 27, 2022.

170. On January 10, 2023, the Department issued an Administrative Order to Defendants, which required the following to be submitted to the Department for the 10780 Q Street property:

- a. A completed Tier 1 Pre-Investigation Assessment Work Plan Form within 45 days of receiving the order;
- b. A completed Tier 1 Site Investigation Work Plan Form for Department approval within 90 days of receiving the order; and
- c. A completed Tier 1 Report satisfying the requirement of Step 6, as set forth in Appendix B to Title 118 of the Nebraska Administrative Code within 60 days of the Department's approval of a Tier 1 Work Plan.

171. The January 10, 2023 Administrative Order was delivered to Defendants' registered agent (same for both TFL and RSH) on February 3, 2023.

172. The Department did not receive an answer or request for hearing from Defendants within 30 days of February 3, 2023. The Department has not received any of the forms, plans, or reports required by the January 10, 2023 Administrative Order.

173. The Tier 1 Pre-Investigation Work Plan Form, the Tier 1 Site Investigation Work Plan Form, and the Tier 1 Report are necessary for the Department to fully assess the impacts of the releases at 10780 Q Street and will inform whether remedial actions are necessary.

174. Defendants violated both Neb. Rev. Stat. § 81-1508.02(1)(b) and § 81-15,125 by failing to comply with the January 10, 2023 Administrative Order.

175. Pursuant to Neb. Rev. Stat. § 81-1508.02, Defendants, jointly and severally, are subject to a civil penalty of not more than \$10,000 for failing to comply with the January 10, 2023 Administrative Order. Each day Defendants fail to comply is a separate violation.

176. Pursuant to Neb. Rev. Stat. § 81-15,125, Defendants, jointly and severally, are subject to a civil fine of not more than \$5,000 for failing to comply with the January 10, 2023 Administrative Order. Each day Defendants fail to comply is a separate violation.

177. Pursuant to Neb. Rev. Stat. § 81-1508 and § 81-15,126, this Court should issue a restraining order, a temporary or permanent injunction, or a mandatory injunction against Defendants, jointly and severally, to comply with the January 10, 2023 Administrative Order, including submitting the required forms and to prepare and complete a Tier 1 Work Plan, and to perform any remedial actions necessary to cleanup the releases at both properties.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests this Court to enter judgment on this Complaint in its favor and grant the following relief:

- A. Declare Defendants violated the Nebraska Environmental Protection Act, the Petroleum Products and Hazardous Substances

Storage and Handling Act, Title 118 of the Nebraska Administrative Code; and/or Title 126 of the Nebraska Administrative Code;

- B. Find and hold Defendants are jointly and severally liable to Plaintiff for the violations of the Nebraska Environmental Protection Act, the Petroleum Products and Hazardous Substances Storage and Handling Act, Title 118 of the Nebraska Administrative Code; and/or Title 126 of the Nebraska Administrative Code and the remaining obligations thereunder;
- C. Issue a restraining order, temporary injunction, permanent injunction, and/or mandatory injunction ordering Defendants, jointly and severally, to do each of the following actions for the 12005 Pacific Street and 10780 Q Street properties in timeframes specified by the Department:
 - 1. Submit a completed Tier 1 Pre-Investigation Assessment Work Plan Form to the Department;
 - 2. Submit a completed Tier 1 Site Investigation Work Plan Form for Department approval;
 - 3. Submit a completed Tier 1 Report to the Department that satisfies Step 6 in Appendix B to Title 118 of the Nebraska Administrative Code;
 - 4. Perform and complete any remedial actions necessary to cleanup the releases at or from the properties.
- D. Enter the statutory maximum civil penalty against Defendants, jointly and severally, as provided under Neb. Rev. Stat. § 81-1508.02(2), for each day of each violation of the Nebraska Environmental Protection Act;
- E. Enter the statutory maximum civil fine against Defendants, jointly and severally, as provided under Neb. Rev. Stat. § 81-15,125, for each day of each violation of the Petroleum Products and Hazardous Substances Storage and Handling Act;

- F. Tax all court costs herein to Defendants, jointly and severally; and
- G. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 11th day of August 2023.

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director of the NEBRASKA
DEPARTMENT OF ENVIRONMENT
AND ENERGY, Plaintiff

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