

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA**

STATE OF NEBRASKA, ex rel.,	)	
JIM MACY, Director,	)	Case No. CI 23-6431
NEBRASKA DEPARTMENT OF	)	
ENVIRONMENT AND ENERGY,	)	
	)	
Plaintiff,	)	<b>CONSENT DECREE</b>
	)	
v.	)	
	)	
TFL, INC., d/b/a MEGA SAVER, and	)	
R.S. HOLDINGS I, LLC,	)	
	)	
Defendants.	)	

COMES NOW Plaintiff, the State of Nebraska on behalf of Jim Macy, Director of the Nebraska Department of Environment and Energy (“Department”), proceeding on the Complaint filed on August 14, 2023 and appearing through counsel, Michael T. Hilgers, Nebraska Attorney General, and Defendants, TLF, Inc., a Nebraska corporation, d/b/a Mega Saver, and R.S. Holdings I, LLC (collectively “Defendants”), appearing through counsel, and each party having consented to the making and entering of this Consent Decree without trial, request entry and approval of this Consent Decree.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject-matter of this action, pursuant to Neb. Rev. Stat. § 24-302, and over the parties to this action. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as Defendants’ facilities and real properties are located in Douglas County and the events took place in Douglas County. The two properties at issue are 12005 Pacific Street in Omaha, Nebraska and 10780 Q Street in Omaha, Nebraska (collectively “Properties”).

2. In the Complaint, Plaintiff alleges Defendants violated the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.*, and the Petroleum Products and Hazardous Substances Storage and Handling Act (“Petroleum Products Act”), Neb. Rev. Stat. § 81-15,117 *et seq.*, by (1)

releasing or allowing the release of oil at the Properties into or upon lands and waters of the state; (2) polluting lands and/or waters of the state; and (3) failing to comply with an order of the director of the Department in regard to performing Tier 1 Investigations and completing any remedial actions necessary to clean up releases at the Properties.

3. The parties agree settlement of this matter is in the public interest and entry and approval of this Consent Decree is the most appropriate means of resolving their dispute. The parties desire to conclude this case without trial or adjudication of any issues of fact or law. The parties further desire to conclude this case without this Consent Decree constituting an admission by Defendants with respect to such issues.

4. This Consent Decree will be in full satisfaction of all claims between the parties alleged in Plaintiff's Complaint. This Consent Decree does not satisfy any unknown or future violations of any statutes or rules and regulations.

5. IT IS THEREFORE ORDERED that Defendants, in lieu of a monetary civil penalty, under Neb. Rev. Stat. § 81-1508.02(2), agree to perform the actions for each respective property laid out below in subparagraphs (A) through (B). Defendants further agree to reimburse the Plaintiff for court costs in the amount of eighty-seven dollars (\$87.00).

A. **10780 Q Street Property.** Defendants will complete all of the following actions to the satisfaction of the Department and within the timeframes established by the Department:

- i. Within 60 days of Department approval of a Tier 1 Work Plan, Defendants shall submit a completed Tier 1 Report to the Department that satisfies the Step 6 requirements set forth in Appendix B – Remedial Action Protocol for Petroleum Releases of Title 118 of the Nebraska Administrative Code;
- ii. If the Department, after evaluation of the Tier 1 Investigation Results, determines additional remedial actions are required, then within 45 days

- of Department notification, Defendants shall submit a Tier 2 work plan that includes a site map of proposed sampling locations to the Department;
- iii. Within 60 days of Department approval of a Tier 2 work plan, Defendants will perform a Tier 2 Site Assessment that satisfies the Step 8 requirements set forth in Appendix B – Remedial Action Protocol for Petroleum Releases of Title 118 of the Nebraska Administrative Code. Defendants will report the Tier 2 Investigation Results to the Department in a format specified by the Department within 60 days after performing the Tier 2 Site Assessment;
  - iv. If the Department, after evaluation of the Tier 2 Investigation Results, determines additional remedial actions are required, then Defendants will perform any actions required by the Department under Step 9 and Step 10 in Appendix B – Remedial Action Protocol for Petroleum Releases of Title 118 of the Nebraska Administrative Code within timeframes specified by the Department. This includes, but is not limited to, developing a workplan, scheduling performance of final remedial actions, obtaining any necessary permits to implement an approved workplan, implementing the remedial actions approved in the workplan, and keeping the Department apprised of remediation efforts;
  - v. If the Department determines ongoing actions are necessary for remediation, Defendants will perform those actions until groundwater and soil contamination is remediated to the Department's satisfaction; and

- vi. If at any time the Department determines remedial actions or ongoing monitoring are not necessary or the site is remediated to the Department's satisfaction, then Defendants shall decommission and abandon all monitoring and remediation wells (if such wells exist) in accordance with Title 178 of the Nebraska Administrative Code. Following site closure and the decommissioning and abandonment of wells (if applicable), Defendants will have no more obligations under this Consent Decree as to the 10780 Q Street Property.

**B. 12005 Pacific Street Property.** R.S. Holdings I, LLC ("RSH"), as the property owner, will complete the following actions to the satisfaction of the Department and within the timeframes established by the Department:

- i. Submit an application for Voluntary Responsible Person ("VRP") status to the Department for review within 30 days of Court approval of this Consent Decree;
- ii. All of the remaining obligations of RSH with respect to the 12005 Pacific Street Property are contingent upon the Department's approval of RSH's application for VRP status, and waiver of any reimbursement reductions for any delays or noncompliance issues alleged, or known by the Department, to have occurred before this Consent Decree is entered.
- iii. Upon the satisfaction of the contingencies set forth in the preceding subparagraph (ii), RSH will submit a completed Tier 1 Pre-Investigation Assessment Work Plan Form to the Department within 60 days of the Department's approval of RSH's VRP application;

- iv. Within 90 days of the Department's approval of RSH's VRP application, RSH will submit a completed Tier 1 Site Investigation Work Plan Form to the Department;
- v. Within 60 days of Department approval of the Tier 1 Work Plan, RSH shall submit a completed Tier 1 Report to the Department that satisfies the Step 6 requirements set forth in Appendix B – Remedial Action Protocol for Petroleum Releases of Title 118 of the Nebraska Administrative Code;
- vi. If the Department, after evaluation of the Tier 1 Investigation Results, determines additional remedial actions are required, then within 45 days of Department notification, RSH shall submit a Tier 2 work plan that includes a site map of proposed sampling locations to the Department;
- vii. Within 60 days of Department approval of a Tier 2 work plan, RSH will perform a Tier 2 Site Assessment that satisfies the Step 8 requirements set forth in Appendix B – Remedial Action Protocol for Petroleum Releases of Title 118 of the Nebraska Administrative Code. Defendants will report the Tier 2 Investigation Results to the Department in a format specified by the Department within 60 days after performing the Tier 2 Site Assessment;
- viii. If the Department, after evaluation of the Tier 2 Investigation Results, determines additional remedial actions are required, then RSH will perform any actions required by the Department under Step 9 and Step 10 in Appendix B – Remedial Action Protocol for Petroleum Releases of Title 118 of the Nebraska Administrative Code within timeframes specified by the Department. This

includes, but is not limited to developing a workplan, scheduling performance of final remedial actions, obtaining any necessary permits to implement an approved workplan, implementing the remedial actions approved in the workplan, and keeping the Department apprised of remediation efforts;

- ix. If the Department determines ongoing actions are necessary for remediation, RSH will perform those actions until groundwater and soil contamination is remediated to the Department's satisfaction; and
- x. If at any time the Department determines remedial actions or ongoing monitoring are not necessary or the site is remediated to the Department's satisfaction, then RSH shall decommission and abandon all monitoring and remediation wells (if such wells exist) in accordance with Title 178 of the Nebraska Administrative Code. Following site closure and the decommissioning and abandonment of wells (if applicable), RSH will have no more obligations under this Consent Decree as to the 12005 Pacific Street Property.

C. If Defendants do not comply with the terms and conditions of Paragraph 5(A) and (B) above, then Defendants must pay a civil penalty in the amount of eighty-thousand dollars (\$80,000.00) to the Clerk of the District Court for Douglas County within thirty (30) days of notice of failure to comply with and satisfy the terms and conditions of the Consent Decree;

D. An additional stipulated penalty of \$100 per day will accrue from the notice of failure until Defendants satisfy the terms and conditions of the Consent Decree;

- E. Any civil penalty payments or stipulated penalty payments made by Defendants will be deposited by the Court and remitted to the County Treasurer for Douglas County for use and support of the common schools in Douglas County as directed by Article VII, Section 5, of the Nebraska Constitution; and
- F. No later than thirty (30) days after the Properties are remediated and closed to the satisfaction of the Department or remedial actions are no longer necessary as determined by the Department, Defendants shall provide Plaintiff with a Showing of Compliance. This Showing of Compliance must indicate Defendants complied with all terms and conditions in the Consent Decree. Defendants may elect to submit a Partial Showing of Compliance if the Properties are not remediated on the same schedule. The Department will verify compliance with the Consent Decree. Plaintiff will file a Satisfaction of Judgment, or a Partial Satisfaction of Judgment, with the Court after Defendants provide their Showing of Compliance or Partial Showing of Compliance and the Department verifies Defendants fully complied with the applicable terms and conditions of this Consent Decree. If Defendants, however, do not comply with the terms and conditions of the Consent Decree during the pendency of the Consent Decree, then Plaintiff, in its sole discretion, may file with the Court a motion to enforce the terms of the Consent Decree to recover any unpaid civil penalties or stipulated penalties and to demand completion of any terms and conditions under the Consent Decree, if necessary.

6. This Consent Decree is binding on Defendants' successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendants under this Consent Decree.

7. This Consent Decree will have no preclusive effect on any enforcement action brought by Plaintiff against Defendants for unknown or future violations of any statutes or rules and regulations. Defendants acknowledge that noncompliance with the terms and conditions set forth in this Consent Decree may also be violations of NEPA, the Petroleum Products Act, or applicable rules and regulations, and this Consent Decree does not preclude Plaintiff from bringing an independent enforcement action seeking civil penalties and/or injunctive relief for such violations.

8. Plaintiff reserves its rights to seek civil penalties and/or injunctive relief against Defendants for unknown or future violations of NEPA, the Petroleum Products Act, and applicable rules and regulations.

9. The undersigned consent without further notice to the form and entry of this Consent Decree.

DATED this 23<sup>rd</sup> day of January 2024, in Douglas County, Nebraska.

BY THE COURT:



\_\_\_\_\_  
District Judge of Douglas County, Nebraska



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

BY: MICHAEL T. HILGERS, #24483  
Nebraska Attorney General

BY: /s/ Maegan L. Woita  
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TFL, INC. d/b/a MEGA SAVER and R.S.  
HOLDINGS I, LLC, Defendants

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*Attorney for Defendants*

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on January 24, 2024 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

TFL, INC.  
202 S. 73rd Street  
Omaha, NE 68114

R.S. Holdings I, LLC  
202 S. 73rd Street  
Omaha, NE 68114

Maegan L Woita  
Maegan.woita@nebraska.gov

Date: January 24, 2024

BY THE COURT:

*Roytal Shoacka*

CLERK

