

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF:	)	Case No. 3125
Steven and Diane Gebers, husband	)	
and wife; David and Sherry Gebers,	)	
husband and wife;	)	
d/b/a Heartland Co-op,	)	COMPLAINT, ORDER FOR
Nora, Nebraska,	)	ACCESS AND NOTICE OF
FID # 37175	)	OPPORTUNITY FOR HEARING
UG #071791-TH-0926	)	
	)	
Respondents.	)	

PRELIMINARY STATEMENT

This Complaint, Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2008, Cum. Supp. 2010) of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-15,124.02 (Reissue 2008, Cum. Supp. 2010) of the Petroleum Products and Hazardous Substances Storage and Handling Act, and the Petroleum Release Remedial Action Act, Neb. Rev. Stat. §66-1501 et seq. The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondents are Steven and Diane Gebers, husband and wife, and David and Sherry Gebers, husband and wife, doing business as Heartland Co-op, Nora, Nebraska.

COMPLAINT

1. The Respondents are Steven and Diane Gebers, husband and wife and David and Sherry Gebers, husband and wife, doing business as Heartland Co-op, Nora, Nebraska, a farm supply store, hereinafter referred to as the "Site".



2. "Regulated substances," as defined in the Petroleum Products and Hazardous Substances Storage and Handling Act, Neb. Rev. Stat. § 81-15,119(6) (Reissue 2008), were stored at the Site.

3. On or about 1991, piping was removed from the Site and soil contamination was found. In 2001 three underground storage "tanks," as defined in Neb. Rev. Stat. § 81-15,119(10), containing regulated substances were removed from the Site; holes were observed in each tank; the soil observed beneath the tanks was discolored; and contaminated soil was observed at a depth of 12 feet.

4. The Department believes that petroleum contamination is present in the soil after the removal of the tanks. Respondents were not the owners of the property in either 1991 or 2001, but are currently the owners of the Site.

5. Several times during 2011 and 2012, the Department contacted Respondents via telephone calls and a letter for the purpose of gaining access to the Site to conduct necessary investigation and remedial action of petroleum contamination. Respondents refused to allow access.

6. The Petroleum Release Remedial Action Act authorizes the Department to undertake investigation and remedial action in response to certain releases of petroleum. The Department has determined that access to the Respondents' property is necessary and essential in order to determine the nature and extent of the contamination and undertake remediation if necessary in order to protect public health and the environment. The Department has further determined that the Respondents have specifically denied access to the Department for necessary and reasonable

investigation, inspection, and remedial action relating to petroleum contamination on property owned by Respondents.

7. Pursuant to Neb. Rev. Stat. § 81-15, 124.02, when access is specifically denied, "the department may order the owner or owner's agent to grant access to property for the performance of reasonable steps, including drilling, to determine the source and extent of contamination or for remediation."

8. The Director finds that the Respondents have specifically denied access to the Site and that it is necessary that the Department gain access to the Site for investigation, inspection, and remedial action pursuant to Neb. Rev. Stat. § 81-15,124.02.

#### ORDER FOR ACCESS

9. IT IS HEREBY ORDERED that, within thirty (30) days of receipt of this Order for Access, Steven and Diane Gebers, husband and wife, and David and Sherry Gebers, husband and wife, shall grant access to the Site for the performance of reasonable steps, including drilling, to determine the source and extent of contamination and for remediation. Access shall be granted to the Department or to a person acting at the direction of the Department. Respondents shall not in anyway interfere or hinder such investigation or inspection.

10. All actions taken on the property by the Department or its agent will be performed in the least obtrusive manner possible to allow the investigation or inspection to proceed. Upon completion of any inspection, investigation, or remedial action, the property shall be restored as nearly as possible to its original condition.

11. NDEQ reserves its rights to conduct further investigation, remediation, and monitoring in the future, pursuant to Neb. Rev. Stat. § 81-15,124.02.

#### NOTICE OF OPPORTUNITY TO REQUEST A HEARING

12. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondents file an answer and requests, in writing, a hearing no later than thirty (30) days after receipt of this Order. Failure to answer within thirty (30) days shall be deemed an admission of the allegations of the Complaint.

13. A written answer to the Complaint, Order for Access, 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

14. 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.

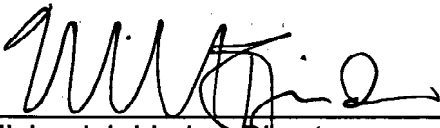
15. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

#### INJUNCTIVE RELIEF AND PENALTY PROVISIONS

16. 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 of this Complaint, Order for Access, and Notice of Opportunity for Hearing. Nothing in this

Complaint, Order for Access, and Notice of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement.

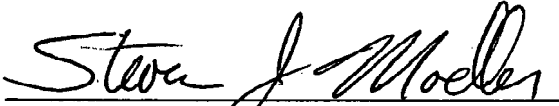
February 21 2012  
Date

  
Michael J. Linder, Director  
NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Order for Access, and Notice of Opportunity for Hearing, with attachments, was served by certified United States mail, postage prepaid, return receipt requested this 22 day of February 2012 upon the Persons listed below:

Steven and Diane Gebers  
David and Sherry Gebers  
4061 Rd M  
Nora, NE 68961

  
Steven J. Moeller, Attorney  
Nebraska Department of Environmental Quality