

IN THE DISTRICT COURT OF DIXON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.)	Case No. CI
MICHAEL J. LINDER, Director,)	
NEBRASKA DEPARTMENT OF)	
ENVIRONMENTAL QUALITY,)	
)	
Plaintiff,)	COMPLAINT
)	
v.)	
)	
NORTHEAST COOPERATIVE)	
A Dissolved Corporation,)	
)	
Defendant.)	

COMES NOW the Nebraska Department of Environmental Quality (hereinafter the "NDEQ" or "Plaintiff"), who institutes this action through Jon C. Bruning, Attorney General, and alleges and states as follows:

1. The Plaintiff is, at all times material herein, the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-15,118 of the Petroleum Products and Hazardous Substances Storage and Handling Act, Neb. Rev. Stat. § 81-15,117 *et seq.* (Reissue 1999, Cum. Supp. 2006), of administering and enforcing the investigation and remediation requirements of the Act and all rules, regulations, and orders promulgated thereunder.

2. Pursuant to Neb. Rev. Stat. § 81-15,124 of the Petroleum Products and Hazardous Substances Storage and Handling Act, the Nebraska Environmental Quality Council adopted Title 126 - Rules and Regulations Pertaining to the Management of Wastes.

3. Title 126, Chapter 18, 001.01 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.”

4. The Plaintiff is, at all times material herein, the agency of the State of Nebraska charged with the duty of administering and enforcing the Petroleum Release Remedial Action Act, Neb. Rev. Stat. § 66-1501 *et seq.* (Reissue 2003, Cum. Supp. 2006), including the investigation and remediation requirements of the Act and all rules, regulations, and orders promulgated thereunder.

5. “Oil” means 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. Title 126, Chapter 1, 030.

6. Neb. Rev. Stat. §81-15,119(2) defines “owner” as

(a)(i) In 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. . .

(b) Owner shall not include a person who, without participating in the management of a tank and otherwise not engaged in petroleum production, refining, and marketing:

(i) Holds indicia of ownership primarily to protect his or her security interest in a tank or a lienhold interest in the property on or within which a tank is or was located: or

(ii) Acquires ownership of a tank or the property on or within which a tank is or was located:

(A) Pursuant to a foreclosure of a security interest in the tank or of a lienhold interest in the property; or

(B) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

(c) Ownership of a tank or the property on or within which a tank is or was located shall not be acquired by a fraudulent transfer, as provided in the Uniform Fraudulent Transfer Act.

7. Neb. Rev. Stat. §66-1514 defines "responsible person" as

[A] person who is an owner or operator of a tank. If an owner or operator is unwilling or unable or fails to comply with required remedial action or to pay a third-party claim, responsible person shall also mean any of the following who voluntarily propose to implement required remedial action or to pay the claim:

(1) A person in the chain of title of a tank or in the property on or within which a tank is or was located;

(2) A person who holds a security interest in a tank or a lienhold interest in the property on or within which a tank is or was located; or

(3) A person who has acquired ownership of a tank or the property on or within which a tank is or was located:

(a) Pursuant to a foreclosure of a security interest in the tank or a lienhold interest in the property; or

(b) If the tank or the property was security for an extension of credit previously contracted, pursuant to a sale under judgment or decree, pursuant to a conveyance under a power of sale contained within a trust deed or from a trustee, or pursuant to an assignment or deed in lieu of foreclosure.

Such voluntary action shall not be construed to render such party responsible or liable for remedial action or payment of the claim.

8. Defendant, Northeast Cooperative, is a dissolved corporation.

9. The Articles of Dissolution were signed on or about April 30, 2005 by Scott Garwood, President.

10. The Articles of Dissolution were filed with the office of the Nebraska Secretary of State on February 17, 2006.

11. Prior to its dissolution, Northeast Cooperative. was authorized to do business in the State of Nebraska.

12. Neb. Rev. Stat. §21-20,155(2)(e) (Reissue 1997) provides that voluntary dissolution of a corporation “shall not prevent commencement of a proceeding by or against the corporation in its corporate name.”

13. At the time of the dissolution, Northeast Cooperative had knowledge that the NDEQ had a claim against them.

14. This claim originated in 1997, at which time Northeast Cooperative, owned and operated a business located at 206 Oak Street, Wakefield, Dixon County, Nebraska (hereinafter the “site”).

15. As part of the business at the site, Northeast Cooperative dispensed oil from five underground petroleum storage tanks.

16. Northeast Cooperative, at all times material herein, was the owner of the underground storage tanks.

17. Northeast Cooperative, at all times material herein, was and is the responsible person related to the site.

18. On or about August 19, 1997, the underground storage tanks were removed from the ground.

19. Upon removal of the tanks, a release of oil was observed and detected in the soil.

20. Oil has been released into or upon the waters and land of the state at the site.

21. Notice was provided on or about June 21, 1999 that an investigation and/or remedial work would be required by the NDEQ in the future at the site.

22. Notice was provided on or about May 10, 2006 that an investigation and/or remedial efforts were required.

23. No remedial work has occurred at the site.

24. Neb. Rev. Stat. §21-20,156 (Reissue 1997) provides the procedure for a dissolved corporation to dispose of known claims against it.

25. Written notice of dissolution was provided by a representative for Northeast Cooperative on or about February 2, 2006.

26. This notice does not comply with Neb. Rev. Stat. §21-20,156 in resolving the known claim by the NDEQ against Northeast Cooperative.

27. Northeast Cooperative has not completed remedial action to restore the site to its condition and capacity prior to the release.

28. The oil contamination remains in the ground and is ongoing.

29. Defendant is in violation of Title 126, Chapter 18, 001.01 and such violation is continuing.

30. Defendant sold the site on or about April 27, 2005, with a closing date of August 31, 2005, to Central Valley Ag Cooperative.

31. At no time material herein was Central Valley Ag Cooperative the owner of the underground storage tanks at the site.

32. Under Neb. Rev. Stat. §66-1514, Central Valley Ag Cooperative can only be held to be the responsible party if they voluntarily propose to remediate the site.

33. Defendant remains liable for the remediation of the contamination at the site, despite the sale of the property.

34. Neb. Rev. Stat. § 81-15,126 provides:

The Department of Environmental Quality . . . may apply to the district court of the county where the violation is occurring or about to occur for a restraining order, a temporary or permanent injunction, or a mandatory injunction against any person violating or threatening to violate the Petroleum Products and Hazardous Substances Storage and Handling Act or the rules, regulations, or orders adopted and promulgated under the act.

35. Pursuant to Neb. Rev. Stat. § 81-15,126, Plaintiff respectfully requests this Court to enter a mandatory injunction enjoining the Defendant from further violating the Petroleum Products and Hazardous Substances Storage and Handling Act and Title 126, Chapter 18.

36. Neb. Rev. Stat. §81-15,125 states that

Any person violating the Petroleum Products and Hazardous Substances Storage and Handling Act or the rules, regulations, or orders of the . . . Department of Environmental Quality adopted 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 shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the size of the operation and the degree and extent of the pollution.

37. Plaintiff's allegations in paragraphs one (1) through thirty-six (36) constitute three hundred ninety two (392) violations for the purposes of Neb. Rev. Stat. §81-15,125.

38. Plaintiff also asks the court for a Order requiring the Defendant to investigate and perform remedial action, as set out in Neb. Rev. Stat. § 81-15, 124 and Title 126, Chapter 18, including the following:

- (a) Within thirty (30) days, Defendant shall submit to the NDEQ for review, a completed Tier 1 Pre-Investigation Assessment Work Plan Form for the site.
- (b) Within thirty (30) days of receipt of NDEQ approval of the Tier 1 Pre-Investigation Assessment Work Plan Form, Defendant shall submit to the NDEQ a completed Risk Based Corrective Action ("RBCA") Tier 1 Site Investigation Work Plan Form for the site.
- (c) Within sixty (60) days of receipt of NDEQ approval of the RBCA Tier 1 Site Investigation Work Plan Form, Defendant shall submit to the NDEQ a completed RBCA Tier 1 Assessment Report for the site, which shall include at a minimum, the information outlined in "Risk Based Corrective Action (RBCA) at Petroleum Release Sites: Tier1/Tier 2 Assessments & Reports," (February 2004).
- (d) Any failure by the Defendant to carry out paragraphs A, B, and C, above, may result in the NDEQ undertaking remedial action. The Defendant shall provide access to the NDEQ to any area needed for investigation and/or remedial action. Any funds expended by the NDEQ for investigation and/or


remedial action are the Defendant's responsibility and shall be recovered by the NDEQ, including court costs and attorney's fees.

WHEREFORE, the Plaintiff prays that

- (1) Judgment be entered in favor of the Plaintiff and against the Defendant in the form of a mandatory injunction, as authorized by Neb. Rev. Stat. § 81-15,126;
- (2) Defendant be assessed a civil penalty pursuant to Neb. Rev. Stat. §81-15,125;
- (3) Defendant be ordered to investigate and perform remedial action pursuant to Neb. Rev. Stat. §81-15,124 and Title 126, Chapter 18;
- (4) All costs of this action be taxed to the Defendant; and
- (5) Any other relief as this Court deems just and proper.

STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff,

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