

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF)	Case No. 2432
ROGER PICKERING)	
D/B/A EASTERN NEBRASKA AUTO)	
RECYCLERS,)	COMPLAINT, COMPLIANCE
ELMWOOD, NEBRASKA)	ORDER AND NOTICE OF
FID#61859)	OPPORTUNITY FOR HEARING
Respondent.)	

This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued by the Director of the Department of Environmental Quality (hereinafter referred to as “Department” or “DEQ”) pursuant to *Neb. Rev. Stat.* §81-1507 (1) of the Environmental Protection Act (Act), *Neb. Rev. Stat.* §81-1501 et seq. (Reissue 2008, Supp. 2009). The Respondent is Roger Pickering, doing business as Eastern Nebraska Auto Recyclers, Elmwood, Nebraska. The Complaint below establishes violations of State law and violations of Nebraska Rules and Regulations, Title 132 – *Integrated Solid Waste Management Regulations*.

COMPLAINT

1. At all times material herein, the Respondent, Roger Pickering, doing business as Eastern Nebraska Auto Recyclers, Elmwood, Nebraska, operated an automobile salvage business at an old Atlas Missile silo location near Elmwood, Nebraska.

2. For the past several years, Respondent, at the above location, has caused or allowed to be placed, stored, or disposed approximately 72,000 waste and scrap tires in an open missile silo.

3. Pursuant to *Neb. Rev. Stat.* §81-1508.02 (1)(e) it is unlawful to violate any provision of or fail to perform any other duty imposed by such acts, rules or regulations. *Neb. Rev. Stat.* §13-2033 (3) (Reissue 2007, Cum. Supp. 2008, Supp. 2009) states that storage of passenger tire equivalents of waste tires for more than one year without reuse, recycling, or shipment out of state is presumed to constitute disposal of solid waste under section 13-2033(1). Speculative accumulation of more than five hundred passenger tire equivalents of waste tires shall be deemed disposal of solid waste and is prohibited. Speculative accumulation is defined in Title 132, *Integrated Solid Waste Management Regulations*, Chapter 14, Section 001.02A, as failure to reuse, recycle, or ship out of state, seventy-five percent (75%) by weight of waste tire material in one (1) calendar year and is prohibited. Land disposal of recyclable waste tires in any form is prohibited in Title 132, Chapter 14, Section 001. Disposal of solid waste after October 1, 1993 at a location other than a solid waste management facility holding a current permit issued by the Department is a violation of *Neb. Rev. Stat.* 81-1506 (3)(d).

4. On or about July 8, 2009, Respondent was speculatively accumulating individual tires in violation of *Neb. Rev. Stat.* §13-2033 (3) and Title 132, Chapter 14, Section 001.02A.

5. On or about July 8, 2009, Respondent was land disposing waste tires in violation of Title 132, Chapter 14, Section 001 and *Neb. Rev. Stat.* 81-1506 (3)(d).

6. The Director of the DEQ is authorized pursuant to *Neb. Rev. Stat.* §81-1504(7) and 81-1507 (1) to issue this order to prohibit or abate discharges of wastes into the air, waters or land of the state and to take necessary corrective action.

COMPLIANCE ORDER

7. IT IS HEREBY ORDERED that the Respondent shall:
- A. Immediately stop depositing waste into the missile silo.
 - B. By July 1, 2010, either:
 - 1. Remove and properly dispose (at a permitted facility), recycle or reuse all waste or scrap tires in the missile silo and all waste tire materials on Respondent's property, or
 - 2. Close the blast doors to the missile silo, place a concrete cap over the cover and take appropriate steps to make the silo water-tight, and secure all other entrances to the silo prevent other waste items from being disposed of in the silo.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

8. In accordance with *Neb. Rev. Stat.* §81-1507(1), this Complaint and Compliance Order shall become final unless the Respondent requests, in writing, a hearing before the Director no later than 30 days after the date such order is received.

9. The request for hearing and an answer 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 DEQ's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Neb. Admin. Code *Rules of Practice and Procedure*, Chapter 7.

10. Failure to answer shall be deemed an admission of the facts of the Complaint. Violation of this Order may result in penalties of up to \$10,000 per day.

11. This Complaint and Compliance Order does not preclude the DEQ from ordering any other action authorized by law or pursuing additional enforcement in the proper court for injunctive relief and penalties or entering further administrative orders based on violations of the Act. The DEQ further reserves the right to impose additional requirements to protect public health and welfare and the environment.

Dated this 25th day of February, 2010.

/s/ Michael J. Linder
Michael J. Linder
Director
Department of Environmental Quality