



5. On or about July 6, 2006, Defendant released oil and/or hazardous substances upon the waters or land of the State of Nebraska.

6. Neb. Rev. Stat. §81-1508.02 (1) (e) makes it unlawful to violate any provision or fail to perform any duty imposed by such acts, rules or regulations.

7. Neb. Rev. Stat. §81-1508.02 (2) (Reissue 1999), provides that any person who violates §81-1508.02 (1) shall be subject to a civil penalty of no more than \$10,000 per day. In a case of a continuing violation, each day shall constitute a separate offense.

#### SECOND CLAIM OF RELIEF

8. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1-7 of its First Claim.

9. Pursuant to Title 126, Chapter 18, Section 002.01, it is unlawful to fail to notify the Department of a release of oil and/or hazardous substances upon the land or waters of the State of Nebraska.

10. On or about July 6, 2006, Defendant failed to notify the Department of the release of oil and/or hazardous substances upon the waters or land of the State of Nebraska.

#### THIRD CLAIM OF RELIEF

11. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1-10 as if fully set forth herein.

12. Pursuant to Neb. Rev. Stat. §81-1505 (13) (Reissue 1999, Cum. Supp. 2006), the Nebraska Environmental Quality Council adopted rules and regulations codified as Title 128, Nebraska Hazardous Waste Regulations.

13. Title 128, Chapter 4, Section 002, requires any person who generates a solid waste to determine whether or not the waste is a hazardous waste.

14. On or about January 10, 2006, Defendant failed to make a hazardous waste determination on hazardous substances such as a waste lacquer thinner at the site as required by Title 128, Chapter 4, Section 002.

#### FORTH CLAIM FOR RELIEF

15. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1-14 as if fully set forth herein.

16. Pursuant to Title 128, Chapter 4, Section 003, "the owner or operator of a facility for treatment, storage or disposal of such hazardous waste shall file with the Department ...a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person."

17. On or about January 10, 2006, Defendant failed to notify the Department of hazardous waste activity as required by Title 128, Chapter 4, Section 003.

#### FIFTH CLAIM FOR RELIEF

18. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1-17 as if fully set forth herein.

19. Neb. Rev. Stat. §81-1508.02 (1) (b) (Reissue 1999) makes it unlawful for any person to "violate... an order of the director."

20. On or about June 22, 2007, the Director of Environmental Quality and Defendant entered into a consent order which required Defendant in paragraph 6 to:

- a. Within 30 days of this Order submit a formal spill report for all known oil and/or hazardous substances spilled at the site,

including, but not limited to, a spill report to be filed for the three 55-gallon drums of used oil that were spilled on or about July 6, 2006.

- b. Within 120 days of this Order characterize, clean-up and properly dispose of all contaminated soil from oil and hazardous substances spills and provide all documentation on this to NDEQ.
- c. Within 60 days of this Order properly characterize and dispose of all remaining solid waste, hazardous waste or hazardous substances at the site. These include, but are not limited to, the following wastes identified on-site during a February 20, 2007 inspection:

1. Numerous 2.5- gallon plastic containers of Agro-Plus and smaller containers of paint cans in garage.
2. Containers of DS-2 Decontaminating Agent, Aluminum Surface Cleaning Compound, Compressor Oil, Deck Coating Paint and bags of Triangle Sulfur dumped out of a trailer sold as Lot #1029.
3. Numerous quarts, gallon and 5-gallon paint cans in a trailer that was tipped on its side. The trailer is located north of Highway 32 near the top of the hill. The trailer also contained large amounts of solid wastes such as hardhats, uniforms and other trash.
4. Four 5-gallon cans of Fuel System Icing Inhibitor located north of Highway 32 where a bus sold as Lot #1102 once stood.
5. Three yellow 85-gallon overpack containers labeled "Hazardous Waste" on the west end of the property just north of Highway 32. The drums in these overpack containers were originally at GPS waypoints 31 and 35 on January 10-11, 2006.
6. One damaged 55-gallon drum of unknown contents laying on its side immediately south of Highway 32 near the west

end of the property. The drum is in poor condition and leaking slightly. It was originally on a flatbed truck sold as Lot #1541.

7. One damaged 55-gallon drum of unknown contents on a tire pile south of Highway 32 and west of County Road 27. The drum was partially full of unknown liquid.
  8. Two 5-gallon containers of unknown contents in a trailer sold as Lot #1416. Containers were marked "Decontaminating Agent STB."
  9. Solid wastes consisting of demolished trailer homes, waste tires and any other wastes without salvage value as a scrap metal.
- d. Respondent shall submit all records documenting the proper disposal of the items in paragraph c above to the NDEQ.
  - e. Respondent shall submit an affidavit to NDEQ that all records in its possession for wastes disposed as of the date of this Order have been submitted to NDEQ and identify the wastes known to be removed or disposed of which cannot be accounted for in the existing paperwork.
  - f. Respondent shall provide to NDEQ Buyer's Affidavit for hazardous materials purchased during the June 29, 2006, estate auction as outlined in Domina Law's January 23, 2007 letter to NDEQ.

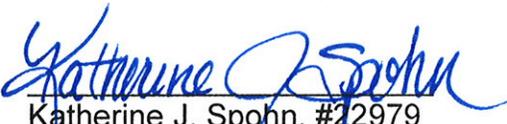
A true and correct copy of said June 22, 2007 Consent Order is attached hereto and incorporated herein as Exhibit A.

21. Defendant, on or about August 22, 2007, and continuing daily thereafter, failed to comply with subparagraphs 6 b, c, d, e and f of the June 22, 2007 Consent Order.

WHEREFORE, Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of civil penalties as provided in Neb. Rev. Stat. §81-1508.02 (Reissue 1999 and Cum. Supp. 2006) and further that all costs of this action be taxed to the Defendant.

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

By JON C. BRUNING, #20351  
Attorney General

By   
Katherine J. Spohn, #22979  
Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-2682  
katie.spohn@nebraska.gov  
Attorneys for Plaintiff.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on this 17<sup>th</sup> day of July, 2008, addressed to the Defendant's attorney of record as follows:

Stacia Palser  
Koley Jessen P.C. L.L.O.  
One Pacific Place, Suite 800  
1125 South 103<sup>rd</sup> Street  
Omaha, NE 68124  
Tel. (402) 390-9500

  
Katherine J. Spohn  
Assistant Attorney General

80928 6

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF	)	Case No. 2719
ROBERT SKLENAR ESTATE	)	
BURT COUNTY, NEBRASKA,	)	CONSENT ORDER
	)	
	)	
Respondent.	)	

COME NOW the parties, Petitioner, the Nebraska Department of Environmental Quality ("NDEQ" or "Department"), proceeding on its Complaint filed herein and appearing through its counsel, Steven J. Moeller, and the Respondent Robert Sklenar Estate, appearing through their counsel, David A. Domina, and each party having consented to the making and entering of this Consent Order without trial, the Director finds that the Consent Order should be and hereby is entered.

1. The Director has jurisdiction of the parties and the subject matter of this action. The Complaint filed herein constitutes a justiciable cause of action against the Respondents.
2. The parties agree that settlement of these matters is in the public interest and that entry of this Consent Order is the most appropriate means of resolving their dispute.
3. The parties desire to conclude this case without trial or adjudication of any issues of fact or law, without this Consent Order constituting an admission by the Respondent with respect to such issues.
4. The Respondent agrees to the form and entry of this Consent Order for the purposes of settlement only.



5. Therefore, and for only the purposes of this Consent Order, the parties agree to the entry of this Consent Order by the Director.

6. IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

- a. Within 30 days of this Order submit a formal spill report for all known oil and/or hazardous substances spilled at the site, including, but not limited to, a spill report to be filed for the three 55-gallon drums of used oil that were spilled on or about July 6, 2006.
- b. Within 120 days of this Order characterize, clean up and properly dispose of all contaminated soil from oil and hazardous substance spills and provide all documentation on this to NDEQ.
- c. Within 60 days of this Order properly characterize and dispose of all remaining solid waste, hazardous waste or hazardous substances at the site. These include, but are not limited to, the following wastes identified on-site during a February 20, 2007 inspection:

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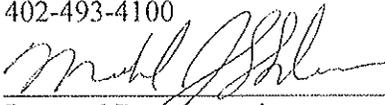
3. Numerous quart, gallon and 5-gallon paint cans in a trailer that was tipped on its side. The trailer is located north of Highway 32 near the top of the hill. The trailer also contained large amounts of solid wastes such as hardhats, uniforms and other trash.

7. The undersigned consent without further notice to the form and entry of the foregoing Consent Order.

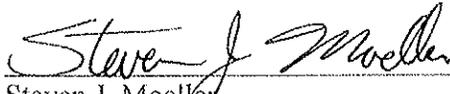
Robert Sklenar Estate,  
Respondent.

By It's Attorney,

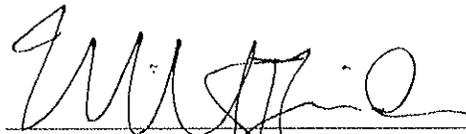
By:   
David A. Domina, #11043  
Claudia L. Stringfield-Johnson, #22824  
DominaLaw Group  
2425 South 144<sup>th</sup> Street  
Omaha, NE, 68144-3267  
402-493-4100

By:   
Personal Representative

Nebraska Department of Environmental  
Quality, Petitioner

By:   
Steven J. Moeller  
Nebraska Department of Environmental  
Quality  
1200 "N" Street, Suite 400  
P.O. Box 98922  
Lincoln, NE 68509  
Telephone No.: (402) 471-0276  
Facsimile No.: (402) 471-2909

BY THE NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

  
Micheal J. Linder, Director, Nebraska  
Department of Environmental Quality

June 22 2007  
Date