

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF:)	Case No. 3051
)	
William M. Barrus)	COMPLAINT, ORDER FOR
d/b/a Saxton's Fruit Farms, Inc.)	ACCESS, AND NOTICE OF
Sutherland, Nebraska)	OPPORTUNITY FOR HEARING
)	
Respondent)	

PRELIMINARY STATEMENT

This Complaint, Order for Access, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2008) of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-15,124.02 (Reissue 2008) of the Petroleum Products and Hazardous Substances Storage and Handling Act, and the Petroleum Release Remedial Action Act, Neb. Rev. Stat. § 66-1501 to -1532 (Reissue 2009). The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent is William M. Barrus, doing business as Saxton's Fruit Farms, Inc. in Sutherland, Nebraska.

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 Respondent's property is necessary and essential in order to determine the nature and extent of the contamination in order to protect public health and the environment. The Department has further determined that the Respondent has specifically denied access to the Department for necessary and reasonable investigation, inspection, and remedial action relating to petroleum contamination on property owned by Respondent.

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COMPLAINT

1. Respondent William M. Barrus, doing business as Saxton's Fruit Farms, Inc., currently owns property located at 1421 1st Street, Sutherland, Nebraska, referred to as the Former Pink Pony, Sutherland, Nebraska (hereinafter, the "Site"). The Site is listed as parcel 009046500 by the Lincoln County Assessor and is located within W1/2 Section 29, Township 14N, Range 33W, Sutherland, Lincoln County, Nebraska.

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 August 24, 1999, 2 underground storage "tanks," as defined in Neb. Rev. Stat. § 81-15,119(10), containing regulated substances were removed from the Site.

4. Petroleum contamination was found to be present in the soil after the removal of the tanks.

5. The Department believes that the Site is the source of petroleum contamination. After examining all reasonable alternatives, the Department has determined that access to the Site is necessary for investigation and possible remedial action of petroleum contamination.

6. On or about June 3, 2010, the Department contacted Respondent via certified mail for the purpose of gaining access to the Site for necessary investigation and remedial action of petroleum contamination.

7. Respondent has not responded to telephone calls and written communication from the Department, which amounts to a specific denial of access to the Department to determine the source and extent of the contamination and to perform necessary investigation and remedial action.

8. 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.”

9. The Director finds that the Respondent has 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

10. IT IS HEREBY ORDERED that, within thirty (30) days of receipt of this Order for Access, Respondent William M. Barrus, doing business as Saxton’s Fruit Farms, Inc., 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. Respondent shall not in anyway interfere or hinder such investigation or inspection.

11. 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.

12. 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

13. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files 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.

14. 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

15. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Lydia Fiedler, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

16. 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

17. 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.

December 21, 2010
Date

/s/ Michael J. Linder
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 22nd day of December 2010 upon the Respondent listed below:

/s/ Lydia Fielder
Lydia Fiedler, Attorney
Nebraska Department of Environmental Quality