

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3217
Joseph Vogel	)	
4601 South 1 <sup>st</sup> Street	)	CONSENT ORDER
Norfolk, NE 68701	)	
F.I.D. No. 410876	)	
Respondent.	)	

I. INTRODUCTION

1. The Department of Environmental Quality (Department or DEQ) and the Respondent, Joseph Vogel, 4601 South 1<sup>st</sup> Street, Norfolk, Nebraska voluntarily enter into this Consent Order. The Consent Order establishes a schedule of compliance for the Respondent to achieve and maintain compliance with his duties under the Nebraska Environmental Protection Act (NEPA), Title 129, *Nebraska Air Quality Regulations*, and Title 132, *Integrated Solid Waste Management Regulations*. This Consent Order also provides for the performance of activities specified in Section VI.

II. JURISDICTION

2. The DEQ is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. §81-1504(1) of exercising exclusive general supervision, administration, and enforcement of the NEPA. This Consent Order is issued under the authority vested in the Director of the DEQ by Neb. Rev. Stats. §81-1504(25) and §81-1507(1).

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent agrees that he will not contest the basis or validity of this Consent Order in any proceedings by the DEQ to enforce this Consent Order.



### III. PARTIES

4. This Consent Order is binding on the DEQ and the Respondent and his successors and assigns.

5. The Respondent shall be responsible for any noncompliance with this Consent Order.

### IV. FINDINGS OF FACT

6. The Respondent lives at the Southern Drive Trailer Court (hereinafter "Trailer Court"), located at 4601 S. 1<sup>st</sup> Street, Norfolk, Nebraska, Madison County, Nebraska.

7. DEQ has not issued the Trailer Court a solid waste management permit or an open burning permit to the Respondent.

8. Title 129, *Nebraska Air Quality Regulations*, Chapter 30, prohibits open burning unless there is written permission from the Director of the Department or there is a specific exception contained in Title 129, Chapter 30. Disposal of solid waste at a location other than a solid waste management facility holding a permit is a violation of Neb. Rev. Stat. Section 81-1506 (3)(d).

9. On three separate occasions on or about, November 14, 2012, December 31, 2012 and January 2, 2013 Respondent caused or allowed waste and scrap/waste tires to be burned on the Trailer Court property without permission from the Director and not falling into any exception set out in Title 129, Chapter 30. Respondent also caused or allowed the solid waste, automotive items and scrap/waste tires to be disposed on the Trailer Court property between November 2012 and June 2013.

## V. CONCLUSIONS OF LAW AND DETERMINATIONS

10. The Respondent is a "person" as defined in Neb. Rev. Stat. §81-1502(10).

11. The Respondent is prohibited by Neb. Rev. Stat. §81-1506(1)(a) from causing pollution of any air, waters or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters or land of the state.

12. The Director of the DEQ is authorized pursuant to Neb. Rev. Stat. §81-1504(7) to issue orders to prevent, control, or abate pollution.

13. This Consent Order shall have the force and effect of a final order of the Director of the DEQ issued pursuant to NEPA.

## VI. COMPLIANCE SCHEDULE

14. Respondent, within 90 days of this order being signed by the Director, shall remove all waste, automotive parts, scrap/waste tires that he placed on the Trailer Court and properly dispose of it in a solid waste facility permitted by the Department. Respondent is under a continuing duty to keep his property free and clear of any accumulation of waste.

15. Respondent shall immediately stop hauling any waste materials or automotive items to the Trailer Court property.

16. Respondent shall immediately cease open burning activities at the Trailer Court location, or any other location unless there is written approval by the Director. Respondent shall not gather waste/scrap tires from any location

and place them at the Trailer Court or any other location without the written approval by the Director.

17. The Respondent shall respond promptly to any written communication by the DEQ no later than 30 days after receipt or date specified in written comments by DEQ. Any delay in responding to such communication shall be construed as non-compliance with this Consent Order. Contact person for questions about this Order is Michael Oleson, NDEQ Northeast Field Office, 601 E. Benjamin Ave., Ste. 104, Norfolk, NE 68701, Telephone 402-370-4427.

#### VII. COMPLIANCE WITH OTHER LAWS

18. The Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permits.

#### VIII. RESERVATION OF RIGHTS

19. Nothing in this Consent Order shall be construed to limit the power and authority of the DEQ to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of the Act and any rules, regulations, orders, or permits issued pursuant to the Act.

#### IX. NEGATION OF AGENCY RELATIONSHIP

20. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the DEQ and the Respondent.

X. AMENDMENT

21. This Consent Order may be modified and amended in writing by mutual agreement of the DEQ and the Respondent.

XI. EFFECTIVE DATE

22. This Consent Order shall become effective on the date it is signed by the Director of the DEQ or his designee.

XII. SIGNATURES

23. Respondent:

Joseph Vogel:

JOSEPH E. VOGEL  
Joseph E Vogel

Date:

24. For the DEQ: IT IS ORDERED and agreed this 8<sup>th</sup> day of August, 2013.

By:

[Signature]

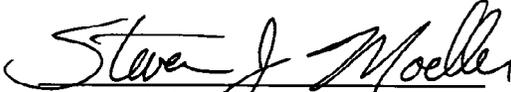
Michael J. Linder  
Director  
Department of Environmental Quality

AFFIDAVIT

STATE OF NEBRASKA | SS  
COUNTY OF LANCASTER |

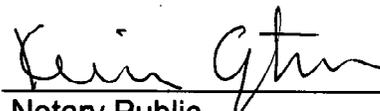
The undersigned oath deposes and says that on the 8<sup>th</sup> day of August 2013, he caused an exact copy of the Consent Order, to be served by mailing the same in the regular United States Mail, first class, postage prepaid, certified with return receipt requested, addressed as follows:

Joseph Vogel  
4601 South 1st Street  
Norfolk, Nebraska 68701

  
Steven J. Moeller, affiant

Subscribed and sworn to before me, a Notary Public, on the 8<sup>th</sup> day of August, 2013.



  
Notary Public