

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

**IN THE MATTER OF DON AND
CAROL STEWART, DENNIS L. VAN
HOUSEN, and VANHOUSEN FARMS,
LLC (a.k.a. VAN HOUSEN FARMS, LLC)**

RE: FORMER POLK OIL & SUPPLY

Facility ID #39699

Respondents.

CASE NO. 3374

**COMPLAINT, ACCESS ORDER AND
NOTICE OF OPPORTUNITY
FOR HEARING**

I. INTRODUCTION

1. This Order for Access and Notice of Opportunity for Hearing is issued pursuant to the Nebraska Environmental Protection Act, Neb. Rev. Stat. §81- 1501 et. seq. (Reissue 2014, Cum. Supp. 2015) and the Nebraska Petroleum Products and Hazardous Substances Storage and Handling Act, Neb. Rev. Stat. §81-15,117 (Reissue 2014) et. seq.

2. The Complainant is the Director, Nebraska Department of Environmental Quality (“Department”). The Respondents are Donald L. and Carol A. Stewart (husband and wife), Dennis L. Van Housen, and VanHousen Farms, LLC (a.k.a. Van Housen Farms, LLC).

3. Pursuant to Neb. Rev. Stat. §81-15,124.02 the Department, “[i]f necessary in the course of an investigation or inspection or during the remedial action and if the owner of property or the owner's agent has specifically denied the Department of Environmental Quality access to the property for such purposes, 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. Access shall be by the department or by a person



conducting an investigation, inspection, or remedial action at the direction of the department. All actions taken on the property shall be performed in the least obtrusive manner possible to allow the investigation, inspection, or remedial action to proceed. Upon completion of any such actions, the property shall be restored as nearly as possible to its original condition.”

II. FACTS

4. The subject property is the former Polk Oil & Supply facility located at 430 Park Avenue, Polk, Nebraska. The legal description is Lots Eleven (11) and Twelve (12), Block Fifteen, Original Town of Polk (or Lots 11 and 12, NE1/4, NW14, Section 28, Township 13N, Range 4W), Polk County, Nebraska.

5. Respondents Donald and Carol Stewart and VanHousen Farms, LLC are the owners of the subject property. Respondents Don and Carol Stewart reside at 670 Cheyenne Avenue, Polk, Nebraska. Respondent Dennis L. Van Housen is the managing member of VanHousen Farms, LLC, whose principal place of business is 320 122nd Road, Polk, Polk County, Nebraska, and whose registered agent is Kelly M. Thomas, Suite A, 408 Platte Avenue, York, Nebraska. According to the Polk County Clerk/Register of Deeds office, the Respondents VanHousen Farms, LLC and Donald and Carol Stewart (jointly as husband and wife) each acquired an undivided ½ interest in the property on or about February 2, 2012.

6. On or about May 1, 2000, the Department received a State Fire Marshal Closure Assessment Report regarding the removal of two underground storage tanks at the former Polk Oil & Supply facility. The report indicated that at least one of the tanks had leaked petroleum and that contamination was present.

7. On or about February 13, 2006, the Department determined that the former owners and operators of the Polk Oil & Supply facility, the responsible persons, were financially unable to

proceed with the necessary petroleum remedial action and the site was placed on the Department's Leaking Underground Storage Tank Trust Fund Priority List. The Department will complete the necessary investigations and remedial actions at the subject property at no cost to the Respondents.

8. On or about April 18, 2016, an environmental consulting company representing the Department sent Mr. Don Stewart a letter requesting a meeting to discuss access to the subject property for the purpose of conducting a subsurface investigation of an underground storage tank that was removed from the former Polk Oil & Supply facility. As of the date of this Order, the Department has not received a written response to this request.

9. On or about August 9, 2016, the Department sent the Respondents Don and Carol Stewart an access agreement and cover letter requesting access to the subject property for the purpose of conducting a site investigation regarding a petroleum release from the former Polk Oil & Supply facility. As of the date of this Order, the Department has not received a written response to this request.

10. On or about October 4, 2016, the Department contacted Mr. Don Stewart by phone to request access for a site investigation of the former Polk Oil & Supply facility. Mr. Stewart verbally refused to allow access.

11. On or about November 16, 2016, the Department sent the Respondent VanHousen Farms, LLC an access agreement and cover letter requesting access to the subject property for the purpose of conducting a site investigation regarding a petroleum release from the former Polk Oil & Supply facility. The letter was sent via certified mail to the Respondent's registered agent. As of the date of this order, the Department has not received a written response to this request.

12. The Department has determined that a site investigation or remedial action including drilling, installation of monitoring wells, and collection of soil and groundwater samples is necessary to determine the source and extent of contamination at the location of the former Polk Oil & Supply facility.

13. The Department has determined that the Respondents Donald and Carol Stewart (husband and wife) and Dennis L. Van Housen, either individually or through VanHousen Farms, LLC have denied access to the Department for necessary and reasonable investigation, inspection and/or remedial action relating to contamination on property owned by the Respondents.

III. COMPLIANCE ORDER

14. IT IS HEREBY ORDERED that, within thirty days of this Order for Access, Respondents shall grant the Department and their agents and contractors, access to the former Polk Oil & Supply facility for the performance of any reasonable steps including but not limited to drilling, sampling, and the installation of monitoring wells, as necessary, to determine the source and extent of the petroleum contamination and to conduct such investigation, inspection, or remedial action as may be required by the Department.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

15. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless the Respondents file an answer and request, in writing, a hearing no later than thirty days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

16. 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*, Ch. 7. The answer and request for hearing may be filed by mail to:

Jim Macy, Director
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.

V. SETTLEMENT CONFERENCE

17. Whether or not the Respondents request a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.


18. 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.

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

19. The Department 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 that are the subject of this Complaint, Compliance Order, and Notice of Opportunity for Hearing. Nothing in this Complaint, Compliance Order, and Notice of Opportunity for Hearing precludes the Department

from pursuing such enforcement. Failure to obey this order may result in fines up to \$10,000 per violation per day, as set out in Neb. Rev. Stat. § 81-1508.02.

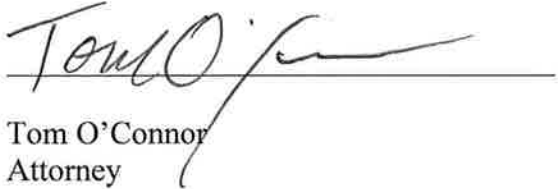
December 9, 2016
Date


Jim Macy
Director
Nebraska Department of
Environmental Quality

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Respondents by regular United States mail, first class postage prepaid on this 20th day of December, 2016 addressed as follows:

Mr. Steve Mossman
Mattson Ricketts Law Firm
Federal Trust Building
134 South 13th Street, Suite 1200
Lincoln, NE 68508


Tom O'Connor
Attorney