

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF SCHMIDT
TRANSPORTATION, INC., AND ROGER
SCHMIDT d/b/a BARTO TRUCKING,
INC., OFC/SCHMIDT/BARTO, LIQUID
TRUCKING, MIDWEST TANK WASH,
and SCHMIDT LIQUID SERVICE,
PLATTSMOUTH, NEBRASKA,

Respondents.

CASE NO. 3369

COMPLAINT, COMPLIANCE ORDER,
AND NOTICE FOR OPPORTUNITY FOR
HEARING

I. INTRODUCTION

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2015). The Complainant is Jim Macy, Director of the Nebraska Department of Environmental Quality (Department). The Respondents are Schmidt Transportation Inc., a Nebraska domestic registered company whose registered agent is William Reinsch, P.O Box 489, 545 Main Street, Plattsmouth, Nebraska, and Roger Schmidt, President and operator of Schmidt Transportation Inc. also doing business as OFC/SCHMIDT/BARTO, Barto Trucking, Inc., Liquid Trucking, Midwest Tank Wash and/or Schmidt Liquid Service.

2. The Department is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504, of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 81-1532 and all rules, regulations, and orders promulgated thereunder.



3. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of issuing permits for the discharge of pollutants to water, as expressed in Neb. Rev. Stat. § 81-1505(1) and § 81-1505(11), the Council adopted and promulgated a rule codified as Neb. Adm. Code, *Title 119 – Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*.

4. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of setting standards for wastewater works, as expressed in Neb. Rev. Stat. § 81-1505(1) and § 81-1505(8), the Council adopted and promulgated a rule codified as Neb. Adm. Code, *Title 123 – Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*.

5. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of hazardous waste determination, as expressed in Neb. Rev. Stat. § 81-1505(1) and § 81-1505(13), the Council adopted and promulgated a rule codified as Neb. Adm. Code, *Title 128 – Nebraska Hazardous Waste Regulations*.

6. The Complaint below establishes the violations of the Respondents, and the Compliance Order establishes a schedule for corrective actions to be taken by the Respondents.

II. COMPLAINT

7. The Respondents are persons as defined in Neb. Rev. Stat. § 81-1502(10).

8. At all times material herein, the Respondents have owned and operated a truck wash facility located at 108 East Bay Road, Plattsmouth, Nebraska 68048. The truck wash facility does business as inter alia, Schmidt Transportation Inc., OFC/SCHMIDT/BARTO, Barto Trucking, Inc., Liquid Trucking, Midwest Tank Wash and/or Schmidt Liquid Service.

9. On or about August 3, 2015 the Department received a complaint that a chemical odor was coming from the Respondents' truck wash facility.

10. On or about August 5, 2015, Department personnel visited the Respondents' truck wash facility and determined that the Respondents had installed wastewater lagoons and other appurtenances to collect and treat truck wash wastewater; allowed runoff from the area around the lagoons to leave the property; discharged waste sludge in an unlined lagoon, and accumulated numerous totes containing truck wash rinse water.

11. On or about August 24, 2015 the Department sent a Letter of Warning to Roger Schmidt detailing alleged violations of state regulations for failing to make a hazardous waste determination.

12. On or about September 17, 2015 the Department issued a Notice of Violation to Roger Schmidt detailing alleged violations of state regulations regarding wastewater treatment and pollutant discharge.

13. Department records show that the Respondents do not have a National Pollutant Discharge Elimination System (NPDES) permit to discharge from the truck wash facility. Failure to obtain a NPDES permit prior to discharging from the truck wash facility is a violation of Title 119 and Neb. Rev. Stat. § 81-1506(2).

14. Department records show that the Respondents' wastewater system was constructed and installed without permits or approval from the Department, was not designed by a Nebraska registered professional engineer, and does not meet Department design standards. Construction of a wastewater system without Department approval is a violation of Title 123 and Neb. Rev. Stat. § 81-1506(2).

15. Department records show the Respondents have not determined whether accumulated sludge and rinse water is a hazardous waste. Failure to determine whether waste is hazardous is a violation of Title 128 and Neb. Rev. Stat. § 81-1506(3).

III. COMPLIANCE ORDER

16. It is hereby ORDERED that the Respondents shall:

- a. By August 15, 2016 cease the discharge of wastewater and sludge to the two unlined (center and east) lagoons and permanently disconnect the pipe between the west and center lagoon by removing, capping or plugging the pipe.
- b. By August 15, 2016 provide the Department with documentation of the waste determination and disposal for the totes containing tanker truck wash rinse water. (For example, analytical results, shipping manifests, waste disposal information, receipts, etc.).
- c. By September 1, 2016 submit for Department approval a sampling plan for the characterization of the lagoon sludge and lagoon waste materials using any of the applicable sampling methods specified in Appendix I of 40 CFR Part 261 as referenced in Title 128. Complete the sample collection within 15 days of Department approval and submit all testing results and reports to the Department within 30 days of sample collection.
- d. By October 1, 2016 submit to the Department a pretreatment application for the discharge of the truck wash wastewater to the City of Plattsmouth wastewater treatment plant or provide the Department with an alternate plan for disposal of the truck wash wastes.

- e. By October 1, 2016 submit to the Department a Notice of Intent for coverage under the general permit for industrial storm water discharge from the truck wash facility.
- f. By November 1, 2016 abandon the unlined (center and east) lagoons according to Title 123 regulations. Abandon the lined (west) lagoon in accordance with Title 123 regulations within 90 days after the truck wash facility is connected to the City of Plattsmouth wastewater treatment plant.

17. The Respondents shall respond in writing within seven (7) working days to all requests for information requested by the Department.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

18. 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.

19. 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. 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

20. 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.

21. 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

22. 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 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 Neh. Rev. Stat. § 81-1508.02.

7-26-2016
Date



Jim Macy
Director
Nebraska Department of Environmental Quality

VII. CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing was served by certified United States mail, postage prepaid, return receipt requested this 27 day of July 2016 upon the Respondents listed below:

Mr. William Reinsch
Schmidt Transportation Inc.
545 Main Street
P.O. BOX 489
Plattsmouth, Nebraska 68048

Mr. Roger Schmidt
OFC/Schmidt Liquid Service
108 East Bay Road
Plattsmouth, Nebraska 68048


Thomas O'Connor
Attorney