

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
LARRY ECKEL,
Respondent.

Case No. 2975
COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY
FOR HEARING

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507(1) (Reissue 2008) of the Nebraska Environmental Protection Act §81-1501 et seq (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to herein as NDEQ). The Respondent is Larry Eckel, a resident of Lancaster County, Nebraska.

2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty pursuant to Neb. Rev. Stat. §81-1504(1) and (4) (Reissue 2008) of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §81-1501 et seq., the Integrated Solid Waste Management Act §13-2001 et seq. (Reissue 2007; Cum Supp. 2008), and all rules, regulations and permits promulgated thereunder. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. §81-1504 (7) and §81-1507 (Reissue 2008).

3. Neb. Rev. Stat. §13-2033 (1) (Reissue 2007) in effect at all times material herein provides in pertinent part as follows: "...no person shall dump or deposit any solid waste at any place other than a landfill approved by the director unless the department has granted a permit which allows the dumping or depositing of solid waste at any other facility. Neb. Rev. Stat. § 81-1506 (3) provides in part: "It shall be unlawful for any person to: ...(d) After October 1, 1993, dispose of any solid waste at a location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act.

4. Pursuant to Neb. Rev. Stat. §81-1505 (Reissue 2008) the Nebraska Environmental Quality Council adopted and promulgated Title 132, Integrated Solid Waste Management Regulations, Nebraska Administrative Code. At all times material herein Title 132 provided in part as follows: "Chapter 2 ...001 Permit Required. No

person shall construct or operate a solid waste management facility without a permit issued by the Department pursuant to this chapter unless otherwise provided in these regulations. ...”

5. The Respondent owns real property located at 12950 Waverly Road, northwest of the town of Waverly, in Lancaster County, Nebraska. From July 18, 2006, through December 2, 2009, the Respondent dumped and deposited solid waste and operated a solid waste management facility upon his Waverly Road property without a permit therefor, contrary to said §13-2033, §81-1506(3), and Title 132, Chapter 2, 001.

6. IT IS THEREFORE ORDERED that the Respondent shall on or before August 1, 2010, remove to a licensed solid waste landfill all solid waste that the Respondent has deposited or accumulated on his Waverly Road property and disposed thereon, except that uncontaminated sand, gravel, stone, soil, brick, rock, concrete rubble, and asphalt rubble, may remain if used for the purpose of land improvement. Failure to observe any applicable flood plain, zoning, or other pertinent land use requirement will not qualify as land improvement. The Respondent shall obtain receipts from the landfills for all such removed waste showing the volume and/or weight removed to the landfills clearly identifying the landfills and the individual landfill official or employee who provided the receipts. Accurate copies or originals of such receipts shall be marked “attention: Blayne Glissman, Waste Management Division” and furnished to the Department on or before the 30th day after the originals are acquired by the Respondent, Larry Eckel.

7. IT IS FURTHER ORDERED that the Respondent shall, until and unless he acquires a permit, or other form of authorization from the Department to do so, cease all dumping and deposits of solid wastes (excepting fill defined as: “solid waste that contains only one or more of the following: sand, gravel, stone, soil, rock, brick, concrete rubble, asphalt rubble, or similar material used for the purpose of land improvement.) on the property in Waverly, Nebraska, and at all other locations in Nebraska but licensed landfills.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

8. Pursuant to Neb. Rev. Stat. §81-1507 (2008) the Respondent may apply for a hearing to contest the Complaint, Compliance Order and Notice of Opportunity for Hearing by making a request for such hearing to the Director no later than 30 days after service hereof. Nebraska Department of Environmental Quality, Rules of Practice and Procedure, Title 115, Chapter 7, addresses initiation and procedure of such hearings.

ADVISEMENT OF POSSIBLE PENALTIES

9. 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 NDEQ from pursuing such enforcement. Failure to obey this Order may result in fine up to \$10,000 per day as set out in Neb. Rev. Stat. §81-1508.02 (Reissue 2008).

Dated: February 11, 2010

By: /s/ Michael J. Linder
Michael J. Linder, Director
Nebraska Department of
Environmental Quality