

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF)	Case No. 3058
David Hoerle)	
Bartlett, Nebraska)	COMPLAINT, COMPLIANCE
Unpermitted Truck Wash)	ORDER AND OPPORTUNITY
F.I.D. # 96078,)	FOR HEARING
)	
)	
Respondent.)	

PRELIMINARY STATEMENT

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 2008, Cum. Supp. 2010). Complainant has determined that the Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 *et. seq.* (Reissue 2008, Cum. Supp. 2010), Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*, and Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under The National Pollutant Discharge Elimination System*. The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter “NDEQ” or “Department”). The Respondent is David Hoerle, Bartlett, Nebraska. The Complaint below establishes the violations.

COMPLAINT

1. Respondent David Hoerle is the owner of a Truck Wash located three (3) miles south of Bartlett on Highway 281, Wheeler County, Nebraska. The legal description for the property is NE1/4 of the NE1/4, Section 35, township 22 North, Range 11 West, Wheeler County, Nebraska.

20110001922

2. Pursuant to *Neb. Rev. Stat.* § 81-1506 (2) (b), it is unlawful for any person to construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department. Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*, Chapter 3, prohibits construction of a wastewater works until a construction permit is issued. Title 119, *Rules and Regulations Pertaining to the Issuance Of Permits under the National Pollutant Discharge Elimination System*, Chapter 12, prohibits land application of non-domestic wastewater without a permit or approval by the Department.

3. In November 2010 and March 2010, a Department inspector observed that trucks were being washed at the truck wash and that the wash water was flowing into a disposal system that was not permitted by the Department and Respondent has been land applying wastewater without a permit or approval by the Department. A Notice of Violation letter was issued to Respondent in May 2010 to correct the problem but no action was taken. A Notice of Violation letter was issued to Respondent in December 2010 requesting that the truck wash immediately stop operations but no action was taken to turn off power to the water pump. The continued washing and dumping of wastewater into an unpermitted disposal system and unapproved land application of the wastewater is a clear and present danger to land, surface water, and ground water, which presents a danger to public health and welfare.

4. The Respondent is a "person" as defined in *Neb. Rev. Stat.* §81-1502(10). Respondent has violated *Neb. Rev. Stat.* §81-1506 (2) (b), *Neb. Rev. Stat.* § 81-1508.02 (1) (e), Title 123 and Title 119.

COMPLIANCE ORDER

IT IS HEREBY ORDERED THAT:

5. Respondent shall:

- a. Immediately stop operation of the truck wash and do not operate or allow others to operate the truck wash. This includes posting signs at the site and disabling the water supply for use in truck washing.
- b. By May 1, 2011, properly close and abandon the waste water facilities at the truck wash including, but not limited to, cleaning the debris basin and wastewater ponds as set out in Title 123, Chapter 10 (attached).
- c. If the Respondent intends to continue its operations beyond May 1, 2011, by May 1, 2011, clean the debris basin and wastewater ponds of sludge by proper land application and submit plans and specifications to the Department for review and approval for a new wastewater facility that meets the requirements of Title 123 contingent upon the Department issuance of a construction permit.

- d. If Respondent intends to continue in operation beyond May 1, 2011, Respondent shall apply for a Land Application NPDES permit by May 1, 2011 and complete construction of the facility by October 1, 2011
- e. Respondent shall allow NDEQ or its agents access to the property to verify compliance with this Order.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

6. 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 days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

7. 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: 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.

8. This Complaint and Order does not preclude the Department from pursuing any other action including additional enforcement in the proper court for injunctive relief and penalties or by administrative order based on violations of the Act. The Department further reserves the right to seek civil or criminal

penalties or impose additional obligations to abate or eliminate the discharge by further order of the Director.

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

10. 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.

Dated this 20th day of January, 2011.

/s/ Michael J. Linder
Michael J. Linder
Director
Department of Environmental Quality

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 24 day of January 2011 upon the Respondent listed below:

David Hoerle, Hoerle Truck Wash, 82704 Highway 281, Bartlett, NE 68622

/s/ Steven J. Moeller

Steven J. Moeller
Attorney