

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF LARRY SCHULTZ
dba LARRY'S AUTO PARTS and/or
LARRY'S AUTO RECYCLERS

CASE NO. 3420

COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY FOR
HEARING

NDEQ # 30325

Respondent

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 (Act), Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2016). The Complainant is Jim Macy, Director of the Nebraska Department of Environmental Quality (Department). Respondent is Larry Schultz, doing business as Larry's Auto Parts and/or Larry's Auto Recycling located at 2035 Yolande Avenue, Lincoln, Nebraska 68521.

II. JURISDICTION

2. The Department 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 Act and all rules, regulations, and orders promulgated thereunder.

3. The Department is further charged, pursuant to Neb. Rev. Stat. §81-1504(4), with the duty to act as the state water pollution control agency for all purposes of the Clean Water Act, as amended, 33 U.S.C. 1251 et. seq.

4. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of issuing permits under the National Pollutant Discharge Elimination System (NPDES) created by the Clean Water Act 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*.

5. Pursuant to Neb. Rev. Stat. §81-1507, the Director may order necessary corrective action be taken in response to the violations alleged within a reasonable time to be prescribed in such order.

III. COMPLAINT

6. The Respondent is a person as defined in Neb. Rev. Stat. § 81-1502.

7. Respondent, at all times material herein has owned and operated an automobile salvage yard and auto parts store known as Larry's Auto Parts and/or Larry's Auto Recyclers located at 2035 Yolande Avenue, Lincoln, Lancaster County, Nebraska 68521. As a component of the auto salvage and recycling business, the Respondent dismantles motor vehicles for the purpose of selling used parts.

8. Neb. Rev. Stat. § 81-1506(1)(a) makes it unlawful to cause pollution or to place or cause to be placed any wastes in a location where they are likely to cause pollution.

9. Neb. Rev. Stat. § 81-1506(2)(a) makes it unlawful to discharge any pollutant into waters of the state without obtaining a permit.

10. Title 119, Ch. 10, 002.01 states that no person shall discharge storm water containing any pollutant except as authorized by a NPDES permit.

11. Title 119, Ch. 10, 003.01 requires dischargers of storm water associated with industrial activity to apply for an individual permit or seek coverage under a promulgated storm water general permit.

12. On or about September 1, 2016 Department personnel visited the Respondent's business at the request of the City of Lincoln and explained to Respondent the need to apply to the

Department and obtain a NPDES Industrial Storm Water General Permit (ISW-GP) NER910000, which identifies automobile salvage yards as an activity that requires a permit.

13. On or about September 26, 2016, the Department sent a Notice of Violation to Respondent's place of business requesting that Respondent immediately take steps to minimize storm water pollutant discharge; initiate the development of a Storm Water Pollution Prevention Plan and submit a "*Notice of Intent for Authorization to Discharge Under the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity, NPDES General Permit NER9100000*".

14. On or about October 9, 2017 Department staff conducted an onsite inspection of Respondents business and observed that vehicles were partially submerged from heavy rainfall; that fuel was being stored outside without containment; that petroleum products were mixed with rainwater; and that runoff was leaving the property. Department personnel did not observe any best management practices or structural controls that would tend to reduce the amount of runoff leaving the property.

15. Department records show Department personnel have made several attempts to contact Respondent and provide assistance and that Respondent has not submitted the paperwork necessary to apply for and obtain permit coverage for storm water runoff.

16. Respondent has allowed and continues to allow storm water discharge containing pollutants to runoff from Respondents business without a permit in violation of Neb. Rev. Stat. §§ 81-1506(1)(a), 81-1506(3)(c) and Title 119, Ch. 10.

IV. COMPLIANCE ORDER

20. It is hereby ORDERED that the Respondent shall:

- a. By February 16, 2018, submit for Department review and approval a Storm Water Pollution Prevention Plan and a completed *Notice of Intent for Authorization to*

Discharge under the NPDES General Permit for Storm Water Discharges Associated with Industrial Activity, NPDES General Permit NER9100000.

- b. Within thirty (30) days following Department approval of the Storm Water Pollution Prevention Plan, implement all tasks in the approved, written plan.
- c. Respond in writing within seven (7) working days to all requests for information requested by the Department.

21. Information to be submitted under this ORDER shall refer to IIS# 030325, Case No. 3420, and shall be sent to:

Reuel Anderson
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922
Telephone (402) 471-1367

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

22. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless the Respondent files an answer and request, in writing, a hearing no later than thirty (30) days after receipt of this Order. Failure to answer within thirty (30) days shall be deemed an admission of the allegations of the Complaint.

23. 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.

VII. SETTLEMENT CONFERENCE

24. Whether or not the Respondent requests 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.

25. 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.

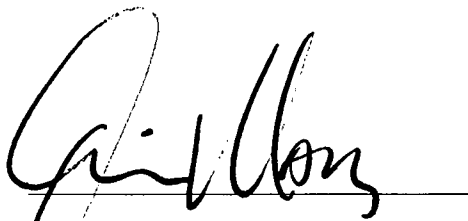
VIII. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

26. The Department reserves the right to require the Respondent to complete additional work or take additional actions as necessary to achieve compliance with all applicable laws and regulations. Further, 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.

27. 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.

12-29-17

Date

A handwritten signature in black ink, appearing to read "Jim Macy", written over a horizontal line.

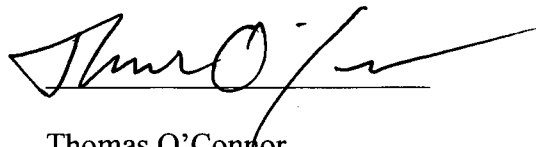
Jim Macy
Director

Nebraska 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 29 day of December 2017 upon the Respondent listed below:

Larry Schultz
Larry's Auto Recycling and Auto Parts
2035 Yolande Avenue
Lincoln, Nebraska 68521

A handwritten signature in black ink, appearing to read "Thur O'Connor", written over a horizontal line.

Thomas O'Connor
Attorney