

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

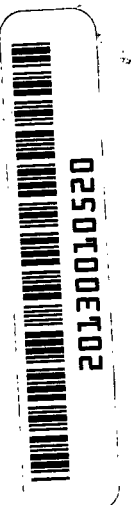
IN THE MATTER OF	)	CASE NO. 3193
Jeff Herber, d/b/a Diamond Truck Wash	)	
Grand Island, Nebraska	)	COMPLAINT, COMPLIANCE
FID # 24443	)	ORDER AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent.	)	

I. INTRODUCTION

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 2008, Cum. Supp. 2012). 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. 2012), 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 Jeff Herber, doing business as Diamond Truck Wash, Grand Island, Nebraska. The Complaint below establishes the violations.

II. COMPLAINT

1. Respondent is Jeff Herber, d/b/a Diamond Truck Wash, Grand Island, Nebraska, which owns a truck washing facility located just south of Grand Island on Highway 281, Hall County, Nebraska.
2. Pursuant to *Neb. Rev. Stat.* § 81-1508.02 (1) (e), it is unlawful for any person to violate any rule or regulation.



3. 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 the necessary permits from the department. Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*, Chapter 2, requires a facility to obtain a NPDES permit for discharge to ground water.

4. 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 123, Chapter 11 requires proper operation and maintenance of the wastewater works.

5. On July 7 2011, Respondent was operating a wastewater system without obtaining the necessary NPDES permit, had constructed a wastewater treatment cell without a construction permit from the Department, and had failed to properly operate and maintain the facility: dikes eroding, no mowing taking place, plants and tree growing in north cell, not operating in a two phase cycle and not maintaining signage and fencing around facility.

6. The Respondent is a "person" as defined in *Neb. Rev. Stat.* §81-1502(10).

7. Respondent has violated *Neb. Rev. Stat.* §81-1506 (2) (b), *Neb. Rev. Stat.* § 81-1508.02 (1) (e), Title 123 and Title 119.

8. The Director of the NDEQ is authorized pursuant to *Neb. Rev. Stat.* §81-1504(7) to issue this order requiring the construction of wastewater treatment systems or any parts thereof to prevent, control, or abate pollution.

### III. COMPLIANCE ORDER

9. The Respondent shall perform, within the following time frames, the following activities:

A. By July 1, 2013, shall have an agreement in place to connect to the City of Grand Island Wastewater Treatment System, or

B. Respondent shall:

(1 ) By June 1, 2013, correct problems by mowing, removing plants and tree growing in north cell, operate only the approved cell and build signage and fencing around facility.

(2) By June 1, 2013, have a Nebraska registered professional engineer prepare and submit to the Department an engineering evaluation of the wastewater lagoon system.

(3) By August 1, 2013, have a Nebraska registered professional engineer submit plans and specifications for approval for the upgrade to the wastewater system, as needed, and meet the Department's design standards, as required by Title 123, Chapter 2, Section 003.

(4) By November 1, 2013, complete construction of the system as approved by the Department.

10. Respondent shall report to NDEQ any delay in progress with complying with paragraph 9 of this Order.

11. Respondent shall respond promptly to any written communication by the NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Order.

12. Information to be submitted under this Order shall refer to FID# 093880 and shall be sent to:

Steve Goans  
Water Quality Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922  
Telephone number (402) 471-2186

#### IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

13. 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.

14. 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.

## V. SETTLEMENT CONFERENCE


15. 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.

16. 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

17. 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.

March 18 2013  
Date

  
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Michael J. Linder, 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, with attachments, was served by certified United States mail, postage prepaid, return receipt requested this 18<sup>th</sup> day of March 2013 upon the Respondent listed below:

Jeff Herber  
Diamond Truck Wash  
6499 South Highway 281  
Grand Island, NE 68801

  
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Steven J. Moeller  
Staff Attorney