

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

|                                 |   |                       |
|---------------------------------|---|-----------------------|
| IN THE MATTER OF                | ) | CASE NO. 2976         |
| D&H Real Estate,                | ) |                       |
| a Nebraska general partnership; | ) | COMPLAINT, COMPLIANCE |
| ORDER                           |   |                       |
| Randy Shoemaker; Don Shoemaker; | ) | AND NOTICE OF         |
| All d/b/a SHOEMAKER'S TRUCK     | ) | OPPORTUNITY FOR       |
| HEARING                         |   |                       |
| STATION,                        | ) |                       |
| FID #30990,                     | ) |                       |
|                                 | ) |                       |
| Respondent.                     | ) |                       |

PRELIMINARY STATEMENT

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to *Neb. Rev. Stat. § 81-1507(1), 81- 1504 (7)* and in accordance with Title 115 - *Rules of Practice and Procedure* for the Department of Environmental Quality. The Complainant is the Department of Environmental Quality (Department). The Respondents are D&H Real Estate, a Nebraska general partnership; Randy Shoemaker; and Don Shoemaker, all doing business as Shoemaker's Truck Station, The following establishes the violations of the Act, orders certain activities to be performed and gives notice for an opportunity for a Hearing:

COMPLAINT

1. Since July 2009 the Respondents, D&H Real Estate, a Nebraska general partnership; Randy Shoemaker; and Don Shoemaker, have owned or operated a wastewater collection and treatment facility located in Lancaster County, Nebraska, located at 4800 West O Street at a business called Shoemaker's Truck Station. The wastewater collection and treatment facility

treats the wastewater and then disposes of the treated wastewater by discharging it into Middle Creek, a water of the State.

2. *Neb. Rev. Stat.* § 81-1506 (1)(a) states that it is unlawful for any person to cause pollution of any air, waters or land of the state or place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters or land.

3. *Neb. Rev. Stat.* § 81-1506 (2)(b) states that it is unlawful 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.

4. Respondents in July 2009 took possession of the treatment facility from Shoemaker's Truck Station, Inc., which had operated the facility under a National Pollutant Discharge Elimination System (NPDES) permit issued to Shoemaker's Truck Station, Inc.

5. Department alleges that at all times since July 2009 the Respondents were required to have a NPDES permit but did not obtain such permit or have the NPDES permit held by Shoemaker's Truck Station, Inc. transferred to it.

6. Over the last two years Respondents has constructed or modified a storm water diversion system without obtaining a storm water construction permit from the Department.

7. Over the last two years Respondents have had several discharges of wastewater from the facility that caused pollution to the lands and waters of the state or have placed wastes in locations where the waste is likely to cause pollution to the land and waters of the state. As a discharging facility, the

Respondents are required to have an operator (Direct Responsible Charge Operator).

8. The Director finds Respondents are a “person” as defined in *Neb. Rev. Stat. § 81- 1502(10)*.

9. The Director finds Respondents have violated *Neb. Rev. Stat. § 81- 1506 (1) (a) and (2) (b)*.

10. The Director of the DEQ is authorized pursuant to *Neb. Rev. Stat. § 81-1504(7)* to issue this order to prohibit or abate discharges of wastes into the air, waters or land of the state and to require the construction of new disposal systems or any parts thereof or the modification, extension, or adoption of other remedial measures to prevent, control or abate pollution.

### ORDER

11. IT IS HEREBY ORDERED THAT:

A. Respondents immediately, but not later than February 1, 2011, shall: 1) send to the Department a complete application for the appropriate wastewater or storm water permits, and, 2) employ a certified wastewater treatment operator (Direct Responsible Charge Operator) with the appropriate qualifications to operate the wastewater facility and send notification of this to the department.

B. By August 1, 2011, either connect to the City of Lincoln wastewater treatment system (with the city's approval);

or,

C. Repair, upgrade or replace the current wastewater treatment facility:

i. By August 1, 2011 submit a facility plan and an engineering analysis of the facility, including current system capacity.

ii. By December 1, 2011 submit to the Department plans and specifications prepared by a registered Nebraska professional engineer, for upgrades to wastewater works in accordance with a facility plan submitted to and approved by the Department.

iii. By June 1, 2012 begin construction of upgrades to wastewater works in accordance with the approved plans and specifications.

iv. By November 1, 2012 place into operation a wastewater works in compliance with all permit requirements and regulations.

12. Beginning February 1, 2011, Respondents shall submit progress reports to NDEQ on the activities listed in paragraph 11 until those activities are completed. These reports shall contain information regarding the activities associated with the project, construction schedule and completion date. Respondent shall report to NDEQ any delay in progress with complying with paragraph 11 of this Order.

13. Respondents 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 Consent Order.

14. Information to be submitted under this Order 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

#### NOTICE OF OPPORTUNITY TO REQUEST A HEARING

15. In accordance with *Neb. Rev. Stat. §81-1507(1)*, this Order shall become final unless Respondents file an answer and request a hearing in writing no later than 30 days after receipt of the Complaint, Compliance Order and Notice of Opportunity for Hearing.

16. If the Respondents decide to contest this complaint and order, a written answer and request for hearing must be filed with the Director, Department of Environmental Quality, P.O. BOX 98922, Lincoln, Nebraska

68509-8922. The answer and request for hearing must conform to the requirements of Title 115, Chapter 7.

17. Failure to contest this Complaint and Order shall be deemed an admission of the facts in the Complaint. Violation of this Order may subject the violator to penalties of up to \$10,000 per day pursuant to *Neb. Rev. Stat.* §81-1508.02.

18. This Complaint, Compliance Order and Notice of Opportunity for Hearing does not preclude the Department of Environmental Quality from pursuing enforcement in the proper court for injunctive relief and penalties based on violations of state statutes or regulations.

Dated this 23<sup>rd</sup> day of November, 2010.

/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 November 2010 upon the persons listed below:

Don Shoemaker, 4800 West "O" St, Lincoln, Nebraska, 68528

Randy Shoemaker, 4800 West "O" St, Lincoln, Nebraska, 68528

Nebraska Department of Environmental Quality,

By: /s/ Steven J. Moeller

Steven J. Moeller, #16003  
Nebraska Department of Environmental  
Quality  
1200 "N" Street, Suite 400  
P.O. Box 98922  
Lincoln, NE 68509  
(402) 471-0276