



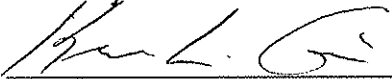
4. Schmidt has failed to submit this assessment report to NDEQ for the underground storage tanks on his property that had been leaking.

5. Under Neb. Rev. Stat. §81-15,125 (Reissue 1999), any person who violates the Petroleum Products and Hazardous Substances Storage and Handling Act, or the rules, regulations, or order of NDEQ adopted or issued pursuant to such act, shall be subject to a civil fine of not more than \$5,000 per offense. In the case of a continuing violation, each day shall constitute a separate offense.

WHEREFORE, NDEQ prays that judgment be entered in its favor and against Schmidt and that Schmidt (1) be assessed civil penalties as provided in § 81-15,125 in the amount of \$18,285; (2) be enjoined from any further violation of NDEQ's February 28, 2007, order; (3) be ordered to give NDEQ full access to investigate and perform remedial actions, as provided in § 81-15,124.02; and (4) be assessed all costs of this action.

STATE OF NEBRASKA, ex rel.,  
MICHAEL J. LINDER, Director  
NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY, Plaintiff

By: Jon C. Bruning, #20351  
Attorney General

By:   
Kevin L. Griess, #22182  
Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
Tel. (402) 471-2682  
Attorney for Plaintiff.

IN THE DISTRICT COURT FOR JEFFERSON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel. )  
MICHAEL J. LINDER, DIRECTOR, )  
NEBRASKA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY )  
 )  
Plaintiff, )  
v. )  
 )  
Gary Schmidt, d/b/a Schmidt Service )  
Fairbury, Nebraska )  
 )  
Defendant. )  
 )

Case Number \_\_\_\_\_

**PRAECIPE FOR SUMMONS**

TO THE CLERK OF SAID COURT:

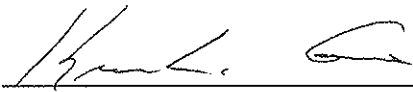
Please prepare and issue a summons according to law, together with a copy of the attached complaint, and deliver to the sheriff of Jefferson County Nebraska for service upon the individual defendant as follows:

Gary Schmidt  
d/b/a Schmidt Services  
566895 Hwy 136  
Fairbury, NE 68352

Dated this 26 day of March, 2008.

STATE OF NEBRASKA, ex rel., MICHAEL J.  
LINDER, Director  
NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,

By JON C. BRUNING, #20351  
Attorney General

By   
Kevin L. Griess, #22182  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-2682  
Attorney for Plaintiff.

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF:	)	Case No. 2758
	)	
	)	COMPLAINT, COMPLIANCE ORDER
Gary Schmidt, d/b/a	)	AND NOTICE OF OPPORTUNITY
Schmidt Service	)	FOR HEARING
Fairbury, Nebraska	)	
UG#091297-NM-0700	)	
FID#64089	)	
Respondent.	)	

PRELIMINARY STATEMENT

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 1999, 2006 Cum. Supp.) of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §81-1501 et. seq. and Neb. Rev. Stat. §81-15,124 of the Petroleum Products and Hazardous Substances Storage and Handling Act, Neb. Rev. Stat. §81-15,117 et. seq. (Reissue 1999, 2006 Cum. Supp.). The Complainant is the director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent is Gary Schmidt, d/b/a Schmidt Service, Fairbury, Nebraska.

The Complainant has determined that Respondent is in violation of Neb. Rev. Stat. §81-1506(1)(a); Neb. Rev. Stat. §81-15,124; and Title 126 Nebraska Administrative Code, Rules and Regulations Pertaining to the Management of Wastes (hereinafter "Title 126"). Moreover, Respondent is failing to conduct an investigation and remedial action required by Title 118 Nebraska Administrative Code, Ground Water Quality Standards and Use Classification (hereinafter "Title 118"). The Complaint below establishes the violations.

COMPLAINT



1. Respondent owned and operated a business commonly referred to as Schmidt Service, Fairbury, Nebraska (the "Site"). At the Site, as part of his business, Respondent sold gasoline and fuel oils from underground petroleum storage tanks. Respondent owned and operated "tanks" as defined by Neb. Rev. Stat. §81-15,119(10) containing "regulated substances" as defined by Neb. Rev. Stat. §81-15,119(6) at the Site.

2. On or about July 1997, product lines and tanks were removed from the ground. Petroleum contamination of the soil was detected by soil sampling from the base of the excavation.

3. On or about June 29, 1998, Respondent received a letter from the NDEQ in which he was informed that a release of petroleum from the operation of his tanks had occurred and that Respondent was responsible for securing the release, identifying the affected environment, and completing any remedial action required by the NDEQ. Additional letters were sent to Respondent in October 2000, January 2006, May 2006 and January of 2007.

4. Respondent has failed and refused to submit a Tier 1 Investigation Report as required by Title 118, Appendix B, for the Site.

5. Respondent, in violation of Title 126, Chapter 18, section 001.01, and 81-1506 (1) (a), has discharged oil into or upon the waters or land of the state, and such violation is continuing.

#### COMPLIANCE ORDER

6. IT IS HEREBY ORDERED that, within sixty (60) days of receipt of this Compliance Order, Respondent shall submit to NDEQ his complete RBCA Tier I Assessment Report, which shall include at a minimum, the information outlined in "Risk Based Corrective Action (RBCA) at Petroleum Release Sites: Tier 1/Tier 2 Assessments & Reports," (February 2004).

7. NDEQ reserves its rights to order Respondent to conduct further investigation, remediation and monitoring based on the above information.

8. Any failure by Respondent to carry out paragraphs 6 or further orders as set out in paragraph 7 shall result in the Department undertaking remedial actions pursuant to Neb. Rev. Stat. 66-1529.02 (1)(b) and (4). Pursuant to Neb. Rev. Stat. §81-15,124.02, Respondent shall allow access to the Department for the performance of any reasonable steps, including drilling to determine the source and extent of the contamination and to perform remedial action. Any funds expended are Respondent's responsibility and subject to being recovered by the Department, including court costs and attorney's fees.

9. Information to be submitted under this Order shall be sent to:

John Fogerty  
Petroleum Remediation Section  
Water Quality Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922  
Telephone number (402) 471-4143.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

10. 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.

11. The request for hearing and an answer may be filed by mailing 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 NDEQ's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska. 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.

SETTLEMENT CONFERENCE

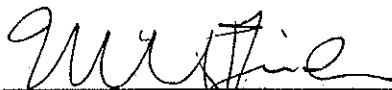
12. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Steve Moeller, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

13. 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.

INJUNCTIVE RELIEF AND PENALTY PROVISIONS

14. 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.

February 28 2007  
Date

  
\_\_\_\_\_  
Michael J. Linder, Director  
NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

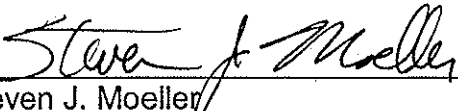
CERTIFICATE OF SERVICE

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 5<sup>th</sup> day of March  
2007 upon the Respondent listed below:

Gary Schmidt, 56895 Hwy 136, Faribury, Nebraska 68352.

  
\_\_\_\_\_  
Steven J. Moeller  
Staff Attorney