

IN THE DISTRICT COURT OF CUSTER COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel. )  
MICHAEL J. LINDER, DIRECTOR, )  
NEBRASKA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
HENRY NUXOLL, JR., 2<sup>ND</sup> WIND )  
RANCH, INC., )  
 )  
Defendants. )  
 )

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

**COMPLAINT**

COMES NOW the Plaintiff, Nebraska Department of Environmental Quality (hereinafter "NDEQ"), who institutes this action through its attorney, Jon C. Bruning, Attorney General, and alleges and states as follows:

**FIRST CLAIM**

1. NDEQ is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. §81-1504(1) (Reissue 1999) of exercising exclusive supervision, administration and enforcement of the Environmental Protection Act, Neb. Rev. Stat. §81-1501 (Reissue 1999, Cum. Supp. 2006) *et seq* and all rules and regulations promulgated thereunder.

2. Title 124 of the Nebraska Administrative Code, "Rules and Regulations for Design, Operation, and Maintenance of On-Site Wastewater Treatment Systems" (hereinafter "Title 124") was promulgated pursuant to such act, and at all times material herein, such regulations were in full force and effect.

3. Defendant Henry Nuxoll, Jr. is the owner of the property located at SE1/4, Section 23, T19N, R17W, Custer County, Nebraska.

5. Defendant 2<sup>nd</sup> Wind Ranch, Inc. is conducting business on the property owned by Defendants Henry Nuxoll, Jr., and Henry and Martha Nuxoll, Sr., including, but not limited to, hosting musical concerts and performances and renting campgrounds (hereinafter, the "Site").

6. On or about August 25, 2005, a "Complaint, Order, and Notice of Opportunity for Hearing" (hereinafter "Administrative Order") was entered by the Director of the NDEQ and sent to the Defendants.

7. Defendants did not contest the findings or request a hearing regarding the Administrative Order and it became a final order on or about September 26, 2005. The Administrative Order is attached hereto and incorporated herein as "Attachment A."

8. The Administrative Order required Defendants to:

6...[I]mmediately stop discharging wastewater to the earthen pit, land surface or other unapproved location.

7...c. Authorize and complete installation of an onsite wastewater treatment system in compliance with Title 124 and state law....

9. Defendants did not comply with the requirements of paragraph 6 of the Administrative Order.

10. Defendants did not comply with the requirements of paragraph 7 of the Administrative Order.

11. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate an Administrative Order issued by the Director of the NDEQ.

12. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1508.02(1)(b). In the case of a continuing violation, each day shall constitute a separate offense.

## **SECOND CLAIM**

13. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 12 of this Complaint as if fully set forth herein.

14. Neb. Rev. Stat. §81-1506(2)(b) makes it unlawful for any person to “[c]onstruct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department”.

15. On or about June 4, 2007, Defendants constructed, installed, modified, or operated a disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from NDEQ.

## **THIRD CLAIM**

16. Neb. Rev. Stat. §81-1508(2) allows the Director of NDEQ to petition the Court for an injunction enjoining Defendants from further violating any provision of the Nebraska Environmental Protection Act, any rules and regulations promulgated thereunder, or an order of the Director.


17. The Director of NDEQ respectfully petitions this Court for an injunction enjoining Defendants from further violating Title 124, Neb. Rev. Stat. §81-1506(2)(b) and the Administrative Order issued by the Director of NDEQ on August 25, 2005. In particular, the Director of NDEQ respectfully requests that Defendants be enjoined from hosting any further music concerts, performances, or other events wherein the generating of wastewater may occur until Defendants come into compliance with Title 124 and the Administrative Order issued by the Director of NDEQ on August 25, 2005 or until approval is obtained from NDEQ of any plan for proper disposal of waste generated on the property.

WHEREFORE, NDEQ prays that judgment be entered in its favor and against Defendants in the form of an injunction pursuant to Neb. Rev. Stat. §81-1508(2); civil penalties as provided in Neb. Rev. Stat. § 81-1508.02, with consideration by the Court of “the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance” in determining the appropriate civil penalty pursuant to Neb. Rev. Stat. § 81-1508.02(2); that all costs of this action be taxed to the Defendant; and any other relief as this Court deems just and equitable.

18. WHEREFORE, NDEQ futher prays for an order enjoining Defendants from hosting any further music concerts, performances, or other events wherein the generating of wastewater may occur until Defendants come into compliance with Title 124 and the Administrative Order issued by the Director of NDEQ on August 25, 2005 or until approval is obtained from NDEQ of any plan for proper disposal of waste generated on the property.

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

By JON C. BRUNING, #20351  
Attorney General

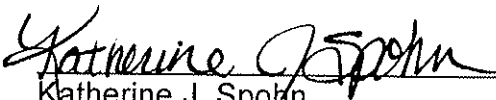
By   
Katherine J. Spohn #22979  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-2682

Attorney for Plaintiff.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on this 4th day of June, 2007 addressed to the Defendants' attorney of record as follows:

Gregory G. Jensen  
1532 L Street  
PO Box 310  
Ord, NE 68862  
Tel. (308) 728-3676

  
Katherine J. Spohn  
Assistant Attorney General

COPY

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF	)	Case No. 2639
Henry Nuxoll Jr.,	)	
2 <sup>nd</sup> Wind Ranch, Inc.,	)	
Henry (Sr.) and Martha Nuxoll,	)	COMPLAINT, COMPLIANCE ORDER
Comstock, Nebraska	)	AND NOTICE OF
F.I.D. #	)	OPPORTUNITY FOR HEARING
	)	
Respondents.	)	

PRELIMINARY STATEMENT

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 1999). The Complainant is the Department of Environmental Quality (Department or NDEQ). The Respondents are Henry Nuxoll, Jr., 2nd Wind Ranch, Inc., and Henry Nuxoll (Sr.) and Martha Nuxoll. The Complainant has determined that the Respondents are in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 et. seq. (Reissue 1999, Cum. Supp. 2004), Title 124, *RULES AND REGULATIONS FOR THE DESIGN, OPERATION AND MAINTENANCE OF ON-SITE WASTEWATER TREATMENT SYSTEMS*. The Complaint below establishes the violations of the Act, the Compliance Order sets out the specific actions that must be taken by Respondents and the Notice of Opportunity for Hearing sets out how a hearing can be requested before the Director of the Department.

COMPLAINT

1. Respondent Henry Nuxoll Jr. is the owner of the ranch property located at the SE1/4, Section 23, T19N, R17W, Custer County, Nebraska. Respondents 2<sup>nd</sup> Wind Ranch, Inc. is a person conducting businesses on this property, such as holding large musical performances and renting campgrounds.

Blumberg No. 5137  
 ATTACHMENT  
 "A"

COPY  
 642F0005002

Respondents Henry Nuxoll (Sr.) and Martha Nuxoll are owners of ranch property located on the E1/2 of the SW1/4, Section 23, T19N, R17W, Custer County, Nebraska. On this property are located campgrounds that are adjacent to the above property operated Henry Nuxoll Jr. and 2<sup>nd</sup> Wind Ranch.

2. Pursuant to *Neb. Rev. Stat.* § 81-1508.02 (1) (e), it is unlawful for any person to violate any rule or regulation.

3. Title 124, Chapter 2, Section 006.03, prohibits discharges of wastewater to the land surface from a dwelling, establishment, building sewer, or on-site wastewater treatment system without Department approval.

4. Title 124, Chapter 2, Section 001, provides that a dwelling or establishment that generates wastewater shall have an on-site wastewater treatment system in accordance with these regulations or be connected to a wastewater works.

5. On or about July 7, 2005 and July 27, 2005 the Department inspected the Respondents property in Custer County, Nebraska and determined that the Respondents are allowing discharges or discharging human wastes to a on-site waste disposal system not approved by the Department, an earthen pit and buried concrete pit, during or after the musical performances. Both the earthen pit and concrete pit are located on the SE1/4, Section 23, T19N, R17W, Custer County, Nebraska.

#### COMPLIANCE ORDER

IT IS HEREBY ORDERED THAT:

6. Respondents shall immediately stop discharging wastewater to the earthen pit, concrete pit, land surface or other unapproved location.

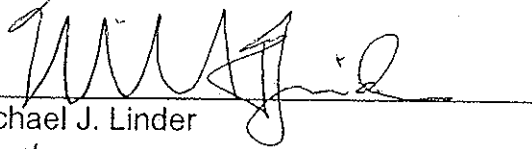
7. Respondent Henry Nuxoll, Jr. shall within 60 days of this order:

- a. Submit plans and specifications for a properly functioning onsite wastewater treatment system. If Respondents intend to use the existing concrete pit and existing earthen pit as part of the wastewater treatment system, include an engineering assessment of the quantity and quality of wastewater being generated and an engineering analysis of the condition and capacity of the concrete pit and earthen pit including a sizing evaluation for both, an evaluation of the entire concrete surface for the concrete pit checking for any cracks or leakage, and seepage testing for the earthen pit.
- b. Apply for a construction permit as provided for in Title 124, Chapter 3.
- c. Authorize and complete installation of an onsite wastewater treatment system in compliance with Title 124 and state law. Respondent shall allow NDEQ or its agents access to the property to verify compliance.
- d. Provide in writing to NDEQ Onsite Wastewater Unit, at least ten (10) days prior to beginning of any work being performed, the name of the person, authorized by law, hired to perform the work and when the work will begin.



pursuing enforcement in the proper court for injunctive relief and penalties based on violations of state statutes or regulations.

Dated this 25<sup>th</sup> day of August, 2005.



Michael J. Linder  
Director  
Department of Environmental Quality

Prepared By: Steven J. Moeller

Steven J. Moeller, #16003  
Staff Attorney  
Department of Environmental Quality  
Suite 400, The Atrium  
1200 N Street  
P.O. Box 98922  
Lincoln, NE 68509-8922  
(402) 471-0276


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 25<sup>th</sup> day of August 2005 upon the Respondents listed below:

2<sup>nd</sup> Wind Ranch, Inc.  
C/O Henry Nuxoll  
HC 68 Box 8  
Comstock, Nebraska 68828

Henry Nuxoll  
HC 68 Box 19  
Comstock, Nebraska 68828

Henry (Sr.) and Martha Nuxoll  
P.O. Box 98  
Comstock, Nebraska 68828

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

**SENDER: COMPLETE THIS SECTION**

■ Complete items 1, 2, and 3. Also complete



20050001263

or on the front if space permits.

1. Article Addressed to:

2nd Wind Ranch, Inc.  
c/o Henry Nuxoll  
HC 68 Box 8  
Comstock, NE 68828

85611 2630 Complaint, Comp Order

2. Article Number & Notice of Oppor for Hearing

(Transfer from service label)

7000 0520 0022 9592 7909

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *Roland Shuff*  Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

*Roland Shuff* *8-27-05*

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

3. Service Type

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

**SENDER: COMPLETE THIS SECTION**

■ Complete items 1, 2, and 3. Also complete



20050001264

or on the front if space permits.

1. Article Addressed to:

Henry Nuxoll  
HC 68 Box 19  
Comstock, NE 68828

85611 2630 Complaint, Comp

Order & Notice of Oppor for Hearing

(Transfer from service label)

7000 0520 0022 9592 7916

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *Henry Nuxoll*  Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

*Henry Nuxoll* *8/26/05*

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

3. Service Type

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes

**SENDER: COMPLETE THIS SECTION**

■ Complete items 1, 2, and 3. Also complete



20050001265

or on the front if space permits.

1. Article Addressed to:

Henry (Sr) & Martha Nuxoll  
PO Box 98  
Comstock, NE 68828

85611 2630 Complaint, Comp  
Order & Notice of Oppor for Hrrng

2. Article Number

(Transfer from service label)

7000 0520 0022 9592 7923

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-1540

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *Henry Nuxoll*  Agent  
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

*Henry Nuxoll* *8/26/05*

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

3. Service Type

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)

Yes