

IN THE DISTRICT COURT OF SAUNDERS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	CASE NO. _____
MICHAEL J. LINDER, Director)	
NEBRASKA DEPARTMENT OF)	
ENVIRONMENTAL QUALITY,)	
)	
Plaintiff,)	COMPLAINT
)	
v.)	
)	
GEORGE MULLER)	
)	
Defendants.)	

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

FIRST CLAIM

1. The Plaintiff 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. 2004) et seq. and all rules promulgated thereunder.

2. At all times material herein the Defendant, George Muller, owned a residential dwelling located at 301 Ann Street, Morse Bluff, in Saunders County, Nebraska.

3. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for onsite wastewater systems, as expressed in Neb. Rev. Stat. §81-1505(8), (Reissue 1999), the Council adopted a rule and standard codified as Title 124, Rules and

Regulations For the Design, Operation And Maintenance of On-Site Wastewater Treatment Systems.

4. Title 124, Chapter 2, requires any dwelling that generates wastewater and is not connected to a wastewater works to have an on-site wastewater system that meets all requirements of Title 124.

5. Title 124, Chapter 5, Section 001, requires that absorption systems be set back 25 feet from pressure-main water lines and 50 feet from surface water lines.

6. Neb. Rev. Stat. §81-1508.02 (1)(e) states that it is unlawful to violate any other provision or fail to perform any other duty imposed by such acts, rules, and regulations.

7. That since May 30, 2004 and continuing daily thereafter, the Defendant owned a dwelling that generated wastewater and was not connected to a wastewater works and had a soil absorption system that did not meet the requirements of Title 124 because it is located less than 25 feet from pressure-main water lines and less than 50 feet from surface water.

8. Pursuant to Neb. Rev. Stat. §81-1508.02(2), where there has been a violation of §81-1508.02(1)(e), a civil penalty is provided in the amount of not more than ten thousand dollars (\$10,000) for each day of violation.

SECOND CLAIM

9. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 and 2 of its First Claim.

10. In April 2005 an Administrative Order was sent to George Muller requiring him to remove the soil absorption system located next to the main water line

and to install a system that complied with Title 124. Muller contested this order and asked for a hearing. Settlement was reached and a Consent Order was entered into by the parties requiring Muller to remove or disable the soil absorption system prior to January 1, 2006, and to install a system that complies with Title 124 by January 1, 2006.

11. Defendant did not remove or disable the soil absorption system located next to the main water line and did not install a system that complied with Title 124 by January 1, 2006.

12. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to “violate...any order of the director.”

13. Pursuant to Neb. Stat. §81-1508.02(1)(b) and (2) where there has been a violation of an order of the director, a civil penalty is provided in the amount of not more than ten thousand dollars (\$10,000) for each day of violation.

THIRD CLAIM

14. Plaintiff hereby incorporates by reference each and every allegation contained in its First and Second Claim.

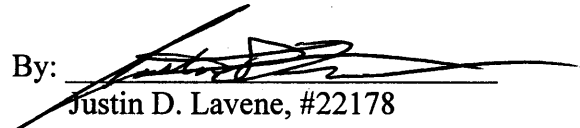
15. The Director, pursuant to Neb. Rev. Stat. §81-1508(2), asks the Court for an injunction enjoining the Defendant from operating the existing wastewater system until either removal of the soil absorption system located in the road ditch near the community water main, or removal of the riser and pile from the riser to the soil absorption system. The Director also asks the Court for an injunction enjoining Defendant from further violating Title 124 and order that the Defendant shall: 1) Properly abandon any septic tank, holding tank, or cistern not complying with Title 124; 2) Have all work performed by a Nebraska Certified Professional as defined in Title 124; 3)

Authorize and complete installation of an onsite wastewater treatment system that complies with Title 124 and state law within 60 days of the Court's order; 4) Allow NDEQ or its agents access to the property to verify compliance; 5) Provide in writing to NDEQ Onsite Wastewater Unit, at least ten (10) days prior to beginning of any work, the name of the Nebraska certified professional or professionals, hired to perform the work and when the work will begin; 6) Take steps to ensure that the person doing the work registers the new system with the Department within 45 days of installation.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of civil penalties as provided in Neb. Rev. Stat. § 81-1508.02 (2), an injunction be entered and that all costs of this action be taxed to the Defendants.

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

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