

IN THE DISTRICT COURT FOR PLATTE COUNTY, NEBRASKA

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

Case No. CI10-218

Plaintiff,

COMPLAINT

v.

FILED
MARLENE M VETICK, CLERK

A.J. & SONS TRUCKING, INC.

APR 21 2010

Defendant.

DISTRICT COURT
PLATTE COUNTY, NEBR.

The State of Nebraska, on behalf of the Nebraska Department of Environmental Quality (NDEQ), alleges the following:

FIRST CLAIM

1. NDEQ is the agency of the State of Nebraska charged under Neb. Rev. Stat. § 81-1504(1) (Reissue 2008), with exercising exclusive supervision of the administration and enforcement of the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2008), along with all rules, regulations, and orders promulgated under that Act, including Title 123 of the Nebraska Administrative Code, "Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works."

2. A.J. & Sons Trucking, Inc., is a Nebraska corporation and at all relevant times operated a truck wash near Platte Center, Platte County, Nebraska. As a part of its operation, A.J. & Sons Trucking uses a wastewater lagoon system to treat and store the wastewater produced by the truck wash.



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3. Under Neb. Rev. Stat. § 81-1506(2)(b), it is unlawful for any person to construct, install, modify, or operate a disposal system without obtaining the necessary permits from NDEQ.

4. Beginning in January 2006 and continuing thereafter, A.J. & Sons Trucking operated a disposal system without obtaining the necessary permit from NDEQ.

5. Under Neb. Rev. Stat. § 81-1508.02(2), any violation of § 81-1506 subjects a person to a civil penalty of not more than \$10,000 per day, and in the case of a continuing violation, each day shall constitute a separate offense.

SECOND CLAIM

6. The State incorporates by reference each and every allegation contained in paragraphs 1, 2, and 5 of its First Claim.

7. On October 25, 2007, NDEQ issued an Administrative Order against A.J. & Sons Trucking, ordering A.J. & Sons Trucking to (a) apply for a wastewater land application permit by December 1, 2007, (b) submit an engineering evaluation of the wastewater lagoon system to NDEQ by January 1, 2008, and (c) upgrade the wastewater lagoon system to comply with NDEQ's rules and regulations by June 1, 2008. This Administrative Order was not contested by A.J. & Sons Trucking and became a final order on or about November 25, 2007. A copy of this Administrative Order is attached to this Complaint as Attachment No. 1 and incorporated by this reference.

10. To date, A.J. & Sons Trucking has not applied for a wastewater land application permit, has not submitted an engineering evaluation of the wastewater

lagoon system, and has not upgraded its wastewater lagoon system, as required by the October 27, 2007 Administrative Order.

11. Under Neb. Rev. Stat. § 81-1508.02(1)(b) (Reissue 2008), it is unlawful for any person to violate any order of the director of NDEQ. For such violations, § 81-1508.02(2) authorizes a civil penalty in the amount of not more than \$10,000 for each violation. In addition, Neb. Rev. Stat. § 81-1508(3) authorizes a court to award injunctive relief whenever NDEQ has reason to believe that any person is violating any order of NDEQ.

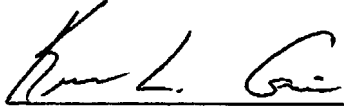
The State requests that:

- (1) judgment be entered in favor of the State and against A.J. & Sons Trucking;
- (2) a civil penalty be assessed against A.J. & Sons Trucking, as provided in § 81-1508.02(2), together with the costs of this action;
- (3) the Court enter an injunction requiring A.J. & Sons Trucking to (a) apply for a wastewater land application permit within 30 days following the entry of judgment in this case, (b) submit an engineering evaluation of the wastewater lagoon system to NDEQ within 60 days following the entry of judgment in this case, and (c) upgrade the wastewater lagoon system to comply with NDEQ's rules and regulations within 6 months following the entry of judgment in this case.

Dated: April 19, 2010.

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
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Lincoln, Nebraska 68509-8920
(402) 471-2682
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Attorneys for Plaintiff.

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
A. J. & Sons Trucking, Inc.
Platte Center, Nebraska

CASE NO. 2823

COMPLAINT, COMPLIANCE
ORDER AND NOTICE OF
OPPORTUNITY FOR HEARING

FILED
MARLENE M VETICK, CLERK

APR 21 2010

Respondent.

**DISTRICT COURT
PLATTE COUNTY, NEBR.**

I. INTRODUCTION

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 1999). Complainant has determined that the respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 et. seq. (Reissue 1999, Cum. Supp. 2006), 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 A. J. & Sons Trucking, Inc., Platte Center, Nebraska. The Complaint below establishes the violations.

II. COMPLAINT

1. Respondent is A. J. & Sons Trucking, Inc., Platte Center, Nebraska, which owns a truck washing facility located NW1/4, Section 17, Township 18N, Range 1W, Platte 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.

Blumberg No. 0177
Attachment
1



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.

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 119, *Rules and Regulations Pertaining to the Issuance Of Permits under the National Pollutant Discharge Elimination System*, Chapter 12, prohibits land application of non-domestic wastewater without a permit or approval by the Department.

5. Since 1990 and continuing to the present time, Respondent has been and is operating a wastewater system without obtaining the necessary permits from the department because no construction permit was ever issued for the wastewater treatment facility and Respondent has been land applying wastewater since 1990 without a permit or approval by the Department.

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 December 1, 2007 apply for a wastewater land application permit or approval as set out in by Title 119, Chapter 12, Section 001.02.
- B. By January 1, 2008 have a professional engineer prepare and submit to the Department an engineering evaluation of the wastewater lagoon system.
- C. By June 1, 2008, upgrade the wastewater system, as needed, and meet the Department's design standards, as required by Title 123, Chapter 2, Section 003.

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 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.

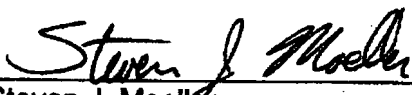
October 25 2007
Date


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 26th day of October 2007 upon the Respondent listed below:

Stephen Jarecki
27357 310th St
P.O. Box 195
Platte Center, NE 68653


Steven J. Moeller
Staff Attorney