

IN THE DISTRICT COURT FOR HALL COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY, )  
Plaintiff, )  
v. )  
NICK WINFREY, D/B/A WINFREY )  
PLUMBING & HEATING CO. )  
Defendant. )

Case No. \_\_\_\_\_

**COMPLAINT AND REQUEST  
FOR INJUNCTION**

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 of exercising exclusive supervision, administration, and enforcement of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, pursuant to Neb. Rev. Stat. §§ 81-15,236–81-15,253 (Cum. Supp. 2006, Supp. 2007, Reissue 2008).

2. At all times material herein, the Defendant, Nick Winfrey, doing business as Winfrey Plumbing & Heating Co., has owned and operated a plumbing business in Hall County, Nebraska.

3. The Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act ("Act"), Neb. Rev. Stat. §§ 81-15,236–81-

15,253, provides that onsite systems shall be installed by certified professionals. Specifically, Title 124, *Rules and Regulations for the Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems*, Chapter 20, Section 003.01A, states, in part, that only a Master Installer or a Journeyman Installer is authorized to engage in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater treatment system.

4. At all times relevant in this complaint, Defendant and his employees did not have the proper certification to engage in the siting, layout, construction, reconstruction, alteration, modification, or repair a private onsite wastewater system pursuant to the Act.

5. Defendant, in July 2007, engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater treatment system at 537 Ivy Hall Ct., Grand Island, Hall County, Nebraska without being certified or authorized to do so under the Act.

6. Pursuant to Neb. Rev. Stat. § 81-15,253 where there has been a violation of the Act or rules and regulations promulgated pursuant to the Act, a civil penalty is provided in the amount of not more than \$10,000 (ten thousand dollars) per violation. In the case of a continuing violation, each day shall constitute a separate offense.

## SECOND CLAIM

7. Plaintiff hereby incorporates by reference paragraphs 1, 2, and 6 contained in its First Claim.

8. Neb. Rev. Stat. § 81-15,248(2) (Reissue 2008) and Title 124, Chapter 22, Section 001 state that any private onsite wastewater treatment systems must be registered with the Department by a certified professional within forty-five days of completion of construction, reconstruction, alteration, or modification.

9. Defendant, in July 2007, engaged in the construction, reconstruction, alteration, or modification of a private onsite wastewater treatment system at 537 Ivy Hall Ct., Grand Island, Hall County, Nebraska. The system was not registered with the Department within forty-five days of completion of construction, reconstruction, alteration, or modification.

#### THIRD CLAIM

10. Plaintiff hereby incorporates by reference paragraphs 1, 2, 3, 4, and 6 contained in its First Claim.

11. Defendant, in November 2007, engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater treatment system at 929 Gunbarrel Rd., Grand Island, Hall County, Nebraska, without being certified or authorized to do so under the Act.

#### FOURTH CLAIM

12. Plaintiff hereby incorporates by reference paragraphs 1, 2, 6, and 8 contained in its First and Second Claims.

13. Defendant, in November 2007, engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater

treatment system at 929 Gunbarrel Rd., Grand Island, Hall County, Nebraska. The system was not registered with the Department within forty-five days of completion of construction, reconstruction, alteration, or modification.

#### FIFTH CLAIM

14. Plaintiff hereby incorporates by reference each and every allegation contained in its Complaint.

15. The Director asks the Court for an injunction enjoining the Defendant from any further work on private onsite wastewater treatment systems until proper certification and registration of the systems identified above and any other onsite wastewater treatment systems constructed, reconstructed, modified, or otherwise changed by Defendant in Nebraska since January 1, 2004.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendants in the form of civil penalties as provided in Neb. Rev. Stat. § 81-15,253, that an injunction be entered, and that all costs of the action be taxed to the Defendant.

DATED this 6<sup>th</sup> day of February, 2009.

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

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CERTIFICATE OF SERVICE

It is hereby certified that on this 6<sup>th</sup> day of February, 2009, a true and accurate copy of the foregoing Complaint has been served upon Defendant herein by placing a copy of the same in the United State Mail, first class postage prepaid, addressed to Defendant's attorney of record.

Michelle Weber  
Michelle Weber  
Assistant Attorney General