

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF NATHAN L. HOYT

NDEQ CASE NO. 3488

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY FOR
HEARING

NDEQ # 70156

Respondent

I. INTRODUCTION

1. This Complaint, Compliance and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §§ 81-1504 and 81-1507 by the Director of the Nebraska Department of Environmental Quality (Department).

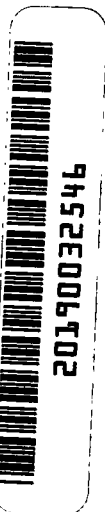
2. The Respondent is Nathan L. Hoyt who resides at 71960 Road 374, Culbertson, Hitchcock County, Nebraska 69024.

3. This Compliance Order establishes a schedule of corrective actions necessary to achieve and maintain compliance with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2016) and all rules and regulations promulgated under such Act.

II. STATUTORY AND REGULATORY SETTING

4. Pursuant to Neb. Rev. Stat. § 81-1505(1) and (8), the Nebraska Environmental Quality Council adopted a rule and standard codified as Neb. Admin. Code Title 124 - *Rules and Regulations for the Design, Operation and Maintenance of Onsite Wastewater Treatment Systems*.

5. Title 124, Ch. 1, 035 defines failing or failed as an unauthorized discharge of effluent or wastewater onto the surface of the ground.



6. Title 124, Ch. 1, 061 defines an onsite wastewater system as “any system of piping, treatment devices, or other appurtenances that convey, store, treat, or dispose of domestic or non-domestic wastewater...on the property where it originates, or on nearby property under the control of the user, which system is not connected to a public sewer...”

7. Title 124, Ch. 1, 079 defines a septic system as “an onsite wastewater treatment system that has a septic tank for primary treatment and a trench or bed soil absorption system for secondary treatment of wastewater.”

8. Title 124, Ch. 2, 007.03 prohibits the discharge of domestic wastewater from a dwelling or an onsite wastewater system to the land surface without Department approval.

9. Title 124, Ch. 3, 008 prohibits the operation of an onsite wastewater system if the system has failed, endangers public health or results in a prohibited discharge.

10. Neb. Rev. Stat. § 81-1506 makes it unlawful to cause land or water pollution or to cause to be placed any wastes in a location where they are likely to cause land or water pollution or to operate any disposal system without obtaining the necessary permits from the Department.

11. Pursuant to Neb. Rev. Stat. §81-1507, the Director may order necessary compliance actions be taken in response to the violations alleged within a reasonable time as described in Section IV, below.

III. COMPLAINT

12. The Respondent is the owner of an onsite wastewater system located at 71960 Road 374, Culbertson, Hitchcock County, Nebraska.

13. On or about January 10, 2017, the Department received a complaint regarding an open sewage discharge coming from Respondent’s property onto the adjacent property. The

Department followed up the complaint by sending a letter requesting the Respondent voluntarily cease the discharge and correct the problem.

14. On or about February 6, 2017, the Department received a response from Respondent stating that he was contacting certified installers and beginning to address the problem.

15. On or about February 9, 2017, the Department sent a compliance request letter asking for the onsite registration upon completion of the necessary work.

16. On or about May 3, 2017, the Department received a letter from Respondent along with two bids for the installation of a septic system.

17. On or about November 3, 2017, the Department sent a letter requesting the onsite registration and a reminding Respondent that a failing onsite system is illegal to operate.

18. On or about November 13, 2017, the Department received a letter stating Respondent had a contract for installing the septic system but that the contractor was behind schedule.

19. On or about June 5, 2018, the Department sent Respondent a Letter of Warning for failure to comply.

20. On or about July 13, 2018, the Department received a letter from Respondent stating he had filed for bankruptcy and requesting more time to come into compliance.

21. On or about April 10, 2019, Department staff conducted a site inspection and observed a sewer-discharge pipe outlet from Respondent's residence that drained onto neighboring property. During the April site visit, Department staff also met with Respondent who stated that due to limited area on his property, the cost of a new system was not economical. Respondent stated that he intended to fix the onsite system and was hopeful he could reach an agreement with a neighbor for an easement or a property transfer. Before leaving, Department staff discussed the State of Nebraska Title 124 rules and regulation regarding onsite wastewater systems and

reminded the Respondent that the issues with Respondent's onsite system would have to be corrected.

22. Respondent continues to operate a failed onsite wastewater system and is discharging wastewater to the ground surface in violation of Neb. Rev. Stat. § 81-1506 and Title 124.

IV. COMPLIANCE ORDER

23. It is hereby ORDERED that Respondent shall:

- a. By July 12, 2019, have the onsite wastewater system repaired, replaced or have a new system installed as necessary by a certified professional authorized to engage in such activities.
- b. By August 5, 2019, provide the Department with documentation that the onsite wastewater system complies with Title 124 requirements. Documentation shall be sent to the attention of:

Mr. Tom Buell, Onsite Section Supervisor
Nebraska Department of Environmental Quality
Suite 400, The Atrium
P.O. Box 98922
Lincoln, Nebraska 68509-8922

or copies may be sent as an attachment via email to:
thomas.buell@nebraska.gov

24. Respondent shall reply to the above address or email within seven (7) working days to all requests for information.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

25. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless the 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.

26. 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:

Jim Macy, Director
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.

VI. SETTLEMENT CONFERENCE

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

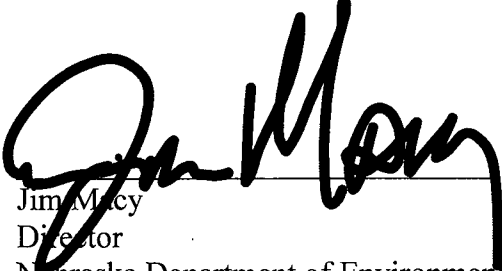
VII. RESERVATION OF RIGHTS AND PENALTY PROVISIONS

28. The Department reserves the right to require the Respondent to complete additional work or take additional actions as necessary to achieve compliance with all applicable laws and regulations. Further, the Department 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 Department from pursuing such enforcement.

29. Failure to comply with this Compliance Order may result in fines or penalties up to \$10,000.00 per day with each day of violation constituting a separate offence, as set out in Neb. Rev. Stat. § 81-1506.

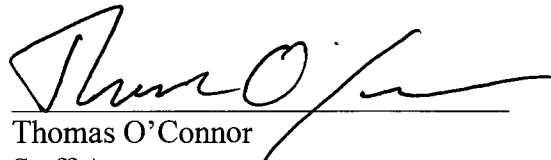
5-8-19
Date


Jim Macy
Director
Nebraska Department of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order of Variance was sent by certified United States mail, postage prepaid, return receipt requested this 9th day of May, 2019 to the following:

Nathan Hoyt
71960 Road 374
Culbertson, Nebraska 69024


Thomas O'Connor
Staff Attorney