

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF
THE WINONA BENDON TRUST

FID #115195

Respondent.

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Case No. 3554

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF
OPPORTUNITY FOR HEARING

I. INTRODUCTION

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507. The Complainant is the Director of the Nebraska Department of Environment and Energy (NDEE or Department).

2. The Respondent is The Winona Bendon Trust, which holds title to the parcel of land located at SW SW Section 35, Township 31, Range 6 W, in Knox County (the “parcel”). Winona Bendon is trustee of The Winona Bendon Trust and resides at 52619 882 Rd, Verdigre, NE, which is located on the parcel. An onsite wastewater (septic) system serves the residence located at 52619 882 Rd, Verdigre, NE.

II. JURISDICTION

3. NDEE is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1), of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 81-1532 and all rules and regulations promulgated thereunder.

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* (Title 124).



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III. COMPLAINT

5. The Complaint below establishes the violations, and the Compliance Order establishes a schedule for corrective actions to be taken by the Respondent.

6. On October 27, 2020, NDEE received a report from Winona Bendon that a septic system installed at the residence was discharging to nearby creek.

7. On January 8, 2021, a NDEE employee spoke with the individual who installed the septic system at the residence. The installer confirmed that he installed a pipe from the septic system which discharged to the surface.

8. On January 25, 2021, a Department of Health and Human Services employee operating under a memorandum of agreement with NDEE inspected the septic system at the residence. The inspector documented a pipe which discharged to a creek and determined the pipe was connected to the septic system serving the residence.

9. 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.

10. Title 124, Ch. 2, 007.01 prohibits the discharge of domestic wastewater to surface water without a permit issued in accordance with Nebraska Administrative Code Title 119 - Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System.

11. Title 124 Ch. 3, 008.04 prohibits the operation of a domestic septic system if the system has failed, endangers public health or results in a prohibited discharge.

12. On January 28, 2021, NDEE sent a Letter of Non-Compliance to Ms. Bendon regarding the failed septic system and resulting wastewater discharges. A certified mail receipt confirms

the letter was received by Ms. Bendon on February 1, 2021. The letter requested that Ms.

Bendon:

- a. Immediately cease the discharge;
- b. Before March 15, 2021 provide written documentation that a certified professional has been contracted to connect the septic tank to a drainfield that does not discharge to the land surface or creek; and
- c. Before May 15, 2021, have a septic system installed which complies with Title 124 and is registered with the Department.

13. To date, Ms. Bendon has failed to submit written documentation to NDEE that the system is in compliance with Title 124.

III. COMPLIANCE ORDER

14. It is hereby ORDERED that Respondent shall:

- a. Within 30 days of receiving this Order, submit documentation to NDEE detailing the measures taken to cease discharging wastewater and prevent future discharges from the septic system servicing 52619 882 Rd, Verdigre, NE.
- b. Within 90 days of receiving this Order, submit documentation to NDEE that a certified professional as defined in Title 124 has been contracted to have the septic system repaired or replaced as necessary to ensure the system complies with the requirements of Title 124.
- c. Within 180 days of receiving this Order, submit documentation to NDEE that the septic system has been repaired or replaced as necessary to ensure the system complies with the requirements of Title 124.

- d. Respond in writing within seven (7) working days to all requests for information as requested by the Department.

15. Submissions to the Department under this Order shall refer to FID #115195 and shall be sent to:

Alan Aanerud
Onsite Section Supervisor
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

16. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files an answer and request, 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.

17. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Neb. Admin. Code, Title 115, Rules of Practice and Procedure. The answer and request for hearing may be filed by mail to:

Jim Macy, Director,
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, Nebraska 68509-892,

or may be delivered to the Department's Lincoln office located at 245 Fallbrook Blvd., Lincoln, Nebraska.

V. SETTLEMENT CONFERENCE

18. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Steve Thomas, Attorney, Nebraska Department of Environment and

Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or Respondent's attorney may make such a request.

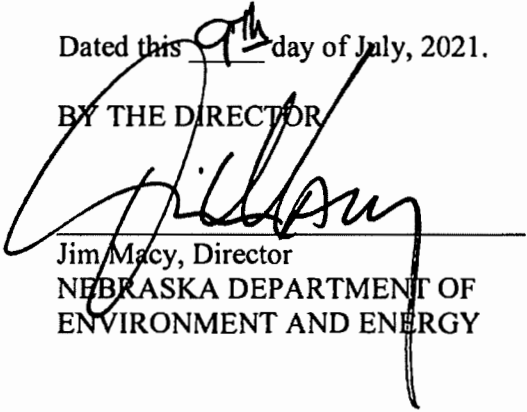
19. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

20. The NDEE 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 NDEE from pursuing such enforcement.

Dated this 9th day of July, 2021.

BY THE DIRECTOR



Jim Macy, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY

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 9th day of July, 2021, upon the Respondent listed below:

The Winona Bendon Trust
c/o Winona Bendon, Trustee
52619 882nd Rd
Verdigre, NE 68783
USPS Label # 9414811898765804274040


Lauren Triplett
Staff Assistant - Legal Division