

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

|                                    |   |                             |
|------------------------------------|---|-----------------------------|
| THE CASE OF                        | ) | Case No. 3295               |
| <b>Beverly Whitten</b>             | ) |                             |
| 43042 Kilgore Road, Gibbon         | ) |                             |
| Buffalo County, Nebraska           | ) | COMPLAINT, ORDER AND NOTICE |
| Onsite Wastewater Treatment System | ) | OF OPPORTUNITY FOR          |
| F.I.D. # 98302                     | ) | HEARING                     |
|                                    | ) |                             |
| Respondents                        | ) |                             |

PRELIMINARY STATEMENT

This Complaint, Order, and Opportunity for Hearing is issued by the Director of the Department of Environmental Quality (herein after referred to as "Department" or "NDEQ") pursuant to Neb. Rev. Stat. §81-1507(1) of the Environmental Protection Act (Act), Neb. Rev. Stat. §81-1501 et seq. (Reissue 2008). The Respondent is Beverly Whitten. The Complaint below establishes the violations, the Order sets out what is required of the Respondent and the Notice of Hearing sets out how to ask for a hearing in this matter.

COMPLAINT

1. Respondent Beverly Whitten is the owner of a dwelling on property located at 43042 Kilgore Road, Gibbon, Buffalo County, Nebraska, that has a septic system.

2. Pursuant to *Neb. Rev. Stat.* § 81-1508.02 (1) (e), it is unlawful for any person to violate any rule or regulation.

3. Title 124, *RULES AND REGULATIONS FOR THE DESIGN, OPERATION AND MAINTENANCE OF ON-SITE WASTEWATER TREATMENT SYSTEMS*, Chapter 3, Section 008.04, prohibits operating an onsite waste

system if the system is endangering public health, failing or if operation of the system results in a prohibited discharge.

4. From February 2011 to the present, the Respondent has a septic system which has been continuously discharging to the surface or has failed.

5. The Director finds that Respondent has violated Title 124, Chapter 3, Section 008.04.

### ORDER

IT IS HEREBY ORDERED THAT:

5. Respondent shall:

- a. Immediately eliminate discharge of wastewater to the land surface and prevent access to the area where the discharge took place by erecting a fence or similar temporary barrier with a warning sign. Provide proof of this to the Department within 15 days of receiving this Order.
- b. Within 30 days of this Order, submit to the Department an assessment conducted by a certified installer or inspector of the current system, which includes depth to ground water, scaled drawings, construction details, system capacity, system condition, absorption area dimensions and setbacks.
- c. Within 90 days of this Order, submit to the Department evidence that the existing failed onsite wastewater treatment system has been repaired or modified by a certified professional in compliance with Title 124.

d. Respondent shall allow NDEQ or its agents access to the property to verify compliance.

6. Respondent shall take steps to ensure that the certified professional doing the work registers the new system with the Department within 45 days of installation.

7. Information to be submitted under this Order shall be sent to:

Steve Goans  
Wastewater Section Supervisor  
Water Quality Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922  
Telephone number (402) 471-2186

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

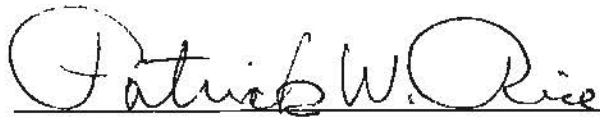
8. In accordance with *Neb. Rev. Stat. §81-1507(1)*, this Order shall become final unless the Respondent files an answer and requests a hearing in writing no later than 30 days after receipt of the Complaint, Compliance Order and Notice of Opportunity for Hearing.

9. If the Respondent decides to contest this Order, a written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Chapter 7. The answer and request for hearing must be filed with the Director, Department of Environmental Quality, P.O. BOX 98922, Lincoln, Nebraska 68509-8922.

10. Failure to answer shall be deemed an admission of the facts of the Complaint. Violation of this Order may result in penalties of up to \$10,000 per day.

11. This Complaint, Compliance, Order and Notice of Opportunity for Hearing does not preclude the Department of Environmental Quality from pursuing enforcement in the proper court for injunctive relief and penalties based on violations of state statutes or regulations.

Dated this 18<sup>th</sup> day of December, 2014.



Patrick W. Rice  
Acting Director  
Department of Environmental Quality

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Order and Notice of Opportunity was served by certified United States mail, postage prepaid, return receipt requested this 19<sup>th</sup> day of December 2014 upon the Respondent and persons listed below:

Beverly Whitten, 2285 9<sup>th</sup> Street East, Dickinson ND 58601.



Steven J. Moeller  
Staff Attorney