

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)	
)	Case No. 3555
LOWELL R. JOHNSON)	
)	COMPLAINT, COMPLIANCE ORDER
and)	AND NOTICE OF
)	OPPORTUNITY FOR HEARING
ROSS J. JOHNSON)	
)	
FID #113926)	
)	
RESPONDENTS.)	

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). The Respondents are Lowell R. Johnson and Ross J. Johnson, joint owners and operators of a failing onsite wastewater treatment system located in Fillmore County, NE.

2. Complainant has determined the Respondents are in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 *et seq.*, and Neb. Admin. Code, Title 124, *Rules and Regulations for the Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems*.

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 NEPA and Title 124.

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III. COMPLAINT

4. The Complaint below establishes the violations and the Compliance Order establishes a schedule of corrective actions to be taken by the Respondents.

5. Respondents jointly own and operate an onsite wastewater treatment (OWT) system as defined by Title 124, Chapter 1, 061. The OWT system is located on 2 adjacent parcels at SE 1/4, SE 1/4, SW 1/4, Section 14, Township 07N, Range 03W, Fillmore County, NE.

6. The OWT system consists of a “dwelling” as defined in Title 124, Chapter 1, 031, that generates domestic wastewater and is on property owned by Respondent Lowell R. Johnson. The Fillmore County Assessor parcel identification number for the property containing the dwelling that is generating domestic wastewater is 300032557. The physical address is 1110 Road J, Geneva, NE 68361.

7. The OWT system also consists of a “wastewater lagoon” as defined in Title 124, Chapter 1, 094, that receives domestic wastewater from the dwelling owned by Respondent Lowell R. Johnson. The wastewater lagoon is located on property owned by Respondent Ross J. Johnson. The Fillmore County Assessor parcel identification number for the property containing the wastewater lagoon that is receiving domestic wastewater is 300032550. The physical location of the wastewater lagoon is approximately eighty (80) yards northeast of the dwelling at 1110 Road J, Geneva, NE 68361.

8. On January 31, 2020, NDEE received an anonymous complaint that indicated Respondent Mr. Lowell R. Johnson “is discharging his septic waste directly to a former hog operation lagoon”. The complaint stated that the lagoon had not been used for livestock production in approximately thirty (30) years, but had been used for the discharge of domestic wastewater from the dwelling on the property of Respondent Lowell R. Johnson. The complaint

also identified that the wastewater lagoon and former hog operation was located on neighboring property.

9. On March 12, 2020, NDEE conducted a complaint investigation at 1110 Road J in Fillmore County, NE to evaluate the complaint and Respondents' compliance or non-compliance with Title 124.

10. The NDEE inspectors first met with Respondent Ross J. Johnson at his property containing the lagoon and confirmed the discharge of domestic wastewater to the former hog operation lagoon, now used as a domestic wastewater lagoon. The NDEE inspectors observed:

- a. the discharge of wastewater on the surface of the ground;
- b. visible domestic wastewater solids and toilet paper at the ground and water surface;
- c. a domestic wastewater discharge pipe covered by a section of 55-gallon drum;
- d. an indeterminate lagoon depth;
- e. no lagoon depth marker;
- f. black standing water with a noticeable odor;
- g. no fencing around the lagoon; and
- h. multiple brush piles surrounding the lagoon.

11. The NDEE observations of the wastewater lagoon on the property of Respondent Ross J. Johnson support a determination that the lagoon is a "failed or failing" onsite wastewater treatment system as defined in Title 124, Chapter 1, 035.

12. The NDEE inspectors next met with Respondent Lowell R. Johnson at his adjacent property where he confirmed that it is his dwelling that is discharging domestic wastewater to the former hog lagoon, now a domestic wastewater lagoon on the property of Respondent Ross J. Johnson.

13. Between March 2020 and April 2021, NDEE staff made various attempts by phone and letter to obtain voluntarily compliance with Title 124 from Respondent Lowell R. Johnson.

14. To date, Respondents Lowell R. Johnson and Ross J. Johnson have not made efforts to voluntarily comply with Title 124.

15. Title 124, Chapter 2, 001 states:

“001 A dwelling or non-dwelling facility that generates wastewater shall have an onsite wastewater treatment system in accordance with these regulations or be connected to a wastewater works.”

16. Title 124, Chapter 2, 004 states:

“004 An existing onsite wastewater treatment system is subject to these design requirements if:

004.01 It endangers public health, fails, or discharges a prohibited or unauthorized discharge. A cesspool, seepage pit, dry well, or leaching pit is a failed system. A soil absorption system with less than four feet to groundwater or other limiting soil characteristic is a failed system;”

17. Title 124, Chapter 2, 007 states:

“007 A discharge of wastewater is prohibited:

007.03 To the land surface from a dwelling, non-dwelling facility, building sewer, or onsite wastewater treatment system without Department approval.

18. Title 124, Chapter 15, 003 states:

003 The owner of a lagoon shall operate and maintain the lagoon in the following manner:

003.01 The liquid level in a lagoon shall be maintained at a minimum depth of two feet. Additional water shall be added as necessary to maintain the two foot minimum depth.

003.02 The lagoon area shall be mowed to keep grass and other plants at six inches or less in height on the lagoon slopes and top of dike.

003.03 The lagoon shall be operated to prevent the liquid level from encroaching on the one foot freeboard requirement of the lagoon.

003.04 Solids will be removed from the lagoon if needed through the services of a Master or Journeyman Pumper, a professional engineer, or a registered environmental health specialist and disposed of in accordance with this Title.

19. Respondents have violated and continue to be in violation of Title 124, Chapter 2, 001, 004.01, 007.03; and Chapter 15, 003 since on or around January 31, 2020 or before.

20. The NDEE Director is authorized under Neb. Rev. Stat. §81-1504(7), (25), and §81-1507(1) to require and enforce compliance schedules to prevent, control, or abate unlawful discharges to land of the State and to require the construction of new disposal systems or any parts thereof or the modification, extension, or adoption of other remedial measures to prevent, control, or abate pollution.

III. COMPLIANCE ORDER

21. Within 30 days of receiving this Order, Respondents shall indicate together in a single, signed writing whether they have selected “Compliance Option A” or “Compliance Option B”, as described below, in meeting the requirements of Title 124.

22. In selecting Compliance Option A, Respondents shall:

- a.** Upgrade and maintain the existing onsite wastewater treatment lagoon system to meet all applicable requirements of Title 124, including but not limited to the requirements in Chapter 12, 002 and in Chapter 15, 003; and
- b.** Mutually execute and record an easement appurtenant prepared by an attorney licensed in Nebraska that allows for domestic wastewater generated on Fillmore County Assessor parcel identification number 300032557 to be discharged to an upgraded, Title 124-compliant onsite wastewater treatment lagoon system located on Fillmore County Assessor parcel identification number 300032550. The easement appurtenant shall include location descriptions of all upgraded onsite wastewater treatment lagoon structures, discharge piping, etc. The easement appurtenant shall also include provisions related to access, operation, and maintenance of the onsite wastewater treatment lagoon system on an ongoing basis in accordance with Title 124, Chapter 5, 003.

23. In selecting Compliance Option B, Respondents shall:

- a. Install a septic system as defined in Title 124, Chapter 1, 079 meeting all applicable regulatory requirements of Title 124 that is fully located only on the property of Respondent Lowell R. Johnson and does not discharge to or otherwise have surface or subsurface contact with any adjacent properties; and
- b. Permanently abandon the existing wastewater lagoon that is located on the property of Respondent Ross J. Johnson in accordance with the closure requirements of Title 124, Chapter 17, 003.

24. In selecting either Compliance Option A or Compliance Option B, Respondents must employ the services of a certified onsite wastewater professional, a registered environmental health specialist, or a professional engineer (P.E.) licensed in Nebraska for all project work including, but not limited to, siting, design, construction, closure, and disposal of previously accumulated domestic wastewater, wastewater solids, toilet paper, fats, oils, grease, etc.

25. Within 60 days of receiving this Order, Respondents shall submit a written project timeline for completion of either Compliance Option A or Compliance Option B and provide, in writing, the name of the certified onsite wastewater professional, registered environmental health specialist, or professional engineer (P.E.) licensed in Nebraska employed to assist Respondents in achieving compliance with Title 124.

26. Upon submittal of the written project timeline for either Compliance Option A or Compliance Option B, Respondents shall complete all project tasks for the selected compliance option by the dates as listed therein and subject to review and approval by NDEE.

27. Submissions to the Department under this Order shall refer to FID #113926 and shall be sent to:

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

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

29. 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, State of Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the Department's Lincoln office located at 245 Fallbrook Blvd., Lincoln, Nebraska.

V. SETTLEMENT CONFERENCE

30. Whether or not Respondents request a hearing, an informal settlement conference may be requested by writing to Brian McMullen, Attorney, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

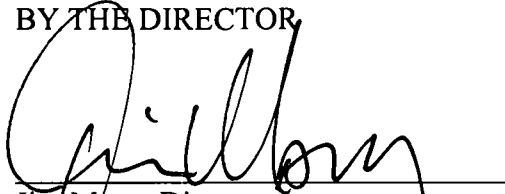
31. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

32. 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 30th day of June, 2021.

BY THE DIRECTOR



Jim Macy, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY