

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF
ROBERT P. BANKS

CASE NO. 3499

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY FOR
HEARING

NDEQ # 110172

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 Environment and Energy (Department).

2. The Respondent is Robert Banks who resides at 751 Deming Street, Campbell, Franklin County, Nebraska 68923.

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. 2018) 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, 012 defines a cesspool as an underground pit into which raw household wastewater has or can discharge and from which the liquid has or can seep into the surrounding soil. A cesspool is a failed or prohibited system for the purposes of these regulations.

6. Title 124, Ch. 1, 035 defines failed or failing as an unauthorized discharge of effluent or wastewater: on the surface of the ground; or to a cesspool, seepage pit, dry well, or leaching pit; or to a soil absorption system with less than four feet to groundwater or other limiting soil characteristics; or which threatens to cause pollution of any air, water, or land of the State; or which threatens public health.

7. 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...”

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 a wastewater system located at 751 Deming Street, Campbell, Nebraska.

13. On or about August 30, 2017, the Department received a complaint regarding an open sewage discharge coming from Respondent's property onto 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 September 26, 2017, the Department received a response from the Respondent admitting that he had pumped sewage but only onto his own property.

15. On or about November 27, 2018 and again on May 30, 2019 the Department sent the Respondent letters of warning requesting that Respondent provide the Department with written documentation that the wastewater system complies with Title 124 requirements.

16. On or about June 3, 2019, the Department received a phone call from the Respondent stating that he has two cisterns for sewage, the first acts as a septic tank and the second seeps water. Department staff informed the Respondent that he had a failing on-site wastewater system and he would either need to replace it or the residence would have to connect to the city sewer.

17. On or about September 19, 2019, Department staff conducted a drive by site inspection and observed what appeared to be a sewer clean-out pipe on the north side of the house. Department staff were unable to contact Mr. Banks during the site visit or by telephone afterwards. Respondent's discharge of wastewater onto the land surface is a violation of Title 124, Ch. 2, 007.03.

18. Respondent's use of cisterns to dispose of wastewater is an unauthorized discharge of wastewater to a cesspool in violation of Neb. Rev. Stat. § 81-1506 and Title 124.

IV. COMPLIANCE ORDER

19. It is hereby ORDERED that Respondent shall:

- a. By December 20, 2019, have his wastewater system inspected and repaired or replaced by a certified professional authorized to engage in such activities or connect the residence to the city sewer system.
- b. By January 17, 2020, provide the Department with documentation that his wastewater system comply with Title 124 requirements. Documentation shall be sent to the attention of:

Mr. Tom Buell, Onsite Section Supervisor
Nebraska Department of Environment and Energy
Suite 400, The Atrium
P.O. Box 98922
Lincoln, Nebraska 68509-8922
or send copies as an attachment via email to:
thomas.buell@nebraska.gov

20. 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

21. 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.

22. 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 Environment and Energy
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

23. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of Environment and Energy, 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.

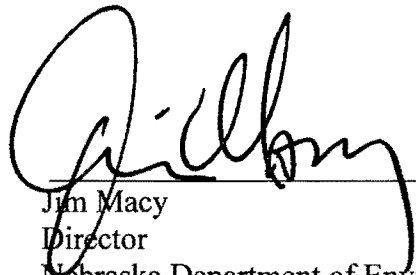
VII. RESERVATION OF RIGHTS AND PENALTY PROVISIONS

24. 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.

25. 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.

10-22-19
Date




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 23rd day of October, 2019, upon the Respondent listed below:

Robert Banks
751 Deming Street
Campbell, NE 68923



Lauren Triplett
Staff Assistant - Legal Division

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