

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF	)	Case No. 2960
<b>Wayne L. Herrmann, d/b/a</b> Great	)	
Plains Septic & Aeration, Great Plains	)	CONSENT ORDER
Septic, Mid-States Aeration,	)	
Omaha, Nebraska	)	
	)	
Respondent.	)	

I. INTRODUCTION

1. The Department of Environmental Quality (DEQ) and the Respondent, Wayne L. Herrmann, doing business as Great Plains Septic and Aeration, Great Plains Septic and Mid-States Aeration, voluntarily enter into this Consent Order. The Consent Order establishes a schedule of compliance for the Respondent to achieve and maintain compliance with Title 124, *Rules and Regulations for the Design, Operation and Maintenance of Onsite Wastewater Treatment Systems*, the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 et seq. (Reissue 2008, Supp. 2009). This Consent Order also provides for the performance of activities specified in Section VI.

II. JURISDICTION

2. The DEQ 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 NEPA. This Consent Order is issued under the authority vested in the Director of the DEQ by Neb. Rev. Stats. §81-1504(25) and §81-1507(1).

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent agrees that it will not

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contest the basis or validity of this Consent Order in any proceedings by the DEQ to enforce this Consent Order.

### III. PARTIES

4. This Consent Order is binding on the Respondent and any successors and assigns.

5. The Respondent shall be responsible for any noncompliance with this Consent Order.

### IV. FINDINGS OF FACT

6. At all times material herein the Respondent, Wayne L. Herrmann, doing business as Great Plains Septic and Aeration, Great Plains Septic and Mid-States Aeration, owns and operates a septic system installation business in Douglas County, Nebraska.

7. The Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, ("Act") Neb. Rev. Stat. §81-15,236, et seq., provides that onsite systems shall be installed by certified professionals. In addition the Act provides for the registration of private onsite wastewater treatment systems. Specifically, Neb. Rev. Stat. §81-15,247 (6) and Title 124, *Rules and Regulations for the Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems*, Chapter 22, Section 002 provides that late fees be paid for systems registered more than 45 days after completion of construction.

8. Respondent has registered 9 systems in which system registration late fees are owed the Plaintiff in the amount of \$3,750. Plaintiff has demanded payment of the late fees and Defendant has refused to pay said late fees.

#### V. CONCLUSIONS OF LAW AND DETERMINATIONS

9. The Respondent is a "person" as defined in Neb. Rev. Stat. §81-1502(10).

10. The Director of the DEQ is authorized pursuant to Neb. Rev. Stat. §81-1504(7) to issue this order requiring the construction of wastewater treatment systems or any parts thereof to prevent, control, or abate pollution.

11. This Consent Order shall have the force and effect of a final order of the Director of the DEQ issued pursuant to NEPA and is binding on the Respondent's officers, employees, agents, successors and assigns.

#### VI. COMPLIANCE SCHEDULE

12. The Respondent shall perform the following activities:

- A. Submit an upfront late system registration fee payment of \$600 upon signing of the settlement offer. This \$600 will be used to satisfy the late system registration fees for the Boystown and Cvitak systems.
- B. On the first of each month thereafter, submit seven (7) monthly payments of \$450 each to paydown the late system registration fee balance of \$3,150 for the remaining outstanding system registrations. Each of these subsequent payments will be applied to the systems in the following

order: During, Pritchett, Laguzza, Engel, Lor, Romano and Abundis.

- C. The \$600 upfront late system registration fee payment as set out in paragraph 12 A. above must be received prior to submittal of any application for certification by examination. As part of this agreement, the fees previously submitted to the Department for renewal of your certificate and totaling \$400 (\$300 certificate fee + \$100 examination(s) fee (\$50 Installer category + \$50 Inspector category)) shall be applied towards your application for certification by examination for the Installer and Inspector categories.
- D. The application for certification by examination must include a completed application for a certificate on Form D and a completed application for examination on Form H.
- E. Until such time that you obtain certification by examination, you may not engage in the siting, layout, construction, reconstruction, alteration, modification, repair, or otherwise changing of a private onsite wastewater treatment system unless a Master Installer, a Journeyman Installer, a professional engineer or a registered environmental health specialist who is responsible for such work is physically present at the site where such work is being performed and is supervising the work.

F. Once you have received authorization to practice under a certificate by examination, you must comply with all applicable requirements of Title 124 including, but not limited to, registration with the Department of any onsite wastewater treatment system within forty-five (45) days of completion of the construction, reconstruction, alteration, modification, or other change to the system. Further Respondent agrees to cease air fracturing to fracture soil.

#### VII. COMPLIANCE WITH OTHER LAWS

13. The Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permits and that such performance shall be considered by DEQ in determining further actions or proceedings.

#### VIII. FORCE MAJEURE

14. Force majeure for the purposes of this Consent Order means any event arising from causes beyond the reasonable control of the Respondent and any entity controlled by the Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order. The Respondent shall exercise best efforts to anticipate any potential force majeure events and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable.

15. If any event occurs that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the Respondent shall notify the DEQ by telephone, e-mail or fax within 24 hours of learning of the event. The Respondent shall provide, in writing within 7 days, the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any action.

16. Information required to be submitted under this Order shall be sent to:

Gary Buttermore  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Suite 400, The Atrium  
1200 N Street  
Lincoln, Nebraska 68509-8922  
(402) 471-2186  
Fax (402) 471- 2909

17. If the DEQ agrees that an event may delay the performance of any obligation under this consent order, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay.

18. The parties may agree in writing to an extension caused by any other event.

#### IX. RESERVATION OF RIGHTS

19. Nothing in this Consent Order shall be construed to limit the power and authority of the DEQ to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA and any rules, regulations, orders, or permits issued pursuant to NEPA.

#### X. NEGATION OF AGENCY RELATIONSHIP

20. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the DEQ and the Respondent.

#### XI. AMENDMENT

21. This Consent Order may be modified and amended in writing by mutual agreement of the DEQ and the Respondent.

#### XII. EFFECTIVE DATE

22. This Consent Order shall become effective on the date it is signed by the Director of the DEQ or his designee.

#### XIII. SEVERABILITY

23. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

#### XIV. SIGNATURES

24. For the Respondent:

By: /s/ Wayne Herrmann

Date: May 21, 2010

25. For the DEQ: IT IS ORDERED and agreed this 1<sup>st</sup> day of June, 2010.

By: /s/ Michael J. Linder

Michael J. Linder

Director

Department of Environmental Quality