

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3347
WILLIAM LEHR	)	
RE: UNAPPROVED	)	
SANITARY SEWER	)	COMPLAINT, COMPLIANCE
DUNCAN, NEBRASKA	)	ORDER, AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent	)	

**I. INTRODUCTION**

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2015) and in conformance with Neb. Admin. Code, *Title 123 – Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*. The Complainant is James Macy, Director of the Nebraska Department of Environmental Quality (Department). The Respondent is William Lehr who resides at 16361 265<sup>th</sup> Avenue, Columbus, Nebraska 68601.

2. The Department 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, regulations, and orders promulgated thereunder.

3. The Department is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504 and § 81-1505, of administering the state program for construction and operation of wastewater collection systems and sanitary sewer mains, and the rules and regulations adopted and promulgated pursuant to such acts.



4. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of setting standards for sanitary sewer systems, as expressed in Neb. Rev. Stat. § 81-1505(1) and § 81-1505(8), the Council adopted and promulgated a rule codified as Neb. Adm. Code, *Title 123 – Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*.

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

## **II. COMPLAINT**

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

7. On or about December 15, 2015, Department personnel were informed of a non-conforming, privately-owned wastewater works (sanitary sewer main) constructed by the Respondent located near the intersection of 6<sup>th</sup> Street and Century Drive in the Village of Duncan.

8. On or about December 21, 2015, Department personnel visited the site and determined that three residential houses on Century Drive were connected to the Village of Duncan's municipal sewer and wastewater treatment system by a substandard 4-inch PVC plastic pipe.

9. Department records show the substandard 4-inch PVC sewer main was constructed and installed without a Department permit, was not designed by a Nebraska registered professional engineer, and does not meet Title 123 design standards.

10. Pursuant Neb. Rev. Stat. § 81-1506(2), it is unlawful for any person to construct, install, or operate a wastewater disposal system—or any sewer main or sewer addition—without first obtaining a permit from the Department.

11. Respondent's failure to obtain a permit from the Department prior to constructing, installing, modifying, or operating a sanitary sewer main is a violation of Neb. Rev. Stat. § 81-1506(2).

### **III. COMPLIANCE ORDER**

12. It is hereby ORDERED that the Respondent shall:

- a. By October 1, 2016 replace the existing 4 inch PVC sewer main with a sewer main designed by a professional engineer and approved by the Department, or abandon the existing sewer main and install a Department-approved alternative wastewater system.
- b. Respondent shall meet all applicable Title 123 rules and regulations for construction, abandonment, design standards, submission of engineering documents, and plans and specifications.

13. Respondent shall respond in writing within seven (7) working days to all requests for information requested by the Department.

### **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

14. 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.

15. 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 Environmental Quality  
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.

#### **V. SETTLEMENT CONFERENCE**

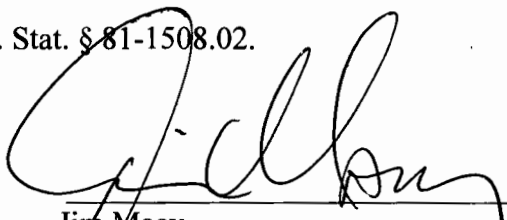
16. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

17. 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**

18. The NDEQ 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. Failure to obey this order may result in fines up to \$10,000 per violation per day, as set out in Neb. Rev. Stat. § 81-1508.02.

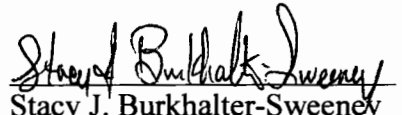
6-6-16  
Date

  
Jim Macy  
Director  
Nebraska Department of Environmental Quality

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for Hearing, with attachments, was served by certified United States mail, postage prepaid, return receipt requested this 7<sup>th</sup> day of June 2016 upon the Respondent listed below:

Mr. William Lehr  
16361 265th Avenue  
Columbus, Nebraska 68601

  
Stacy J. Burkhalter-Sweeney  
Legal Services Staff Assistant