

IN THE MATTER OF

FID #115835

RESPONDENT.

Case No. 3558

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF
OPPORTUNITY FOR HEARING

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 Respondent is Gary Fleshman, owner and operator of a failing onsite wastewater treatment system located in Keith 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.*

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.

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



2021,0004578

5. Respondent owns and operates an onsite wastewater treatment (OWT) system as defined by Title 124, Chapter 1, 061. The OWT system is located at Lot 39, K-1 Road, Section 4, Township 14N, Range 38W, Keith County, NE.

6. Respondent's OWT system located consists of a "dwelling" as defined in Title 124, Chapter 1, 031, that generates domestic wastewater and a "septic system" as defined in Title 124, Chapter 1, 079, that is designed to receive, store, and treat domestic wastewater from the dwelling owned by Respondent.

7. On April 14, 2021, NDEE received an anonymous complaint that indicated Respondent's septic system was failing, that domestic wastewater from the failing septic system was discharging downhill, and that the domestic wastewater was producing a strong odor. The complaint also indicated that the septic system had been failing for several months.

8. On May 18, 2021, NDEE conducted a complaint investigation at Lot 39, K-1 Road in Keith County, NE to evaluate the complaint and Respondent's compliance or non-compliance with Title 124. The NDEE inspector confirmed that domestic wastewater and solids from Respondent's septic system was discharging downhill. The NDEE inspector documented the odor of domestic wastewater and the area where domestic wastewater was discharging to the surface of the ground. The NDEE inspector noted that no apparent action had been taken to stop the discharge.

9. The NDEE observations of the septic system owned and operated by Respondent support a determination that the lagoon is a "failed or failing" OWT system as defined in Title 124, Chapter 1, 035.

10. Between April and June 2021, NDEE staff made various attempts by phone and letter to obtain Respondent's voluntarily compliance with Title 124.

11. To date, Respondent has not made efforts to voluntarily comply with Title 124.

12. 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.”

13. 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;”

14. 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.

15. Respondent has violated and continues to be in violation of Title 124, Chapter 2, 001, 004.01, and 007.03 since on or around April 14, 2021 or before.

16. 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

17. Respondent shall **immediately** have his failing septic system located at Lot 39, K-1 Road pumped by a Master or Journeyman Pumper as required by Title 124 to immediately cease the discharge of domestic wastewater to the surface of the ground. Respondent shall have such

present and future pumping performed at both a volume and frequency as is necessary to prevent any future discharges of domestic wastewater to the ground surface.

18. Respondent shall **immediately** have all domestic wastewater presently on the surface of the ground at or near Lot 39, K-1 Road properly removed and disposed in accordance with Title 124 and all other applicable state and local requirements.

19. **Within 30 days** of receiving this Order, Respondent or his representatives shall submit a construction/operating permit application in accordance with Title 124, Chapter 3, 003 for a replacement OWT system that complies with all applicable requirements of Title 124. With this application, Respondent shall submit the \$450 permit application fee as required by Title 124, Appendix A.

20. **Within 30 days** of receiving this Order, Respondent or his representatives shall submit a written project timeline for completing construction and commencing operation of the OWT system applied for in accordance with Title 124, Chapter 3, 003 and this Order.

21. Upon submittal of the written project timeline, Respondent shall complete all project work by the dates as listed therein and subject to review and approval by NDEE.

22. Respondent 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.

23. Submissions to the Department under this Order shall refer to FID #115835 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

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

25. 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

26. Whether or not Respondent requests 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.

27. 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.

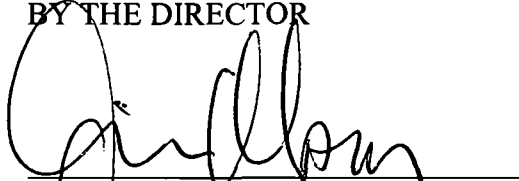
VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

28. 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

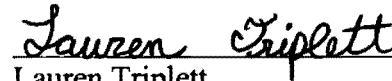


Jim Macy, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY

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 30th day of June, 2021, upon the Respondent listed below:

Gary Fleshman
39 K-1 Road
Ogallala, NE 69153
USPS Label # 9414811898765809453433



Lauren Triplett
Staff Assistant - Legal Division