

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Case No. 3020

IN THE MATTER OF
JAMES McGINNIS, D/B/A
CENTRAL PLAINS, INC.,
Respondent.

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(1) of the Nebraska Environmental Protection Act § 81-1501 to -1532 (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (hereinafter “Department” or “NDEQ”). The Respondent is James McGinnis, a resident of South Dakota, doing business as Central Plains, Inc. in Cuming County, Nebraska.

2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) & (4) (Reissue 2008), of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 to -1532, and all rules, regulations, and permits promulgated thereunder. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. §§ 81-1504 (7) and -1507 (Reissue 2008).

3. The Respondent, James McGinnis, doing business as Central Plains, Inc., owns and operates a truck wash located 1/4 mile north of Highway 275 on the west side of Road 4-1/2 near Wisner in Cuming County, Nebraska. The legal description of the location of the truck wash is NE Part of SE 1/4, NW 1/4, Section 34, Township 24 North, Range 4 East.

4. Neb. Rev. Stat. § 81-1506(2)(b) (Reissue 2008) states that it is unlawful to “[c]onstruct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department. . . .” Nebraska Administrative Code Title 123, *Rules and Regulations for The Design,*

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Operation And Maintenance Of Wastewater Works, was promulgated pursuant to Neb. Rev. Stat. § 81-1505. Title 123, Chapter 3, Section 001, states that “[n]o person shall construct, install, modify, or make additions to a wastewater works until a construction permit is issued authorizing the project.”

5. On or about October 26, 2009, Respondent was found to be operating a wastewater lagoon to capture wash water and manure from his truck wash operation. Respondent never sought or received a construction permit for this wastewater system. Respondent operated the lagoon until December 19, 2009 without a permit.

6. Neb. Rev. Stat. § 81-1506(1)(a) (Reissue 2008) states that “[i]t shall be unlawful for any person ... [t]o cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state ...”

7. Though Respondent has discontinued operation of the truck wash facility, wastewater solids, manure, and other wastes have accumulated and remain at the site. This accumulated waste is polluting land and waters of the state. Respondent has failed to abate pollution caused by the truck wash, including properly disposing of manure and wastewater solids.

8. The Director finds that Respondent has violated Neb. Rev. Stat. § 81-1506 and Title 123.

9. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) (Reissue 2008) to issue this order requiring abandonment of the wastewater system and proper disposal of the remaining waste as necessary to prevent and abate pollution.

COMPLIANCE ORDER

10. IT IS THEREFORE ORDERED that the Respondent shall perform, within the following time frames, the following activities:

- a. On or before September 15, 2010, Respondent shall submit a letter to DEQ describing a cleanup plan that properly disposes of all manure,

wastewater solids, and other wastes that have accumulated at Respondent's truck wash site.

- b. Immediately upon written approval of the cleanup plan, Respondent shall begin cleanup operation.
- c. By January 1, 2011, Respondent shall complete cleanup operations at the site and submit a signed letter to the Department stating that site cleanup has been completed according to the approved cleanup plan.

11. Information to be submitted under this Order shall be sent to:

Steve Goans
Wastewater Section Supervisor, Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number: (402) 471-2186

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

12. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1) (Reissue 2008), unless 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.

13. 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*, Chapter 7. The answer and request for hearing may be filed by mail to:

Michael J. Linder, 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.

SETTLEMENT CONFERENCE

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

15. 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.

INJUNCTIVE RELIEF AND PENALTY PROVISIONS

16. 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 NDEQ from pursuing such enforcement. Failure to obey this order may result in fine up to \$10,000 per day as set out in Neb. Rev. Stat. § 81-1508.02.

August 12, 2010

Date

/s/ Michael J. Linder

Michael J. Linder, 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 13th day of August 2010 upon the Respondent listed below:

James M. McGinnis d/b/a/ Central Plains, Inc.
5 Calamity Lane
Deadwood, SD 57732

/s/ Lydia Fiedler

Lydia Fiedler
Staff Attorney