

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	CASE NO. 3432
)	
JAMES AND KATHRYN)	COMPLAINT, COMPLIANCE
MENSENDIKE)	ORDER AND NOTICE OF
FID # 75594)	OPPORTUNITY FOR HEARING
)	
Respondents)	

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 (NEPA), Neb. Rev. Stat. § 81-1501 *et. seq.* (Reissue 2014; Cum. Supp. 2016). The Complainant is James Macy, Director of the Nebraska Department of Environmental Quality (Department). The Respondents are James and Kathryn Mensendike who reside at 6417 O Rd, Nebraska City, Otoe County, Nebraska.

II. JURISDICTION

2. The Department is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504 (1) to administer and enforce the NEPA and all rules, regulations and orders created thereunder.

3. 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*.



4. 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

5. Respondents at all time material herein have resided at 6417 O Rd, Nebraska City, Nebraska. Through a recorded easement, Respondents have control of and use of a septic system located on adjoining property.

6. 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.

7. Title 124, Ch. 1, 011 defines a Certified Professional as a private onsite wastewater treatment system professional certified under the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act to perform the tasks for which the certification has been issued.

8. 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...”

9. Title 124 Ch. 1, 079 defines a septic system as “an onsite wastewater treatment system that has a septic tank for primary treatment and a trench or bed soil absorption system for secondary treatment of wastewater.”

10. Title 124, Ch. 2, 007.03 prohibits the discharge of domestic wastewater from a septic system to the land surface without Department approval.

11. Title 124, Ch. 3, 002.02 authorizes by rule the operation of a domestic septic system provided such system is not failing and does not endanger public health.

12. Title 124 Ch. 3.008 prohibits the operation of a domestic septic system if the system has failed, endangers public health or results in a prohibited discharge.

13. On or about June 19, 2014, the Department received a complaint that a hose was being used to discharge domestic wastewater from the Respondent's septic system onto the ground.

14. On or about July 7, 2014, the Department issued a Notice of Violation via certified mail to Respondents requesting that they immediately cease any wastewater discharge to the land surface and to work with a certified pumper to ensure compliance with Department rules.

15. On or about August 28, 2014 the Department issued a Letter of Warning via certified mail to Respondents warning the Respondents that they had failed to cease or mitigate the violations identifies in the Notice of Violation.

16. On or about September 4, 2014 Department staff conducted an inspection of Respondent's septic system and observed that the Respondents had been pumping domestic wastewater to the ground surface and that Respondent's septic system had failed.

17. On or about September 25, 2014 the Department issued a Compliance Request via certified mail to Respondents requesting that their septic system be pumped and inspected by a certified professional.

18. On or about December 14, 2015 the Department issued a Letter of Warning via certified mail to Respondents requesting that they comply with the September 25, 2014 Notice of Violation and the requirements of Title 124.

19. On or about October 10, 2017, the Department received a complaint that the Respondents were discharging domestic wastewater through a hose onto the ground surface.

20. There have been numerous contacts over the last two years between Respondents and Department staff regarding Respondent's septic system. One such contact took place on or about November 27, 2017, when Department staff contacted Respondent by telephone to inquire about the status of the septic system. The Department again requested that the Respondent submit an inspection report or proof that the system complies with Title 124. Department records show that such documentation has not been submitted.

21. Respondents continued operation of a failed septic system and discharge of wastewater to the ground surface is a violation of Neb. Rev. Stat. § 81-1506 and Title 124.

IV. COMPLIANCE ORDER

22. It is hereby ORDERED that Respondents shall:

- a. By December 29, 2017 have their septic system inspected by a certified inspector or professional engineer to determine whether or not the system is in compliance with Title 124. A copy of the inspection report shall be submitted to the Department by January 5, 2018.
- b. If the septic system is found to be in violation of Title 124, Respondents shall have the septic system repaired or replaced by February 1, 2018 as necessary. All repair and replacement work shall be completed by a certified professional who is authorized to engage in such activities. This date may be delayed upon written approval of the Department if the certified professional notifies the Department of unsuitable weather conditions and provides an updated schedule for installation, which shall be no later than April 1, 2018.

- c. Within 30 days of the completion of the septic system repair or replacement provide the Department with documentation that the septic system meets the requirements of Title 124.
- d. Respond in writing within seven (7) working days to all requests for information as requested by the Department.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

23. 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.

24. 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.

VI. SETTLEMENT CONFERENCE

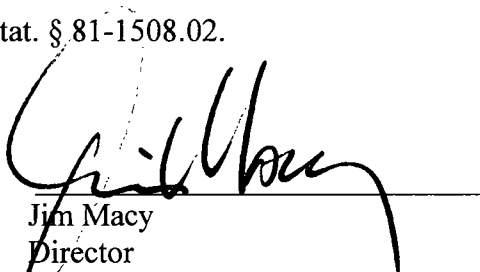
25. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request. A request for settlement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

26. 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.

12-18-17
Date




Jim Macy
Director
Nebraska Department of Environmental Quality

VII. 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 18 day of December, 2017 upon the Respondents listed below:

Kathryn and James Mensendike
6417 O Rd
Nebraska City, Nebraska 68410


Thomas O'Connor
Attorney