

IN THE DISTRICT COURT OF SCOTTS BLUFF COUNTY, NEBRASKA
STATE OF NEBRASKA, ex rel.,) Case No. CI _____

MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)

Plaintiff,)

v.)

BEREAN FUNDAMENTAL CHURCH OF)
MITCHELL, NEBRASKA a/k/a)
MITCHELL BEREAN CHURCH,)

Defendant.)

COMPLAINT

COMES NOW the Plaintiff, Nebraska Department of Environmental Quality (hereinafter "NDEQ"), who institutes this action through its attorney, Jon C. Bruning, Attorney General, and alleges and states as follows:

FIRST CLAIM

1. Plaintiff is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) (Reissue 1999) of exercising exclusive supervision, administration, and enforcement of the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2006), and all rules, regulations, and orders promulgated thereunder.

2. Title 124 of the Nebraska Administrative Code, "Rules and Regulations for Design, Operation, and Maintenance of On-Site Wastewater Treatment Systems" (hereinafter "Title 124") was promulgated pursuant to such act, and at all times material herein, such regulations were in full force and effect.

3. Title 122 of the Nebraska Administrative Code, "Rules and Regulations for Underground Injections and Mineral Production Wells" (hereinafter "Title 122") was promulgated pursuant to such act, and at all times material herein, such regulations were in full force and effect.

4. At all times material herein, the Defendant, Berean Fundamental Church of Mitchell, a/k/a Mitchell Berean Church (hereinafter "Defendant" or "Berean Fundamental Church"), owned and operated a church at 50680 Cook Oil Road, Mitchell, Scotts Bluff County, Nebraska.

5. The Defendant constructed a church and an on-site wastewater treatment system at 50680 Cook Oil Road, Mitchell, Scotts Bluff County, Nebraska ("the Site.")

6. On or about February 16, 2006, a "Complaint, Order, and Notice of Opportunity for Hearing" (hereinafter "Administrative Order") was entered by the Director of the NDEQ and sent to the Defendant.

7. Defendant did not request a hearing regarding the Administrative Order, did not contest the Administrative Order, and it became a final order on or about March 18, 2006.

8. The Administrative Order is attached hereto and incorporated herein as "Attachment A."

9. The Administrative Order required Defendant to:

"5b. Submit to NDEQ three copies of plans and specifications to comply with Title 124, including soil borings and percolation tests for the area used. The information must clearly identify all components of the septic system as construction as of Dec 31, 2005. The documents are to be prepared by a Professional Engineer licensed in the State of Nebraska. The plans and specifications will identify any deficiencies and corrections needed for the system to comply with Title 124 requirements. The information will also include the engineer's narrative summary of any and all deficiencies and changes needed. Additional information may be required by the Department to ensure proper engineering design and operation . . .

9. . . . obtain an operating permit from the [NDEQ] prior to using the onsite wastewater treatment system. . .

10. . . . apply for an Authorization for Underground Injection Control (UIC) as required by Title 122 prior to using the onsite wastewater

treatment system. Upon review of the UIC Authorization application, the NDEQ may require [Defendant] to obtain a full UIC permit, or may deny the application, depending on subsurface conditions at the site.”

10. Defendant did not comply with the requirements of paragraph 5b of the Administrative Order.

11. Defendant did not comply with the requirements of paragraph 9 of the Administrative Order.

12. Defendant did not comply with the requirements of paragraph 10 of the Administrative Order.

13. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate an Administrative Order issued by the Director of the NDEQ.

14. Neb. Rev. Stat. §81-1508.02(2) provides for a civil penalty in the amount of not more than \$10,000 per day of violation of Neb. Rev. Stat. §81-1508.02(1)(b). In the case of a continuing violation, each day shall constitute a separate offense.

15. Plaintiff's allegations in paragraphs 1 through 14 of the Complaint constitute two hundred twenty-eight (228) violations for purposes of Neb. Rev. Stat. §81-1508.02(2).

SECOND CLAIM

16. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 15 of this Complaint as if fully set forth herein.

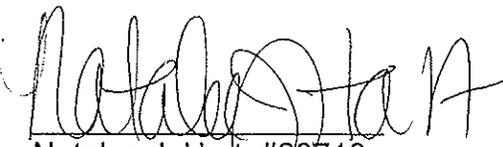
17. Neb. Rev. Stat. §81-1508(2) allows the Director of the NDEQ to petition the court for an injunction enjoining the Defendant from further violating any provision of the Nebraska Environmental Protection Act, any rules and regulations promulgated thereunder, or an order of the Director.

18. The Director of the NDEQ respectfully requests this court for an injunction enjoining the Defendant from further violating Title 122 and 124 and the Administrative Order issued by the Director of the NDEQ on February 16, 2006.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of an injunction pursuant to Neb. Rev. Stat. §81-1508(2), a civil penalty as provided in Neb. Rev. Stat. § 81-1508.02, with consideration by the Court of "the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance" in determining the appropriate civil penalty pursuant to Neb. Rev. Stat. § 81-1508.02(2); that all costs of this action be taxed to the Defendant; and any other relief as this court deems just and equitable.

BY: STATE OF NEBRASKA ex rel.
MICHAEL J. LINDER, Director
Department of Environmental Quality,
Plaintiff,

BY: JON BRUNING # 20351
Attorney General

BY: 
Natalee J. Hart, #22716
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2682
natalee.hart@ago.ne.gov
Attorneys for Plaintiff

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF)	Case No. 2669
Mitchell Berean Church,)	
Mitchell, Nebraska)	COMPLAINT, COMPLIANCE ORDER
Onsite Wastewater Treatment System)	AND NOTICE OF
F.I.D. # 86058)	OPPORTUNITY FOR HEARING
)	
Respondent.)	

PRELIMINARY STATEMENT

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 1999). The Complainant is the Department of Environmental Quality (Department or NDEQ). The Respondent is Mitchell Berean Church. The Complainant has determined that the Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 et. seq. (Reissue 1999, Cum. Supp. 2004, Supp. 2005), Title 124, *RULES AND REGULATIONS FOR THE DESIGN, OPERATION AND MAINTENANCE OF ON-SITE WASTEWATER TREATMENT SYSTEMS*. The Complaint below establishes the violations of the Act, the Compliance Order sets out the specific actions that must be taken by Respondent and the Notice of Opportunity for Hearing sets out how a hearing can be requested before the Director of the Department.

COMPLAINT

1. The Respondent is the owner of a newly constructed church located just east of Mitchell, Nebraska.
2. Pursuant to *Neb. Rev. Stat. § 81-1508.02 (1) (e)*, it is unlawful for any person to violate any rule or regulation.



Blumberg No. 5137
Attachment
A

3. Title 124, Chapter 3, requires a construction and operating permit for any system where wastewater flow will exceed 1000 gallons per day.

4. During the summer of 2005, the Respondent authorized the construction and installation of a soil absorption system exceeding 1000 gallons of wastewater per day without obtaining the necessary construction and operating permit from the Department.

COMPLIANCE ORDER

IT IS HEREBY ORDERED THAT:

5. Respondent shall within 90 days of this order:

- a. Submit to NDEQ a complete septic permit application that complies with Title 124 requirements, including a completed Form B – "Application for a Construction/Operating Permit for a Septic System" signed by the owner.
- b. Submit to NDEQ three copies of plans and specifications to comply with Title 124, including soil borings and percolation tests for the area used. The information must clearly identify all components of the septic system as constructed as of Dec 31, 2005. The documents are to be prepared by a Professional Engineer licensed in the State of Nebraska. The plans and specifications will identify any deficiencies and corrections needed for the system to comply with Title 124 requirements. The information will also include the engineer's narrative

summary of any and all deficiencies and changes needed.

Additional information may be required by the Department to ensure proper engineering design and operation.

6. Respondent shall obtain a construction permit from the Department prior to making any changes to the system and prior to constructing any new onsite wastewater treatment system or system components.

7. Respondent shall notify the NDEQ Onsite Wastewater Unit at least five working days prior to any construction and grant the Unit or its designee approval to observe any and all activities related to onsite system evaluation and construction.

8. Respondent shall provide in writing to the NDEQ Onsite Wastewater Unit the name of the certified onsite wastewater professional that is going to complete the work prior to beginning any work.

9. Respondent shall obtain an operating permit from the Department prior to using the onsite wastewater treatment system.

10. Respondent shall apply for an Authorization for Underground Injection Control (UIC) as required by Title 122 prior to using the onsite wastewater treatment system. Upon review of the UIC Authorization application, the NDEQ may require the Respondent to obtain a full UIC permit, or may deny the application, depending on subsurface conditions at the site.

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

Gary Buttermore
Onsite Wastewater Unit
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

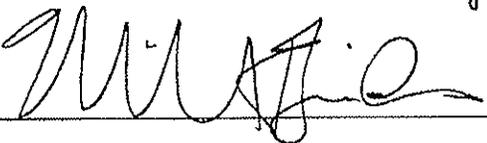
12. In accordance with Neb. Rev. Stat. § 81-1507 (1), this Order shall become final unless the Respondent files an answer and requests a hearing in writing no later than 30 days after receipt of the Complaint, Compliance Order and Notice of Opportunity for Hearing.

13. If the Respondent decides to contest this Order, a written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115, *Rules of Practice and Procedure*, Chapter 7. The answer and request for hearing must be filed with the Director, Department of Environmental Quality, P.O. BOX 98922, LINCOLN, NEBRASKA 68509-8922.

14. Failure to answer shall be deemed an admission of the facts of the Complaint. Violation of this Order may result in penalties of up to \$10,000 per day.

15. This Complaint, Compliance Order and Notice of Opportunity for Hearing does not preclude the Department of Environmental Quality from pursuing enforcement in the proper court for injunctive relief and penalties based on violations of state statutes or regulations.

Dated this 15th day of February, 2006.



Michael J. Linder
Director
Department of Environmental Quality

Prepared By: Steven J. Moeller

Steven J. Moeller, #16003
Staff Attorney
Department of Environmental Quality
Suite 400, The Atrium
1200 N Street
P.O. Box 98922
Lincoln, NE 68509-8922
(402) 471-0276

CERTIFICATE OF SERVICE

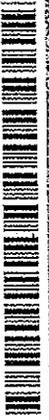
I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, was served by certified United States mail, postage prepaid, return receipt requested this 16th day of February 2006 upon the Respondent listed below:

Pastor Scott Mathis
Mitchell Berean Church
2002 Center Avenue
Mitchell, NE 69357

Steven J. Moeller
Steven J. Moeller
Staff Attorney

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete
Postnet ZIP Code



20060009963

Use with return or space permits.

1. Article Addressed to:

Pastor Scott Mathis
Mitchell Berean Church
2002 Center Avenue
Mitchell, NE 69357

COMPLETE THIS SECTION ON DELIVERY

A. Signature X *Trace One* Agent
 Addressed

B. Received by (Printed Name) *Trace One* C. Date of Delivery *2-18-06*

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below. No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

86058 2669 Comp. Compliance
Postnet ZIP Code
NOTICE OF OPPOR FOR HEARING

(Transfer from service label) 7004 2510 0002 0649 2211

PS Form 3811, August 2001

Domestic Return Receipt

102595-02-M-15-0