

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.)

HEGDEM CONSTRUCTION, INC.,)

A Wyoming Corporation,)

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 Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2006), the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, Neb. Rev. Stat. §81-15,236 *et. seq.* (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, Heggem Construction, Inc., (hereinafter "Heggem Construction") was a Wyoming Corporation registered to do business in Nebraska.

5. Heggem Construction's business address in Nebraska is 1620 Avenue A, Scottsbluff, Nebraska.

6. At all times material herein, Heggem Construction was engaged in the business of installing on-site wastewater treatment systems, to wit: septic systems, in the State of Nebraska.

7. Title 124, Chapter 3, Section 003 requires that when wastewater flow in an on-site wastewater treatment system will exceed 1,000 gallons per day, construction and operating permits are required.

8. Title 124, Chapter 3, Section 003 requires that the documents submitted in the application for a construction permit be prepared by a Professional Engineer licensed in the State of Nebraska.

9. On or about the month of August, 2005, Heggem Construction installed a septic tank and soil absorption system for the Berean Fundamental Church of Mitchell, Nebraska a/k/a Mitchell Berean Church, Mitchell, Nebraska, without obtaining a construction permit.

10. Neb. Rev. Stat. §81-1508.02(1)(e) makes it unlawful to violate a provision of or fail to perform any duty imposed by regulations promulgated pursuant to the Nebraska Environmental Protection Act.

11. 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)(e). In the case of a continuing violation, each day shall constitute a separate offense.

12. Plaintiff's allegations in paragraphs 1 through 11 of the Complaint constitute over six hundred (600) days of violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

SECOND CLAIM

13. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 12 of this Complaint as if fully set forth herein.

14. At the time of the installation of the onsite wastewater treatment system at the Berean Fundamental Church of Mitchell, Nebraska, Heggem Construction employed a certified professional as defined in Neb. Rev. Stat. §81-15,240.

15. Neb. Rev. Stat. §81-15,248(2) requires that any private onsite wastewater treatment system constructed by a certified professional be registered with the NDEQ by the certified professional within 45 days of the completion of the system.

16. Heggem Construction failed to register the onsite wastewater system constructed at the Berean Fundamental Church of Mitchell, Nebraska with the NDEQ within 45 days of the completion of that system.

17. The onsite wastewater system was not registered until on or about September 22, 2006.

18. Neb. Rev. Stat. §81-15,253 provides a penalty for the violation of Neb. Rev. Stat. §81-15,248(2) in the amount of not more than \$10,000 for each violation. In the case of a continuing violation, each day shall constitute a separate violation.

19. Plaintiff's allegations in paragraphs 13 through 18 of the Complaint constitute over three hundred fifty (350) days of violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

THIRD CLAIM

20. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 19 of this Complaint as if fully set forth herein.

21. Title 124, Chapter 14, Section 012 requires that an onsite wastewater treatment system not be located within five feet, horizontally, of a parking area, driveway, or impermeable surface or cover.

22. On or about the month of December, 2005, Heggem Construction installed a septic and soil absorption system for Lanphier, Inc., Gering, Nebraska, within five feet of a parking area, driveway, or impermeable surface or cover

23. Neb. Rev. Stat. §81-1508.02(1)(e) makes it unlawful to violate a provision of or fail to perform any duty imposed by regulations promulgated pursuant to the Nebraska Environmental Protection Act.

24. 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)(e). In the case of a continuing violation, each day shall constitute a separate offense.

25. Plaintiff's allegations in paragraphs 20 through 24 of the Complaint constitute over two hundred ninety (290) days of violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

FOURTH CLAIM

26. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 25 of this Complaint as if fully set forth herein.

27. At the time of the installation of the onsite wastewater treatment system at Lanphier, Inc., Heggem Construction employed a certified professional as defined in Neb. Rev. Stat. §81-15,240.

28. Neb. Rev. Stat. §81-15,248(2) requires that any private onsite wastewater treatment system constructed by a certified professional be registered with the NDEQ by the certified professional within 45 days of the completion of the system.

29. Heggem Construction failed to register the onsite wastewater system constructed at Lanphier, Inc. with the NDEQ within 45 days of the completion of that system.

30. The onsite wastewater system was not registered until on or about September 22, 2006.

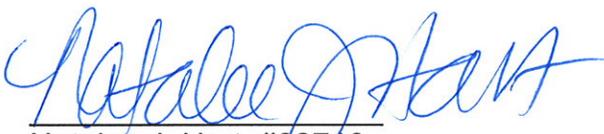
31. Neb. Rev. Stat. §81-15,253 provides a penalty for the violation of Neb. Rev. Stat. §81-15,248(2) in the amount of not more than \$10,000 for each violation. In the case of a continuing violation, each day shall constitute a separate violation.

32. Plaintiff's allegations in paragraphs 26 through 31 of the Complaint constitute approximately thirteen (13) days of violation for purposes of Neb. Rev. Stat. §81-1508.02(2).

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of a civil penalty as provided in Neb. Rev. Stat. § 81-1508.02 and Neb. Rev. Stat. §81-15,253, 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