

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)

Case No. CI _____

Plaintiff,)

COMPLAINT

v.)

THE HAMPTONS LAND)
DEVELOPMENT, L.L.C.,)

Defendant.)

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. 2004, Supp. 2005), and all rules, regulations, and orders promulgated thereunder.

2. Title 123 of the Nebraska Administrative Code, "Rules and Regulations for Design, Operation, and Maintenance of Wastewater Treatment Facilities" (hereinafter "Title 123") was promulgated pursuant to such acts, and at all times material herein, such regulations were in full force and effect.

3. The Defendant, The Hamptons Land Development, L.L.C. (hereinafter "Defendant" or "The Hamptons") is a Nebraska Limited Liability Company.

4. At all times material herein, the Defendant was constructing a housing development on a parcel of land located in Douglas County, Nebraska (hereinafter "the Site.")

5. The Site is located at the SW 1/4, NE ¼, Section 3, Township 14 North, Range 10 East near or in the city of Omaha, in Douglas County, Nebraska.

6. The Site is also described as Sanitary Improvement District No, 517 d/b/a/ The Hamptons Waste Water Treatment Facility, Douglas County, Nebraska.

7. The Site has also been generally described as the North Side of Q Street, 234th to 240th Streets, Douglas County, Nebraska.

8. In constructing the residential housing development, the Defendant also constructed a residential sewer system at the Site.

9. The residential sewer system was constructed without the Defendant first obtaining a construction permit for such a system from the NDEQ.

10. Beginning on or before September 27, 2005 and continuing daily thereafter until at least September 30, 2005, the Defendant constructed its residential sewer system without the proper permit.

11. Neb. Rev. Stat. §81-1506(2)(b) makes it 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 (NDEQ)."

12. Title 123, Chapter 3, Section 001 provides that "[n]o person shall install, change or make alterations in or additions to any wastewater works, until complete plans and specifications or additional information in writing and drawings fully describing the proposed work have been submitted to the Department for a review and approval

and a construction permit has been issued. Plans and specifications for public works must be prepared and submitted by a professional engineer duly registered to practice in the State of Nebraska. Engineering reports may be required by the Department if needed for describing the details of design, construction and operation.”

13. Failing to obtain a construction permit before beginning construction of the residential sewer system is a violation of Neb. Rev. Stat. §81-1506(2)(b) and Title 123.

14. Neb. Rev. Stat. §81-1508.02(2) provides that each violation of Neb. Rev. Stat. §81-1506, or the rules and regulations adopted pursuant to the Environmental Protection Act, shall subject a person to a civil penalty of no more than ten thousand dollars (\$10,000) per day, and in 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 four (4) 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. The Defendant sent a Notice of Intent to be covered under the general NDEQ National Pollutant Discharge Elimination System (“NPDES”) General Permit for Storm Water Discharges from Construction Sites, Permit Number NER100000, (hereinafter the “general NPDES permit”) for activities at the Site on or about March 14, 2005.

18. The Defendant was covered by the general NPDES permit beginning on or about March 23, 2005

19. The general NPDES permit has, at all times material herein, been in full force and effect, and has applied to the Defendant.

20. The general NPDES permit provides, in pertinent part, on page 11, Section D.3.c that

Temporary or permanent seeding shall be established as soon as possible after grading and clearing activities are completed, and during interim periods on areas that are not being actively worked. Whenever exposed soils are to be graded for 30 days or more, temporary or permanent seeding needs to be initiated, unless other stabilization methods are used or such need can be justified as unnecessary due to mitigating conditions present at the site....

21. The general NPDES permit also provides, on page 12, section D.5, "The permittee shall initiate and complete corrective actions to address any maintenance needs or deficiencies as soon as possible. Maintenance and repair of silt fences and bale barriers shall be completed within 24 hours after any deficiencies are discovered."

22. Beginning on or before September 27, 2005 and continuing daily thereafter until November 1, 2005, Defendant failed to implement proper storm water controls, including temporary or permanent seeding and failed to maintain and repair silt fences and bale barriers as required, during construction of the residential hosing development.

23. Neb. Rev. Stat. §81-1508.02(1)(b) makes it unlawful for any person to violate any air, water, or land quality standards, any permit condition or limitation, or any monitoring, reporting, or record-keeping requirements contained in or issued or entered into pursuant to the Environmental Protection Act, or the rules or regulations adopted and promulgated pursuant to that act.

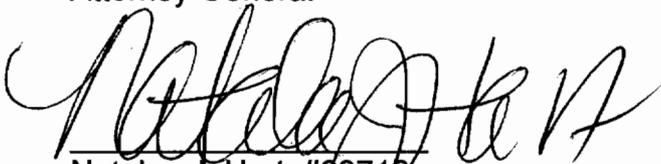
24. Neb. Rev. Stat. §81-1508.02(2) provides that each violation of Neb. Rev. Stat. §81-1508.02 shall subject a person to a civil penalty of no more than ten thousand dollars (\$10,000) per day, and in case of a continuing violation, each day shall constitute a separate offense.

25. Plaintiff's allegations in paragraphs 16 through 24 of the Complaint constitute thirty-six (36) violations 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, 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.
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Department of Environmental Quality,
Plaintiff,

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