

IN THE DISTRICT COURT OF KEITH COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY, )  
Plaintiff, )  
v. )  
William A. McMillan, d/b/a McMillan )  
Plumbing )  
Defendant. )

Case No. CE09-12

**COMPLAINT**

FILED TIME 9:50am  
KEITH COUNTY

JAN 16 2009

SUSAN THOMAS  
CLERK OF DISTRICT COURT

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

**FIRST CLAIM**

1. The Plaintiff is the agency of the State of Nebraska charged with the duty of exercising exclusive supervision, administration, and enforcement of the Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, pursuant to Neb. Rev. Stat. §§ 81-15,236–81-15,253 (Reissue 1999, Cum. Supp. 2006, Supp. 2007).

2. At all times material herein the Defendant, William A. McMillan, doing business as McMillan Plumbing, owned and operated a plumbing business in Keith County, Nebraska.

3. The Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act ("Act"), Neb. Rev. Stat. §§ 81-15,236–81-



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15,253, provides that onsite systems shall be installed by certified professionals and also provides for the registration of private onsite wastewater treatment systems. Specifically, Title 124, *Rules and Regulations for the Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems*, Chapter 22, Section 001, states, in part, that on or after January 1, 2004, any on-site wastewater treatment system constructed, reconstructed, altered, modified, or otherwise changed by a certified professional, professional engineer, or registered environmental health specialist shall be registered with the Department by the certified professional, professional engineer, or registered environmental health specialist within forty-five days of completion of the construction, reconstruction, alteration, modification, or other change.

4. Defendant at all times material herein, was a certified professional pursuant to Neb. Rev. Stat. § 81-15,240.

5. Defendant on or about April, 2004, engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater treatment system at the Clinton Schmidt residence, Grant, Nebraska, and did not register said system with the Department as required in Title 124, Chapter 22, Section 001.

6. Pursuant to Neb. Rev. Stat. §81-15,253 where there has been a violation of the Act or rules and regulations promulgated pursuant to the Act, a civil penalty is provided in the amount of not more than \$10,000 (ten thousand dollars) per violation. In the case of a continuing violation each day shall constitute a separate offense.

## SECOND CLAIM

7. Plaintiff hereby incorporates by reference paragraphs 1, 2, 3, 4, and 6 contained in its First Claim.

8. Defendant on or about June, 2005, engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater treatment system at Elton Tophoj residence, Oshkosh, Nebraska, and did not register said system with the Department as required in Title 124, Chapter 22, Section 001.

## THIRD CLAIM

9. Plaintiff hereby incorporates by reference paragraphs 1, 2, 3, 4, and 6 contained in its First Claim.

10. Defendant on or about May, 2006, engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater treatment system at David Enfield (Neff) residence, Brule, Nebraska, and did not register said system with the Department as required in Title 124, Chapter 22, Section 001.

## FOURTH CLAIM

11. Plaintiff hereby incorporates by reference paragraphs 1, 2, 3, 4, and 6 contained in its First Claim.

12. Defendant on or about July, 2007, engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite

wastewater treatment system at Robert Welsh residence, Ogallala, Nebraska, and did not register said system with the Department as required in Title 124, Chapter 22, Section 001.

#### FIFTH CLAIM

13. Plaintiff hereby incorporates by reference paragraphs 1, 2, 3, 4, and 6 contained in its First Claim.

14. Defendant on or about November, 2007, engaged in the siting, layout, construction, reconstruction, alteration, modification, or repair of a private onsite wastewater treatment system at Tim Holzfast (Prairie Ridge) residence, Paxton, Nebraska, and did not register said system with the Department as required in Title 124, Chapter 22, Section 001.

#### SIXTH CLAIM

15. Plaintiff hereby incorporates by reference each and every allegation contained in its Complaint.

16. The Director asks the Court for an injunction enjoining the Defendant from any further work involving onsite wastewater treatment systems until the onsite wastewater systems which are the subject of this complaint are properly certified and registered.

WHEREFORE, the Plaintiff prays that judgment be entered in favor of the Plaintiff and against the Defendant in the form of civil penalties as provided in Neb. Rev.

Stat. § 81-15,253, and injunction be entered and that all costs of this action be taxed to the Defendant.

DATED this 15<sup>th</sup> day of January, 2009.

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

By JON C. BRUNING, #20351  
Attorney General

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Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

It is hereby certified that on this 15<sup>th</sup> day of January, 2009, a true and accurate copy of the foregoing Complaint has been served upon Defendant herein by placing a copy of the same in the United State Mail, first class postage prepaid, addressed to Defendant's attorney of record, Randy Fair, P.O. Box 60, Ogallala, NE 69153.

Michelle Weber  
Michelle Weber  
Assistant Attorney General