

IN THE DISTRICT COURT OF DAWES COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
JOSEPH APPLGARTH,)
Defendant.)

Case No. 03-09-09

COMPLAINT AND
REQUEST FOR INJUNCTION

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AUG 26 2009

Sharon M. Korman
CLERK OF THE DISTRICT COURT
DAWES COUNTY, NEBRASKA

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, 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 (Reissue 1999, Cum. Supp. 2008) et seq.

2. At all times material herein the Defendant, Joseph Applegarth, owns and operates a septic tank pumping and inspecting business in Dawes County, Nebraska.

3. The Private Onsite Wastewater Treatment System Contractors Certification and System Registration Act, ("Act") Neb. Rev. Stat. § 81-15,236, et seq., provides that onsite systems shall be pumped and inspected by certified professionals. Title 124, Rules and Regulations for the Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems, Chapter 20, Section 001, states that only a certified professional engineer, a registered environmental health specialist, or a person under



their direct supervision may engage in the inspection, pumping, siting, layout, construction, reconstruction, alteration, modification, repair, or otherwise changing of a on-site wastewater treatment system.

4. Defendant does not have the proper certification or qualifications to engage in the pumping, inspection, siting, layout, construction, reconstruction, alteration, modification or repair a private onsite wastewater system.

5. On or about November 18, 2008, Defendant engaged in the inspection of a private onsite wastewater treatment system at 292 Beaver Valley Road, Chadron, Dawes County, Nebraska.

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. On or about September 29, 2008, Defendant engaged in the pumping of a private onsite wastewater treatment system at the Jerry Schmacher residence, RR. 1, Chadron, Dawes County, Nebraska.

THIRD CLAIM

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

10. On or about October 29, 2008, Defendant engaged in the pumping of a private onsite wastewater treatment system at the Lauren Yada residence, 364 Country Club Rd., Chadron, Dawes County, Nebraska.

FOURTH CLAIM

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

12. On or about October 29, 2008, Defendant engaged in the pumping of a private onsite wastewater treatment system at the Elwess residence, Chadron, Dawes County, Nebraska.

FIFTH CLAIM

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

14. On or about December 11, 2008, Defendant engaged in the pumping of a private onsite wastewater treatment system at the Adam Gardener residence, 1901 Centennial Drive, Chadron, Dawes County, Nebraska.

SIXTH CLAIM

15. Plaintiff hereby incorporates by reference all of the above claims.

16. On or about April 24, 2008, Plaintiff issued an Administrative Order, ordering the Defendant to stop all activities related to the inspection, pumping, siting, layout, construction, reconstruction, alteration, modification, repair, or otherwise changing of a private onsite wastewater system that are not under the direct supervision of a certified professional engineer, or a registered environmental health specialist until such time that he obtains a valid certificate from the Department. The Defendant was

served with this order May 31, 2008. This Administrative Order became a final order on or about June 30, 2008.

17. Plaintiff alleges that claims 1, 2, 3, 4 and 5 above constitute five separate violations of the Administrative Order issued by the Director.

18. Neb. Rev. Stat. § 81-1508.02(1)(b) and (2) (Reissue 1999) makes it unlawful for any person to "violate...any order of the director."

19. Pursuant to Neb. Rev. Stat. § 81-1508.02(1)(b) and (2) (Reissue 1999) where there has been a violation of an order of the director, a civil penalty is provided in the amount of not more than \$10,000 (ten thousand dollars) for each day of violation.

SEVENTH CLAIM

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

21. The Director, pursuant to Neb. Rev. Stat. § 81-1508(2) (Reissue 1999), asks the Court for an injunction enjoining the Defendant from any further work on private onsite wastewater treatment systems until properly certified.

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 § 81-1508.02(1)(b) and (2), an injunction be entered, and that all costs of this action be taxed to the Defendant.

Dated this 21st day of August, 2009.

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

By JON C. BRUNING, #20351
Attorney General

By 
Mark Hassebrook, #23507
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
mark.hassebrook@nebraska.gov
Attorneys for Plaintiff.