

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF	)	
	)	Case No. 3555
LOWELL R. JOHNSON	)	
	)	
and	)	
	)	CONSENT ORDER
ROSS J. JOHNSON	)	
	)	
FID #113926	)	
	)	
RESPONDENTS.	)	

**I. INTRODUCTION**

1. The Nebraska Department of Environment and Energy (NDEE or Department) and Respondents Lowell R. Johnson and Ross J. Johnson voluntarily enter into this Consent Order. The Consent Order establishes a schedule for Respondents to comply with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 *et seq.*, and Neb. Admin. Code, Title 124, *Rules and Regulations for the Design, Operation, and Maintenance of Onsite Wastewater Treatment Systems.*

**II. JURISDICTION**

2. NDEE is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1), of exercising exclusive general supervision, administration, and enforcement of NEPA and Title 124.

3. In signing this Consent Order, Respondents agree to undertake all actions required by this Consent Order. Respondents agree not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. Respondents waive their rights to further hearing as provided in Neb. Rev. Stat. § 81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 to 84-919.



### III. PARTIES

4. The parties to this Consent Order are NDEE and Respondents Lowell R. Johnson and Ross J. Johnson.

### IV. FINDINGS OF FACT

5. Respondents jointly own and operate an onsite wastewater treatment (OWT) system as defined by Title 124, Chapter 1, 061. The OWT system is located on 2 adjacent parcels at SE 1/4, SE 1/4, SW 1/4, Section 14, Township 07N, Range 03W, Fillmore County, NE.

6. The OWT system consists of a “dwelling” as defined in Title 124, Chapter 1, 031, that has previously generated domestic wastewater and is on property owned by Respondent Lowell R. Johnson. The Fillmore County Assessor parcel identification number for the property containing the dwelling that is generating domestic wastewater is 300032557. The physical address is 1110 Road J in Fillmore County, NE.

7. The OWT system also consists of a “wastewater lagoon” as defined in Title 124, Chapter 1, 094, that has previously received domestic wastewater from the dwelling owned by Respondent Lowell R. Johnson. The wastewater lagoon is located on adjacent property owned by Respondent Ross J. Johnson. The Fillmore County Assessor parcel identification number for the property containing the wastewater lagoon that is receiving domestic wastewater is 300032550. The physical location of the wastewater lagoon is approximately eighty (80) yards northeast of the dwelling at 1110 Road J in Fillmore County, NE.

8. On March 12, 2020, NDEE conducted an inspection of the OWT system that services 1110 Road J, in Fillmore County, NE and determined that the wastewater lagoon is a “failed or failing” OWT system as defined in Title 124, Chapter 1, 035.

9. The dwelling owned by Respondent Lowell R. Johnson at 1110 Road J in Fillmore County, NE is presently vacant and not used or intended to be used for human occupancy as a single family or multi-family residence which generates domestic wastewater.

#### **V. COMPLIANCE ORDER**

10. Respondent Lowell R. Johnson agrees to continue to not use for human occupancy the dwelling at 1110 Road J in Fillmore County, NE until such time as Respondent Lowell R. Johnson either installs a Title 124-compliant OWT system on his own property or relocates the dwelling to a different property. In agreeing to continue to not use the dwelling at 1110 Road J for human occupancy, Respondent Lowell R. Johnson knowingly and willingly agrees not to generate any domestic wastewater as defined in Title 124, Chapter 1, 026 from the dwelling at 1110 Road J.

11. By January 31, 2022, Respondent Ross J. Johnson agrees to permanently abandon the wastewater lagoon located on his property and serving the dwelling at 1110 Road J in Fillmore County, NE in accordance with the requirements of Title 124, including, but not limited to, the closure requirements of Title 124, Chapter 17, 003. Respondent Ross J. Johnson further agrees to submit all project plans to NDEE in advance of site work and to utilize the services of a certified onsite wastewater professional, a registered environmental health specialist, or a professional engineer (P.E.) licensed in Nebraska for closure activities in accordance with Title 124, Chapter 20, 001.

12. Submittals to the Department under this Order shall refer to FID #113926 and shall be sent to:

Alan Aanerud  
Onsite Wastewater Section Supervisor  
Nebraska Department of Environment and Energy  
P.O. Box 98922  
Lincoln, NE 68509-8922

## **VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS**

13. Respondents agree to perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations and permits.

## **VII. RESERVATION OF RIGHTS**

14. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEE to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA, LWMA, and any rules, regulations, orders, or permits issued pursuant to NEPA or LWMA.

## **VIII. NEGATION OF AGENCY RELATIONSHIP**

15. Nothing in this Consent Order shall be construed to create, either expressly, or by implication, the relationship of agency between NDEE and Respondents.

## **IX. AMENDMENT**

16. This Consent Order may be modified and amended in writing by mutual agreement of NDEE and Respondents.

## **X. EFFECTIVE DATE**

17. This Consent Order shall become effective on the date it is signed by the NDEE Director or his designee.

## **XI. SEVERABILITY**

18. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

## **XII. SIGNATURES**

19. For Respondent Lowell R. Johnson:

Signed: Lowell R. Johnson

Dated: 8/15/21

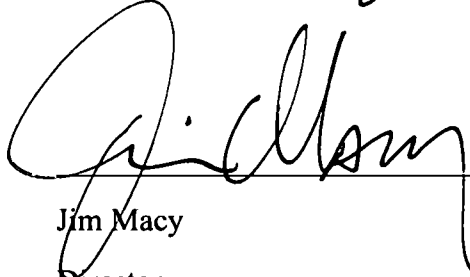
20. For Respondent Ross J. Johnson:

Signed: Ross Johnson

Dated: 8-9-21

21. For NDEE:

IT IS SO ORDERED and agreed this 24<sup>th</sup> day of August, 2021.

A handwritten signature in black ink, appearing to read "Jim Macy", is written over a horizontal line.

Jim Macy

Director

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY