

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
Plaintiff,)
v.)
CLEARWATER FALLS, L.L.C.,)
Defendant.)

Case No. CI _____

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 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, Clearwater Falls, L.L.C. (hereinafter "Defendant" or "Clearwater Falls") 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 Sarpy County, Nebraska (hereinafter "the Site.")

5. The Site is located at the SW 1/4, Section 8, Township 13 North, Range 13 East near or in the city of Bellevue, in Sarpy County, Nebraska.

6. The Site is also generally described as being 48th and Birchwood Drive, Bellevue, Sarpy County, Nebraska.

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

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

9. Beginning on or before November 22, 2005 and continuing daily thereafter until at least December 20, 2005, the Defendant constructed its residential sewer system without the proper permit.

10. 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).”

11. 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.”

12. 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.

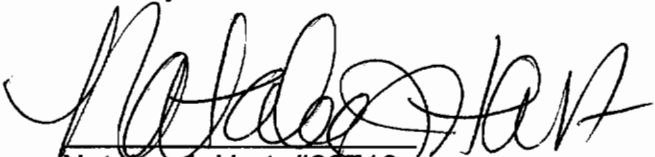
13. Neb. Rev. Stat. §81-1508.02(2) provides that each violation of Neb. Rev. Stat. §81-1506, or the rules and regulations adopted pursuant to the Environmental Protection Act, shall subject a person to a civil penalty of no more than ten thousand dollars (\$10,000) per day, and in case of a continuing violation, each day shall constitute a separate offense.

14. Plaintiff's allegations in paragraphs 1 through 13 of the Complaint constitute twenty-nine (29) 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.
MICHAEL J. LINDER, Director
Department of Environmental Quality,
Plaintiff,

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