

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

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| IN THE MATTER OF |) | CASE NO. 2974 |
| CITY OF COZAD, |) | |
| A political subdivision of the |) | |
| State of Nebraska, |) | COMPLAINT, COMPLIANCE |
| |) | ORDER AND NOTICE OF |
| |) | OPPORTUNITY FOR HEARING |
| Respondent. |) | |

I. INTRODUCTION

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 2008). Complainant has determined that the respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 *et. seq.* (Reissue 2008) and Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under The National Pollutant Discharge Elimination System*. The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter “NDEQ” or “Department”). The Respondent is the City of Cozad. The Complaint below establishes the violations.

II. COMPLAINT

1. At all times material herein the Respondent, City of Cozad, a political subdivision of the State of Nebraska, has owned and operated a wastewater collection and treatment facility located in Dawson County, Nebraska. The wastewater collection and treatment facility treats the waste and then disposes the treated waste by discharging it into the Platte River, a water of the State.

2. Pursuant to the Nebraska Environmental Quality Council’s authority to adopt rules for the issuance of operating permits for sources of water pollution,

as expressed in Neb. Rev. Stat. §81-1505(11), the Council adopted a rule and standard codified as Title 119, *Rules and Regulations Pertaining To The Issuance of Permits Under the National Pollutant Discharge Elimination System*.

3. At all times material herein the Respondent under Title 119 has had a National Pollutant Discharge Elimination System (NPDES) permit No. NE0112828. Under Title 119, Chapter 3, Section 003, the Director may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable National Pretreatment Standards and requirements, where such contributions would cause the POTW to violate its NPDES permit, or where such contributions exceed the reserve treatment capacity of the POTW.

4. Pursuant to Neb. Rev. Stat. §81-1508.02 (1)(b) states that it is unlawful for any person to violate a permit or license condition or limitation.

5. Over the last three years Respondent has exceeded its permitted numerical limits for discharging for the following: CBOD (Carbonaceous Biochemical Oxygen Demand), TSS (Total Suspended Solids), Ammonia and Fecal Coliform.

6. The Respondent is a “person” as defined in Neb. Rev. Stat. §81-1502(10).

7. Respondent has violated Neb. Rev. Stat. § 81-1508.02 (1) (b).

8. The Director also finds that the activity defined in paragraphs 5 above violates the Respondent’s permit, poses a potential risk to surface and ground water quality and is a potential risk to public health or welfare.

III. COMPLIANCE ORDER

9. IT IS HEREBY ORDERED THAT RESPONDENT:

- A. By June 1, 2010 submit a facility plan and an engineering analysis of the facility, including current system capacity and an analysis of industrial users and their impact on the facility, prepared by a registered Nebraska professional engineer.
- B. By October 1, 2010 submit to the Department plans and specifications prepared by a registered Nebraska professional engineer, for upgrades to wastewater works in accordance with a facility plan submitted to and approved by the Department.
- C. By March 1, 2011 begin construction of upgrades to wastewater works in accordance with the approved plans and specifications.
- D. By October 1, 2012 place into operation a wastewater works in compliance with all permit requirements and regulations.
- E. During the effective period of this Order, the Respondent shall not add or allow any other person or party to add any significant industrial user (as defined in Title 119), commercial user (over 15,000 square ft. of floor space), or housing development (over 10 lots or 20 housing units) service connections to the sanitary sewer system until written approval is granted by the Department.

10. Respondent shall submit monthly progress reports to NDEQ on the activities listed in paragraph 9 of this Order. These reports shall contain

information regarding the activities associated with the project, construction schedule and completion date. Respondent shall report to NDEQ any delay in progress with complying with paragraph 9 of this Order.

11. Respondent shall respond promptly to any written communication by the NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Order.

12. Information to be submitted under this Order shall be sent to:

Steve Goans
Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number (402) 471-2186

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

13. This Complaint, Compliance Order and Notice of Opportunity shall become final, pursuant to Neb. Rev. Stat. §81-1507(1), unless Respondent files a written answer no later than thirty days after receipt of this Order and requests a hearing. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

14. A written answer to the Complaint, Compliance Order and Notice of Opportunity must conform to the requirements of Title 115, Neb. Admin. Code, Rules of Practice and Procedure, Chapter 7. The answer and request for hearing may be filed by mail to: Michael J. Linder, Director, State of Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-

8922, or may be delivered to the Department's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

V. SETTLEMENT CONFERENCE

15. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Steve Moeller, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

16. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Complaint, Compliance Order and Notice of Opportunity.

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

17. The NDEQ reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil or criminal penalties for any violations that are the subject of this Complaint, Compliance Order and Notice of Opportunity for Hearing. Nothing in this Complaint, Compliance Order and Notice of Opportunity precludes the NDEQ from pursuing such enforcement.

January 5, 2010
Date

/s/ Michael J. Linder
Michael J. Linder, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY