

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Case No. 2998

IN THE MATTER OF
THE VILLAGE OF ELM CREEK,
Respondent.

COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY
FOR HEARING

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) of the Nebraska Environmental Protection Act § 81-1501 et seq (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to hereinafter as NDEQ). The Respondent is the Village of Elm Creek, Buffalo County, a body corporate and politic, as provided in the laws of Nebraska.

2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) & (4) (Reissue 2008), of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq., and all rules, regulations, and permits promulgated thereunder. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. § 81-1504 (7) and § 81-1507 (Reissue 2008).

3. The Respondent, the Village of Elm Creek, owns and operates a system for collection and treatment of municipal wastewater in Buffalo County, Nebraska, consisting of a sewer system and a lagoon treatment system.

4. Nebraska Administrative Code Title 119, *Rules And Regulations Pertaining To The Issuance Of Permits Under The National Pollutant Discharge Elimination System*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505. Pursuant to Title 119, the Complainant issued the Respondent a National Pollutant Discharge Elimination System (NPDES) permit on October 16, 2007. This permit, permit number NE0026042, became effective on January 1, 2008. The permit is in effect at all times material herein.

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Title 119, Chapter 14, 001.01 states that “[t]he permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Federal and State Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.” Chapter 14, 001.04G1, further requires the permittee to verbally report noncompliance within twenty four (24) hours and written notification within five (5) days.

5. Respondent’s NPDES Permit Part I. is entitled “Discharge Limits and Monitoring Requirements for Outfall 001” and provides discharge limits for pollutants including pH; concentration of Carbonaceous Biochemical Oxygen Demand (CBOD); concentration of Total Suspended Solids (TSS); and concentration and quantity of ammonia.

6. On or about November 2007, effluent discharged from Respondent’s wastewater treatment facility exceeded limits established in respondent’s NPDES permit for pH level, TSS, and CBOD. On or about April 2008, effluent discharged from respondent’s wastewater treatment facility exceeded limits established in respondent’s NPDES permit for pH level and quantity of ammonia. On or about October 2008, effluent discharged from respondent’s wastewater treatment facility exceeded limits established in respondent’s NPDES permit for concentration of ammonia, quantity of ammonia, TSS, and CBOD. On or about April 2009, effluent discharged from respondent’s wastewater treatment facility exceeded limits established in respondent’s NPDES permit for concentration of ammonia, quantity of ammonia, TSS, and CBOD.

7. For each of the above-listed violations, Respondent failed to provide verbal reporting of noncompliance within 24 hours and written reporting within five days of becoming aware of the noncompliance.

COMPLIANCE ORDER

8. IT IS THEREFORE ORDERED that The Respondent shall perform, within the following time frames, the following activities:

- a. The Respondent shall immediately cease any discharge of wastewater that violates permit limitations. At least one month prior to any future

discharge, Respondent must take process control samples to determine if wastewater can be discharged within permit limitations. Respondent must make every effort to discharge wastewater only when such discharge will be in compliance with Respondent's permit.

- b. On or before August 1, 2010, the Respondent shall implement a temporary disposal plan if the discharge falls outside permit limits. Disposal must conform to Respondent's permit and shall entail either (i) hauling of wastewater to a Department-approved wastewater treatment facility, or (ii) land application via a temporary irrigation system in compliance with Title 119.
- c. On or before September 1, 2010, the Respondent shall submit copies of easement, lease, and/or purchase documents verifying that land will be available to respondent for land application of treated wastewater for at least twenty (20) years in accordance with plans and specifications received by the Department.
- d. On or before November 1, 2010, Respondent shall begin construction of the Department-approved land application system described in construction permit number 10-0015.
- e. On or before April 1, 2011, the Respondent shall complete construction of the approved land application system in accordance with Department-issued construction permit number 10-0015.

9. Once constructed, Respondent shall operate its wastewater treatment facility in accordance with all Department rules and regulations, including the requirements of Titles 119 and 123.

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

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

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

12. A written answer to the Complaint, Compliance Order, and Notice of Opportunity for Hearing 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
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.

SETTLEMENT CONFERENCE

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

14. 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 Order.

INJUNCTIVE RELIEF AND PENALTY PROVISIONS

15. 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 for Hearing precludes the NDEQ from pursuing such enforcement. Failure to obey this order may result in fine up to \$10,000 per day as set out in Neb. Rev. Stat. § 81-1508.02.

June 16, 2010

Date

/s/ Michael J. Linder

Michael J. Linder, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, was served by certified United States mail, postage prepaid, return receipt requested this 16th day of June 2010 upon the Respondent listed below:

Mark Stephens, Board Chairperson
535 W. Boyd Ave.
PO Box 130
Elm Creek, NE 68836

/s/ Lydia Fiedler

Lydia Fiedler
Staff Attorney