

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

Case No. 3471

CITY OF OGALLALA WASTEWATER  
TREATMENT FACILITY  
FID #28050

CONSENT ORDER

Respondent.

**I. INTRODUCTION**

1. The Nebraska Department of Environmental Quality (NDEQ) and City of Ogallala, Nebraska (Respondent) voluntarily enter into this Consent Order. The Consent Order establishes a schedule for Respondent to comply with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2014; Cum. Supp. 2016) and Nebraska Administrative Code (NAC) Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System* (Title 119).

**II. JURISDICTION**

2. NDEQ is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504, of exercising exclusive general supervision, administration, and enforcement of NEPA and all rules and regulations and orders promulgated under such acts, including Title 119.

3. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent agrees not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. Respondent waives its right to further hearing as provided in Neb. Rev. Stat. §81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. §84-901 *et seq.* for the violations alleged herein.



### **III. PARTIES**

4. The parties to this Consent Order are NDEQ and the City of Ogallala, Nebraska. This Consent Order is binding on NDEQ, Respondent, and any successors and assigns.

### **IV. FINDINGS OF FACT**

5. Respondent is the owner and operator of a wastewater treatment facility (WWTF) located at NE ¼, SE ¼, Section 5, Township 013 North, Range 038 West in Keith County, Nebraska.

6. On June 30, 2014, NDEQ issued Respondent National Pollution Discharge Elimination System (NPDES) Permit No. NE0040045 (Permit), which, subject to its terms and conditions, authorizes Respondent to collect and treat domestic, commercial, and industrial wastewaters generated in the City of Ogallala and then to discharge treated wastewaters to the South Platte River.

7. Among the terms and conditions of its NPDES Permit, Respondent is required to meet seasonal numeric limits for the discharge of ammonia to the South Platte River. These numeric limits are in Part I.C. of the NPDES Permit.

8. In a Discharge Monitoring Report (DMR) for the reporting period ending on June 30, 2018, Respondent reported its monthly average ammonia discharge was 7.19 mg/L and daily maximum ammonia discharge was 16.1 mg/L.

9. The reported ammonia discharges for this period exceeded Respondent's NPDES Permit limit for ammonia of 1.00 mg/L as a monthly average and 2.00 mg/L as a daily maximum.

10. Upon investigation by Respondent, it was determined that Respondent's ammonia exceedances were caused by a faulty cover and mixing system on the anaerobic digester at the WWTF, making the digester unable to perform its designed function.

11. Neb. Rev. Stat. §81-1506(2)(c) and (d) state that it is unlawful for any person to increase in volume or strength any waste in excess of permitted discharges specified under any existing permit or operate any facility in a manner that would cause an increase in the discharge of wastes into waters of the state in a manner that is not lawfully authorized.

12. 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 and any provision or duty imposed by rules and regulations.

13. Title 119, Chapter 14, Section 001.01 requires Respondent to comply with all conditions of NPDES Permit No. NE0040045 and states that permit noncompliance is grounds for enforcement action.

14. Respondent is a "person" as defined in Neb. Rev. Stat. §81-1502(10).

15. Respondent has violated Neb. Rev. Stat. §81-1506(2)(c) and (d), §81-1508.02(1)(b), and Title 119, Chapter 14, Section 001.01.

16. The NDEQ Director is authorized under Neb. Rev. Stat. §81-1504(7), (25), and §81-1507(1) to require and enforce compliance schedules to prevent, control, or abate unlawful discharges to waters of the State.

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

17. Respondent agrees to **immediately**:

- a. Continue best efforts to maintain compliance with its NPDES Permit until digester repairs or upgrades are complete. These efforts include, but are not

limited to, removing excess biosolids and the use of temporary dewatering equipment;

- b. Continue to sample for all permit parameters and report noncompliance to NDEQ in accordance with the terms and conditions of the NPDES Permit; and
- c. Provide NDEQ with written updates on the funding status for the digester project, such as moneys applied for from the Clean Water State Revolving Fund or other sources.

**18. By December 31, 2018,** Respondent agrees to provide NDEQ with a written timeline for completing digester repairs or upgrades, including:

- a. Construction bid end date;
- b. Notice to proceed date; and
- c. Construction start and end dates.

**19. Information to be submitted under this Consent Order shall refer to FID # 28050 and shall be sent to:**

Reuel Anderson  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, NE 68509-8922

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

**20.** Respondent shall 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**

**21.** Nothing in this Consent Order shall be construed to limit the power and authority of the NDEQ to take or order any action necessary to protect public health, welfare, or the

environment or to enforce any provision of NEPA and any rules, regulations, orders, or permits issued pursuant to NEPA.

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

22. Nothing in this Consent Order shall be construed to create, either expressly, or by implication, the relationship of agency between NDEQ and Respondent.

#### **IX. AMENDMENT**

23. This Consent Order may be modified and amended in writing by mutual agreement of NDEQ and Respondent.

#### **X. EFFECTIVE DATE**

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

#### **XI. SEVERABILITY**

25. 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.

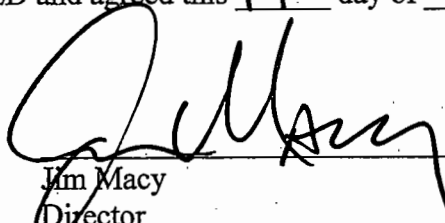
#### **XII. SIGNATURES**

26. For Respondent:

By: Deb Schick  
Title: Council President  
Date: 12-11-18

27. For NDEQ:

IT IS SO ORDERED and agreed this 19<sup>th</sup> day of December, 2018.

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

Jim Macy  
Director

Nebraska Department of Environmental Quality