

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF THE MEADOW
VIEW HOMEOWNERS ASSOCIATION,
LINCOLN, NEBRASKA

FID # 72176

Respondents

Case No. 3538

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF OPPORTUNITY
FOR HEARING

I. INTRODUCTION

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 to § 81-1532.

2. The Complainant is Jim Macy, Director of the Nebraska Department of Environment and Energy (NDEE or the Department). The Respondent is the Meadow View Homeowners Association (Meadow View), a non-profit domestic corporation whose principal business office is 3340 SW 80th Cir, Lincoln, Nebraska.

II. STATUTORY AND REGULATORY SETTING

3. The Department is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504(1) to administer and enforce the NEPA and all rules, regulations and orders created thereunder and pursuant to Neb. Rev. Stat. § 81-1504(12), to require the proper maintenance and operation of wastewater disposal systems.

4. Pursuant to Neb. Rev. Stat. § 81-1504 and § 81-1505, the Nebraska Environmental Quality Council adopted rules and standards codified as Neb. Admin. Code Title 123 - *Rules and Regulations for The Design, Operation and Maintenance of Wastewater Works*.

5. Title 123, Ch. 3, 001 prohibits the construction or modification of a wastewater treatment facility unless a permit is issued by the Department authorizing the project.



6. Title 123, Ch. 5, 005.01 limits the seepage rate of wastewater lagoons to one-eighth inch per day at the design maximum water depth; requires a lower seepage rate, or zero seepage, if the Department determines that additional ground water protection is required; and requires ground water monitoring wells where the Department determines that monitoring is necessary.

7. Title 123, Ch. 11, 008 requires that cattails, reeds and other emergent vegetation be removed from wastewater lagoons; that at least two feet of water be maintained at all times in active lagoons (unless the lagoon has a synthetic liner); and that damage to lagoons caused by muskrats or other rodents, erosion, tree roots, animal hooves, or any other source be repaired.

8. The Department is also the agency charged with the duty, pursuant to Neb. Rev. Stat. § 81-15,131 to carry out the purposes of the Wastewater Treatment Operators Certification Act, including the requirement that all wastewater treatment facilities be under the supervision of certified operator (Neb. Rev. Stat. § 81-15,134).

9. Pursuant to Neb. Rev. Stat. § 81-15,130 the Nebraska Environmental Quality Council adopted rules and standards codified as Neb. Admin. Code Title 197 - *Rules and Regulations for the Certification of Wastewater Treatment Operators in Nebraska*.

10. Title 197, Ch 2, 002 requires that all wastewater treatment facilities be operated by a certified operator, unless the wastewater treatment facility is exempted.

III. COMPLAINT

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

12. At all times material herein, Respondent has owned and/or operated a wastewater treatment facility that receives domestic waste from the Meadow View Estates subdivision, located in Lancaster County, Nebraska. The wastewater treatment facility consists of a northern two-cell lagoon system (northeast and northwest cells) located near the intersection of SW 84th

and West Van Dorn Streets and a southern single-cell lagoon (south cell) located near the intersection of SW 84th and W. Pioneers Blvd.

13. On or about June 26, 2020, Department personnel inspected the Respondent's wastewater system in response to a complaint received from a neighbor that seepage from the south lagoon had rendered a portion of his farmland useless. During the inspection, Department personnel observed the field adjacent to the south cell was muddy and that a discharge structure was present in the south cell. Department personnel also observed burrowing animals, woody vegetation, reeds and cattails in all three lagoons and that a berm had been added to the northwest lagoon creating a new cell. A file review at the time of the inspection found no engineering plans and specifications for the renovation.

14. On or about July 8, 2020, the Department issued a Notice of Violation (NOV) via certified mail to Respondent for failure to comply with Title 123 operation, maintenance and construction requirements. The NOV also requested that Respondent identify any discharge structures associated with the wastewater treatment system and notify the Department of the exempt status of the lagoons.

15. On or about October 28, 2020, Respondent Meadow View replied to the NOV stating that ongoing maintenance was being performed on the lagoons and that the berm had been installed as part of that maintenance.

16. On or about November 3rd and 12th, 2020 Department personnel inspected Respondent's wastewater system and observed woody vegetation, reeds and burrowing animals in the northern and southern lagoons and the unapproved berm in the northwest cell.

17. On or about December 11, 2020, Department personnel again inspected Respondent's wastewater system and observed that trees and vegetation had been removed in the northeast cell

and partially removed in the northwest cell. No maintenance had been completed in the south cell. An outfall discharge structure was also observed in the northwest cell.

18. Respondent's modification of a wastewater system without a construction permit issued by the Department is a violation of Neb. Rev. Title 123, Ch. 3, 001;

19. Respondent's operation of a wastewater treatment system with emergent vegetation, cattails, and burrowing animals is a violation of Title 123, Ch. 11, 008.

20. Respondent's operation of a wastewater system without a certified operator, unless exempted is a violation of Neb. Rev. Stat. § 81-15,134 and Title 197, Ch 2, 002.

IV. COMPLIANCE ORDER

21. It is hereby ORDERED that by August 1, 2021, Respondent shall:

- a. Remove emergent vegetation and cattails and repair any damage caused by burrowing animals in the all three wastewater lagoon cells if not already completed.
- b. Submit a construction application, including an as-built and soil and seepage tests for the northwest cell and seepage test results for the northeast cell.
- c. Remove or permanently render all lagoon discharge structures inoperable by filling the discharge pipes with concrete or similar method. Submit to the Department written notice (along with photo documentation) that the discharge structures are permanently inoperable and cannot discharge wastewater. If the discharge structures are abandoned, an application for a wastewater operator exemption along with a \$150 fee must be submitted.

If the Respondent does not decide to remove or permanently close the discharge structure by August 1, 2021 in accordance with this Order, then Title 119 - National Pollutant Discharge Elimination System (NPDES) requirements and Title 197 wastewater

operator certification requirements will apply and by August 1, 2021, the Respondent must apply for a NPDS permit and obtain an operator certified at the Class L level or higher. (See Title 197, Ch. 2,002).

d. Submit plans for a seepage test or water balance test on the south lagoon to the Department for review. The test is to be completed within 60 days of Department approval and the results must be stamped by an engineer licensed in Nebraska.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

22. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless the 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.

23. 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:

Jim Macy, Director
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, Nebraska 68509-8922

or may be delivered to the Department's Lincoln office located at 245 Fallbrook Blvd., Lincoln, Nebraska.

V. SETTLEMENT CONFERENCE

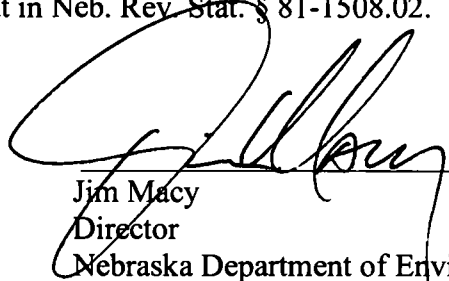
24. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request. A request for settlement 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.

VI. RESERVATION OF RIGHTS AND PENALTY PROVISIONS

25. The Department reserves the right to require the Respondent to complete additional work or take additional actions as necessary to achieve compliance with all applicable laws and regulations. Further, the NDEE 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 Department from pursuing such enforcement. Failure to obey this order may result in fines up to \$10,000 per violation per day, as set out in Neb. Rev. Stat. § 81-1508.02.

February 4, 2021
Date

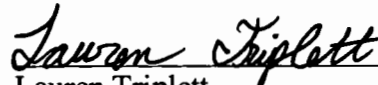


Jim Macy
Director
Nebraska Department of Environment and Energy

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, was served by certified United States mail, postage prepaid, return receipt requested this 4th day of February, 2021, upon the Registered Agent listed below:

Pamela Hallowell
3340 SW 80th Circle
Lincoln, NE 68532



Lauren Triplett
Staff Assistant - Legal Division

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