

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF THE VILLAGE OF  
VERDIGRE, NEBRASKA

FID # 57857

Respondent

Case No. 3472

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 Neb. Rev. Stat. § 81-1507(1) of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 *et. seq.* (Reissue 2014; Cum. Supp. 2016). The Complainant is James Macy, Director of the Nebraska Department of Environmental Quality (NDEQ or Department). The Respondent is the Village of Verdigre, a body corporate as provided in the laws of Nebraska.

**II. JURISDICTION**

2. 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.

3. At all times material herein, Respondent has owned and operated a Wastewater Treatment Facility (WWTF) for the collection and treatment of municipal wastewater consisting of a sewer system and a three-cell wastewater treatment lagoon. The WWTF is located west of the Village of Verdigre, in the NE1/4 of the SE1/4, Section 6, Township 30N, Range 6W Knox County, Nebraska.



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 119 - *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*.

5. Pursuant to Neb. Rev. Stat. § 81-1504(7) and § 81-1507, the Director may order necessary compliance actions be taken in response to the violations alleged within a reasonable time as described in Section IV, below.

### **III. COMPLAINT**

6. Neb. Rev. Stat. § 81-1502(20) defines water pollution to include the manmade or man-induced alteration of the chemical, physical, biological integrity of water.

7. Neb. Rev. Stat. §81-1506(1) makes it unlawful to cause pollution of any waters or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution or to discharge or emit any wastes into any waters or land of the state which reduce the quality of such waters or land below the standards established by the council.

8. Neb. Rev. Stat. § 81-1506(2) makes it unlawful to discharge any pollutant into the waters of the state without first obtaining a permit as required by the National Pollutant Discharge Elimination System (NPDES) created by the Clean Water Act, as amended 33 U.S.C. 1251 et seq. and by rules and regulations adopted and promulgated pursuant to Neb. Rev. Stat. § 81-1505.

9. Title 119, Ch. 1, 087 defines pollutant to include sewage, which is the primary constituent of Respondent's municipal wastewater.

10. Title 119, Ch. 2, 001 prohibits the discharge of any pollutant into any waters of the state from a point source without first having obtained a permit from the Department for such discharge. Respondent does not have a permit authorizing discharge to waters of the state.

11. On or about September 20, 2018, a Department employee conducted a site investigation of Respondent's WWTF and observed a hose running from the Respondent's wastewater treatment lagoon to Verdigre Creek. The Respondent's consulting engineer, who was contacted via phone, confirmed that wastewater had been discharged via a hose from Respondent's lagoon to Verdigre Creek.

12. On or about October 1, 2018, as a result of the investigation, the Department issued Respondent a Notice of Violation for discharging from the WWTF without a NPDES permit or authorization and requesting that Respondent provide a written explanation for the discharge.

13. On or about November 1, 2018, the Department received Respondent's response, which in part stated that the discharge had lasted for 23 days; that the discharge was the result of high water levels in the lagoons; that land application was not practical and that the village was planning on installing a new land application system.

14. Respondent has caused wastewater to be discharged to waters of the state without a permit in violation of Neb. Rev. Stat. § 81-1506(2) and Title 119 and as a result of the discharge has caused pollution of Verdigre Creek in violation of Neb. Rev. Stat. § 81-1506(1).

#### **IV. COMPLIANCE ORDER**

15. It is hereby ORDERED that Respondent shall:

- a. By March 1, 2019, submit an application for a National Pollutant Discharge Elimination System (NPDES) Permit for Department review and approval that

describes how the Respondent will implement land application in accordance with Title 119 requirements.

- b. By June 3, 2019, submit for Department review and approval a plan describing how the source(s) of excess inflow and infiltration to the Respondent's sewer system will be identified.
- c. By August 1, 2019 submit for Department review and approval a plan describing the corrective action Respondent will take to eliminate, reduce and mitigate excess infiltration and inflow to the sewer system.

#### **V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

16. 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.

17. 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 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.

#### **VI. SETTLEMENT CONFERENCE**

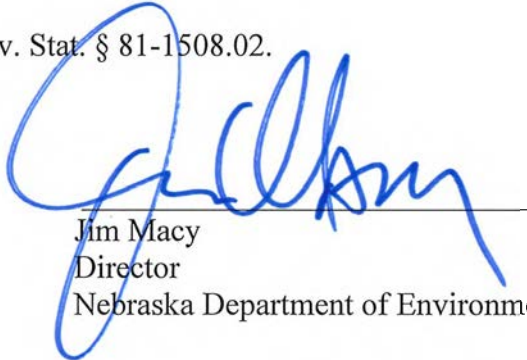
18. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of Environmental

Quality, 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.

## **VII. INJUNCTIVE RELIEF AND PENALTY PROVISIONS**

19. 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 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.

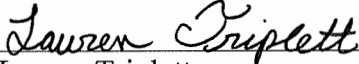
1-4-19  
Date

  
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Jim Macy  
Director  
Nebraska Department of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, were served by certified United States mail, postage prepaid, return receipt requested this 8<sup>th</sup> day of January, 2019, upon the Respondent listed below:

Dave Wickett, Chairperson  
Village of Verdigre  
301 South Main St.  
P.O. Box 330  
Verdigre, NE 68783

  
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Lauren Triplett  
Staff Assistant - Legal Division