

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
THE CITY OF HUMPHREY,
Respondent.

Case No. 3147
COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY
FOR HEARING

COMPLAINT

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 of the Nebraska Environmental Act §81- 1501 et seq. (Reissue 2008).

2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504(1) and (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). The Respondent is the City of Humphrey in Platte County, Nebraska.

3. Pursuant to Neb. Rev. Stat. §81-1505 the Nebraska Environmental Quality Council adopted Title 119, Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System, providing in part as follows:

"Chapter 2 - PERMITS; WHEN REQUIRED...001 No person shall discharge any pollutant into any waters of the state from a point source without first having obtained a permit from the Department for such discharge unless exempted under Chapter 3 of this Title."

4. Pursuant to Neb. Rev. Stat. §81-1505 the Nebraska Environmental Quality Council adopted Title 123, Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works, providing in part as follows:

"Chapter 11- OPERATION AND MAINTENANCE OF WASTEWATER WORKS



001 Wastewater treatment facilities shall be maintained in proper operating condition in accordance with this chapter and shall be operated in a manner to meet all NPDES permit requirements and not result in a prohibited or an unauthorized discharge. ..."

5. The Respondent owns and operates a system for collection and treatment of municipal wastewater consisting of a sewer system and a lagoon system with irrigation facilities in Platte County, Nebraska. The Respondent was issued a National Pollutant Discharge Elimination System (NPDES) permit on March 2, 2006 and amended on March 27, 2006. The permit as amended is in effect at all times material herein and provides in part as follows:

"Part I. Outfall 001 Discharge to Receiving Stream Requirements.

The discharge of treated sanitary wastewater from the Outfall 001, final effluent, as authorized and shall be monitored and limited as specified

Part II. Influent Requirements To comply with these monitoring requirements samples shall be taken at the head-works of the wastewater treatment facility prior to the treatment system. Influent shall be monitored as specified in the table below.

[Table 4 of the permit, Monitoring Requirements for Influent Wastewater, provides for flow monitoring annually on the same day as sample collection for BOD, TSS, and pH.]

III. Effluent Land Application Requirements for Outfall 003 The discharge of treated sanitary wastewater from Outfall 003, final effluent, is authorized ...

...Appendix A -Standard Conditions that Apply to NPDES and NPP Permits...

A. General Conditions...

6. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. This provision requires the operation of back-up or auxiliary facilities or similar systems which are

installed by the permittee only when the operation is necessary to achieve compliance with the conditions of the permit. ...

G. Operation and Maintenance

1. Proper Operation and Maintenance

The permittee shall, at all times, maintain in good working order and operate as efficiently as possible facilities or systems of control installed by the permittee in order to achieve compliance with the terms and conditions of this permit. This would include, but not be limited to, effective performance based on designed facility removals, effective management, adequate operator staffing and training, adequate laboratory and process controls, and adequate funding that reflects proper user fee schedules. ..."

6. The Respondent's wastewater treatment facility includes two pipes from the treatment plant to sites where the Respondent is authorized by the permit to irrigate crops with the wastewater. The Respondent has not acquired ownership or contractual terms sufficient to control when and for how long irrigation will occur and thus failed to have its system in good working order, under effective management.

7. On June 11, 10, and 13, 2010, the Respondent discharged untreated wastewater to waters of the state as a result of the Respondent's ineffective management of its irrigation capabilities.

8. On April 16, 2012, the Respondent had failed to properly maintain the south lagoon cell dike wall which was observed in a failed and eroded state.

9. On April 16, 2012, the Respondent had failed to repair the splitter box, a part of the wastewater facility which was observed in a broken state.

10. On April 16, 2012, the Respondent caused the lagoons to hold wastewater at levels above the levels that the permit specifies for maximum levels.

11. On April 16, 2012, the Respondent had failed to remove weeds and trees on the exterior of lagoon cells.

12. On April 16, 2012, the Respondent had used inappropriately large concrete pieces in many cases containing exposed reinforcing bars as rip-rap at the water and dike interface.

13. On April 16, 2012, the Respondent had failed to keep burrowing animals from its lagoon site.

14. On April 16, 2012, the Respondent had failed to place an effective fence around the perimeter of its lagoon site.

15. On April 16, 2012, the Respondent had failed to keep the lagoon site secure by closing and locking a gate to control vehicle access.

16. On April 16, 2012 the Respondent had failed to keep the lagoon site surrounded by signage that explained to the public that the lagoons contained human waste.

17. Throughout the year 2011 the Respondent failed to properly analyze the flow into the wastewater system.

18. The Respondent failed to collect and analyze the influent sample required for the year 2011.

19. Each of the actions or failures to act alleged in paragraphs 6 through 18 above constitutes a violation of the permit conditions requiring proper operation and maintenance cited in paragraph 5 and the Title 123 requirement to maintain facilities in proper operating conditions and not result in a prohibited bypass or unauthorized discharge cited in paragraph 4.

COMPLIANCE ORDER

19. IT IS THEREFORE ORDERED that on or before June 15, 2012, the Respondent shall complete the following:

a. Replace or modify, physically, and/or by terms of legal authority and contractual rights, the facilities for land application so that the Respondent has the unequivocal right and ability to irrigate as necessary to prevent violation of its NPDES permit.

b. Locate each of the lagoon valves at its facility and determine whether each is operable and supply a drawing with accurate scale showing the location and state of repair of each.

c. Initiate a study of lagoon flow using among other elements, historical city pumping records.

d. Remove all trees and deep rooted vegetation from the lagoon site and repair damage caused by burrowing animals.

20. IT IS FURTHER ORDERED that on or before August 15, 2012, the Respondent shall complete the following:

a. Complete a geotechnical investigation under the supervision of a professional engineer of all the lagoon dikes and liners and submit a written report of the same to NDEQ for its approval. The report shall address all significant geotechnical features of the lagoons and include control measures to address animal burrows, erosion, and tree roots.

b. Identify and accurately plot all soil deposited on dikes and liners, all improper rip-rap, and all locations of dike and liner damage that are not consistent with the design for the wastewater facility.

c. Replace all inoperable valves with new valves.

d. Remove all sources of influent that carry liquid other than wastewater to the lagoon.

e. Eliminate all known sources of groundwater infiltration to the wastewater lagoons.

21. IT IS FURTHER ORDERED that on or before October 31, 2012, complete the following:

a. Repair the splitter box, and repair or remove of all other conditions at the lagoon that are not in conformity with the lagoon permit/s and NDEQ regulations.

b. Submit to NDEQ a wastewater facility plan for NDEQ's approval covering all of the Respondent's wastewater system. The submission shall include and incorporate the completed study of lagoon flow required in paragraph 19 above.

22. IT IS FURTHER ORDERED that on or before October 31, 2013, all necessary construction permits shall be secured from NDEQ and all construction identified as necessary for the sanitary sewers and the wastewater treatment facility in the Facility Study shall be completed.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

23. Pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2008) the Respondent has the right to apply for a hearing to contest this Complaint and Compliance Order by making a request for such hearing to the Director no later than 30 days after service hereof. Nebraska Department of Environmental Quality, Rules of Practice and Procedure, Title 115, Chapter 7, sets forth the procedure of such hearings.

ADVISEMENT OF POSSIBLE PENALTIES

24. 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 civil penalties of up to \$10,000 per day as set out in Neb. Rev. Stat. §81-1508.02 (Reissue 2008).

Dated: _____

May 21 2012

By: _____



Michael J. Linder, Director
Nebraska Department of
Environmental Quality

AFFIDAVIT

STATE OF NEBRASKA
COUNTY OF LANCASTER

ss

COMES NOW Timothy J. Doyle, who upon first being duly sworn on oath, deposes and says that on May 21, 2012, he caused an exact copy of the attached Complaint, Compliance Order, and Notice of Opportunity for Hearing, to be served upon the City of Humphrey, Nebraska, by mailing the same, certified mail with return receipt requested, sufficient postage prepaid, in the regular United States mail, addressed as follows:

Hon. Alan Eisenmenger
Mayor of Humphrey
P.O. Box 48
Humphrey, NE 68642

By:


Timothy, J. Doyle, affiant

SUBSCRIBED AND SWORN to before me, a Notary Public, on

May 21, _____, 2012.



By:


NOTARY PUBLIC