

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF THE VILLAGE
OF FAIRMONT, NEBRASKA

FID #57714

Respondent.

)
)
)
)
)
)
)

Case No. 3524

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. The Complainant is the Director of the Nebraska Department of Environment and Energy (NDEE or Department). The Respondent is the Village of Fairmont, a body corporate and politic as provided in the laws of Nebraska.

2. Complainant has determined the Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532 and Neb. Admin. Code, Title 123, Rules and Regulations for The Design, Operation and Maintenance of Wastewater Works.

3. The Complaint below establishes the violations, and the Compliance Order establishes a schedule for corrective actions to be taken by the Respondent.

II. JURISDICTION

4. NDEE is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1), of exercising exclusive general supervision, administration, and enforcement of NEPA and all rules and regulations promulgated under such acts.

5. Pursuant to the Nebraska Environmental Quality Council's authority to adopt and promulgate rules and regulations as expressed in Neb. Rev. Stat. § 81-1505(8), the Council



adopted rules and regulations codified as Neb. Admin. Code, Title 123, Rules and Regulations for The Design, Operation and Maintenance of Wastewater Works (Title 123).

6. At all times material herein, Respondent has owned and operated a Wastewater Treatment Facility (WWTF) for the collection and treatment of municipal wastewater located in Fillmore County, Nebraska.

III. COMPLAINT

7. Neb. Rev. Stat. § 81-1506(3)(c) makes it unlawful to violate any rule or regulation adopted and promulgated pursuant to NEPA.

8. Title 123, Ch. 11, 008.04 requires that when inactive lagoon cells are placed into service, the liner's permeability rate will be tested, and if necessary, restored to meet the seepage rate established by the Department.

9. The WWTF was originally designed to include four lagoon cells. Of the four cells, only Primary Lagoon Cell #2 has been used continuously.

10. On or about July 12, 2017, Respondent submitted a construction application to the Department proposing to reduce the capacity of the WWTF by cannibalizing Evaporative Lagoon Cell #1 to berm off a portion of Primary Lagoon Cell #1, creating a smaller cell now referred to as the Northeast Cell.

11. An engineering report contained in the application indicated that Final Lagoon Cell #1 would need to be refurbished if Respondent were to place the cell back into service.

12. Construction on the Northeast Cell was completed on or about July 9, 2018. Upon completion, only Primary Lagoon Cell #2 and the Northeast Cell were active and suitable for use.

13. On February 21, 2020, the Department conducted a site inspection of Respondent's WWTF and observed, among other things, the Northeast Cell was discharging into Final Lagoon Cell #1 and standing water was present in Final Lagoon Cell #1.

14. On or about March 18, 2020, based on the site inspection, the Department mailed a Notice of Violation to Respondent requesting that Respondent, among other things, submit a written description of how Respondent will maintain storage capacity in the lagoon system without using inactive cells or provide a schedule for placing inactive cells back into service in compliance with Title 123. The Department has not received the written response as requested.

15. Respondent's operation of Final Lagoon Cell #1 is a violation of Title 123, Ch. 11, 008.04 and an unlawful act under Neb. Rev. Stat. § 81-1506(3)(c).

III. COMPLIANCE ORDER

16. Within 60 days of receiving this Order, Respondents shall submit a written description of how Respondent will maintain storage capacity in the lagoon system without using inactive cells or provide a schedule for placing inactive cells back into service which complies with Title 123.

17. Submissions to the Department under this Order shall refer to FID #57714 and shall be sent to:

Reuel Anderson
NPDES Permits and Compliance Supervisor
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

18. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondents file an answer and request, 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.

19. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Neb. Admin. Code, Title 115, Rules of Practice and Procedure. The answer and request for hearing may be filed by mail to: Jim Macy, Director, State of 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 1200 N Street, Suite 400, Lincoln, Nebraska.

V. SETTLEMENT CONFERENCE

20. Whether or not Respondents request a hearing, an informal settlement conference may be requested by writing to Steve Thomas, Attorney, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

21. 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.

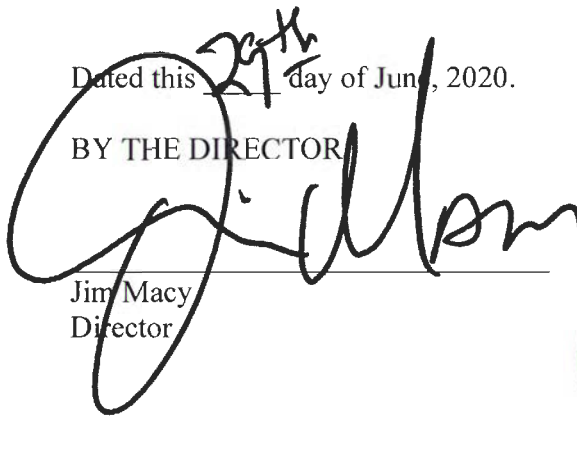
VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

22. 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 NDEE from pursuing such enforcement.

Dated this 29th day of June, 2020.

BY THE DIRECTOR

Jim Macy
Director

A large, stylized handwritten signature in black ink, which appears to read "Jim Macy", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the beginning and a long, thin vertical stroke at the end.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complain, Compliance Order and Notice of Opportunity for Hearing, was served by certified United States mail, postage prepaid, return receipt requested this 30th day of June, 2020, upon the Respondent listed below:

Village of Fairmont
Aaron Fintel, Chairperson
635 6th Ave
PO Box 156
Fairmont, NE 68354


Lauren Triplett
Staff Assistant – Legal Division

USPS Label # 9414810898765062090942