

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	CASE NO. 3248
CITY OF MITCHELL,)	
A political subdivision of the)	
State of Nebraska,)	COMPLAINT, COMPLIANCE
)	ORDER AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Respondent.)	

I. INTRODUCTION

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 2008, 2012 Cum. Supp., 2013 Supp.). Complainant has determined that the respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 *et. seq.* (Reissue 2008, 2012 Cum. Supp., 2013 Supp.) and Title 119, *Rules and Regulations Pertaining to the issuance of Permits Under The National Pollutant Discharge Elimination System*. The Complainant is the Acting Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent is the City of Mitchell. The Complaint below establishes the violations.

II. COMPLAINT

1. At all times material herein the Respondent, City of Mitchell, a political subdivision of the State of Nebraska, has owned and operated a wastewater collection and treatment facility located in Scotts Bluff County, Nebraska. The wastewater collection and treatment facility treats the waste and then disposes the treated waste by discharging it into the North Platte River, a water of the State.



2. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the issuance of operating permits for sources of water pollution, as expressed in Neb. Rev. Stat. §81-1505(11), the Council adopted a rule and standard codified as Title 119, *Rules and Regulations Pertaining To The Issuance of Permits Under the National Pollutant Discharge Elimination System*.

3. At all times material herein the Respondent under Title 119 has had a National Pollutant Discharge Elimination System (NPDES) permit No. NE0026123.

4. Pursuant to 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.

5. Over the last four years Respondent has exceeded its permitted numerical limits for discharging for the following: CBOD (Carbonaceous Biochemical Oxygen Demand), TSS (Total Suspended Solids), Ammonia and Fecal Coliform.

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

7. Respondent has violated Neb. Rev. Stat. § 81-1508.02 (1) (b).

8. The Director also finds that the activity defined in paragraphs 5 above violates the Respondent's permit, poses a potential risk to surface and ground water quality and is a potential risk to public health or welfare.

III. COMPLIANCE ORDER

9. IT IS HEREBY ORDERED THAT RESPONDENT:

A. By October 1, 2014 submit a facility plan that meets Waste Water Advisory Committee (WWAC) minimum requirements (See attachment 1, incorporated herein). Prior to submitting this plan Respondent must conduct a flow study that meets the requirements of the WWAC Water Wastewater Common Pre-application Process (See attachment 1).

B. By January 1, 2015 submit to the Department plans and specifications prepared by a registered Nebraska professional engineer, for upgrades to wastewater works in accordance with a facility plan submitted to and approved by the Department.

C. By March 1, 2015 begin construction of upgrades to wastewater works in accordance with the approved plans and specifications.

D. By October 1, 2016 place into operation a wastewater works in compliance with all permit requirements and regulations.

E. Until written approval by the Department, the Respondent shall not add and shall not allow any other person or party to add service connections to the sanitary sewer system as of the date of this Order.

10. Respondent shall submit monthly progress reports to NDEQ on the activities listed in paragraph 9 of this Order. These reports shall contain information regarding the activities associated with the project, construction

schedule and completion date. Respondent shall report to NDEQ any delay in progress with complying with paragraph 9 of this Order.

11. Respondent shall respond promptly to any written communication by the NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Order.

12. Information to be submitted under this Order shall be sent to:

Steve Goans
Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number (402) 471-2186

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

13. This Complaint, Compliance Order and Notice of Opportunity shall become final, pursuant to Neb. Rev. Stat. §81-1507(1), unless Respondent files a written answer no later than thirty days after receipt of this Order and requests a hearing. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

14. A written answer to the Complaint, Compliance Order and Notice of Opportunity must conform to the requirements of Title 115, Neb. Admin. Code, Rules of Practice and Procedure, Chapter 7 (See attachment 2). The answer and request for hearing may be filed by mail to: Patrick W. Rice, Acting Director, State of 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.

V. SETTLEMENT CONFERENCE

15. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Steve Moeller, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

16. 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 Complaint, Compliance Order and Notice of Opportunity.

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

17. 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 precludes the NDEQ from pursuing such enforcement.

February 12, 2014
Date


Patrick W. Rice
Patrick W. Rice, Acting Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, was served by certified

United States mail, postage prepaid, return receipt requested this 13th day of February 2014 upon the Person listed below:

Mr. Brian Taylor
Mayor
1280 Center Avenue
Mitchell, Nebraska 69357


Steven J. Moeller
Staff Attorney