

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3165
CITY OF GIBBON,	)	
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, Cum. Supp. 2010, Supp. 2011). 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, Cum. Supp. 2010, Supp. 2011), Title 123, *Rules And Regulations For The Design, Operation And Maintenance Of Wastewater Works*, and Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under The National Pollutant Discharge Elimination System*. The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent is the City of Gibbon. The Complaint below establishes the violations.

II. COMPLAINT

1. At all times material herein the Respondent, City of Gibbon, a political subdivision of the State of Nebraska, has owned and operated a wastewater collection and treatment facility located in Buffalo County, Nebraska. The



wastewater collection and treatment facility treats the waste and then discharges the treated waste into the Wood 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. NE0029297. Under Title 119, Chapter 3, Section 003, the Director may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by Industrial Users where such contributions do not meet applicable National Pretreatment Standards and requirements, where such contributions would cause the POTW to violate its NPDES permit, or where such contributions exceed the reserve treatment capacity of the POTW.

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. Neb. Rev. Stat. §81-1508.02 (1) (e) states that it is unlawful for any person to violate any duty or provision of the acts, rules or regulations permit or license condition

5. Over approximately the last year, Respondent exceeded permit limits for Total Suspended Solids (TSS), Ammonia, and violated Acute toxicity limitations. Further, over the last two years the Respondent has failed to operate

and maintain the Sequential Batch Reactors (SBR) and anaerobic lagoons as set out in the design of the facility.

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) (e) and Title 123, Chapters 11 and 14.

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

### III. COMPLIANCE ORDER

9. IT IS HEREBY ORDERED THAT RESPONDENT:

- A. By February 1, 2013 repair all SBR units to operating condition and operate them as designed.
- B. By May 1, 2013 repair or replace both anaerobic lagoon covers.
- C. By May 1, 2013 operate facility as designed and complete necessary maintenance.
- D. By June 1, 2013 is in compliance with all permit requirements and regulations.
- E. During the effective period of this Order, the Respondent shall not add or allow any other person or party to add any industrial user, commercial user, or housing development service connections to the sanitary sewer system until written approval is granted by the Department.

10. Respondent shall submit monthly written 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. The answer and request for hearing may be filed by mail to: Michael J. Linder, 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. Violation of this Compliance Order may result in penalties of up to \$10,000 per day. 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.

August 13 2012

Date

Michael J. Linder

Michael J. Linder, 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 14<sup>th</sup> day of August 2012 upon the Person listed below:

Mayor Cory Snell  
City Hall  
715 Front Street  
P.O. Box 130  
Gibbon, Nebraska 68840

Steven J. Moeller

Steven J. Moeller  
Staff Attorney