

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
THE CITY OF YORK,
Respondent.

Case No. 3169
COMPLAINT, COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR
HEARING

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, Neb. Rev. Stat. §§ 81-1501 to -1532 (2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality ("NDEQ" or "Department"). The Respondent is the City of York, York County, a body corporate and politic, as provided in the laws of Nebraska.

2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) & (4) (2008), of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to -1532, 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 (2008).

3. The Respondent owns and operates a system for collection and treatment of wastewater in York County, Nebraska, consisting of a sewer system and a mechanical treatment system.

4. Neb. Rev. Stat. § 81-1502(10) (Reissue 2008) is in effect at all times material herein and defines Respondent as a "person."

5. Nebraska Administrative Code Title 119, *Rules And Regulations Pertaining To The Issuance Of Permits Under The National Pollutant Discharge Elimination System*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505. Pursuant to Title 119, the Complainant issued the Respondent a National Pollutant Discharge Elimination System



(NPDES) permit that became effective on July 1, 2008 (hereinafter “permit”). The permit, number NE0040932, is in effect at all times material herein.

FIRST CLAIM

6. The permit provides a schedule for construction which will allow the Respondent to meet final effluent limitations outlined elsewhere in the permit. The compliance schedule can be found in *Part V. Compliance Schedule for Meeting Final Escherichia coli Limitations*. Part V states, in relevant part:

On or before the last day of the 36th month after the issuance of this permit, the permittee shall initiate the construction phase of the upgrade to the York WWTF in order to bring the York WWTF into compliance with the final fecal coliform limits contained in this permit... On or before the last day of the 48th month after the issuance of this permit, the permittee shall complete any necessary construction to the York WWTF. The permittee, (City of York), will certify that the York WWTF is in compliance with the final numerical *Escherichia coli* limitation established in the permit.

7. Neb. Rev. Stat. §81-1508.02(1)(b) states that it is unlawful for any person to violate “any permit ... issued or entered into pursuant to the Environmental Protection Act ... or the rules or regulations adopted and promulgated pursuant to such act[]” Title 119, Chapter 14, 001.01 further states that “[t]he permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Federal and State Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.”

8. Respondent failed to begin construction by the last day of the 36th month following issuance of the permit and failed to complete construction by the last day of the 48th month following issuance of the permit.

9. The Director finds that respondent has violated its permit, thereby violating Title 119.

10. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) to issue this order requiring the modification of the wastewater treatment facility as necessary to prevent, control, or abate pollution.

SECOND CLAIM

11. The permit provides final effluent limitations for the pollutant *Escherichia coli* in *Part II.C Table 3: Discharge Limitations and Monitoring Requirements for Escherichia coli*. The table provides an interim reporting requirement as well as final limitation of 126 Colony Forming Units per 100 milliliters of effluent (CFU/100mL). The final limitation is to apply following the construction schedule in Part V, described above.

12. Respondent reported noncompliance with the limitation for *Escherichia coli* for the months of August and September 2012.

13. The Director finds that respondent has violated its permit, thereby violating Title 119.

14. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) to issue this order requiring the modification of the wastewater treatment facility as necessary to prevent, control, or abate pollution.

COMPLIANCE ORDER

15. IT IS THEREFORE ORDERED that the Respondent shall perform, within the following time frames, the following activities:

- a. On or before February 1, 2013, the Respondent shall complete and submit to the NDEQ for approval design and specifications for an upgrade to the Wastewater Treatment Facility that will routinely produce an effluent discharge that will meet all permit conditions.
- b. On or before December 1, 2013, the Respondent shall complete construction based on the approved design and specifications and shall operate the Wastewater Treatment Facility in compliance with all conditions of its permit, Title 119, and all other relevant rules and regulations.

- c. Beginning February 1, 2013, and every 3 months until construction is completed, Respondent shall submit a progress report to the Department summarizing the status of compliance with this schedule.

16. 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

17. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless 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.

18. 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:

Michael J. Linder, 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.

V. SETTLEMENT CONFERENCE

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

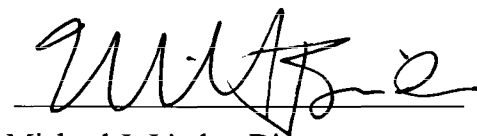
20. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

21. 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 fine up to \$10,000 per day as set out in Neb. Rev. Stat. § 81-1508.02.

December 18 2012

Date

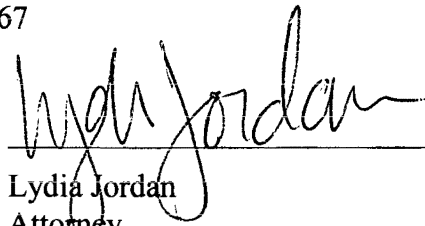
A handwritten signature in black ink, appearing to read "M. J. Linder", written over a horizontal line.

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 18 day of December 2012 upon the Respondent listed below:

The Honorable Charles Harris, Mayor
PO Box 276
York, NE 68467



Lydia Jordan
Attorney