

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF THE VILLAGE
OF CHAMBERS, NEBRASKA

FID # 57926

Respondent

Case No. 3470

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 the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2014; Cum. Supp. 2016) and the Wastewater Treatment Operator Certification Act, Neb. Rev. Stat. § 81-15,128 *et seq.* (Reissue 2014).

2. The Complainant is Jim Macy, Director of the Nebraska Department of Environmental Quality (NDEQ or the Department). The Respondent is the Village of Chambers, a body corporate as provided in the laws of Nebraska.

II. JURISDICTION

3. At all times material herein, Respondent has owned and operated a Wastewater Treatment Facility (WWTF) for the collection and treatment of municipal wastewater consisting of a sewer system and a three-cell wastewater treatment lagoon. The WWTF is located within the drainage basin of the South Fork of the Elkhorn River, northeast of the Village of Chambers, in the NW1/4 of the SE1/4, Section 20, Township 26N Range 12W, Holt County, Nebraska.

4. The Department is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504(1) to administer and enforce the NEPA and all rules, regulations and orders created thereunder.

5. The Department is also the agency charged with the duty pursuant to Neb. Rev. Stat.



§ 81-15,131 to carry out the purposes of the Wastewater Treatment Operator Certification Act and all rules, regulations and orders created thereunder.

6. Pursuant to Neb. Rev. Stat. § 81-1504 and § 81-1505, the Nebraska Environmental Quality Council adopted rules and standards codified as Neb. Admin. Code Title 119 - *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System* and Neb. Admin. Code Title 123 - *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*.

7. Pursuant to Neb. Rev. Stat. § 81-15,130, the Council also adopted rules and standards codified as Neb. Admin. Code Title 197 - *Rules and Regulations for Certification of Wastewater Treatment Operators in Nebraska*.

III. FIRST COMPLAINT

8. Neb. Rev. Stat. § 81-1502(21) defines waters of the state to mean all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.

9. Neb. Rev. Stat. § 81-1506(2)(a) makes it unlawful to discharge any pollutant into the waters of the state without first obtaining a permit as required by the National Pollutant Discharge Elimination System (NPDES) created by the Clean Water Act, as amended 33 U.S.C. 1251 *et seq.* and by the rules and regulations adopted and promulgated pursuant to Neb. Rev. Stat. § 81-1505.

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

11. Title 119, Ch. 1, 087 defines pollutant to include sewage and municipal wastewater, which are the primary constituent of Respondent's municipal wastewater.

12. Title 119, Ch. 2, 001 prohibits the discharge of any pollutant into any waters of the state from a point source without first having obtained a permit from the Department for such discharge.

13. Title 123, Ch. 11, 001 requires proper operation and maintenance of wastewater lagoons and that such operation not result in a prohibited bypass or an unauthorized discharge.

14. Title 123, Ch. 11, 008 requires the prompt removal of vegetation from wastewater lagoons.

15. Department records show Respondent's WWTF is a non-discharging lagoon system with wastewater to be land applied to nearby cropland. Department records also show Respondent obtained an easement for land application and installed three groundwater monitoring wells to monitor the impact to groundwater at the land application site.

16. On or about May 8, 2017, the Department received an application from Respondent for exempt status as a non-discharging lagoon. The application stated in part that land application to lower lagoon levels had not been necessary for the previous three years.

17. On or about June 13, 2018, Department employees observed wastewater discharging from Respondent's lagoon system via an open pipe directly into a low-lying grassy area that drains to the north. At the time of the investigation, a village employee indicated the discharge was a result of wet weather and high lagoon levels. The employee further stated that the landowner would not allow land application at the time of the discharge.

18. On or about July 13, 2018, the Department issued a Notice of Violation to the

Respondent for discharging from their WWTF without a permit in violation of Title 119, Ch. 2, 001 and Neb. Rev. Stat. § 81-1506(2)(a). The Department requested that Respondent provide a written explanation for the discharge.

19. On or about July 27, 2018, the Department received Respondent's written response, which in summary, stated that recent rains had been unusually heavy resulting in periodic outflows from the lagoon during the period from June 7 through July 20, 2018 and that the village was unable to obtain landowner consent to land apply the excess water.

20. On or about October 16, 2018, a Department employee again observed wastewater discharging from Respondent's lagoon system via an open pipe directly into the low-lying grassy area. The Department employee also observed overgrown vegetation and trees growing in Respondent's lagoons.

21. Respondent has discharged sewage and municipal wastewater to waters of the State without a permit in violation of Neb. Rev. Stat. § 81-1506, Title 119 and Title 123.

22. Respondent has failed to remove woody vegetation from the wastewater lagoons in violation of Neb. Rev. Stat. § 81-1506 and Title 123.

IV. SECOND COMPLAINT

23. Neb. Rev. Stat. § 81, 15,134 requires all WWTF be under the supervision of an operator certified to at least the level of the WWTF that is to be supervised.

24. Title 197, Ch. 3.002 requires all WWTF to have operators certified at the classification level of the WWTF, unless exempted by Title 197, Ch. 2, 002.

25. On or about May 17, 2017, the Department granted exemption from the Title 197 requirements for a certified operator.

26. On or about December 12, 2018, because of documented non-compliance events, the Department revoked Respondent's exemption and notified Respondent that a direct responsible charge (DRC) operator certified at least to the Class L level was required.

27. Respondent continues to operate the WWTF without a Class L level or higher certified operator in violation of Neb. Rev. Stat. § Neb. Rev. Stat. § 81, 15,134 and Title 197.

V. COMPLIANCE ORDER

28. It is hereby ORDERED that Respondent shall:

- a. Cease all discharge of wastewater unless the discharge is unavoidable to prevent loss of life, personal injury, or severe property damage and there are no feasible alternatives to the discharge.
- b. If Respondent makes a determination to discharge:
 - i. Notify the Department at least 48 hours in advance of any planned discharge;
 - ii. Sample the discharge for Carbonaceous Biochemical Oxygen Demand, Total Suspended Solids, pH, Ammonia and e-coli;
 - iii. Publish a notice of the discharge in a local paper and at the local post office.
- c. By February 8, 2019, provide for Department review and approval a schedule for hiring a Class L level or higher certified wastewater operator.
- d. By March 1, 2019, submit NPDES Combined Form 1 & 2A - T-119 A (available on the Department website at: <http://deq.ne.gov/>) for Department review and approval describing how the village will implement land application in accordance with Title 119 requirements. The application must include a groundwater-monitoring plan that

provides a schedule and description for the sampling of the existing groundwater monitoring wells.

- e. By April 5, 2019, submit for Department review and approval a plan for identifying source(s) of excess inflow and infiltration to the village sewer system.
- f. By August 1, 2019 submit for Department review and approval a plan describing the corrective action to be taken to eliminate, reduce and mitigate excess infiltration and inflow to the sewer system.

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

30. 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:

Jim Macy, 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.

VII. SETTLEMENT CONFERENCE

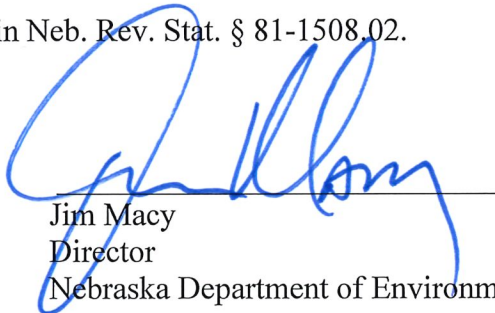
31. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of Environmental

Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request. 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.

VIII. RESERVATION OF RIGHTS AND PENALTY PROVISIONS

32. The Department reserves the right to require the Respondent to complete additional work or take additional actions as necessary to achieve compliance with all applicable laws and regulations. Further, 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 Department from pursuing such enforcement. Failure to obey this order may result in fines up to \$10,000 per violation per day, as set out in Neb. Rev. Stat. § 81-1508.02.

1-23-19
Date



Jim Macy
Director
Nebraska Department of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, were served by certified United States mail, postage prepaid, return receipt requested this 24th day of January, 2019, upon the Respondent listed below:

Brian Rowse, Chairperson
Village of Chambers
P.O. Box 143
Chambers, NE 68725



Lauren Triplett
Staff Assistant - Legal Division