

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3118
CITY OF BENKELMAN,	)	
A political subdivision of the	)	
State of Nebraska,	)	CONSENT ORDER
	)	
	)	
Respondent.	)	

I. INTRODUCTION

1. The Department of Environmental Quality (DEQ) and the Respondent, City of Benkelman, Nebraska, voluntarily enter into this Consent Order. The Consent Order establishes a schedule of compliance for changes to the Respondent's wastewater treatment facility necessary to achieve and maintain compliance with the National Pollutant Discharge Elimination System (NPDES), the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 et seq. (Reissue 2008, Cum. Supp. 2010), Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Treatment Works* and Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under The National Pollutant Discharge Elimination System*. This Consent Order also provides for the performance of activities specified in Section VI.

II. JURISDICTION

2. The DEQ 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 the NEPA. This Consent Order is issued under the authority vested in the Director of the DEQ by Neb. Rev. Stats. §81-1504(25) and §81-1507(1).



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3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent agrees that it will not contest the basis or validity of this Consent Order in any proceedings by the DEQ to enforce this Consent Order.

### III. PARTIES

4. This Consent Order is binding on the DEQ and the Respondent and its successors and assigns.

5. The Respondent shall ensure that any contractors, sub-contractors, and representatives implementing any provision of this Consent Order receive a copy of this Consent Order. The Respondent shall be responsible for any noncompliance with this Consent Order.

### IV. FINDINGS OF FACT

6. At all times material herein the Respondent, City of Benkelman, a political subdivision of the State of Nebraska, has owned and operated a wastewater collection and treatment facility located in Dundy County, Nebraska. The wastewater collection and treatment facility treats the waste and then disposes the treated waste by discharging it into the Republican River.

7. 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*.

8. At all times material herein the Respondent under Title 119 has had a National Pollutant Discharge Elimination System (NPDES) permit No. NE0112887.

9. 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.

10. On or about February 2008 through May 2009, Respondent violated the following numeric limits contained in its permit:

- A. Exceeded the limitation for E. Coli twice.
- B. Exceeded the limitation for pH three times.
- C. Exceeded the limitation for Ammonia seven times.
- D. Exceeded the limitation for total Suspended Solids twelve times.
- E. Exceeded the Carbonaceous Biochemical Oxygen Demand (CBOD) eighteen times.

#### V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

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

13. The Director of the Department 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.

#### VI. COMPLIANCE ORDER

14. Respondent agrees to perform the following activities:

- A. By June 1, 2012 implement all necessary measures to improve compliance in existing wastewater lagoons, as approved by the Department, to remedy or improve the current inadequate performance of the system.
- B. By July 1, 2012 submit a final facility plan to the Department for approval, which will meet the limitations set out in Respondent's permit and Title 119.
- C. By March 1, 2013 submit plans and specifications prepared by a registered Nebraska professional engineer, for the Department's approval, for upgrades to wastewater works in accordance with a facility plan submitted to and approved by the Department.
- D. By April 1, 2014 begin construction of upgrades to wastewater works in accordance with the approved plans and specifications.
- E. By December 1, 2014, place into operation a wastewater works constructed in accordance with plans and specifications approved by NDEQ.

15. Beginning April 1, 2012, the Respondent shall submit quarterly progress reports to DEQ on the activities listed in paragraph 14 of this Consent Order. These reports shall contain information regarding the activities associated with the project, construction schedule and completion date.

16. The Respondent shall respond promptly to any written communication by the DEQ to modify any submitted documents and by making the required

modifications or changes no later than 30 days after receipt or date specified in written comments by DEQ. Any delay in responding to such communication shall be construed as non-compliance with this Consent Order.

## **VII. COMPLIANCE WITH OTHER LAWS**

17. The Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permits.

## **VIII. FORCE MAJEURE**

18. Force majeure for the purposes of this Consent Order means any event arising from causes entirely beyond the control of the Respondent and any entity controlled by the Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order. The Respondent shall exercise best efforts to anticipate any potential force majeure events and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable.

19. If any event occurs that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the Respondent shall notify the DEQ by telephone within 24 hours of learning of the event. The Respondent shall provide, in writing within 7 days, the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any action.

20. If the DEQ agrees that the delay is attributable to a force majeure, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay.

21. The DEQ, in its discretion, may agree to an extension caused by any other event.

#### IX. RESERVATION OF RIGHTS

22. Nothing in this Consent Order shall be construed to limit the power and authority of the DEQ to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA and any rules, regulations, orders, or permits issued pursuant to NEPA.

#### X. NEGATION OF AGENCY RELATIONSHIP

23. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the DEQ and the Respondent.

#### XI. AMENDMENT

24. This Consent Order may be modified and amended in writing by mutual agreement of the DEQ and the Respondent.

#### XII. EFFECTIVE DATE

25. This Consent Order shall become effective on the date it is signed by the Director of the DEQ or his designee.

#### XIII. SEVERABILITY

27. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative

authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

#### XIV. SIGNATURES

28. For the Respondent: The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By: Gay L Clark  
Title: Mayor  
Date: January 5, 2012

29. For the DEQ: IT IS ORDERED and agreed this 10<sup>th</sup> day of January, 2012.

By: MJL  
Michael J. Linder  
Director  
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 10<sup>th</sup> day of January 2012 upon the Person listed below:

Mr. Gary Clark  
City of Benkelman  
P.O. Box 347  
Benkelman, Nebraska 69021

  
Steven J. Moeller  
Staff Attorney