

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
THE VILLAGE OF LEWISTON,
Respondent.

Case No. 3012
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 § 81-1501 et seq (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to hereinafter as NDEQ). The Respondent is the Village of Lewiston, Pawnee 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) (Reissue 2008), of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq., 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 (Reissue 2008).

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

FIRST CLAIM

4. 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 on November 28, 2007 that became effective on January 1, 2008. The permit is in effect at all times material herein. Title 119, Chapter

20100026000

14, 001.01 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.”

5. Respondent’s permit, Part II, Page 5, required submission of plans and specifications to the Department by April 1, 2009 as well as submissions of progress reports on October 1, 2008, April 1, 2009, and October 1, 2009. Appendix A of Respondent’s permit also required proper maintenance and operation of the facility including prevention of erosion to the dikes and overflow of influent box into the lagoon.

6. On or about March 18, 2010 and March 23, 2010, Respondent failed to provide proper maintenance and operation of the facility by allowing erosion to the dikes and overflow of influent box into the lagoon. Furthermore, Respondent failed to submit plans and specification by April 1, 2009 or progress reports on October 1, 2008, April 1, 2009, or October 1, 2009, as required by its permit.

7. The Director finds that respondent has violated its permit, thereby violating Title 119, Chapter 14, 001.01.

8. 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

9. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 3 above.

10. Neb. Rev. Stat. § 81-1508.02(1)(b) (Reissue 2008) is in effect at all times material herein and states that it is unlawful to violate any regulations promulgated pursuant to the Environmental Protection Act. Pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008), the Nebraska Environmental Quality Council adopted and promulgated Title 123 of the Nebraska Administrative Code, *Rules And Regulations For The Design, Operation And Maintenance Of Wastewater Works*. At all times material herein, Title 123, Chapter 11, 001 states that “[w]astewater treatment facilities shall be maintained in proper operating condition in accordance with this chapter and shall be operated in a

manner to meet all NPDES permit requirements and not result in a prohibited bypass or an unauthorized discharge.” One of the specific requirements of Chapter 11, 008.02, states that “[a]t least two feet of water shall be maintained at all times in active wastewater lagoons...” Chapter 11, 008.05 further requires that “[d]amage to lagoon dikes and liners caused by muskrats or other rodents, erosion, tree roots, animal hooves, or any other source shall be promptly repaired.”

11. On or about March 18, 2010 and March 23, 2010, the Respondent improperly maintained its wastewater works, including:

- a. allowing muskrats to occupy the lagoon, burrowing and causing damage to the dikes and failing to promptly repair the resulting damage;
- b. allowing erosion of the dikes and overflow of the influent box into the lagoon and failure to repair the dikes following erosion;
- c. allowing a tree to grow in the dike and cause damage and failing to promptly repair the resulting damage; and
- d. allowing sludge to build up to the extent that the system was operating at a depth of less and two feet

all in violation of Nebraska Administrative Code Title 123, Chapter 11.

12. The Director finds that respondent has violated Title 123, Chapter 11.

13. 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

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

- a. Respondent shall immediately submit to DEQ a letter explaining the delay in submission of plans, specifications, and progress reports and explaining the loss of wastewater from lagoon #2.
- b. On or before September 1, 2010, Respondent shall hire a qualified professional engineer to conduct a complete facility evaluation. By this date, Respondent shall also:

- i. remove accumulated sludge from the system and land apply it properly;
 - ii. repair damage to dikes caused by erosion, animals burrowing, and tree roots;
 - iii. cover the influent box; and
 - iv. take steps to begin removing muskrats from the facility.
 - c. On or before November 1, 2010 the respondent shall submit to NDEQ the engineering evaluations for the facility and a facility plan for improvements that will bring the facility in compliance with its permit.
 - d. On or before February 1, 2011 the respondent shall submit to NDEQ construction plans and specifications which make all necessary modifications to the wastewater system in order for operation to comply with all relevant laws and regulations including Title 123.
 - e. On or before October 1, 2012, Respondent shall complete construction of the necessary modifications in accordance with the plans and specification submitted to NDEQ.
15. Once constructed, Respondent shall operate its wastewater treatment facility in accordance with its NPDES permit and all NDEQ rules and regulations, including the requirements of Title 123.

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

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

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.

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.

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.

June 16, 2010
Date

/s/ 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 16th day of June 2010 upon the Respondent listed below:

Mr. Jim Kinghorn, Chairperson
Village of Lewiston
PO Box 100
Lewiston, NE 68380-0100

/s/ Lydia Fiedler
Lydia Fiedler
Staff Attorney