

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
LANCASTER COUNTY SID #5,
Respondent.

Case No. 3011
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 Lancaster County SID #5 serving the Unincorporated Village of Cheney, Nebraska, 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 wastewater in Lancaster County, Nebraska, consisting of a sewer system and a lagoon 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.”

FIRST CLAIM

5. Neb. Rev. Stat. § 81-1506 (1)(a) (Reissue 2008) is in effect at all times material herein and states that it is unlawful for any person to “cause pollution of any air,

20100025932

waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state.”

6. On or about March 18, 2010, Respondent discharged wastewater from its treatment lagoon across its land and onto adjoining property.

7. The Director finds that respondent has violated Neb. Rev. Stat. § 81-1506(1)(a).

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 4 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, 008.05, states that “[d]amage to lagoon dikes and liners caused by ... erosion ... shall be promptly repaired.” Chapter 11, 008.07 further requires that “[w]astewater lagoons shall be operated so that the water level is not maintained in the area designed for freeboard.”

11. On or about March 18, 2010, the Respondent improperly maintained its wastewater works, including allowing an unauthorized discharge, failing to repair eroded dikes, and operating an overflowing lagoon with no freeboard, 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 take measures necessary to prevent discharge from its lagoons.
- 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 take measures to ensure that there is adequate freeboard, at least two feet below the top of the dike, in its lagoons.
- c. On or before November 1, 2010 the respondent shall submit to NDEQ a facility plan explaining upgrades necessary to achieve compliance with all statutes and regulations.
- 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 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 17th day of June 2010 upon the Respondent listed below:

Mr. Brian Faubion, President
SID #5 Lancaster County
9511 Chester Street
Lincoln, NE 68526-9323

/s/ Lydia Fiedler

Lydia Fiedler
Staff Attorney