

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
JAY B. EASTEP

NDEQ ID # 203730
OPERATION CERTIFICATION
NO. 1610

Respondent.

) CASE NO. 3442
)
) COMPLAINT
) NOTICE OF REVOCATION,
) AND NOTICE OF
) OPPORTUNITY FOR HEARING
)
)
)

I. INTRODUCTION

1. This Complaint, Notice of Revocation, and Notice of Opportunity for Hearing is issued pursuant to the Wastewater Treatment Operator Certification Act, Neb. Rev. Stat. § 81-15,128 to 81-15,143 (Reissue 2014) and the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1507 to 81-1532 (Reissue 2014, Cum. Supp. 2016).

2. Complainant, Jim Macy, is the Director of the Nebraska Department of Environmental Quality ("Department"). The Respondent is Jay B. Eastep who resides at 9931 N. 152nd St., Lancaster County, Waverly, Nebraska 68462. Respondent is a Certified Class II Wastewater Treatment Facility Operator, who holds Certificate No. 1610.

3. Pursuant to Neb. Rev. Stat. § 81-15,130, the Nebraska Environmental Quality Council is charged with the duty to adopt rules and regulations for the purpose of carrying out the Wastewater Treatment Operator Certification Act, including the certification of wastewater professionals.

4. Pursuant to Neb. Rev. Stat. § 81-15,130 the Council adopted and promulgated rules and regulations codified as Neb. Adm. Code, Title 197 - *Rules and Regulations for*



the Certification of Wastewater Treatment Operators in Nebraska.

5. Pursuant to Neb. Rev. Stat. § 81-15,136 and Title 197, Ch. 10.001, the Director may revoke the certificate of a wastewater operator for failure to use reasonable care in the performance of their duties, if the operator has practiced fraud or deception, or if the operator is unable to perform duties properly.

II. COMPLAINT

6. The Raymond Wastewater Treatment Facility (hereinafter "WWTF"), NDEQ FID # 57817, 14350 W. Railroad Street, Raymond, NE 68428, is owned and operated by the Village of Raymond, Nebraska. The legal description is SW NE Section 06, Township N 11, Range E06, Lancaster County, Nebraska. The WWTF has been issued NPDES Permit No. NE0046281

7. Department records show that at all times material herein, Respondent was the Direct Responsible Charge (DRC) for the WWTF. In accordance with Title 197 Ch. 1.016, Respondent, as DRC, had the responsibility for making decisions regarding the daily operational activities of the WWTF and for making decisions that would impact compliance with NPDES Permit No. NE0046281.

8. Two investigators from the Department conducted a site visit to the WWTF on the morning of January 5, 2018. Upon their arrival at approximately 9:30 a.m. they found that the aeration tank and blowers were not operational. They observed that (a) the clarifier was completely frozen over, allowing untreated wastewater to discharge; (b) the sludge holding tank was completely full and frozen; (c) the UV disinfection was operational with the UV bulbs still in the raceway; and (d) there was a large amount of

sludge in the UV chamber. The investigators also observed a strong septic smell in the UV chamber and aeration basin.

9. With the above equipment not operational or frozen over, wastewater was not being treated by the Facility; and untreated wastewater was being discharged directly out of the Facility onto the ground surface with the potential to reach waters of the state. The outfall was discharging solids, including personal care products, into the receiving stream.

10. Neb. Rev. Stat. § 81-1506(1)(a) makes it "unlawful for any person to cause pollution of any air, 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."

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

12. The Department has the power and duty to "require proper maintenance and operation of disposal systems" pursuant to Neb. Rev. Stat. § 81-1504(12).

13. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the issuance of NPDES permits in Neb. Rev. Stat. § 81-1505(11), the Council adopted and promulgated Neb. Admin. Code, Title 119, *Rules and Regulations Pursuant to the Issuance of Permits under the National Pollutant Discharge Elimination System (NPDES)*.

14. Title 119, Chapter 2, § 002 requires "All persons discharging or proposing to discharge pollutants from a point source into any waters of the state are required to apply for and have a permit to discharge as required by 40 CFR 122.21(a). This includes, but is not limited to, such operations as: 002.01 Disposal of sewage sludge

resulting from the operation of a treatment works that would result in any pollutant from such sewage sludge entering any waters of the state pursuant to Section 405 of the Clean Water Act”.

15. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for waste water treatment facilities in Neb. Rev. Stat. §81-1505(8), the Council adopted and promulgated Neb. Admin. Code, Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*.

16. Title 123, Chapter 11, § 001 states: “Wastewater 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.

17. The Director finds that the equipment failure at the WWTF has placed the WWTF in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et. seq. (Reissue 2014, Cum. Supp. 2016); Title 119; Title 123; and the WWTF's NPDES Permit # NE0046281.

18. The Director finds that the Village of Raymond, by the actions cited above and by failing to operate the WWTF under the terms of their permit, NPDES Permit #NE0046281, and in compliance with the NEPA, Title 119, and Title 123, has operated this facility in a manner that presents an emergency and imminent and substantial threat to human health and the environment, is likely to cause and may already have caused pollution to the air, waters, and land of the state in violation of state law, rules and regulations

19. Based upon the above facts, an Emergency Complaint and Order was filed

against the Village of Raymond and the WWTF on January 5, 2018, NDEQ Case No. 3438. As the DRC for the WWTF, these violations were the responsibility of the Respondent.

20. On August 11, 2017, the Department issued a Notice of Violation (NOV) against the WWTF for violations of Title 119 and Title 123. The NOV cites the WWTF for the following violations:

- A. Failure to comply with monitoring and reporting conditions. The annual sampling of influent wastewater was not conducted for the 2011 through 2016 annual monitoring periods. Discharge monitoring reports (DMRs) for the June 2014 through June 2017 monitoring periods have not been received by the Department. No 24 hour notification or written noncompliance report was received by the Department for an *E. coli* violation in August 2013. These are violations of Title 119, Chapter 14, Sections 001.01, 001.12D, and 001.12G.
- B. Failure to comply with signatory requirements. WWTF failed to provide the Department with their current certifying official. This is a violation of Title 119, Chapter 13, Section 004.
- C. Failure to comply with operation and maintenance requirements. The comminutor, sludge return and wasting lines, flow meter and UV disinfection system are not operational. The final clarifier has excessive sludge, the sludge holding tank is full, and the effluent discharge line is not free flowing. These are violations of Title 119, Section 001.05 and Title 123, Chapter 11, Sections 003 and 004.

As the DRC for the WWTF, these violations were the responsibility of the Respondent.

21. By failing to properly operate the Raymond WWTF Respondent has violated Neb. Rev. Stat. § 81-15,136 and Title 197, Ch. 10.001.

III. NOTICE OF REVOCATION

22. Pursuant to Neb. Rev. Stat. § 81-15,136 and Title 197, Ch. 10.001, the Director FINDS that the Respondent failed to use reasonable care in the operation and maintenance of the Village of Raymond Wastewater Treatment Facility (WWTF).

23. Pursuant to Neb. Rev. Stat § 81-15, 136 and Neb. Adm. Code Title 197, Ch.

10.002, Respondent is hereby given NOTICE OF REVOCATION of his Class II Wastewater Treatment Facility Operator Certificate No. 1610, issued by the NDEQ on June 28, 2016. This revocation is final 30 days from receipt of this Notice unless a hearing is requested pursuant to Section IV.

24. The Department will not consider any application for recertification by examination from the Respondent prior to one year from the effective date of revocation.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

25. Pursuant to Neb. Rev. Stat. §§ 81-1507(1) and 81-15,137, Respondent has the right to appeal this decision and REQUEST A HEARING in writing no later than thirty (30) days after receipt of this Notice. A written answer 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.

V. RESERVATION OF OTHER ACTIONS AND REMEDIES

26. Nothing in this Complaint, Notice of Revocation, and Notice of Opportunity for Hearing precludes the Complainant from pursuing other equitable remedies or legal action.

February 2, 2018
Date




Jim Macy, 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 was served by certified United States mail, postage prepaid, return receipt requested this 5th day of February 2018 upon the Respondent at the following address:

Jay B. Eastep
9931 N. 152nd St.
Waverly, NE 68462



Susan M. Ugai