

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3033
VILLAGE OF DUNNING,	)	
A political subdivision of the	)	
State of Nebraska,	)	COMPLAINT, COMPLIANCE
	)	ORDER AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent.	)	

I. INTRODUCTION

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 2008, Cum. Supp. 2012). Complainant has determined that the respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 2008, Cum. Supp. 2012), and Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*. The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent is the Village of Dunning. The Complaint below establishes the violations.

II. COMPLAINT

1. At all times material herein the Respondent, Village of Dunning, a political subdivision of the State of Nebraska, has owned and operated a wastewater collection and treatment facility located in Blaine County, Nebraska. The wastewater collection and treatment facility should be treating the waste and then disposing of the treated waste by land applying it.

2. 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 rules and standard codified as Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*.

3. At all times material herein the Respondent under Title 123 has duties to properly maintain and operate its wastewater treatment system.

4. Pursuant to Neb. Rev. Stat. §81-1508.02 (1)(e) states that it is unlawful for any person to violate rules and regulations.

5. On or about April 15, 2009, Respondent violated Title 123, Chapter 11 by failing to repair damage to the dikes caused by erosion, plant roots and other causes and by operating the facility with less than the two feet of liquid which does not provide protection for the soil liner.

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

7. Respondent has violated Neb. Rev. Stat. § 81-1508.02 (1) (e).

8. The Director also finds that the activity defined in paragraphs above poses a potential risk to surface and ground water quality and is a potential risk to public health or welfare.

### III. COMPLIANCE ORDER

9. IT IS HEREBY ORDERED THAT RESPONDENT:

A. By May 1, 2013 begin construction in accordance with plans and specifications approved by NDEQ.

B. By December 31, 2013 complete construction in accordance with plans and specifications and begin operating system.

10. Respondent shall report every 60 days to NDEQ progress with complying with paragraph 9 of this Order.

11. Respondent shall respond promptly to any written communication by the NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Order.

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

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

#### IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

13. This Complaint, Compliance Order and Notice of Opportunity shall become final, pursuant to Neb. Rev. Stat. §81-1507(1), unless Respondent files a written answer no later than thirty days after receipt of this Order and requests a hearing. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

14. A written answer to the Complaint, Compliance Order and Notice of Opportunity 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, State of 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. SETTLEMENT CONFERENCE

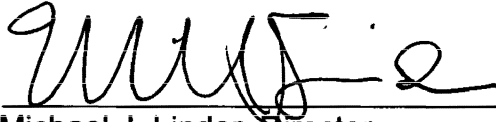
15. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Steve Moeller, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

16. 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 Complaint, Compliance Order and Notice of Opportunity.

## VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

17. 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 precludes the NDEQ from pursuing such enforcement.

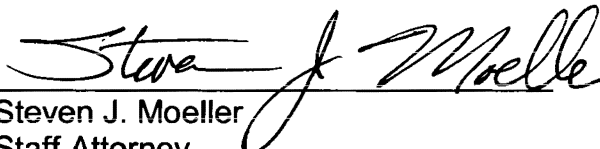
January 9 2013  
Date

  
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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 9<sup>th</sup> day of January 2013 upon the Person listed below:

Dan Sheets, Board Chairperson  
PO Box 8  
Dunning, NE 68833

  
Steven J. Moeller  
Staff Attorney