

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	CASE NO. 2979
VILLAGE OF BRAINARD,)	
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). 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), Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under The National Pollutant Discharge Elimination System.* 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 Brainard. The Complaint below establishes the violations.

II. COMPLAINT

1. At all times material herein the Respondent, Village of Brainard, a political subdivision of the State of Nebraska, has owned and operated a wastewater collection and treatment facility located in Butler County, Nebraska. The wastewater collection and treatment facility treats the waste and then disposes the treated waste by discharging it into Middle Oak Creek, a water of the State.

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 119, *Rules and Regulations Pertaining To The Issuance of Permits Under the National Pollutant Discharge Elimination System* and Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*.

3. At all times material herein the Respondent under Title 119 has had a National Pollutant Discharge Elimination System (NPDES) permit No. NE0042366.

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 June 28, 2009, Respondent violated Title 119, Chapter 4 by having wastewater overflow the dikes of the lagoon.

6. On or about June 28, 2009, Respondent violated Title 123, Chapter 11 by failing to repair damages to the dikes, operating the facility over the two foot freeboard requirement, having improper size of rip rap and having rebar in the rip rap which has punctured the liner.

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

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

9. 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

10. IT IS HEREBY ORDERED THAT RESPONDENT:

- A. Take immediate steps to stop overflowing from the cells, restore a two foot freeboard on all cells, take steps to repair damage by animal burrows, and remove improper rip rap.
- B. Submit measurements concerning the depth of the sludge blanket in all three cells of the system to the Department by May 1, 2010.
- C. By June 1, 2010, hire an engineer to conduct a complete evaluation of the facility by a professional engineer and to provide plans and specifications for upgrades, replacement or repairs.
- D. By September 1, 2010, submit the evaluation and plans and specifications for construction and/or repair of system to the Department.
- E. By September 1, 2012, place into operation a wastewater works constructed in accordance with plans and specifications approved by NDEQ.

11. Respondent shall report to NDEQ any delay in progress with complying with paragraph 10 of this Order.

12. 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.

13. 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

14. 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.

15. 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

16. 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.

17. 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

18. 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 6, 2010
Date

/s/ Michael J. Linder
Michael J. Linder, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY