

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	CASE NO. 3011
Lancaster County SID #5)	
Lancaster County, Nebraska)	CONSENT ORDER
Respondent.)	

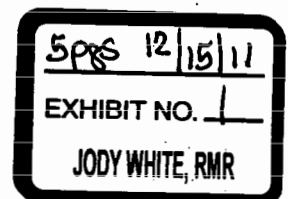
COME NOW the parties, Petitioner, the Nebraska Department of Environmental Quality ("NDEQ" or "Department"), proceeding on its Complaint, Compliance Order, and Notice of Opportunity for Hearing filed herein and appearing through its counsel, Lydia Fiedler, and the Respondent, Lancaster County Sanitary and Improvement District (SID) #5, a body corporate and politic serving the Unincorporated Village of Cheney, Nebraska, appearing through its counsel, Stephen D. Mossman. Each party having consented to the making and entering of this Consent Order without trial, the Director finds that the Consent Order should be and hereby is entered.

1. The Director has jurisdiction over the parties and the subject matter of this action. The Complaint, Compliance Order, and Notice of Opportunity for Hearing filed herein constitute a justiciable cause of action against the Respondent.

2. The parties agree that settlement is in the public interest and that entry of this Consent Order is the most appropriate means of resolving their dispute.

3. The parties desire to conclude this case without trial or adjudication of any issues of fact or law concerning the Complaint, Compliance Order, and Notice of Opportunity for Hearing, without this Consent Order constituting an admission by the Respondent with respect to such issues contained in the Complaint, Compliance Order, and Notice of Opportunity for Hearing.

4. The Respondent agrees to the form and entry of this Consent Order for the purposes of settlement only. The Department reserves the right to pursue any other



action including additional enforcement in the proper court for injunctive relief and penalties, and/or an administrative order based on violations of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to -1532 (Reissue 2008). The Department further reserves the right to impose additional obligations to abate or eliminate the violation by further order or action by the Director. In addition, the Department specifically reserves its right to pursue either criminal or civil enforcement for any violations not covered by the Consent Order.

5. Therefore, and only for the purposes of this Consent Order, the parties agree to the entry of this Consent Order by the Director to resolve the contested case asked for on the Complaint, Compliance Order, and Notice of Opportunity for Hearing.

6. IT IS THEREFORE AGREED TO AS FOLLOWS:

- a. Effective immediately, Respondent shall operate its wastewater system in accordance with all applicable statutes and regulations. If freeboard is currently less than one (1) foot, Respondent shall achieve one (1) foot of freeboard by January 1, 2012, and maintain at least one (1) foot of freeboard thereafter. Any excess wastewater shall be disposed of properly, e.g. land applied according the Neb. Admin. Code Title 119 Chapter 12, or pumped and hauled to an approved wastewater treatment facility or collection system
- b. On or before January 15, 2012, the Respondent shall submit to NDEQ final 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.
- c. On or before March 1, 2012, Respondent shall apply for a National Pollutant Discharge Elimination System (NPDES) Permit through NDEQ.

- d. On or before July 1, 2012, Respondent shall begin construction of the necessary modifications to the wastewater system according to the plans and specification approved by NDEQ.
- e. During construction, Respondent shall remove sludge from the existing wastewater system and properly handle and dispose of this sludge in a manner approved by NDEQ.
- f. Prior to the first discharge of the wastewater system, Respondent shall employ a certified Direct Responsible Charge (DRC) operator at the Class L level or higher to operate the wastewater treatment facility in accordance with Nebraska Administrative Code Title 197, *Rules And Regulations For Certification Of Wastewater Treatment Operators In Nebraska*.
- g. On or before January 1, 2013, Respondent shall complete construction of the necessary modifications in accordance with the plans and specification approved by NDEQ. Thereafter, Respondent shall operate the wastewater system in compliance with all relevant statutes, regulations, and permits.

7. The parties agree that the requirements in paragraph 6b–6g this Consent Order are subject to force majeure. Force majeure for the purposes of this Consent Order means any event arising from causes beyond the reasonable control of the Respondent and any entity controlled by the Respondent, including its contractors and subcontractors, that delays the timely performance of the obligations in paragraph 6b–6g of this Consent Order. For this the purpose of this Consent Order only, failure to timely secure funding through the State Revolving Fund (SRF) can be considered a force majeure event, provided that Respondent in no way contributes to the delay. The Respondent shall exercise best efforts to anticipate any potential force majeure events and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable. Respondent shall bear the burden to prove that a failure to comply with the Consent Order was the result of a force majeure event pursuant to this Paragraph.

8. If any event occurs that may delay the performance of the obligations in paragraph 6b–6g of this Consent Order, whether or not caused by a force majeure event, the Respondent shall notify the DEQ by telephone, e-mail or fax within 24 hours of learning of the event. The Respondent shall provide, in writing within 7 days, the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any action.

9. Information required to be submitted under this Order shall be sent to:

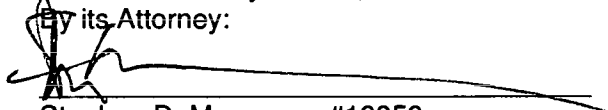
Steve Goans
Wastewater Section Supervisor, Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number: (402) 471-2186

10. If the DEQ agrees that an event may delay the performance of any obligation under this consent order, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay.

11. The parties may agree in writing to an extension caused by any other event.

12. The Parties further agree that the request for contested case shall be dismissed and the undersigned consent without further notice to the form and entry of the foregoing Consent Order.

Lancaster County SID #5,
By its Attorney:



Stephen D. Mossman, #19859
Mattson Ricketts Davies Stewart Calkins,
134 S. 13th Street, Ste. #1200
Lincoln, NE 68508-1901
(402) 475-8433

Nebraska Department of Environmental
Quality, By:



Lydia Fiedler, #24144
Nebraska Dept. of Environmental Quality
1200 "N" Street, Suite 400
P.O. Box 98922
Lincoln, NE 68509
(402) 471-3173

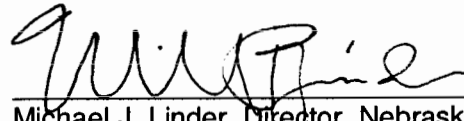
HEARING OFFICER



Bill Morris
Morris & Titus Law Firm, PC, LLO
4645 Normal Blvd, Ste 272
Lincoln, NE 68506

Jan 24, 2012
Date

BY THE NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY:



Michael J. Linder, Director, Nebraska
Department of Environmental Quality

January 27 2012
Date