

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	CASE NO. 3311
Village of Cody,)	
WASTEWATER)	
TREATMENT PLANT,)	CONSENT ORDER
FID #73521,)	
Respondent.)	

I. INTRODUCTION

1. The Department of Environmental Quality (DEQ) and the Respondent, Village of Cody, Nebraska, voluntarily enter into this Consent Order. The Consent Order establishes a schedule of compliance for changes to the Respondent's wastewater treatment facility necessary to achieve and maintain compliance with the National Pollutant Discharge Elimination System (NPDES), the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 et seq. (Reissue 2014), Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works* and Title 119, *Rules and Regulations Pertaining to the Issuance of Permits Under The National Pollutant Discharge Elimination System*. This Consent Order also provides for the performance of activities specified in Section VI with the goal of proper wastewater treatment and prevention of pollution to ground or surface water.

II. JURISDICTION

2. The DEQ is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. §81-1504(1) of exercising exclusive general supervision, administration, and enforcement of the NEPA. This Consent Order is issued under the authority vested in the Director of the DEQ by Neb. Rev. Stats. §81-1504(25) and §81-1507(1).



3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent agrees that it will not contest the basis or validity of this Consent Order in any proceedings by the DEQ to enforce this Consent Order.

III. PARTIES

4. This Consent Order is binding on the DEQ and the Respondent and its successors and assigns.

5. The Respondent shall ensure that any contractors, sub-contractors, and representatives implementing any provision of this Consent Order receive a copy of this Consent Order. The Respondent shall be responsible for any noncompliance with this Consent Order.

IV. FINDINGS OF FACT

6. The Respondent is the owner and operator of a wastewater treatment facility (WWTF) located in Cherry County, Nebraska.

7. Respondent at all times is required to maintain its wastewater treatment facility in good working order and to operate as efficiently as possible in order to achieve compliance with NEPA and the Federal Clean Water Act, Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*, Chapter 11, Title 121, *Effluent Guidelines and Standards*, Chapter 3.

8. The Respondent has not properly maintained the liner integrity of its lagoons or the seepage rate of its liners in violation of Title 123, Chapter 11, 008.06.

9. The Respondent has not maintained two feet of water in their municipal lagoons in violation of Title 123, Chapter 11, 008.02.

10. The Respondent has not done the proper maintenance on the east lagoon by allowing a tree to grow in the dike in violation of Title 123, Chapter 11, 008.01.

11. The Respondent had no warning sign visible in violation of Title 123, Chapter 11, 008.03.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

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

13. The Director of the DEQ is authorized pursuant to Neb. Rev. Stat. §81-1504(7) to issue this order requiring the construction of wastewater treatment systems or any parts thereof to prevent, control, or abate pollution.

14. This Consent Order shall have the force and effect of a final order of the Director of the DEQ issued pursuant to NEPA.

VI. COMPLIANCE SCHEDULE

15. The Respondent shall perform the following activities:

- A. Each year, beginning January 1, 2016, the Respondent shall submit quarterly (January 1, April 1, July 1, October 1) progress reports to DEQ on the activities listed in paragraph 15 of this Consent Order. These reports shall contain information regarding the activities associated with the project, construction schedules and completion dates.

- B. By June 1, 2016 complete upgrade and repairs to the lift station.
- C. Between June 1, 2016 and September 1, 2017 complete at least a one year continuous flow monitoring of inflow to lagoons.
- D. By January 1, 2018 complete a facility plan evaluating options based on the condition and capacity of the existing lagoons using the flow monitoring, and submit it to the Department for approval.

16. Both parties agree that this Order can be amended by the DEQ at any time. A compliance schedule determined by DEQ will be added to this Consent Order after the approval of the facility plan or upon violation of this Consent Order.

17. The Respondent shall respond promptly to any written communication by the DEQ to modify any submitted documents and by making the required modifications or changes no later than 30 days after receipt or date specified in written comments by DEQ. Any delay in responding to such communication shall be construed as non-compliance with this Consent Order. 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

VII. COMPLIANCE WITH OTHER LAWS

18. The Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permits.

VIII. FORCE MAJEURE

19. Force majeure for the purposes of this Consent Order means any event arising from causes entirely beyond the control of the Respondent and any entity controlled by the Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order. 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.

20. If any event occurs that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the Respondent shall notify the DEQ by telephone 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.

21. If the DEQ agrees that the delay is attributable to a force majeure, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay.

22. The DEQ, in its discretion, may agree to an extension caused by any other event.

IX. RESERVATION OF RIGHTS

23. Nothing in this Consent Order shall be construed to limit the power and authority of the DEQ to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA and any rules, regulations, orders, or permits issued pursuant to NEPA.

X. NEGATION OF AGENCY RELATIONSHIP

24. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the DEQ and the Respondent.

XI. EFFECTIVE DATE

25. This Consent Order shall become effective on the date it is signed by the Director of the DEQ or his designee.

XII. SEVERABILITY

26. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XIII. SIGNATURES

28. For the Respondent: The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By: William R. Williams

Title: Chairman

Date: 6-5-2015

29. For the DEQ: IT IS ORDERED and agreed this 15th day of June, 2015.

By: [Signature]
Jim Macy
Director
Department of Environmental Quality

CERTIFICATE OF SERVICE

I certify that on June 16, 2015, I served a true and correct copy of the foregoing Consent Order, by first-class United States mail, postage prepaid, on the following:

Bill Williamson
P.O. Box 118
Cody, Nebraska 69211


Steven J. Moeller
Attorney