

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
THE VILLAGE OF ELMWOOD,
Respondent.

Case No. 2985
COMPLAINT, COMPLIANCE ORDER AND
NOTICE OF OPPORTUNITY
FOR HEARING

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) of the Nebraska Environmental Protection Act § 81-1501 et seq (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to herein as NDEQ). The Respondent is the Village of Elmwood, Cass County, a body corporate and politic, as provided in the laws of Nebraska.

2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504(1) and (4) (Reissue 2008) of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq., and all rules, regulations and permits promulgated thereunder. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. § 81-1504 (7) and § 81-1507 (Reissue 2008).

3. The Respondent owns and operates a system for collection and treatment of municipal wastewater consisting of a sewer system and activated sludge suspended growth treatment plant in Cass County, Nebraska. The Respondent was issued a National Pollutant Discharge Elimination System (NPDES) permit on September 12, 2006, to discharge pollutants from the plant to waters of the state. By its terms, the permit became effective on October 1, 2006. The permit is in effect at all times material herein and provides in part as follows:

“...Part III. Compliance Schedule for Facility Improvements ... A. Upon issuance of this permit, the permittee shall implement the compliance schedule set forth below for meeting final numeric limits set forth for ammonia, installation of actual influent and effluent measurement devices, and upgrades to the complete retention lagoon in accordance with the requirements of NDEQ Title 123. ...6. On or before the last day of the 36th month after the effective date of this permit, the

permittee shall complete any necessary construction and comply with the final numeric ammonia limits established in this permit and the installation of flow measurement devices and upgrades to the complete retention lagoon to comply with this Compliance Schedule. ...”

4. Construction of a proper complete retention lagoon at the Respondent’s plant is necessary because without such construction the Respondent is incapable of meeting final and interim numeric limits for ammonia in the permit. October 31, 2009, was the last day of the 36th month after the effective date of the permit, yet the Respondent had failed to complete construction of the flow measurement devices and upgrades to the complete retention lagoon by such date, and the construction remains incomplete on the date of issuance of this order. The Respondent’s failure to complete construction constitutes violation of the permit.

COMPLIANCE ORDER

5. IT IS THEREFORE ORDERED that the Respondent shall complete the following tasks on or before the stated dates:

A. On or before November 1, 2010, the Respondent shall complete construction of the wastewater facility upgrades as approved by the Department in the wastewater facilities construction permit of August 10, 2009.

B. Within two months following completion of such construction the Respondent shall operate the facilities so constructed in a manner that results in consistent and comprehensive compliance with the NPDES permit and specifically the final limits contained therein.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

6. Pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2008) the Respondent has the right to apply for a hearing to contest a Complaint, and Compliance Order by making a request for such hearing to the Director no later than 30 days after service hereof.

Nebraska Department of Environmental Quality, Rules of Practice and Procedure, Title 115, Chapter 7, set forth the procedure of such hearings.

ADVISEMENT OF POSSIBLE PENALTIES

7. 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 for Hearing precludes the NDEQ from pursuing such enforcement. Failure to obey this Order may result in civil fines of up to \$10,000 per day as set out in Neb. Rev. Stat. §81-1508.02 (Reissue 2008).

Dated: January 8, 2010

By: /s/ Michael J. Linder
Michael J. Linder, Director
Nebraska Department of
Environmental Quality