

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF

) Case No. 3583

)
)
) VILLAGE OF DONIPHAN
) WASTEWATER TREATMENT
) FACILITY
) FID #57701
)

CONSENT ORDER

Respondent.

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (NDEE) and Village of Doniphan, Nebraska (Respondent) voluntarily enter into this Consent Order. The Consent Order establishes a schedule for Respondent to comply with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 *et seq.*; Nebraska Administrative Code (NAC) Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System* (Title 119); and NAC Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works* (Title 123).

II. JURISDICTION

2. NDEE is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504, of exercising exclusive general supervision, administration, and enforcement of NEPA and all rules, regulations, and orders promulgated under such acts, including Titles 119 and 123.

3. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent agrees not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. Respondent waives its right to further hearing as provided in Neb. Rev. Stat. § 81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 *et seq.* for the violations alleged herein.



III. PARTIES

4. The parties to this Consent Order are NDEE and the Village of Doniphan, Nebraska. This Consent Order is binding on NDEE, Respondent, and any successors and assigns.

IV. FINDINGS OF FACT

5. Respondent is the owner and operator of a wastewater treatment facility (WWTF) located at S 1/2, NE 1/4, Section 5, Township 009 North, Range 008 West in Hall County, Nebraska.

6. On October 1, 2016, NDEE reissued Respondent National Pollution Discharge Elimination System (NPDES) Municipal Wastewater Treatment Permit No. NE0114952 (Permit), which, subject to its terms and conditions, authorizes Respondent to collect and treat domestic, commercial, and industrial wastewaters generated in the Village of Doniphan and then to discharge the treated wastewater twice annually during the months of April and October to an undesignated tributary of the Platte River in the Central Platte River Basin.

7. Among the terms and conditions of its NPDES Permit, Respondent is required to meet seasonal numeric limits for the discharge of ammonia. These numeric limits are in Part I.B. of Respondent's NPDES Permit and contain limits for both the daily maximum and monthly average volumes of ammonia in kilograms per day (kg/day) authorized to be discharged in Respondent's treated wastewater to the undesignated tributary of the Platte River as identified in the NPDES Permit and Respondent's NPDES Permit application.

8. For the "Spring Season" from March 1 to May 31 as defined in Part I.B of Respondent's NPDES Permit, and covering Respondent's April wastewater discharges, the ammonia discharge limits were 3.42 kg/day as a monthly average and 5.92 kg/day as a daily

maximum for 2017 through 2020 and were 3.1 kg/day as a monthly average and 6.22 kg/day as a daily maximum for 2021.

9. For each Spring Season following the issuance of Respondent's NPDES Permit, beginning in 2017 and through 2021, Respondent violated NPDES Permit condition Part I.B for both the monthly average and daily maximum numeric permit limits for the discharge of ammonia, with the following reported values and percent exceedances of the permit limit:

- a. For April 2017, Respondent's monthly average discharge of ammonia was 11.85 kg/day, a 246% exceedance from the permit limit, and daily maximum discharge of ammonia was 7.4 kg/day, a 113% exceedance from the permit limit.
- b. For April 2018, Respondent's monthly average discharge of ammonia was 15.84 kg/day, a 363% exceedance from the permit limit, and daily maximum discharge of ammonia was 24.53 kg/day, a 314% exceedance from the permit limit.
- c. For April 2019, Respondent's monthly average discharge of ammonia was 10.9 kg/day, a 219% exceedance from the permit limit, and daily maximum discharge of ammonia was 16.33 kg/day, a 176% exceedance from the permit limit.
- d. For April 2020, Respondent's monthly average discharge of ammonia was 8.14 kg/day, a 138% exceedance from the permit limit, and daily maximum discharge of ammonia was 11.02 kg/day, an 86% exceedance from the permit limit.
- e. For April 2021, Respondent's monthly average discharge of ammonia 11.02 kg/day a 255% exceedance from the permit limit, and daily maximum discharge of ammonia was 20.74 kg/day, an 233% exceedance from the permit limit.

10. Respondent's NPDES Permit establishes a compliance schedule for meeting numeric limits for the discharge of ammonia, due to Respondent's historic and ongoing non-compliance with this permit requirement. The compliance schedule is in Part III. of the Permit and contains the following series of deadlines for upgrading the Doniphan WWTF:

- a. By October 1, 2018, Respondent was required to complete and submit engineering designs and specifications to NDEE for an upgrade to the Doniphan Wastewater Treatment Facility resulting in a treatment system that can routinely achieve ammonia limits.
- b. By October 1, 2019, Respondent was required to initiate construction of upgrades to the Doniphan WWTF to meet permit limits for ammonia.
- c. By April 1, 2021, Respondent was required to complete upgrades to the WWTF.

11. To date, Respondent has not met any of the three facility upgrade deadlines in Part III of its NPDES Permit though NDEE acknowledges certain initial efforts Respondent has made toward the deadline in paragraph 10.a., such as the submittal of a supplemental Wastewater Facility Evaluation & Preliminary Engineering Report in January 2018. That report is the precursor to a Title 123 WWTF construction permit application as required in Part III. of Respondent's NPDES Permit and as described above in paragraph 10.a. Respondent has also entered into a Wastewater Treatment Facilities Construction Loan agreement with NDEE, mutually executed as of December 14, 2021.

12. Neb. Rev. Stat. §81-1506(2)(c) and (d) state that it is unlawful for any person to increase in volume or strength any waste in excess of permitted discharges specified under any existing permit or operate any facility in a manner that would cause an increase in the discharge of wastes into waters of the state in a manner that is not lawfully authorized.

13. Neb. Rev. Stat. §81-1508.02(1)(b) states that it is unlawful for any person to violate a permit or license condition or limitation and any provision or duty imposed by rules and regulations.

14. Title 119, Chapter 14, Section 001.01 requires Respondent to comply with all conditions of NPDES Permit No. NE0114952 and states that permit noncompliance is grounds for enforcement action.

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

16. Respondent has violated Neb. Rev. Stat. §81-1506(2)(c) and (d), §81-1508.02(1)(b), and Title 119, Chapter 14, Section 001.01.

17. The NDEE Director is authorized under Neb. Rev. Stat. §81-1504(7), (25), and §81-1507(1) to require and enforce compliance schedules to prevent, control, or abate unlawful discharges to waters of the State.

V. COMPLIANCE ORDER

18. Respondent agrees to the following "Proposed Implementation Schedule" for upgrading its WWTF, as previously submitted on or around and dated September 28, 2021, including revised deadlines for the following project tasks:

- a. select final design of proposed WWTF improvements by July 1, 2022;
- b. submit Title 123 WWTF construction permit application to NDEE by August 1, 2022;
- c. advertise, bid, and award proposed WWTF project by January 1, 2023;
- d. initiate construction of proposed WWTF improvements by May 1, 2023;
- e. substantially complete proposed WWTF improvements by November 1, 2023; and
- f. initiate WWTF operation by December 1, 2023.

19. Respondent agrees to submit written project implementation updates to NDEE within 30 days of completion for each of the project tasks in paragraph 18.

20. Information to be submitted under this Consent Order shall refer to FID # 57701 and shall be sent to:

Reuel Anderson
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

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

VII. RESERVATION OF RIGHTS

22. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEE or State of Nebraska 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.

VIII. NEGATION OF AGENCY RELATIONSHIP

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

IX. AMENDMENT

24. This Consent Order may be modified and amended in writing by mutual agreement of NDEE and Respondent.

X. EFFECTIVE DATE

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

XI. 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.

XII. SIGNATURES

27. For Respondent:

Ryan Nickerson

Ryan Nickerson
Chairman
Doniphan Village Board

Date: 6-13-22

28. For NDEE:

IT IS SO ORDERED and agreed this 21 day of June, 2022.

Jim Macy

Jim Macy
Director
Nebraska Department of Environment and Energy