

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3360
FREMONT WASTEWATER	)	
TREATMENT FACILITY	)	
FID # 48534	)	COMPLAINT, COMPLIANCE
	)	ORDER AND NOTICE OF
Respondent.	)	OPPORTUNITY FOR HEARING

**I. INTRODUCTION**

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, Neb. Rev. Stat. §§ 81-1501 to -1532 (Reissue 2014; Cum. Supp. 2015) and in conformance with Title 119 – *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System (NPDES)* and Title 123 – *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*. The Complainant is Jim Macy, Director of the Nebraska Department of Environmental Quality (NDEQ or Department). The Respondent is the City of Fremont, a political subdivision of the State of Nebraska that owns and operates a Wastewater Treatment Facility.

2. The Department is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) & (4), of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 1532, and all rules, regulations, and permits promulgated thereunder.

3. The Complaint below establishes the violations of Respondent and the Compliance Order establishes a schedule for corrective actions to be taken by the Respondent.



## II. COMPLAINT

4. At all times material herein the Respondent, City of Fremont, has owned and operated a Wastewater Treatment Facility (WWTF) located at 6325 Morningside Road, Fremont, Nebraska 68025.

5. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the issuance of permits for the purpose of water pollution control and design and construction requirements for WWTFs, as expressed in Neb. Rev. Stat. § 81-1505, the Council adopted rules codified as Title 119 – *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System (NPDES)* and Title 123 – *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*.

6. Pursuant to Title 119, the Department issued Respondent an “Authorization to Discharge Under the National Pollutant Discharge Elimination System (NPDES)” Permit" #NE0031381 (hereinafter "Permit"), on or about April 29, 2015, and said Permit has, at all times material herein, been in full force and effect.

7. Permit Condition I.A. requires Respondent to meet discharge limits at WWTF Outfall No. 001 of 30.0 mg/L (Monthly Average) and 45.0 mg/L (7 Day Average) for Total Suspended Solids (TSS). Outfall 001 empties into the Elkhorn River, a water of the State of Nebraska.

8. Respondent has submitted Discharge Monitoring Reports to the Department that show the Respondent exceeded the TSS weekly and monthly discharge limits at Outfall 001 during May and June, 2014.

9. Neb. Rev. Stat. §81-1506(2)(c) and (d) make it 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. 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.

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

11. The Respondent has violated Neb. Rev. Stat. §81-1506(2)(c) and (d) and § 81-1508.02(1)(b).

12. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) and § 81-1507(1) to issue this order requiring Respondent to modify its WWTF or any part thereof to prevent, control or abate unlawful discharges to waters of the State and correct violations.

### **III. COMPLIANCE ORDER**

13. IT IS THEREFORE ORDERED:

a. By March 31, 2017, Respondent shall submit plans and specifications to the Department for approval for construction of upgrades of and improvements to the existing WWTF. The plans shall at a minimum meet *Title 123* standards and requirements and include a system for the treatment of ammonia, total suspended solids, biochemical oxygen demand, total Kjeldahl nitrogen, fats, oil and grease that will ensure the WWTF meets all applicable regulatory requirements and NPDES permit limits.

b. By June 30, 2018, Respondent shall initiate construction of the approved upgrades and WWTF system improvements in accordance with the plans and specifications as approved by the Department.

c. By November 1, 2019, Respondent shall complete construction and place into operation the approved upgrades and improvements.

d. Beginning June 1, 2016, and every 6 months until construction is completed, the Respondent shall submit a progress report to the Department summarizing the status of compliance with the schedule in this Order.

e. Respondent shall adhere to all Permit conditions and discharge limits.

f. Respondent shall not connect any new industrial or commercial users to the WWTF whose flow would increase existing total wastewater flow or loading at the time of this Order by greater than 5%, if the WWTF does not have the capacity to accept such wastewater and remain in compliance with Permit conditions.

14. Information to be submitted under this Order shall be sent to:

Charles Duerschner  
Unit Supervisor  
Technical Assistance Unit  
Wastewater Section  
Water Quality Division  
P.O. Box 98922  
Lincoln, NE 68509-8922

15. Respondent shall respond in writing within seven (7) working days to all requests for information requested by NDEQ.

#### **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

16. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondents file an answer and requests, in writing, a hearing no later than thirty days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

17. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing 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:

Jim Macy, Director  
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**

18. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

19. 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 Order.

#### **VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS**

20. 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 Department from pursuing such enforcement. Failure to obey this order may result in fines up to \$10,000, per violation, per day, as set out in Neb. Rev. Stat. § 81-1508.02.

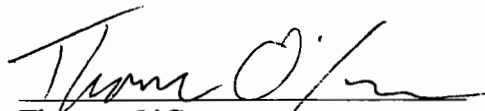
3-31-16  
Date

  
Jim Macy, Director  
NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, was served by certified United States mail, postage prepaid, return receipt requested this 1<sup>st</sup> day of April 2016 upon the Respondent listed below:

Honorable Scott Getzschman  
Mayor of Fremont  
400 East Military  
Fremont, NE 68025-5141

  
Thomas O'Connor  
Attorney