



IN THE DISTRICT COURT OF BUFFALO COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director, NEBRASKA
DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

THE CITY OF GIBBON,

Defendant.

CASE NO. CI 15482

CLERK OF DISTRICT COURT
BUFFALO COUNTY, NE

2015 AUG 26 AM 9 27

FILED
SHARON K. MAULER

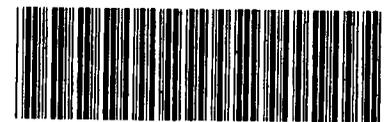
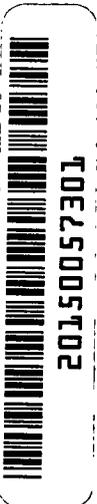
COMPLAINT

COMES NOW Jim Macy, Director of the Nebraska Department of Environmental Quality ("Department" or "Plaintiff"), who institutes this action through Douglas J. Peterson, the Nebraska Attorney General, on behalf of the State of Nebraska and alleges and states the following:

FIRST CAUSE OF ACTION: NPDES PERMIT VIOLATIONS

1. The Department is and was at all times material herein the agency of the State of Nebraska charged with the duty, pursuant to NEB. REV. STAT. § 81-1504 (1) (Reissue 2014), to administer and enforce the Environmental Protection Act, NEB. REV. STAT. § 81-1501 (Reissue 2014) *et seq.* and all rules, regulations, orders, and permits created thereunder. The Department is also charged with the duty, pursuant to NEB. REV. STAT. § 81-1504 (4) (Reissue 2014), to act as the state control agency for all purposes of the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, as amended.

2. Defendant, City of Gibbon, is a political subdivision of the State of Nebraska, located in Buffalo County, Nebraska. Defendant, at all relevant times, has



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owned and operated a Publicly Owned Treatment Works (POTW) system consisting of a sewer system and wastewater treatment facility in Buffalo County, Nebraska. Further, the system was designed to collect and treat municipal sewage and industrial waste before discharging the treated effluent to waters of the State, specifically Wood River, in Buffalo County.

3. NEB. REV. STAT. § 81-1508.02 (1)(b) (Reissue 2014) is in effect at all times material herein and states that it is unlawful to violate any regulations promulgated under the Environmental Protection Act. Pursuant to NEB. REV. STAT. § 81-1505 (Reissue 2014), the Nebraska Environmental Quality Council adopted *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System* (NPDES), promulgated at Title 119 of the Nebraska Administrative Code, which is in effect at all times material herein.

4. Title 119 provides in pertinent part that wastewater treatment facilities obtain a NPDES discharge permit and comply with the terms and conditions of the NPDES permit and to properly operate and maintain the facility.

5. Pursuant to NEB. REV. STAT. § 81-1505 (Reissue 2015), the Nebraska Environmental Quality Council adopted *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*, promulgated at Title 123 of the Nebraska Administrative Code, which is in effect at all times material herein.

6. Title 123 provides in pertinent part that wastewater treatment facilities be maintained in proper operating condition, operated in a manner to meet all

NPDES permit requirements and not result in a prohibited bypass or unauthorized discharge.

5. On or about September 28, 2012, the Department issued the Defendant NPDES Permit No. NE0029297 that has been in effect at all times material herein. The Department-issued NPDES permit contains specific discharge limits for ammonia.

6. Beginning on or about October 1, 2013, and continuing through at least May 2014, the Defendant exceeded the discharge limits for ammonia as required by the NPDES permit.

7. Discharge of ammonia above NPDES permit limits is a violation of NEB. REV. STAT. § 81-1506(2)(c)(Reissue 2014), NEB. REV. STAT. § 81-1508.02 (1)(b) (Reissue 2014) and Neb. Admin. Code Title 119 and Title 123.

8. Pursuant to NEB. REV. STAT. § 81-1508.02(2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Act.

SECOND CAUSE OF ACTION: FAILURE TO COMPLY WITH ORDER

9. The plaintiff hereby incorporates by reference each and every allegation contained in ¶¶ 1-8.

10. On or about August 14, 2012 the Director issued a Complaint, Compliance Order and Notice of Opportunity for Hearing to the Defendant that has been in effect at all times material herein. The Compliance Order required

Defendant to repair all Sequencing Batch Reactor (SBR) units to operating condition and operate them as designed; repair or replace both anaerobic lagoon covers; operate the wastewater treatment facility as designed and to complete necessary maintenance; and be in compliance with all permit requirements and regulations. Defendant did not contest the Director's Order.

11. Beginning on or about June 1, 2013 and continuing through at least May 2014, Defendant failed to repair all SBR units to operating condition and to operate the wastewater treatment facility as designed and to complete all necessary maintenance; and failed to comply with the discharge limits for ammonia as required by the Compliance Order and the NPDES permit.

12. Failure to comply with an Order of the Director is a violation of NEB. REV. STAT. § 81-1508.02 (Reissue 2014)

13. Pursuant to NEB. REV. STAT. § 81-1508.02 (2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Act.

PRAYER FOR RELIEF

14. Plaintiff hereby incorporates by reference each and every allegation contained in its Petition.

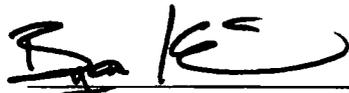
WHEREFORE, the Plaintiff requests that the Court enter judgment in favor of the Plaintiff and against the Defendant in the form of civil penalties as provided

under NEB. REV. STAT. § 81-1508.02(2)(Reissue 2014) and that all costs of this action be taxed to the Defendant.

Dated this 18th day of August, 2015.

**STATE OF NEBRASKA, ex rel.
JIM MACY, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY,
Plaintiff.**

By: DOUGLAS J. PETERSON, # 18146
Attorney General of Nebraska

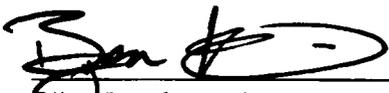
By: 
Bijan Koohmaraie, #25512
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Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2015, I filed the foregoing document with the Clerk of the District Court for Buffalo County, Nebraska and served upon Defendant by electronic mail to their attorney Barry Hemmerling at: barry@jhhz.net.

By: 
Bijan Koohmaraie
Assistant Attorney General