

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 15 482

2015 AUG 31 AM 11 30  
CLERK OF DISTRICT COURT  
BUFFALO COUNTY, NE

FILED  
SHARON K. MAULER

CONSENT DECREE

COMES NOW Plaintiff, Jim Macy, Director of the Nebraska Department of Environmental Quality ("NDEQ" or "Plaintiff"), proceeding on this Complaint filed herein and appearing through Counsel, Douglas J. Peterson, Attorney General, and Defendant, City of Gibbon, ("Defendant"), and each party having consented to the making and entering of this Consent Decree without trial, the Court finds that the Consent Decree should be and hereby is entered.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court has jurisdiction of the parties and the subject matter of this action pursuant to the Nebraska Environmental Protection Act, NEB. REV. STAT. § 81-1501 *et seq.* (Reissue 2014), and all rules and regulations and orders promulgated thereunder.

2. In the Complaint, Plaintiff alleged, in pertinent part, that Defendant has previously and continues to fail to maintain its wastewater treatment facility in proper operating condition in accordance with all applicable regulations, that Defendant failed to operate said facility in a manner to meet Defendant's National Pollutant Discharge Elimination System



permit requirements, that Defendant failed to promptly repair or replace certain mechanical devices installed in said facility when such devices became inoperable, and that Defendant failed to comply with a final order of the NDEQ director, in violation of the Nebraska Environmental Protection Act and certain rules or regulations adopted or promulgated pursuant thereto.

3. The parties agree that settlement of this matter is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving their dispute. The parties desire to conclude this case without trial or adjudication of any issues of fact or law, without this Consent Decree constituting an admission by Defendant with respect to such issues.

4. This Consent Decree will be in full satisfaction of all claims between the parties alleged in Plaintiff's complaint.

5. IT IS THEREFORE ORDERED that Defendant shall pay a civil penalty under NEB. REV. STAT. § 81-1508.02 (2) (Reissue 2014), in the amount of twenty five thousand dollars (\$25,000.00) as well as court costs in the amount of eighty two dollars (\$82.00), to the District Court of Buffalo County, Nebraska. The civil penalty shall be due and owing upon the entry of the Consent Decree and is payable to the Clerk of the Court. The civil penalty shall be handled as provided under Article VII, Section V, of the Constitution of the State of Nebraska.

6. IT IS FURTHER ORDERED that Defendant will undertake the following:

- a. On or before November 1, 2016, Defendant will complete the following equipment repairs to its wastewater treatment system:

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- i. Defendant will restore the oxygen transfer efficiency reactor for each of the SBR reactors through maintenance and repairs on the diffusers and the distribution header pipers and the valves and Defendant will ensure reliable blower operation including the on-demand backup blower;
  - ii. Defendant will restore both anaerobic covered lagoons to full integrity and operational effectiveness;
  - iii. Defendant will replace the SBR #1 mixer;
  - iv. Defendant will restore the SBR #2 level indicator to service;
  - v. Defendant will restore the retrieval chain for the SBR #2 sludge wasting pump; and
  - vi. Defendant will ensure the SCADA operates equipment for the duration and in the sequence as intended by the operator in charge of the facility.
- b. On or before November 1, 2015, Defendant will create operation plans, consisting of the agreed upon terms found in the memo detailing the specifications for the operation plan, which were accepted by Defendant on or about July 8, 2015, for the waste water treatment facility and will submit those plans to NDEQ for its approval;
  - c. On or before November 1, 2015, Defendant will create staffing plans, consisting of the agreed upon terms found in the memo detailing the specifications for the staffing plan, which were accepted by Defendant on or

about July 8, 2015, for the waste water treatment facility and will submit those plans to NDEQ for its approval; and

- d. On or before November 1, 2015, Defendant will create an asset management plan, consisting of the agreed upon terms found in the memo detailing the specifications for the asset management plan, which were accepted by Defendant on or about July 8, 2015, for the waste water treatment facility and will submit that plan to NDEQ for its approval.

7. In the event Defendant fails to comply with the requirements set forth in paragraphs 6(a)-(d) by each respective required time, Defendant will pay the following stipulated civil penalties:

- a. Ten thousand dollars (\$10,000) on the first day after the agreed upon completion date;
- b. Ten thousand dollars (\$10,000) on the 30th day after the agreed upon completion date;
- c. Ten thousand (\$10,000) on the 60th day after the agreed upon completion date; and
- d. A penalty of one hundred dollars (\$100.00) per day for the 61st to 75th day of delay after the agreed upon completion date and two hundred fifty dollars (\$250.00) per day for each day of delay thereafter. This paragraph will not be applicable to any missed deadline attributable to a force majeure.
- e. For purposes of this Consent Decree, force majeure means any event arising from causes beyond the reasonable control of Defendant or any entity

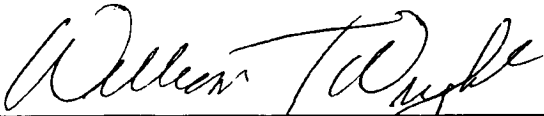
controlled by Defendant, including contractors and subcontractors, which results in a delay of compliance with the requirements set forth in this Consent Decree. Defendant will exercise their best efforts to anticipate any potential force majeure and mitigate its resulting delay. Defendant will bear the burden to prove that any delay was attributable to a force majeure under this paragraph.

8. This Consent Decree will have no effect on any enforcement action brought by NDEQ against Defendant for future violations of any statutes or regulations.

9. The undersigned consent without further notice to the form and entry of this consent decree.

Dated this 31<sup>st</sup> day of August 2015.

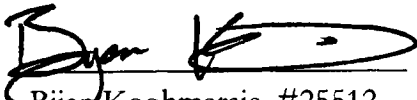
BY THE COURT:

  
\_\_\_\_\_  
DISTRICT JUDGE OF BUFFALO COUNTY, NE

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

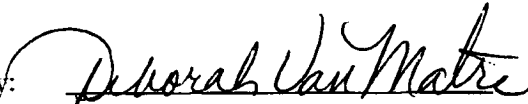
CITY OF GIBBON, Defendant.

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

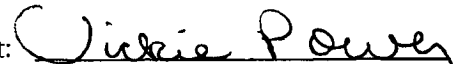
By:   
Bijan Koohmaraie, #25512  
*Assistant Attorney General*

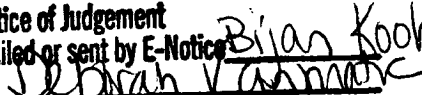

2115 State Capitol  
Lincoln, Nebraska 68509-8920  
(402) 471-1455  
bijan.koohmaraie@nebraska.gov

Attorneys for Plaintiff.

By:   
Deborah VanMatre  
*Mayor*

715 Front Street  
Gibbon, NE 68840  
(308) 468-6118  
gibboncityhall-mayor@nctc.net

Attest:   
Vickie Power  
Municipal Clerk, City of Gibbon

Notice of Judgement  
Mailed or sent by E-Notice  
to:  Bijan Koohmaraie  
and: \_\_\_\_\_  
on: 8/31/15  
Sharon K. Mauler  
Clerk of the District Court  
By: 

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on August 31, 2015 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

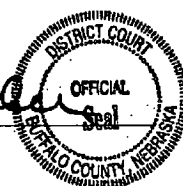
Bijan Koochmaraie  
bijan.koochmaraie@nebraska.gov

Date: August 31, 2015

BY THE COURT:

*Sharon K. Mauldin*

CLERK



**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on September 1, 2015, I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

Barry L Hemmerling  
barry@jhhz.net

State of Nebraska, Ex Rel  
Douglas J Peterson Attorney General  
2115 State Capitol  
Lincoln, NE 68509-8920

Jim Macy Director  
2115 State Capitol  
Lincoln, NE 68509-8920

Date: September 1, 2015. BY THE COURT:

*Sharon K. Mauldin*

CLERK

