

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF)	Case No. 3011
)	
Lancaster County SID #5)	
A body corporate and politic)	EMERGENCY COMPLAINT AND
Serving the unincorporated)	ORDER
Village of Cheney, Nebraska)	
)	
Respondent)	
)	

PRELIMINARY STATEMENT

This Emergency Complaint and Order is issued by the Director of the Department of Environmental Quality (herein after referred to as "Department" or "NDEQ") pursuant to Neb. Rev. Stat. §81-1507(4) of the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 to -1532 (Reissue 2008), to require immediate action to protect the public health and welfare. The Respondent is Lancaster County Sanitary and Improvement District (SID) #5, a body corporate and politic, serving the Unincorporated Village of Cheney, Nebraska, as provided in the laws of Nebraska. The complaint below establishes the existence of the emergency and the emergency order sets out the specific action that must be taken to abate the emergency. This Emergency Complaint and Order is effective immediately upon issuance. The Respondent shall be afforded the opportunity for a hearing upon application in writing to the Director, such hearing to take place as soon as possible and not later than 10 days after a request is made.

COMPLAINT

1. Respondent Lancaster County SID #5 is the owner and operator of a system for the collection and treatment of wastewater in Lancaster County, Nebraska, consisting of a sewer system and a lagoon treatment system.

2. Pursuant to Neb. Rev. Stat. § 81-1506(1)(a), it is unlawful for any person “to cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state.”

3. Neb. Rev. Stat. § 81-1508.02(1)(b) (Reissue 2008) is in effect at all times material herein and states that it is unlawful to violate any regulations promulgated pursuant to the Environmental Protection Act.

4. Pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008), the Nebraska Environmental Quality Council adopted and promulgated Title 119 of the Nebraska Administrative Code, *Rules And Regulations Pertaining To The Issuance Of Permits Under The National Pollutant Discharge Elimination System*. At all times material herein, Title 119, Chapter 2, 001 states that “[n]o person shall discharge any pollutant into any waters of the state from a point source without first having obtained a permit from the Department for such discharge....”

5. Pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008), the Nebraska Environmental Quality Council adopted and promulgated Title 123 of the Nebraska Administrative Code, *Rules And Regulations For The Design, Operation And Maintenance Of Wastewater Works*. At all times material herein, Title 123, Chapter 11, 001 states that “[w]astewater treatment facilities shall be maintained in proper operating condition in accordance with this chapter and shall be operated in a manner to meet all NPDES permit requirements and not result in a prohibited bypass or an unauthorized discharge.”

6. On or about September 27, 2010, a Department employee observed that the lagoon owned and operated by Lancaster County SID #5 was overflowing and discharging to land and waters of the state. The Department has been unable to make

contact with any responsible party affiliated with Lancaster County SID #5 despite repeated attempts and no corrective action has yet been taken. The discharge has flowed onto neighboring property and is located in an area accessible to members of the public. Wastewater from the discharge has flowed into a nearby pond. These facts constitute an emergency under Neb. Rev. Stat. § 81-1507(4).

EMERGENCY ORDER

IT IS HEREBY ORDERED THAT:

7. Respondent shall:

- a. Immediately cease all discharges of wastewater to land and waters of the state and notify the NDEQ Wastewater NPDES Permits and Compliance Unit when the unauthorized discharge of wastewater has ceased.
- b. Immediately pump excess wastewater from the treatment lagoons in order to reduce lagoon volume so that there is adequate freeboard, at least two (2) feet below the top of the dike. After the appropriate lagoon volume is achieved, excess wastewater shall be pumped as necessary to maintain at least two (2) feet of freeboard. Wastewater that is collected or pumped from lagoons shall be disposed of properly, e.g. hauled to an approved wastewater treatment facility or collection system.
- c. Immediately remove accumulated sludge from influent splitter and dispose of accumulated sludge properly, e.g. hauled to an approved wastewater treatment facility or collection system or to an approved solid waste landfill.

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

Steve Goans
Wastewater Section Supervisor, Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number: (402) 471-2186

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

9. In accordance with Neb. Rev. Stat. § 81-1507(4), this Emergency Complaint and Order shall become final upon issuance. The Respondent is required to comply with the Emergency Complaint and Order upon receipt.

10. The Respondent may request a hearing by submitting a request to the Director in writing upon receipt of the Emergency Complaint and Order. Such hearing shall be scheduled as soon as possible but not later than 10 days after the request is made. The Emergency Complaint and Order shall remain in effect pending any hearing and shall not relieve the Respondent from immediate compliance with this Emergency Complaint and Order.

11. This Emergency Complaint and Order is limited to those actions required to abate the emergency and does not limit the authority of the Department to require further action to address the matter. This Emergency Complaint and Order does not preclude the Department from pursuing any other action including additional enforcement in the proper court for injunctive relief and penalties, or an administrative order based on violations of the Environmental Protection Act. The Department further reserves the right to impose additional obligations to abate or eliminate the discharge by further order or action by the Director.

Dated this 30th day of September, 2010.

/s/ Michael J. Linder
Michael J. Linder
Director
Department of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Emergency Complaint and Order was served by certified United States mail, postage prepaid, return receipt requested this 1st day of October 2010 upon the Respondent listed below:

Mr. Brian Faubion, President
SID #5 Lancaster County
9511 Chester Street
Lincoln, NE 68526-9323

Eloise Hiatt, Clerk
SID #5 Lancaster County
8400 S 98th Street
Lincoln, NE 68526

/s/ Lydia Fielder
Lydia Fiedler
Attorney