

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
COVIDIEN INC.,
Respondent.

Case No. 3092
COMPLAINT, COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR
HEARING

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 (2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (“NDEQ” or “Department”). The Respondent is Covidien Inc., a corporation authorized to do business in the state of Nebraska.

2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) & (4) (2008), 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. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. §§ 81-1504 (7) & -1507 (2008).

3. The Respondent owns and operates a manufacturing plant, including a wastewater collection and treatment system, in Madison County, Nebraska.

4. Neb. Rev. Stat. § 81-1502(10) (2008) is in effect at all times material herein and defines Respondent as a “person.”

5. Neb. Rev. Stat. § 81-1506(1) states that “[i]t shall be unlawful for any person: (a) 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.”

6. Neb. Rev. Stat. § 81-1506(2) states that “[i]t shall be unlawful for any person to: (a) Discharge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System....”



7. Nebraska Administrative Code Title 119, *Rules And Regulations Pertaining To The Issuance Of Permits Under The National Pollutant Discharge Elimination System*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505. Title 119, Chapter 2 001 states, in relevant part, that “No 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....”

8. At all times material herein, Respondent has discharged wastewater from its treatment system to a water of the state without first obtaining a permit from the Department.

9. The Director finds that Respondent has violated Neb. Rev. Stat. § 81-1506(1)&(2) and Title 119.

10. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) & (20) to issue this order requiring Respondent to modify its waste disposal system to prevent and control pollution and to secure a permit prior to continued operation.

COMPLIANCE ORDER

11. IT IS THEREFORE ORDERED that the Respondent shall perform, within the following time frames, the following activities:

- a. On or before May 12, 2012, the Respondent shall submit to NDEQ an application for a NPDES permit for discharge of wastewater from Respondent’s facility.
- b. On or before October 1, 2013, the Respondent shall complete and submit to the NDEQ for approval design and specifications for an upgrade to the Wastewater Treatment Facility that will routinely produce an effluent discharge that will meet secondary standards as required by Title 119, Chapter 21 and comply with all other relevant standards and regulatory guidelines.
- c. On or before April 1, 2014, the Respondent shall begin construction based on the approved design and specifications.

- d. On or before April 1, 2015, Respondent shall complete construction based on the approved design and specifications.
 - e. On or before May 1, 2015, the Respondent shall operate the Wastewater Treatment Facility in compliance with all other relevant permits, rules, and regulations.
 - f. Beginning June 1, 2012, and every 6 months until construction is completed, Respondent shall submit a progress report to the Department summarizing the status of compliance with this schedule.
12. Information to be submitted under this Order shall be sent to:

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

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

13. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files 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.

14. 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:

Michael J. Linder, 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

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

16. 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

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

November 22 2011

Date



Michael J. Linder, 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 3rd day of November 2011 upon the Respondent listed below:

C T Corporation System
1024 K STREET
Lincoln, NE 68508



Lydia Fiedler
Attorney