

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Case No. 3186

IN THE MATTER OF  
THE VILLAGE OF HARDY,  
Respondent.

COMPLAINT, COMPLIANCE ORDER BY  
CONSENT, AND WAIVER OF OPPORTUNITY  
FOR HEARING

1. This Complaint, Compliance Order by Consent, and Waiver of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) of the Nebraska Environmental Protection Act § 81-1501 et seq (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to herein as NDEQ). The Respondent is the Village of Hardy, an incorporated village in Nuckolls County, Nebraska.

2. NDEQ is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504(1) and (4) (Reissue 2008) of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq., 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) and § 81-1507 (Reissue 2008). NDEQ reserves the right to seek penalties and injunctive relief to punish the Respondent's non-compliance and/or secure performance of the Respondent's obligations under this order. The NDEQ further reserves the right to seek injunctive relief to cease and/or remediate any prior, existing, or future contamination from, or unauthorized releases and discharges by, the Respondent.

3. The Respondent at all times material herein has owned and operated a wastewater treatment facility including two lagoons designed for complete retention of wastewater from the village. On a day to day basis the village collects wastewater from its residents and commercial activity and by pipes and conduits sends it to the lagoons.

4. Pursuant to Neb. Rev. Stat. § 81-1505 (1) and (2) (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; and the following provisions of Title 123 are currently in effect:

"Title 123 - NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

"Chapter 5 - DESIGN STANDARDS AND SPECIFICATIONS

005 Wastewater Lagoons



005.01 The seepage rate of wastewater lagoons shall not exceed one-eighth inch per day at the design maximum water depth. ...

"Chapter 11 – OPERATION AND MAINTENANCE OF WASTEWATER WORKS

The operation and maintenance of wastewater lagoons shall be conducted in the following manner:

008.01 Lagoon dikes shall be maintained with grass to minimize soil erosion, except for areas protected by rip rap or other stabilization methods. The grassed dikes shall be mowed to prevent growth of trees or woody plants. Cattails, reeds and other emergent vegetation shall be removed from lagoons promptly as they appear.

008.02 At least two feet of water shall be maintained at all times in active wastewater lagoons unless the lagoon has a synthetic liner with an adequate ballast system to prevent uplift from the wind.

008.03 A fence shall be maintained around lagoon systems to keep unauthorized persons, pets, and domestic livestock from entering the lagoon. Warning signs shall be maintained in legible condition. Gates and locks shall be maintained in operable condition.

... 008.05 Damage to lagoon dikes and liners caused by muskrats or other rodents, erosion, tree roots, animal hooves, or any other source shall be promptly repaired."

5. On July 2, 2012, and for an undetermined time preceding, the seepage rate of wastewater in the Respondent's wastewater lagoons exceeded one-eighth inch per day at the lagoons' design maximum water depth in violation of Title 123.

6. On July 2, 2012, and for an undetermined time preceding, the Respondent failed to mow grassed dikes on its lagoons and failed to promptly remove cattails, reeds, and emergent vegetation as they appeared on the lagoon dikes and within the holding areas of the lagoons in violation of Title 123.

7. On July 2, 2012, and for an undetermined time preceding, the Respondent failed to maintain the minimum depth of two feet of water in each of its lagoons in violation of Title 123.

8. On July 2, 2012, and for an undetermined time preceding, the Respondent failed to promptly repair lagoon dike damage caused by rodents, tree and vegetation damage, and damage caused by other sources in violation of Title 123.

9. IT IS THEREFORE AGREED AND ORDERED that the Respondent shall within 180 days following receipt of this Order produce and submit to the NDEQ the documents identified below and complete the following measures by the dates specified as follows:

- A. Complete removal of trees and herbaceous and emergent vegetation from the lagoon cells and dikes by July 31, 2013.
- B. In the event that the village will seek planning grant funds from NDEQ, submit application to NDEQ for planning grant funds for wastewater improvement planning by July 31, 2013.
- C. Identify in writing to NDEQ all reasonable potential sources of wastewater improvements funding available to the village by July 31, 2013.
- D. Submit for review and approval a wastewater facility plan prepared by a professional engineer licensed in Nebraska and identifying feasible options for achieving consistent compliance at the facility to NDEQ by July 31, 2014.
- E. In the event that the village will seek state or federal funding for its wastewater improvements submit to NDEQ a completed form obtained from NDEQ and titled "Water Wastewater Pre-Application for State and/or Federal Assistance" by July 31, 2014.
- F. Submit all necessary applications for funding, giving consideration to comments from the Water Wastewater Advisory Committee, known as WWAC, necessary to make improvements identified in the facility plan that will lead to consistent compliance with Title 123 by October 31, 2014.
- G. Select an approved alternative from the facility plan and identify for NDEQ what the Respondent intends to construct and/or implement at its wastewater facility that are reasonably likely to achieve compliance with Title 123 by October 31, 2015.
- H. Submit a complete set of Plans and Specifications prepared by a professional engineer licensed in Nebraska for wastewater facility improvements selected by

the village for achieving compliance with Title 123 to NDEQ by December 31, 2015.

I. Complete construction of wastewater improvements as approved by NDEQ by August 31, 2016.

10. IT IS FURTHER AGREED AND ORDERED that, in the event that following submission of the facility plan to NDEQ, the NDEQ gives written notice to the Respondent of any features of the wastewater facility identified in the required submissions that fail to comply in full with Title 123, THEN IN THAT EVENT the Respondent shall promptly correct such deficiencies, and any others known to the Respondent, to conform to the current requirements of Title 123 and submit the corrections to NDEQ.

11. IT IS FURTHER AGREED AND ORDERED that the reports, drawings, plans and specifications required herein shall be submitted and addressed as follows, to:

Charles Duerschner  
Technical Assistance Unit  
Water Quality Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922

#### WAIVER OF OPPORTUNITY TO REQUEST A HEARING

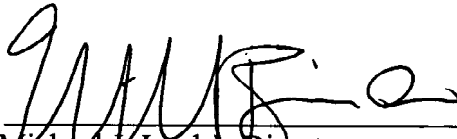
12. Pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2008) the Respondent has the right to apply for a hearing to contest a Complaint, and Compliance Order by making a request for such hearing to the Director no later than 30 days after service hereof. Nebraska Department of Environmental Quality, Rules of Practice and Procedure, Title 115, Chapter 7, sets forth the procedure of such hearings. Notwithstanding such rights, the Respondent agrees to the entry of this Order and the requirements imposed herein without contest and without further notice.

#### ADVISEMENT OF POSSIBLE PENALTIES

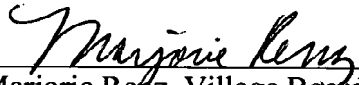
13. The NDEQ reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil or criminal penalties for any violations that are the subject of this Complaint, Compliance Order by Consent and Notice of Opportunity for Hearing. Nothing in

this Complaint, Compliance Order by Consent and Notice of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement. Failure to obey this Order herein may result in civil penalties of up to \$10,000 per day as set out in Neb. Rev. Stat. §81-1508.02 (Reissue 2008).

Dated: February 15 2013

By:   
Michael J. Linder, Director  
Nebraska Department of  
Environmental Quality

Dated: 2/12/13

By:   
Marjorie Reitz, Village Board Chairperson  
Village of Hardy