

IN THE DISTRICT COURT OF DAWES COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)

Case No. _____

Plaintiff,)

COMPLAINT

v.)

THE CITY OF CRAWFORD,)
a city of the second class)
and a body corporate and politic,)

Defendant.)

COMES NOW Michael J. Linder, Director of the Department of Environmental Quality, who institutes this action through Jon Bruning, Attorney General, on behalf of the State of Nebraska as plaintiff and alleges as follows:

FIRST CLAIM

1. Plaintiff, the Nebraska Department of Environmental Quality (hereinafter "Plaintiff" or "NDEQ"), is 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 2008) to administer and enforce the Environmental Protection Act, NEB. REV. STAT. § 81-1501 *et seq.* (Reissue 2008) and all rules, regulations, and permits created thereunder. The authority of NDEQ to require compliance measures is expressed in NEB. REV. STAT. § 81-1504(7) and § 81-1507 (Reissue 2008).

2. Defendant is the City of Crawford, Dawes County, a city of the second class and a body corporate and politic, as provided in the laws of Nebraska, NEB. REV. STAT. §§ 17-114 through 17-174 (Reissue 2008).



3. Defendant owns and operates a system for collection and treatment of municipal wastewater consisting of a sewer system and mechanical treatment plant in Dawes County, Nebraska. Defendant was issued a National Pollutant Discharge Elimination System (NPDES) permit on March 2, 2006 and amended on March 27, 2006. The permit as amended was in effect at all times from March 2, 2006, through June 30, 2011 and provided in part as follows:

“...Part II. Discharge Limitations and Monitoring Requirements for Outfall 001...B. Table 2-Seasonal Discharge Limitations and Monitoring Requirements for Outfalls 001 The treated wastewater discharge is authorized and shall be monitored and limited as specified in the following table. Recreation Season (May 1 through September 30) Parameter/ Discharge Limitations/ Fecal Coliforms/ Unit CFU/100 mL/ Monthly Geometric Mean 200/ Maximum Geometric Mean 400 /This does not preclude fecal coliform limitations based on effluent guidelines. ...E. Operation and Maintenance 1. Proper Operations and Maintenance The permittee shall, at all times maintain in good working order and operate as efficiently as possible, any facilities or systems of control installed by the permittee in order to achieve compliance with the terms and conditions of this permit. ...”

4. On August 20, 2008, Defendant discharged wastewater having a concentration of fecal coliforms with fecal coliforms in excess of 20,000 CFUs per 100 mL in violation of the permit limits for monthly geometric mean.

5. In the month of July 2010, Defendant discharged wastewater having a concentration of fecal coliforms of 5585.7 CFUs per 100 mL in violation of the permit limits for monthly geometric mean.

6. In the month of May 2010, Defendant discharged wastewater having a concentration of fecal coliforms of 15,000 CFUs per 100 mL in violation of the permit limits for monthly geometric mean.

7. In the month of August 2009, Defendant discharged wastewater having a concentration of fecal coliforms of 6,640 CFUs per 100 mL in violation of the permit limits for monthly geometric mean.

8. In the month of June 2009, Defendant discharged wastewater having a concentration of fecal coliforms of 31,000 CFUs per 100 mL in violation of the permit limits for monthly geometric mean.

9. In the month of June 2008, Defendant discharged wastewater having a concentration of fecal coliforms in excess of 20,000 CFUs per 100 mL in violation of the permit limits for monthly geometric mean.

10. Pursuant to NEB. REV. STAT. § 81-1508.02 (Reissue 2008) a civil penalty, not to exceed ten thousand dollars (\$10,000) per day is provided in cases of violation of the permit issued by NDEQ.

11. Pursuant to NEB. REV. STAT. § 81-1508 (Reissue 2008) whenever the Director of NDEQ has reason to believe that any person or corporation has violated or is threatening to violate any provision of the Environmental Protection Act, or rule or order of the Director promulgated under the act, he or she may petition the district court for an injunction.

SECOND CLAIM

12. Plaintiff hereby incorporates by reference each and every allegation contained in its First Claim.

13. At all times material herein there has been in effect a regulation, Title 123, Chapter 11, Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works that provides in part as follows: “Chapter 11 – Operation and Maintenance of Wastewater Works ...001 Wastewater 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 unauthorized discharge. ...004 All mechanical devices, including standby or backup units, that are designed and installed in the original WWTF or lift station shall be promptly repaired or replaced when they become inoperable. ...” Said regulation was adopted by NDEQ and was at all times material herein applicable to Defendant.

14. On July 24, 2008, Defendant did not maintain its wastewater treatment facility in proper operating condition and good working order in that the bar screen had not been raked for an inordinate time, most trickling filters were not functioning properly, filter nozzles were plugged, the Imhoff tank was functioning improperly, and effluent contained solids, fecal material, and algae, in violation of the permit and regulation. In February 2004, the original flow measurement structure, influent structure, and comminutor were not operating, the piping system was in poor condition, and flows and loadings accepted at the plant exceeded its designed capacity. These items had not been repaired, replaced, or corrected by July 24, 2008, in violation of the permit and regulation.

15. On October 2, 2008, Defendant did not maintain its wastewater treatment facility in proper operating condition and good working order in that the trickling filter's concrete structure was cracked and leaking, filter nozzles were plugged and distributing effluent unevenly, and the pH meter that been in use for reporting pH values in discharge monitoring reports was not properly calibrated in violation of the permit and regulation.

THIRD CLAIM

16. Plaintiff hereby incorporates by reference each and every allegation contained in its First and Second Claims.

17. On February 18, 2011, NDEQ issued a Compliance Order, with the consent of Defendant. The Order provided, at all times material herein: "On or before December 1, 2011, the Respondent shall complete construction of the improvements specified in the plans and specifications as approved by NDEQ." Defendant adopted designs different from those set forth in the Compliance order and has failed to complete construction of improvements in violation of the Order.

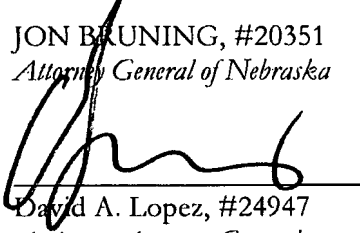
PRAYER FOR RELIEF

WHEREFORE Plaintiff prays that the Court enter judgment herein against Defendant in the form of a civil penalty as provided under NEB. REV. STAT. § 81-1508.02. Plaintiff further prays that the Court enter temporary and permanent orders of injunction as provided under NEB. REV. STAT. § 81-1508 requiring Defendant submit plans and specifications for improvements to its wastewater treatment facility consistent with its present preferred design concept and construct those improvements by a reasonably prompt date certain. Plaintiff further prays that all court costs herein be taxed to Defendant.

Respectfully submitted this 25th day of March, 2013.

STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

By: JON BRAUNING, #20351
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Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon Defendant by regular United States mail, first class postage prepaid on March 25, 2013, addressed to Defendant's attorney as follows:

J. Adam Edmund, Esq.
Skavdahl, Edmund & Stecher
P.O. Box 156
Harrison, NE 69346-0156


David A. Lopez