

IN THE DISTRICT COURT OF DAWES COUNTY, NEBRASKA

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

Plaintiff,

v.

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

Defendant.

Case No. CE 13-42

CONSENT DECREE

FILED
APR 01 2013
JULY, BY 371-374

Sharon M. Harrison
CLERK OF THE DISTRICT COURT
DAWES COUNTY NEBRASKA

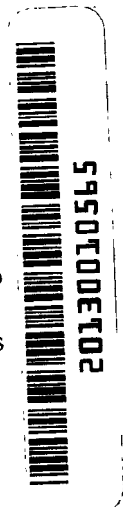
COME NOW the parties, Plaintiff, Michael J. Linder, Director of the Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Plaintiff"), proceeding on his Complaint filed herein and appearing through his Counsel, Jon Bruning, Attorney General, and Defendant, The City of Crawford, (hereinafter "The City" or "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 2008, Cum. Supp. 2012), and all rules and regulations and orders promulgated thereunder.
2. In the Complaint, Plaintiff alleged, in pertinent part, that The City has continuously failed to maintain its wastewater treatment facility in proper operating condition in accordance with all applicable regulations, that The City failed to operate said facility in a manner to meet The City's National Pollutant Discharge Elimination System permit requirements, that The City failed to promptly repair or replace certain mechanical devices installed in said facility when such devices



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became inoperable, and that The City failed to comply with a final order of the NDEQ director to begin construction on certain approved plans to upgrade The City's wastewater treatment facility, 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 The City 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. The parties also agree to release any and all claims or actions arising out of the same transaction or occurrences referenced above and in Plaintiff's complaint, provided that such claims were known to NDEQ, or were reasonably ascertainable from information in NDEQ's possession, as of the date of the filing of the Consent Decree.

5. IT IS THEREFORE ORDERED that The City will pay court costs in the amount of eighty-two dollars (\$82.00) to the District Court of Dawes County.

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

- a. On or before June 1, 2013, The City will commence construction of the wastewater treatment system improvements project approved by NDEQ in its letter of January 16, 2013 (NDEQ ID: 57168, State Construction Permit: 12-0019). Letter from Marty Link, Acting Water Quality Division Administrator, NDEQ, to Terrance [sic] Haugen, Mayor, City of Crawford (Jan. 16, 2013) (attached hereto as Exhibit A).
- b. On or before April 30, 2014, The City will complete construction of the water treatment system improvements project referred to in paragraph 6(a) of this Consent Decree.

- c. At any time during the construction of the wastewater treatment system improvements project referred to in paragraph 6(a) of this Consent Decree, NDEQ's employees or agents will be permitted to enter onto the premises of the City's wastewater treatment facility to monitor or inspect construction progress.
- d. Upon NDEQ's request, the City shall submit reports on the progress of the construction of the wastewater treatment system improvements referred to in paragraph 6(a) of this Consent Decree, in a manner to be specified by NDEQ.

7. In the event The City fails to comply with the requirements set forth in paragraphs 6(a) and 6(b) by the time required, The City will pay stipulated civil penalties of one hundred dollars (\$100.00) per day for the first to fifteenth day of delay 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.

- a. For purposes of this Consent Decree, force majeure means any event arising from causes beyond the reasonable control of The City or any entity controlled by The City, including contractors and subcontractors, which results in a delay of compliance with the requirements set forth in this Consent Decree. The City will exercise their best efforts to anticipate any potential force majeure and mitigate its resulting delay. The City 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 The City 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 28th day of MARCH, 2013, in Dawes County, Nebraska.

BY THE COURT:

Terrence H. Haugen
District Judge of Dawes County, Nebraska



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

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THE CITY OF CRAWFORD, Defendant

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Attest: Jane Dailey 3-15-13
Jane Dailey
City Clerk, City of Crawford