

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
THE VILLAGE OF ARLINGTON,
Respondent.

Case No. 3009
COMPLAINT, COMPLIANCE ORDER ON
CONSENT, WAIVER OF OPPORTUNITY
FOR HEARING

1. This Complaint, Compliance Order on 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) and agreed to and endorsed by the Respondent. 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 Arlington, Washington County, a body corporate and politic, as provided in the laws 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) 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).

3. The Respondent owns and operates a plant for treatment of its municipal water supply in Washington County, Nebraska, to produce potable water. In the normal course of the plant's operation liquid wastewater is produced and discharged to waters of the state, specifically the Elkhorn River. The Respondent was issued a National Pollutant Discharge Elimination System (NPDES) permit for such discharge on November 16, 2006. The permit, an exact copy of which is attached to this Complaint as Exhibit A [Permit # NE0132365 of November 16, 2006 is available on request to the NDEQ Records Management, 1200 "N" Street, Suite 400, The Atrium, PO Box 98922, Lincoln Nebraska 68509], is in effect at all times material herein and provides in part as follows:

"...Part II. Outfall 001 Discharge to Receiving Stream Requirements. ...Table 1: Discharge Limitations and Monitoring Requirements...Parameters...Final Total Residual Chlorine...Units mg/L Discharge Limits 30 Day Average 0.06...Daily Maximum

0.11...Part III. Compliance Schedule for Total Residual for Total Residual Chlorine Limits. ...On or before 8 months after issuance of this permit, the Village of Arlington shall complete and submit to the NDEQ for approval; a plan outlining a modification to treatment plant operation and/or design and specifications for an upgrade to the Arlington Potable Water Treatment Facility that will routinely produce an effluent discharge that will meet the final TRC limits in Table 2. ...On or before 16 months after the issuance of this permit, the Village of Arlington shall initiate operational modifications and/or the construction phase of the planned upgrades to the potable water treatment system. ...On or before two years after the issuance of this permit, the Village of Arlington shall operate the Arlington Potable Water Treatment Facility to meet the final total residual chlorine limits in Table 2 of this permit. ...Appendix A - Standard Conditions that Apply to NPDES and NPP Permits...D. Reporting Requirements...3. 24-Hour Reporting As set forth in NDEQ Title 119, Chapter 14 the permittee shall report to the NDEQ, within 24 hours of becoming aware of: ...e. any noncompliance of an effluent limitation in this permit. Initial notification may be verbal. A written noncompliance notification shall be submitted as set forth in Section D. 4 of this permit. ...4. Written Noncompliance Notification a. The permittee shall submit a written noncompliance report to NDEQ: i) within five days of becoming aware of any noncompliance with the: ... (b) NPDES toxic pollutant effluent limitations or requirements set forth in this permit.

4. On July 28, 2008, the Respondent discharged wastewater having a concentration of total residual chlorine of 1.66 mg/L. There was no discharge report from the Respondent to NDEQ associated with this noncompliance event within five days of becoming aware of it.

5. On April 7, 2009, the Respondent discharged wastewater having a concentration of total residual chlorine of 2.14 mg/L. There was no discharge report from the Respondent to NDEQ associated with this noncompliance event within five days of becoming aware of it.

6. On July 21, 2009, the Respondent discharged wastewater having a concentration of total residual chlorine of 6.77 mg/L. There was no discharge report from the Respondent to NDEQ associated with this noncompliance event within five days of becoming aware of it.

7. On October 26, 2009, the Respondent discharged wastewater having a concentration of total residual chlorine of 5.41 mg/L. There was no discharge report from the Respondent to NDEQ associated with this noncompliance event within five days of becoming aware of it.

8. On January 27, 2010, the Respondent discharged wastewater having a concentration of total residual chlorine of 1.19 mg/L.

9. More than 2 years have elapsed since the issuance of Arlington's NPDES permit yet the Respondent has submitted no plan of modifications to the Respondent's treatment plant, has not initiated operational modifications or construction according to plan for upgrade of the plant, and has not operated its plant so as to meet the permit's requirements for discharge of total residual chlorine.

COMPLIANCE ORDER

10. IT IS THEREFORE ORDERED that the Respondent shall make the following submissions to NDEQ and complete the following tasks on or before the stated dates:

A. On or before January 1, 2011, the Respondent shall submit a plan outlining a modification to treatment plant operation and/or design specifications for an upgrade to the Arlington Potable Water Treatment Facility that will routinely produce an effluent discharge that will meet the final TRC limits in Table 2 of the November 16, 2006, NPDES permit.

B. On or before May 1, 2011, the Respondent shall initiate operational modifications and/or the construction phase of the planned upgrades to the potable water treatment system,

C. On or before September 1, 2011, the Respondent shall operate the Arlington Potable Water Treatment Facility to meet the final total residual chlorine limits in Table 2 of the permit.

WAIVER OF OPPORTUNITY TO REQUEST A HEARING

9. Pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 1999) 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, provides 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

10. 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 (Reissue 2008).

Dated: August 3, 2010

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

Dated: July 30, 2010

By: /s/ Tom Brown
Chairperson, Village of Arlington