

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF
City of Oakland
Burt County, Nebraska

FID # 57785

Respondent.

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CASE NO. 3602

CONSENT ORDER

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (hereinafter “Department”) and the City of Oakland, Burt County, Nebraska (hereinafter “Respondent”), voluntarily enter into this Consent Order to implement improvements to monitoring and environmental management controls at the Respondent’s facility. This Consent Order requires Respondent to comply with the activities and schedules specified in Section V. (Compliance Order and Schedule) below in accordance with the Nebraska Environmental Protection Act (the “Act”), Neb. Rev. Stat. §§ 81-1501 et. seq. (Reissue 2014, Cum. Supp. 2022), Title 119, Rules and Regulations Pursuant to the Issuance of Permits under the National Pollutant Discharge Elimination System (NPDES), and Title 123, Rules and Regulations for the Design Operation and Maintenance of Wastewater Works.

2. The Department and Respondent agree that settlement of this matter is in the public interest to ensure compliance with state laws, rules and regulations, and permits that have been adopted and issued to protect the environment.

II. JURISDICTION

3. The Department is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1), to exercise exclusive general supervision of the administration



and enforcement of the Act, Title 119, Title 123, and all permits, rules and regulations and orders promulgated under such acts.

4. Respondent is the City of Oakland, Nebraska, which owns and operates the Oakland Wastewater Treatment Facility (WWTF) at 800 West Fulton, Oakland, Burt County, Nebraska, 68045, FID # 57785. The legal description is SW ¼, SW ¼, Section 36, Township 22N, Range 8E, Burt County, Nebraska.

III. PARTIES

5. The parties to this Consent Order are the Department and the Respondent, and their employees, successors, and assigns. Respondent shall ensure that all contractors hired to perform work required by this Consent Order are informed of applicable requirements.

IV. COMPLAINT

6. The Respondent is a person as defined in Neb. Rev. Stat. § 81-1502(10).

7. The Department has the power and duty to “require proper maintenance and operation of disposal systems” pursuant to Neb. Rev. Stat. § 81-1504(12).

8. Pursuant to the Nebraska Environmental Quality Council’s authority to adopt rules and regulations for the issuance of NPDES permits in Neb. Rev. Stat. §81-1505(11), the Council adopted and promulgated Neb. Admin. Code, Title 119, Rules and Regulations Pursuant to the Issuance of Permits under the National Pollutant Discharge Elimination System (NPDES).

9. Title 119, Chapter 14, § 001, states: “The following conditions apply to all NPDES permits under this Title:

“001.01 Duty to comply. The permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Federal and State Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

001.01A The permittee shall comply with effluent standards or

prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.”

10. Pursuant to the Nebraska Environmental Quality Council’s authority to adopt rules and regulations for wastewater treatment facilities in Neb. Rev. Stat. § 81-1505(8) & (11), the Council adopted and promulgated Neb. Admin. Code, Title 123, Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works.

11. Title 123, Chapter 11, § 001 states: “Wastewater treatment facilities will be maintained in proper operating condition in accordance with this chapter and be operated in a manner to meet all NPDES permit requirements and not result in a prohibited bypass or an unauthorized discharge.”

12. Title 123, Chapter 11, § 004 states: “All mechanical devices, including standby or backup units, that are designed and installed in the original WWTF or lift station will be promptly repaired or replaced when they become inoperable.”

13. The City of Oakland was issued NPDES Permit No. NE0024023 (Permit), effective January 1, 2022, for the operation of the Oakland Wastewater Treatment Facility.

14. NPDES Permit No. NE0024023 requires Respondent to sample for ammonia, pH, CBOD, temperature, Total Suspended Solids (TSS), and *E.coli* (May to September) for Outfall 002. NPDES Permit No. NE0024023 requires Respondent to electronically submit discharge monitoring reports (DMRs) on a quarterly basis.

15. Appendix A of NPDES Permit No. NE0024023 requires Respondent do the following:

“2. Duty to Comply

- a. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Federal Clean Water Act (CWA) and the applicable State Statutes and Regulations and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.
- b. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the CWA for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.

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6. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

7. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective performance based on designed facility removals, effective management, adequate operator staffing and training, adequate process controls, adequate funding that reflects proper user fee schedules, adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

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14. Reporting Requirements

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g. Twenty-four Hour Reporting.

- i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. A Noncompliance Report Form is provided on the Department website.

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- iii) The following shall be included as information which must be reported within 24 hours under this section:

- Any unanticipated bypass which exceeds any effluent limitation in this permit.
- Any upset which exceeds any effluent limitation in this permit.
- Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours.”

15. A Letter of Noncompliance (LNC) was issued to Respondent on August 12, 2022, for violations of Title 119, Title 123, and Respondent’s Permit. These violations were determined during a file review conducted on July 25, 2022, and inspection on July 28, 2022. The violations which are of on-going concern include:

A. Failure to comply with monitoring and reporting requirements.

i. Noncompliance reports were not submitted for permit exceedances occurring during the July through August 2021 monitoring period.

B. Failure to comply with numeric limitations. Effluent limitations were exceeded

during the July through August 2021 monitoring period for the parameters listed in Permit Part I. A. Table 1 and Part I B. Table 3.

C. Failure to comply with operation and maintenance requirements. The facility is

not maintained in proper operating condition that meet all NPDES permit requirements or provide sufficient backup operation.

16. A Letter of Noncompliance – Further Action Required was sent to Respondent on September 15, 2022. The Respondent was found to remain out of compliance with Titles 119, 123, and Respondent’s Permit. The following items were still outstanding and needed to be remedied immediately upon receipt of the LNC:

A. Noncompliance reports for numeric exceedances need to be submitted for March, April, May, and June of 2022.

- B. Provide a timeline for when the SBR basins will be in full operational order.
- C. Provide a detailed plan describing the corrective action the facility will follow to prevent numeric exceedances and other noncompliance.

17. A Letter of Noncompliance – Further Action Required was sent to Respondent on November 9, 2022. The LNC noted that Respondent submitted a written response noting the cause of permit numeric exceedance, as well as efforts to repair the SBR basins. Noncompliance forms for the exceedances experienced in March 2022 through October 2022 have not been received and should be submitted immediately upon receipt of the LNC.

18. Respondent is out of compliance with NPDES Permit No. NE0024023 for *E.coli* levels. Part I. B. Table 3 of the permit sets the discharge limits as 126/100 ml for the monthly geometric mean and 298/100 ml for the daily maximum.

19. Respondent had the following exceedances (highlighted in yellow) for *E.coli*:

Date	Monthly Geo Mean	Daily Maximum
5/31/2019	1000	1000
6/30/2019	128800	128800
7/31/2019	1196	1196
9/30/2019	920	920
7/31/2020	205.3	205.3
5/31/2021	1733	1733
6/30/2021	613.1	613.1
7/31/2021	648.8	648.8
8/31/2021	2420	2420
9/30/2021	103.9	103.9
6/30/2022	2419.6	2419.6
7/31/2022	2419	2419
8/31/2022	2419	2419
9/30/2022	2419	2419

19. Respondent is out of compliance with NPDES Permit No. NE0024023 for Total Suspended Solids (TSS) levels. Part I. A. Table 1 of the permit sets the discharge limits as 30 mg/L and 11.35 kg/day for the monthly average and 45 mg/L and 17.03 kg/day for the weekly average.

20. Respondent had the following exceedances (highlighted in yellow) for TSS:

Date	Monthly Average mg/L	Monthly Average kg/day	Weekly Average mg/L	Weekly Average kg/day
11/30/2020	36			
1/31/2021	33			
2/28/2021	31			
3/31/2021	31			
4/30/2021	70	51.8	70	51.8
6/30/2021	55	33.78	55	22.78
7/31/2021	54	30.36	54	30.36
8/31/2021	32			
3/31/2022	40	15.54	40	
4/30/2022	136	55.35	136	55.35
5/31/2022	74	29.29	74	29.29
6/30/2022	144	59.67	144	59.67
7/31/2022	48	28.9	48	28.9
9/30/2022	45	19.98		19.98
10/31/2022	44	17.58		17.58
11/30/2022	33			
12/31/2022	62	25.69	62	25.69
1/31/2023	59	24.4	59	24.4
2/28/2023	46	16.67	46	16.67

21. Respondent is out of compliance with NPDES Permit No. NE0024023 for high Carbonaceous Biochemical Oxygen Demand (5-Day) (CBOD) levels. Part I. A. Table 1 of the permit sets the discharge limits as 25 mg/L and 9.46 kg/day for the monthly average and 40 mg/L and 15.14 kg/day for the weekly average.

22. Respondent had the following exceedances (highlighted in yellow) for CBOD:

Date	Monthly Average mg/L	Monthly Average kg/day	Weekly Average mg/L	Weekly Average kg/day
11/30/2020	27			
12/31/2020	30			
1/31/2021	43	17.5	43	
2/28/2021	43	16.86	43	
4/30/2021	60	43.95	60	43.95
7/31/2021	37	20.8	37	
4/30/2022	178	73.44	178	73.44
5/31/2022	50	19.79	50	19.79
6/30/2022	56	23.2	56	23.2
8/31/2022	87	60.19	87	60.19
9/30/2022	111	49.38	111	49.38
10/31/2022	109	43.5	109	43.5
11/30/2022	66	20.26	66	20.26
12/31/2022	83	34.39	83	34.39
1/31/2023	57	23.6	57	23.6
2/28/2023	57	20.6	57	20.6

23. Respondent has not filed any noncompliance reports for the above exceedances as required by Permit Appendix A. 14. g.

24. The facility remains out of compliance with the Act, Titles 119 and 123, and the Permit.

V. COMPLIANCE ORDER

25. Respondent shall bring their facility into compliance with all requirements of the Act, Title 119, Title 123, and the Permit, including, but not limited to completion of the following:

- A. Filing all noncompliance reports for exceedances as required by Permit Appendix A. 14. g. These reports shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the

noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

- B. Within 30 days from the date of this order, provide a comprehensive report from JEO Consulting Group or any other engineering firm hired to complete work at the facility, which includes an analysis of why the exceedances have occurred at the facility, a time for repairs to be completed at the facility, the repairs which are needed at the facility, a list of all parts and equipment to be replaced, and any other pertinent information.

25. Respondents shall report to the Department by November 30, 2023, documenting how compliance with paragraph 25 of this Order has been achieved. If compliance has not been achieved, the report shall document why the facility is not in compliance, what action needs to be taken to bring the facility into compliance, and when the facility will be in full compliance.

26. Respondents shall respond promptly to any written communication by the Department. Any delay in responding to such communication shall be construed as non-compliance with this Order.

27. Information to be submitted under this Order shall refer to FID # 71521 and shall be sent to:

Reuel Anderson
NDPES Compliance Section
Nebraska Department of Environment and Energy
PO Box 98922
245 Fallbrook Blvd.
Lincoln, NE 68509-8922
402-471-2186

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

28. The Department 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 the Consent Order in this case. Nothing in this Consent Order precludes the Department from pursuing such enforcement.

VII. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

29. Respondent shall perform and conduct all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permits.

VIII. RESERVATION OF RIGHTS

30. Nothing in this Consent Order shall be construed to sanction any violation of State or Federal law or limit the power and authority of the Department to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of the Act and any rules, regulations, orders, or permits issued pursuant to the Act. The Department reserves the right to pursue any other remedies to which it is entitled for violations of this Consent Decree or the underlying violations alleged herein, including penalties or injunctive relief.

IX. NEGATION OF AGENCY RELATIONSHIP

31. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the Department and Respondent.

X. AMENDMENT

32. This Consent Order may be modified and amended in writing by mutual agreement of the Department and Respondent.

XI. EFFECTIVE DATE

33. This Consent Order shall become effective on the date it is signed by the Director of the Department.

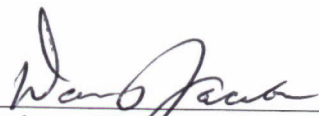
XII. SEVERABILITY

34. If any provision or authority of this Consent Order or the application of the Consent Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the remainder of the Consent Order shall remain in force and shall not be affected thereby.

XIII. SIGNATURES

For the Respondent: The undersigned representative of Oakland, Nebraska, certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By:


~~Ted Beckner, Mayor~~ Dan Jacobs, Mayor
City of Oakland

Date:

June 30, 2023

For the Department: IT IS ORDERED and agreed this 10th day of July, 2023.

By:


Jim Macy
Director
Department of Environment and Energy