

BEFORE THE DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)	Case No. 3622
)	
DAKOTA SPRINGS HOA – SWL)	CONSENT ORDER
DEVELOPMENT, LLC)	
FID: 86736)	
)	
Respondent.)	

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (“Department”) and Dakota Springs HOA – SWL Development, LLC (“Respondent”), voluntarily enter into this Consent Order. The Consent Order establishes a Compliance Schedule for Respondent to comply with the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. §§ 81-1501 to 81-1532; and Titles 119 of the Nebraska Administrative Code, Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System, and Title 123 of the Nebraska Administrative Code, Rules and Regulations for the Design, Operation and Maintenance for Wastewater Works, and all relevant permits.

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, 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), of exercising exclusive general supervision, administration, and enforcement of the NEPA; Titles 119 and 123 of the Nebraska Administrative Code.



4. The Department may issue orders requiring a responsible person to take specific actions when a release under the Nebraska Environmental Response Act (“NERA”) has occurred pursuant to Neb. Rev. Stat. §§ 81-15,301 to 81-15,311, including corrective actions as may be reasonably required to prevent a recurrence of a release.

5. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent agrees not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. Respondent waives its rights to further hearing as provided in Neb. Rev. Stat. § 81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 *et seq.*

III. PARTIES

6. The parties to this Consent Order are the Department and Respondent, the owner and operator of a wastewater treatment facility (WWTF) located at Dakota Springs Dr. & West Saltillo Road, Roca, NE 68642. This Consent Order is binding on the Department, Respondent, and any successors and assigns of the parties. Respondent shall ensure that all contractors hired to perform work required by this Consent Order are informed of applicable requirements.

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

IV. FINDINGS OF FACT

8. Respondent owns and operates a wastewater treatment facility (WWTF) as defined by Title 123, Chapter 1, § 066.

9. The WWTF is located at NE1/4, NE1/4, Section 3, Township 8N, Range 6E, Lancaster County, Nebraska.

10. The WWTF is a small sand filtration facility operated by PeopleService, Inc. (PeopleService). Wastewater flows from twelve houses to the first of two septic tanks for solids

removal. The water is then pumped and distributed over rock media filter which allows for growth of microorganisms which treat the wastewater as it passes through the 4 ft. thick bed of media. It then flows to the recirculation tank where up to 80 percent is sent back to the filter for further treatment and the rest is sent to an outfall in an undesignated tributary of Salt Creek in the Lower Platte River Basin (Receiving Stream).

11. Respondent is required under National Pollutant Discharge Elimination System Permit No. NE0137821, issued January 1, 2013, and renewed January 1, 2018 and January 1, 2023 (NPDES Permit) to conduct the following:

- a. Conduct monthly samples for pH, temperature, Total Suspended Solids (TSS), Carbonaceous Biochemical Oxygen Demand (CBOD), ammonia, and Escherichia coli (E. coli).
- b. Respondent is required under the NPDES Permit to submit quarterly discharge monitoring reports to the Department and sample for total phosphorus and total nitrogen for Outfall 001. Respondent is required to annually test influent for flow, pH, TSS, and CBOD.

12. A pre-inspection records review conducted prior to the April 2019 site inspection revealed there were 19 E.coli and 6 TSS numeric exceedances at Respondent's facility between May 2016 and June 2018. In addition, there were 19 late reporting violations related to E. Coli, and 6 related to TSS violations. Respondent did not provide verbal or written notice to the Department of the exceedances.

13. The Department conducted a site inspection at Respondent's WWTF on April 16, 2019. The inspection revealed that the distribution piping was clogged and causing pooling of

wastewater on the sand filter. There was also observed a strong septic odor from Outfall 001 and the sand filter. White filamentous bacteria was observed in the Receiving Stream.

14. A Notice of Violation (NOV) dated May 7, 2019 was issued to Respondent. The Notice provided:

- a.** The Respondent's facility distribution system was not operating in a condition to meet all NPDES Permit requirements.
- b.** E. Coli and TSS limits for Outfall 001 exceeded acceptable limitations in multiple monitoring periods.
- c.** Discharge from the facility was causing noxious odors and filamentous bacteria to grow in the Receiving Stream in violation of the aesthetics limitations in Respondent's NPDES Permit.

15. Respondent followed-up to the Notice of Violation on July 12, 2019 by filing a noncompliance report with the Department and a written statement that the distribution system had been repaired. The Department closed the Notice of Violation on September 9, 2019.

16. The Department conducted a site inspection at Respondent's WWTF on June 18, 2020. The inspection revealed white filamentous bacteria and a noxious odor in the Receiving Stream. Pooling of water on the sand filter was not observed. A review of the file noted one E.coli violation in August 2019. Proper notice of the August 2019 violation was not provided to the Department.

17. A Notice of Violation (NOV) dated June 29, 2020 was issued to Respondent. The Notice provided:

- a.** Discharge from the facility was causing noxious odors and filamentous bacteria to grow in the receiving stream in violation of the aesthetics limitations in Respondent's NPDES Permit.
- b.** E.Coli limits for Outfall 001 were exceeded for the August 2019 monitoring period.
- c.** Respondent failed to provide verbal notification or a written noncompliance report for the August 2019 E. Coli violation.

18. A noncompliance report was filed by Respondent in response to the June 29, 2020 NOV on July 7, 2020. The NOV was closed on October 29, 2020.

19. A compliance inspection was conducted on November 8, 2022. The inspection revealed 7 E. Coli and 3 CBOD numeric exceedances between August 2019 and September 2022. Respondent did not conduct quarterly sampling as required by the NDPEs Permit during the quarterly monitoring period ending September 2022. A septic odor was observed from the Receiving Stream where the water is discharged. The water was also observed to be backed up and not flowing and was whitish blue in color.

20. A site inspection was conducted on November 23, 2022. The purpose of the site visit was to gather additional observations of the Receiving Stream above, at, and downstream of the WWTF outfall. From all observation points a sulfidic odor was observed and the Receiving Stream was observed to be cloudy and whitish in color.

21. A Letter of Noncompliance (LNC) dated November 30, 2022 was issued to Respondent and found:

- a.** CBOD and E.coli numeric exceedances for Outfall 001 were reported for the monitoring periods reviewed during the November 2023 inspections.

- b.** Required quarterly sampling was not conducted for the monitoring period ending September 2022.
- c.** The effluent from Outfall 001 is resulting in a white discoloration and sulfidic odor in the Receiving Stream.

The LNC requested the following information in writing by January 1, 2023:

- d.** A description of how the WWTF will consistently meet permit limits and monitoring requirements. Include the monitoring, operation, and maintenance steps that will be taken.
- e.** Identify the cause of the narrative permit requirement violation and what action is taken to correct the problem.
- f.** Describe how often the septic tanks are inspected by the operator, how often the contents are removed, and the basis for this frequency. Include documentation of the removal that has occurred since January 1, 2022, how it was removed, and where the contents were taken.

22. PeopleService responded to the LNC by email dated December 9, 2022 as follows:

- a.** The E coli violations were a result of the UV system equipment failure and employee sampling practices.
- b.** The 2022 3rd quarter sample was not taken due to poor employee performance. The employee was terminated and checklists were created for new employees to follow.
- c.** PeopleService will look at the creek and possible blockage, which may disrupt the proper flow and cause pooling.
- d.** Sludge was hauled out in February, May, and August 2022 and further monitoring will occur to determine when the tanks need to be pumped out.

23. Respondent provided further information on February 18, 2023. Respondent indicated that it believed the filtration system was nearing the end of its useful life and will need to be replaced. Respondent was investigating options to remedy the situation and get back into full compliance with the NPDES Permit. Respondent identified two potential replacement systems and the vendor they were working with.

24. The Department sent Respondent a letter requiring further action dated March 23, 2023. The letter noted further action was required and encouraged Respondent to continue the activities indicated in the February 18, 2023 response. In October 2023, Respondent provided notice to the Department of its continued work to find a solution for the filtration system. On January 16, 2024, Respondent notified the Department that it has retained Frontwater Engineering, LLC to develop engineering plans.

FIRST CAUSE OF ACTION

25. Failure to maintain and operate a WWTF in proper operating condition and in accordance with all NPDES Permit requirements is a violation of Neb. Rev. Stat. § 81-1506(2)(a), (c), (d) and Title 123, Chapter 11, § 001. Respondent's WWTF exceeded allowable discharge limits pursuant to Respondent's NPDES Permit on multiple occasions.

SECOND CAUSE OF ACTION

26. Failure to operate a WWTF in accordance with all NPDES Permit requirements is a violation of Neb. Rev. Stat. § 81-1506(2)(a) and Title 123, Chapter 11 § 001. Effluent from Respondent's WWTF resulted in white discoloration and sulfidic odor in the Receiving Stream exceeding allowable aesthetic limits pursuant to Respondent's NPDES Permit.

V. COMPLIANCE SCHEDULE

27. Respondent agrees to:

- a. **Immediately** continue to sample for all permit parameters and submit timely, accurate, and complete reports to the Department in accordance with the terms and conditions of its NPDES Permit.
- b. **Within 15 days** of the effective date of this Consent Order, provide notice of this Consent Order to all members and homeowners covered by the HOA.
- c. **Within 60 days** of the effective date of this Consent Order submit a plan prepared by a professional engineer (“Plan”) engaged by Respondent for purposes of identifying the causes of the NPDES Permit exceedances, evaluating alternatives for achieving compliance with the NPDES Permit limits, and selecting an alternative identifying improvement needed to prevent reoccurrence of permit limit exceedances and aesthetic violations. Upon receipt of the Plan the Department will review and will notify Respondent when the Plan has been approved or require amendments as needed. Respondent will submit an amended plan **within 30 days** after notification that the Department has determined amendments are required.
- d. **Within 60 days** of approval of the Plan, Respondent will apply for a Wastewater Construction Permit under Nebraska Administrative Code Title 123.
- e. **Within 6 months** of the issuance of a Wastewater Construction Permit, complete construction, or modifications necessary to bring the WWTF into compliance; and
- f. **Within 90 days** of completion of construction, or modifications, comply with all applicable NPDES Permit requirements.

28. Information to be submitted and notifications required under this Consent Order shall refer to FID 86736 and be sent to:

Cyril Martinmaas
Engineering Section Supervisor
P.O. Box 98922
Lincoln, NE 68509-8922

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

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

VII. RESERVATION OF RIGHTS

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

VIII. 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 the Respondent.

IX. AMENDMENTS

32. This Consent Order may be amended upon the mutual written agreement of the Department and the Respondent.

X. EFFECTIVE DATE

33. This Consent Order shall become effective on the date the Director of the Department or the Director's designee signs the Consent Order.

XI. TERMINATION

34. Upon completion of the Compliance Schedule, Respondent will be notified by NDEE in writing that the Compliance Schedule has been completed and the present administrative case is closed. Such notification shall be issued within 90 days of the Department determining that the terms of the Compliance Schedule have been met.

XII. SEVERABILITY

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

XIII. SIGNATURES

36. For Respondent: The undersigned certifies that the undersigned possesses actual authority to enter into this Consent Order on behalf of Respondent and to bind Respondent.

Signature: Bud Bubee
Title: President, Dakota Springs HOA
Date: 02/12/2024

37. For the Department:

IT IS SO ORDERED and agreed this 22ND day of February, 2024.

J. Macy
JIM MACY
DIRECTOR
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY