

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF	)	
Midwest Environmental Services, Inc.	)	CASE NO. 3594
(Eagle Lake WWTF),	)	
	)	CONSENT ORDER
	)	
FID # 57969	)	
	)	
	)	
Respondent.	)	

**I. INTRODUCTION**

1. The Nebraska Department of Environment and Energy (hereinafter “Department”) and Midwest Environmental Services, Inc. (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), Title 123, Rules and Regulations for the Design Operation and Maintenance of Wastewater Works, and NPDES Permit No. NE0112895.

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 Midwest Environmental Services, Inc., which owns and operates the Eagle Lake Wastewater Treatment Facility (WWTF) at 20001 South Stable Drive, Eagle, Cass County, Nebraska, 68347-4042, FID # 57969. The legal description is SE¼ SE¼ Section 30, Township 10N, Range 9E, Cass 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. Respondent was issued NPDES Permit No. NE0112895 (Permit), effective October 1, 2012, for the operation of the Eagle Lake Wastewater Treatment Facility (WWTF). The Permit was to expire September 30, 2017, but was automatically extended to the present time.

14. NPDES Permit No. NE0112895 requires Respondent to sample for CBOD, Total Suspended Solids (TSS), and *E.coli* (May to September). NPDES Permit No. NE0112895 requires Respondent to electronically submit discharge monitoring reports (DMRs) on a quarterly basis. NPDES Permit No. NE0112895, Part III, set a Compliance Schedule for Meeting *E coli* Bacteria Limitations.

15. Appendix A of NPDES Permit No. NE0112895 requires Respondent do the following:

"2. Duty to Comply

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

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.

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 includes effective performance based on designed facility removals, effective management, 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 the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

16. A Notice of Violation (NOV) was issued to Respondent on February 20, 2020, for violations of Title 119, Title 123, and Respondent's Permit. These violations were determined during an inspection on January 6, 2020. The violations included:

- A. Failure to comply with permit requirements.
  - 1. Respondent did not meet the requirements of the compliance schedule of their permit set out in Part III.
  - 2. Respondent did not meet the numeric limitations required by their permit. These are violations of Title 119, Chapter 14, Section 001.01.
- B. Failure to comply with reporting requirements. There are no 24-hour oral notifications or written reports provided to the Department for numeric violations. This is a violation of Title 119, Chapter 14, Section 001.12G.

17. Respondent was to provide the department the plans and specifications for the force main and connection to the Village of Eagle WWTF by April 30, 2020, including the start date, the date of connection to the Village of Eagle WWTF, and the date the line will be placed in service. Furthermore, respondent was to immediately comply with the reporting requirements of their NPDES permit.

Respondent failed to comply with these terms.

18. A Letter of Noncompliance was sent to Cass County SID #4 on April 5, 2022. The

Respondent was found to remain out of compliance with Titles 119, 123, and Respondent's Permit.

Respondent was copied on this Letter of Noncompliance. These violations were determined during an NPDES file review and an inspection on March 28, 2022. The violations included:

- A. Failure to comply with permit requirements. These are violations of Title 119, Chapter 14, Section 001.01.
  - Cass County SID #4 has not met the requirement of the compliance schedule set out in Part III of the permit. The schedule included the requirement for the necessary construction of treatment to meet the *E. coli* limits.
  - Eagle Lake WWTF has failed to meet numeric limitations required by the permit.

19. By May 1, 2022, Respondent was to submit to the Department written plan describing how they will meet the permit limitations required by their permit. The plans will include a proposed schedule for completion.

20. A Letter of Noncompliance was sent to Cass County SID #4 on April 4, 2023. The Respondent was found to remain out of compliance with Titles 119, 123, and Respondent's Permit. Respondent was copied on this Letter of Noncompliance. These violations were determined during an NPDES file review on March 24, 2023. The violations included:

- A. Failure to comply with numeric permit limits. These are violations of Title 119, Chapter 14, Section 001.01.
  - Limit exceedances of *E. coli* during the monitoring periods of May 2022 through September 2022.
  - Limit exceedances of CBOD during the monitoring periods of April 2022, May 2022, and October 2022 through December 2022.
  - Limit exceedances of TSS during the monitoring periods of April 2022 through June 2022 and October 2022 through December 2022.

21. By May 1, 2023, Respondent was to submit corrective action taken to meet permit limits and progress updates to the schedule provided by the respondent on May 2, 2022.

22. Respondent is out of compliance with NPDES Permit No. NE0112895 for *E. coli* levels. Part I. C. 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. Respondent had the following exceedances for *E. coli*:

Date	Permit Limit Monthly Geo Mean	Monthly Geo Mean	Permit Limit Daily Maximum	Daily Maximum
5/31/2020	126	2419	298	2419
6/30/2020	126	2419	298	2419
7/31/2020	126	2419	298	2419
8/31/2020	126	2419	298	2419
9/30/2020	126	2419	298	2419
5/31/2021	126	2419	298	2419
6/30/2021	126	2419	298	2419
7/31/2021	126	2419	298	2419
8/31/2021	126	4939	298	4939
9/30/2021	126	2419	298	2419
5/31/2022	126	2420	298	2420
6/30/2022	126	2420	298	2420
7/31/2022	126	2419	298	2419
8/31/2022	126	2419	298	2419
9/30/2022	126	2419	298	2419

23. Respondent is out of compliance with NPDES Permit No. NE0112895 for Total Suspended Solids (TSS) levels. Part I. A. Table 1 of the permit sets the discharge limits as 30 mg/L and 2.27 kg/day for the monthly average and 45 mg/L and 3.40 kg/day for the weekly average. Respondent had the following exceedances for TSS:

Date	Permit Limit Monthly Average kg/day	Monthly Average kg/day	Permit Limit Monthly Average mg/L	Monthly Average mg/L	Permit Limit Weekly Average kg/day	Weekly Average kg/day	Permit Limit Weekly Average mg/L	Weekly Average mg/L
10/31/2019			30	46			45	46
12/31/2019			30	72			45	72
4/30/2020			30	31				
5/31/2020			30	43				
6/30/2020	2.27	2.3	30	32				
12/31/2020	2.27	4.9	30	54	3.4	4.9	45	54
2/28/2021	2.27	2.74	30	33				
3/31/2021	2.27	2.3						
6/30/2021	2.27	2.37	30	33				

11/30/2021			30	34				
4/30/2022	2.27	17.69	30	39	3.4	17.69		
5/31/2022	2.27	20.87			3.4	20.87		
6/30/2022	2.27	15.8			3.4	15.8		
10/31/2022	2.27	10.05			3.4	10.05		
11/30/2022	2.27	4.08			3.4	4.08		
12/31/2022	2.27	20.11			3.4	20.11		

24. Respondent is out of compliance with NPDES Permit No. NE0112895 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 1.89 kg/day for the monthly average and 40 mg/L and 3.03 kg/day for the weekly average. Respondent had the following exceedances for CBOD:

Date	Permit Limit Monthly Average kg/day	5 day, 20C, Monthly Average kg/day	Permit Limit Monthly Average mg/L	5 day, 20 C, Monthly Average mg/L	Permit Limit Weekly Average kg/day	5 day, 20 C, Weekly Average kg/day	Permit Limit Weekly Average mg/L	5 day, 20 C, Weekly Average mg/L
10/31/2019			25	46			40	46
1/31/2020			25	78			40	78
5/31/2020			25	27				
10/31/2020			25	36				
2/28/2021		2.25	25	27				
11/30/2021			25	28				
4/30/2022	1.89	5.44			3.03	5.44		
5/31/2022	1.89	4.35			3.03	4.35		
10/31/2022	1.89	2.87						
11/30/2022	1.89	2.04						
12/31/2022	1.89	2.21	25	39				

25. Respondent remains out of compliance with the Act, Titles 119 and 123, and the Permit.

### V. COMPLIANCE ORDER

26. 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. Within thirty (30) days from the date of this order, provide a comprehensive plan for meeting the requirements of NPDES Permit No. NE0112895 Part III. Compliance Schedule for meeting *E. coli* bacteria limitations. This plan will provide a timeline for completion of this project within ninety (90) days from the date of this order or a detailed explanation of why this timeline cannot be met and when the project will be completed.
- B. If Midwest Environmental Services, Inc. sells or gives this facility to Cass County SID # 4, any sale or gift provision will require Cass County SID # 4 to assume the responsibilities and liabilities of this consent order. Cass County SID # 4 must agree to abide by all terms of this consent order once they assume ownership of this facility.
- C. Respondent will immediately come into compliance with its CBOD and TSS requirements. Any violation of monthly or weekly limits shall be reported within 24 hours and shall include a description of the period of 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.
- D. Respondent will immediately make all repairs to the facility to keep it in full working order and in compliance with all limits in the Respondent's NPDES Permit No. NE0112895.

27. Respondent shall report to the Department by November 30, 2023, documenting how compliance with paragraph 26 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.

28. 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.

29. Information to be submitted under this Order shall refer to FID # 57969 and shall be sent to:

Brad Pracheil  
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**

30. 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**

31. 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**

32. 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**

33. 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**

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

**XI. EFFECTIVE DATE**

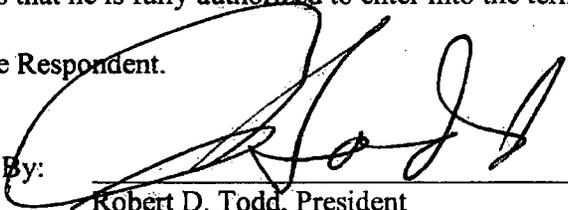
35. This Consent Order shall become effective on the date it is signed by the Director of the Department.

**XII. SEVERABILITY**

36. 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.

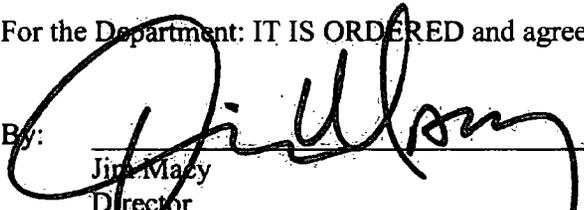
**XIII. SIGNATURES**

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

By:   
Robert D. Todd, President  
Midwest Environmental Services, Inc.

Date: 7/20/2023

For the Department: IT IS ORDERED and agreed this 26<sup>th</sup> day of July, 2023.

By:   
Jim Mazy  
Director  
Department of Environment and Energy