

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF	)	
Lancaster County, Nebraska	)	CASE NO. 3592
Sanitary Improvement District #6	)	
(West Emerald)	)	CONSENT ORDER
	)	
FID # 71521	)	
	)	
Respondent.	)	

**I. INTRODUCTION**

1. The Nebraska Department of Environment and Energy (hereinafter “Department”) and Lancaster County, Nebraska, Sanitary Improvement District # 6 (West Emerald) (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. (Reissuc 2014, Cum. Supp. 2022) and Title 123.

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 123, and all permits, rules and regulations and orders promulgated under such acts.



4. Respondent is Lancaster County, Nebraska, Sanitary Improvement District # 6 (West Emerald), which owns and operates a wastewater treatment facility (WWTF) at 8301 West O St., Emerald, Lancaster County, Nebraska, 68528-9198, FID # 71521. The legal description is SW Section 23, Township 10N Range 05E, Lancaster County, Nebraska. SID 6 is a political subdivision of the State of 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 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.

9. 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.”

10. Title 123, Chapter 11, § 003 states: “Wastewater collection systems will be kept open and free flowing at all times.”

11. Title 123, Chapter 11, § 008.01 states: “Lagoon dikes will be maintained with grass to minimize soil erosion, except for areas protected by rip rap or other stabilization methods. The grassed dikes will be mowed to prevent growth of trees or woody plants. Cattails, reeds and other emergent vegetation will be removed from the lagoons promptly as they appear.”

12. Title 123, Chapter 11, § 008.02 states: “At least two feet of water will be maintained at all times in active wastewater lagoons unless the lagoon has a synthetic liner with an adequate ballast system to prevent uplift from the wind.”

13. Title 123, Chapter 11, § 008.03 states: “A fence will be maintained around lagoon systems to keep unauthorized persons, pets, and domestic livestock from entering the lagoon. Warning signs will be maintained in legible condition. Gates and locks will be maintained in operable condition.”

14. Title 123, Chapter 11, § 008.04 states: “If a new lagoon cell is not immediately needed, or if wastewater flow to a lagoon cell is interrupted for a period greater than a year, lagoon cells may be allowed to dry out. These lagoon cells shall be mowed, as necessary, to prevent the growth of woody plants. When inactive lagoon cells are placed into service, the liner’s permeability rate will be tested, and if necessary, restored to meet the seepage rate established by the Department. Synthetic liners that are being placed back into service will be restored to a watertight condition.”

15. Title 123, Chapter 11, § 008.05 states: “Damage to lagoon dikes and liners caused by muskrats or other rodents, erosion, tree roots, animal hooves, or any other source will be promptly repaired.”

16. On September 17, 2021, the Department issued a Letter of Noncompliance to SID 6 for violations of Title 123. The Department received photographic documentation of upkeep taken to improve the facility showing the removal and mowing of vegetation around the lagoons

and that environmental engineers have been contacted to help mitigate the issues related to operating levels and other engineering related issues.

17. On November 24, 2021, the Department issued a Letter of Noncompliance, Further Action Necessary to SID 6 stating that additional requirements were needed to return the facility to compliance status. These requirements included:

- A. A fence to enclose the lagoon. The lagoon needs to be completely enclosed to keep out animals and people equipped with a lockable gate and signage.
- B. The grate over the splitter box needs to be installed.
- C. An update of the progress and plans made with the engineering firm regarding the following:
  - i. The lagoon is producing odor and has a gray, pink coloration. This indicates influent loading above the treatment capacity of the lagoon.
  - ii. The west lagoon cell is not maintained with at least two feet of water. The lagoon floor is vegetated.

18. During an inspection on February 4, 2022, NDEE inspectors found the following conditions at the facility:

- A. The area along the water line has long vegetation on the west lagoon.
- B. The east lagoon is not being used unless it overflows from the west lagoon, and the bottom of the lagoon has not been mowed; it has long vegetation.
- C. There were trees and shrubs visible in several areas on and around the dikes on the east lagoon.
- D. Fence was only visible along the south side of the facility boundary.
- E. There is dead vegetation in the splitter box, and the cover grate is bent.

F. Middle Creek, which flows along the north side of the facility, has been undercutting the dike with occasional flooding.

19: During an inspection on May 17, 2023, an NDEE inspector found the following conditions at the facility:

- A. The lagoon dikes have not been mowed except a small path once along the tops of the dikes.
- B. There are still trees and shrubs visible in several areas on and around the dikes.
- C. Burrows are visible in the dikes of the west lagoon.
- D. There are plants and trees growing out the sides of the splitter box.
- E. The west lagoon level is very low; based on observations, it is close to minimum operating levels.
- F. The east lagoon is overgrown.
- G. Middle Creek continues to erode the south bank of the creek which is close to the toe of the west lagoon north dike.

20. The facility remains out of compliance with Title 123, Chapter 11, § 003.

#### **V. COMPLIANCE ORDER**

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

- A. Items to be completed within ninety (90 days):
  - i. A fence to enclose the lagoon system. The lagoon system needs to be completely enclosed to keep out animals and people equipped with a lockable gate and signage.
  - ii. Replace the grate over the splitter box. All trees and other vegetation growing out of the splitter box need to be removed.

- iii. Respondent shall hire an operator to maintain and operate the wastewater treatment facility and keep the grounds maintained.
  - iv. All dikes must be mowed and maintained at all times.
  - v. Trees and shrubs growing on and around the lagoon dikes must be removed.
  - vi. East lagoon floor must be cleared of all vegetation.
  - vii. Repair animal burrows in both lagoon dikes.
- C. Hire an engineering firm within thirty days of the signing of this order to update the PER prepared by JEO Consulting Group, Inc. in 2017. Report to NDEE the name of the engineering firm and contact. Provide a copy of the engineering memo prepared by NDEE on the WWTF to the engineering firm hired.
- Respondent may apply for a planning grant to fund this endeavor; if additional time is needed to secure funding through a planning grant, Respondent shall report this to NDEE within thirty days of the signing of this order and give a timeline for completing this task.
- D. An update of the progress and plans made with the engineering firm regarding remediation of the following shall be provided to NDEE. This plan shall include a timeline for completion of the projects:
- i. The west lagoon is producing odor and has a gray, pink coloration.  
Analysis of the west lagoon and a plan to remedy the septic conditions.
  - ii. Determine if east lagoon should be used instead of west lagoon.
  - iii. Evaluation of the lift station and whether it needs to be repaired or replaced.

- iv. A plan to resolve issues with Middle Creek's south bank erosion which is close to the toe of the west lagoon north dike.
- v. Cost estimate updates for all work at the WWTF.

22. Respondent shall report to the Department by January 31, 2024, documenting how compliance with Paragraph 21 of this Order has been achieved. If additional time is needed to remediate the issues in Paragraph 21, Respondent shall report to the Department why additional time is needed and a timeline for completion of all actions.

23. Respondent shall respond promptly to any written communication by the Department. Failure to respond within 14 days to such communication shall be construed as non-compliance with this Order.

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

Phillip Halsted  
NDPES Compliance Section  
Nebraska Department of Environment and Energy  
PO Box 98922  
245 Fallbrook Blvd., Suite 100  
Lincoln, NE 68509-8922  
402-471-2186

#### **VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS**

25. 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**

26. 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**

27. 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**

28. 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**

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

### **XI. EFFECTIVE DATE**

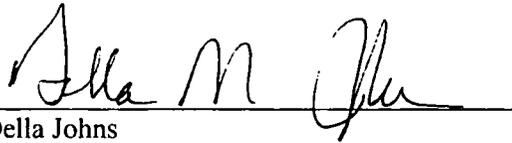
30. This Consent Order shall become effective on the date it is signed by the Director of the Department.

### **XII. SEVERABILITY**

31. 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.

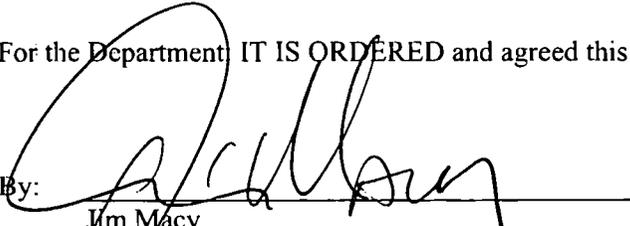
**XIII. SIGNATURES**

For the Respondent: The undersigned representative of Lancaster County Sanitary Improvement District # 6 (Emerald, Nebraska, Unincorporated), certifies that she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By:   
Della Johns  
Administrator  
Lancaster County Sanitary Improvement District # 6  
(Emerald, Nebraska, Unincorporated)

Date: 10-9-2023

For the Department IT IS ORDERED and agreed this 10<sup>th</sup> day of October 2023.

By:   
Jim Macy  
Director  
Department of Environment and Energy