

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF

CRETE CORE INGREDIENTS, LLC
FID #87643

Respondent.

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Case No. 3534

CONSENT ORDER

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (NDEE) and Crete Core Ingredients, LLC (Respondent), voluntarily enter into this Consent Order. The Consent Order establishes a schedule for Respondent to comply with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 *et seq.*; Nebraska Administrative Code (NAC) Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System* (Title 119); and NAC Title 123, *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works* (Title 123).

II. JURISDICTION

2. NDEE is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504, of exercising exclusive general supervision, administration, and enforcement of NEPA and all rules and regulations and orders promulgated under such acts, including NAC Titles 119 and 123.

3. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent neither admits nor denies factual allegations herein but agrees not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. Respondent waives its right to further hearing as provided in Neb. Rev.



Stat. § 81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 *et seq.* for the violations alleged herein.

III. PARTIES

4. The parties to this Consent Order are NDEE and Crete Core Ingredients, LLC. This Consent Order is binding on NDEE, Respondent, successors, and assigns.

IV. FINDINGS OF FACT

5. At all times material herein, Respondent has owned and operated a pet food processing facility located at 2220 Industrial Road in Crete, NE.

6. As a routine part of its facility operation, Respondent discharges pretreated process wastewater to the City of Crete's wastewater treatment plant (WWTP) and publicly owned treatment works (POTW), subject to the terms and conditions of National Pollution Discharge Elimination System (NPDES) Nebraska Pretreatment Program (NPP) Permit No. NE0138746.

7. On or about February 16, 2018 and pursuant to the requirements of Title 123, Respondent submitted a revised wastewater facility construction permit application proposing and describing "Phase 1 Pretreatment Improvements" to be made at Respondent's pet food processing facility in Crete, NE.

8. On April 12, 2018, NDEE issued Respondent Title 123 Construction Permit No. 2018-0021 which approved the construction permit application as submitted on February 16, 2018.

9. Title 123, Chapter 3, 003 contains a provision stating that a "construction permit shall be valid only if construction is started within one year and is completed within three years from the date of approval."

10. On or about April 5, 2021, Respondent re-submitted a Title 123 wastewater facility construction permit application for "Phase 1 Pretreatment Improvements" as Respondent's previous Construction Permit No. 2018-0021 had expired by operation of the regulation in Title 123, Chapter 3, 003.

11. On July 8, 2021, NDEE issued Respondent Title 123 Construction Permit No. 2021-0066 which approved the construction permit application as submitted on April 5, 2021.

12. Respondent's completion of wastewater pretreatment system improvements is necessary for Respondent to comply with the terms and conditions of NPDES/NPP Permit No. NE0138746, reissued on October 1, 2018.

13. Among the terms and conditions of NPDES/NPP Permit No. NE0138746, Respondent is required to pretreat its process wastewater to meet the numeric discharge limits in Part I.A. of Respondent's NPDES/NPP permit, which contains limits for both the daily maximum and monthly average volumes of pollutants allowed to be discharged in Respondent's pretreated wastewater.

14. Between May 2019 and January 2021, Respondent violated its daily maximum numeric limit for Biochemical Oxygen Demand (BOD) of 900 lbs./day in fourteen (14) of twenty-one (21) monthly reporting periods.

15. Between May 2019 and December 2020, Respondent violated its monthly average numeric limit for Biochemical Oxygen Demand (BOD) of 720 lbs./day in thirteen (13) of twenty (20) monthly reporting periods.

16. Between June 2020 and December 2020, Respondent violated its daily maximum numeric limit for Total Kjeldahl Nitrogen of 200 lbs./day in seven (7) out of seven (7) monthly reporting periods.

17. Between June 2020 and November 2020, Respondent violated its monthly average numeric limit for Total Kjeldahl Nitrogen of 160 lbs./day in four (4) of six (6) monthly reporting periods.

18. During the month of June 2020, Respondent violated both its daily maximum and monthly average numeric limits for Total Suspended Solids (TSS) of 100 lbs./day and 80 lbs./day, respectively.

19. Neb. Rev. Stat. §81-1506(2)(c) states that it is unlawful for any person to increase in volume or strength any waste in excess of permitted discharges specified under any existing permit.

20. Neb. Rev. Stat. §81-1508.02(1)(b) states that it is unlawful for any person to violate a permit or license condition or limitation and any provision or duty imposed by rules and regulations.

21. Title 119, Chapter 14, Section 001.01 requires Respondent to comply with all conditions of NPDES Permit No. NE0040045 and states that permit noncompliance is grounds for enforcement action.

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

23. Respondent has violated Neb. Rev. Stat. §81-1506(2)(c), §81-1508.02(1)(b), and Title 119, Chapter 14, Section 001.01.

24. The NDEE Director is authorized under Neb. Rev. Stat. §81-1504(7), (25), and §81-1507(1) to require corrective action and enforce compliance schedules to prevent, control, or abate unlawful discharges.

V. COMPLIANCE ORDER

25. On or before January 1, 2022, Respondent agrees to submit a written project timeline identifying major project tasks necessary to complete construction and begin operation of its "Phase 1 Wastewater Pretreatment Improvements" as described in its April 5, 2021 construction permit application and as approved in NDEE's July 8, 2021 issued Construction Permit No. 2021-0066.

26. Respondent agrees to submit quarterly project updates beginning on January 1, 2022, describing the current construction status, progress made toward completion of the "Phase 1 Wastewater Pretreatment Improvements" during that quarter, and the estimated date of construction completion.

27. By October 31, 2023, Respondent agrees to complete construction and begin operation of its "Phase 1 Wastewater Pretreatment Improvements" as described in its April 5, 2021 construction permit application and as approved in NDEE's July 8, 2021 issued Construction Permit No. 2021-0066. Upon completion of construction, Respondent agrees to provide written notification to NDEE in accordance with the requirements of Title 123, Chapter 9, 004.

28. Information to be submitted under this Consent Order shall refer to FID #87643 and shall be sent to:

Reuel Anderson
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

29. Respondent shall perform all actions required by 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 NDEE or State of Nebraska to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA and any rules, regulations, orders, or permits issued pursuant to NEPA.

31. NDEE reserves the right to inspect Respondent's completed Phase I Wastewater Treatment Improvements project to confirm construction and operation of the project as designed and in compliance with Title 119 and Respondent's NPDES/NPP permit within 50 days of filing a certification of completion and operation as provided in paragraph 27 and prior to case satisfaction pursuant to paragraph 37.

VIII. NEGATION OF AGENCY RELATIONSHIP

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

IX. AMENDMENT

33. This Consent Order may be modified and amended in writing by mutual agreement of NDEE and Respondent.

X. FORCE MAJEURE

34. The parties agree that national supply chain disruptions may delay completion of the approved Phase 1 Wastewater Pretreatment Improvements, these delays may be outside of Respondent's control, and such delays may constitute a *force majeure* in Respondent's efforts

to meet the construction completion and facility operation deadline of October 31, 2023 in paragraph 28 of this Consent Order. The parties agree that Respondent has the burden of proving a project delay constitutes a *force majeure*.

35. When any delay is encountered that is anticipated to impact the compliance deadline in paragraph 28, Respondent agrees to give written notice to NDEE within 30 days of Respondent's awareness of the project delay at issue. In submitting a written notice of delay, Respondent agrees to fully describe the nature and circumstances of the delay, the estimated length of delay, measures taken or to be taken to minimize the delay, and any other information relevant to both the delay and Respondent's ability to meet the compliance deadline in paragraph 28. Respondent agrees to supplement, in writing, previous notices of delay within 30 days of discovery of new information relevant to the delay at issue. Respondent's failure to comply with the written notice provisions of this paragraph is a waiver of Respondent's right to assert a *force majeure* has occurred or is occurring.

36. NDEE agrees to review all notices of delay submitted by Respondent and fairly evaluate whether the delay constitutes a *force majeure*, thus justifying amendment of paragraph 28 this Consent Order, pursuant to paragraph 33. The parties agree that Respondent's submittal of a notice of delay is not an absolute guarantee that the compliance deadline in paragraph 28 will be amended, but that any properly documented *force majeure* is more likely to be approved than not approved.

XI. SATISFACTION OF CONSENT ORDER AND TERMINATION

37. Upon filing of a certification of completion as provided in paragraph 27 and upon a satisfactory NDEE inspection to confirm project completion and operation as provided in paragraph 31, terms of this Consent Order will be satisfied, and the Director shall issue a case

“Satisfaction Order” within 65 days of Respondent's filing a certification of completion. If NDEE does not inspect to confirm project completion and operation as provided in paragraph 31, NDEE will be deemed to have waived its right of inspection under paragraph 31 and shall issue a case "Satisfaction Order" within 65 days of Respondent's filing a certification of completion, notwithstanding the waiver.

XII. EFFECTIVE DATE


38. This Consent Order shall become effective on the date it is signed by the NDEE Director or his designee.

XIII. SEVERABILITY

39. If any provision or authority of this Order or the application of this Order 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 Order shall remain in force and shall not be affected thereby.

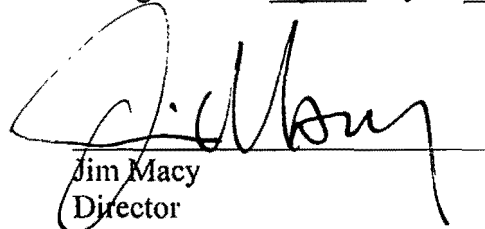
XIV. SIGNATURES

40. For Respondent:

By: 
Title: President/CEO
Date: 11/30/21

41. For NDEE:

IT IS SO ORDERED and agreed this 2ND day of December, 2021.



Jim Macy
Director
Nebraska Department of Environment and Energy