

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)

) CASE NO. 3553

CLEAN HARBORS ENVIRONMENTAL)

SERVICES, INC., a Massachusetts)

Corporation, IIS # 58562,)

AMENDED CONSENT ORDER

) Respondent.)

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (hereinafter "Department") and Clean Harbors Environmental Services, Inc. (hereinafter "Respondent"), voluntarily enter into this Amended Consent Order. The Amended Consent Order establishes a schedule of compliance for changes to the Respondent's hazardous waste treatment and storage facility necessary to achieve and maintain compliance with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2008, Cum. Supp. 2013), and Title 128, Nebraska Administrative Code, *Nebraska Hazardous Waste Regulations*. This Amended Consent Order also provides for the performance of activities specified in Section VI.

II. JURISDICTION

2. 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. This Amended Consent Order is issued under the authority vested in the Director of the Department by Neb. Rev. Stat. §§ 81-1504(25) and 81-1507(1).

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Amended Consent Order. The Respondent agrees that it will not contest the basis or validity of this Amended Consent Order in any proceedings by the Department to enforce this Amended Consent Order.



III. PARTIES

4. This Amended Consent Order is binding on the Department and the Respondent and its successors and assigns.

5. The Respondent shall ensure that any contractors, sub-contractors, and representatives implementing any provision of this Amended Consent Order receive a copy of this Amended Consent Order. The Respondent shall be responsible for any noncompliance with this Amended Consent Order.

6. The Respondent admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law referenced within Section IV, Paragraphs ## 12 through 14 herein.

IV. FINDINGS OF FACT

7. At all times material herein the Respondent has owned and operated a facility at 2247 South Highway 71, Kimball, Kimball County, Nebraska (hereinafter the "Facility") which is used to treat, store, or dispose of hazardous waste.

8. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the issuance of operating permits for sources of hazard waste treatment and storage, as expressed in Neb. Rev. Stat. § 81-1505(13), the Council adopted a rule and standard codified as Title 128, Nebraska Administrative Code, *Nebraska Hazardous Waste Regulations*.

9. Pursuant to Title 128, the Defendant had been issued a Resource Conservation and Recovery Act Permit (hereinafter "RCRA Permit") on December 1, 2015, by the Department and that said RCRA Permit was at all times material herein, in full force and effect.

10. On February 17, 2021, Respondent requested an emergency permit for the temporary storage of up to 100 transfer vans of containerized waste in the facility's ten (10) day yard for up to a period of 90 days. Respondent stated that extremely low temperatures resulted in an unplanned outage which decreased operating throughput. It also caused other facilities owned by Clean Harbors and third-party facilities that accept material shipped from the facility to

shut down unexpectedly. These issues resulted in an on-site inventory increase for the Facility that exceeded current drum storage capacities.

11. Oral authority was granted by the Department on February 19, 2021, for the emergency storage; and an Emergency Permit was approved on February 22, 2021, with an effective date of February 19, 2021. The Permit was effective for 90 calendar days.

12. A Letter of Non-Compliance was issued on May 7, 2021, pursuant to findings from a March 30-April 2, 2021, RCRA Compliance Evaluation Inspection. One of the violations was of the February 19, 2021, Emergency Permit for:

“(f)ailure to store and accumulate containers of hazardous waste only in the container storage areas identified in Appendix II of this Permit (RCRA Permit, Part III.A.). This citation refers to Observation 42.a of the inspection report. An emergency permit was issued to CHESI on February 19, 2021, to allow for additional storage in vans in the 10-day transfer area on the southwest corner of the property. However, during the inspection a random review of transfer vans on the site were found to be holding waste in unpermitted storage areas for as long as 15 days.”

13. 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.

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

15. A request for an extension of the February 19, 2021, permit was received by the Department on May 17, 2021. Respondent indicated there was an unexpected shutdown of the facility’s shredding system which decreased throughput, transportation logistics difficulties to ship inventory off-site, and an anticipated inventory increase due to scheduled maintenance turnaround taking place the first two weeks of June. Respondent requested an additional sixty days to bring its waste storage into compliance with its December 1, 2015, RCRA Permit.

16. A second RCRA Emergency Permit was issued to the Respondent by the Department for the emergency storage on May 21, 2021. It was effective May 21-31, 2021.

17. Consent Order, Case No. 3553, was issued on June 1, 2021, allowing the storage of the wastes referenced in the February 19, 2021, and May 21, 2021, RCRA Emergency Permits

on an emergency basis in the ten-day yard identified in Attachment A (area highlighted in yellow), through July 20, 2021.

18. A request for an amendment of the June 1, 2021, Consent Order was received by the Department on July 2, 2021. Respondent indicated there was a large increase in the amount of waste containers being shipped; waste was generated at an unprecedented rate as businesses re-opened; all cement kilns shut down for maintenance outages in the spring 2021; waste fuels that typically go to these kilns were redirected to hazardous waste incinerators; the spring 2021 freezing weather that impacted the Midwest and south caused several hazardous waste incinerators to go down for weeks, impacting not only the incinerators but major suppliers; and there continues to be a national driver shortage.

19. The Director of the Department is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) to issue this order requiring the modification of the hazardous waste treatment and storage facility as necessary to prevent, control, or abate pollution.

VI. COMPLIANCE ORDER

20. Respondent agrees to perform the following activities regarding the emergency storage of wastes:

A. The hazardous waste shall be stored properly in accordance with the storage requirements of 40 CFR 264.170 through 264.174 and CFR 264.176 through 264.179, as incorporated by reference in Title 128 – Nebraska Hazardous Waste Regulations, Chapter 21, Section 009;

B. Wastes are prohibited to be stored under this Amended Consent Order as identified in the December 1, 2015, issued RCRA Permit, III.C.1. through III.C.8;

C. Daily inspections shall be conducted of the areas covered under this Amended Consent Order, where wastes are stored, in accordance with 40 CFR 264.174, as incorporated by reference in Title 128, Chapter 21, Section 009;

D. Respondent shall take all necessary steps to protect human health and the environment;

E. Respondent shall comply with the requirements of Title 128, Chapter 12, Section 001.04B6;

F. Respondent may store approved wastes allowed by the facility's RCRA permit on an emergency basis in the ten-day yard identified in Attachment A (area highlighted in yellow). Wastes will be managed in accordance with the requirements of the facility RCRA permit, with the exception of the containment requirements of Section III.J. A perimeter fence shall be maintained around the ten-day yard to ensure security.

G. Upon completion of Container Storage Area 27 (currently under construction), wastes shall be placed in a permitted container storage area; and the use of the emergency storage area shall be discontinued.

H. The wastes identified in Paragraph F. above may not be stored in the ten-day yard after December 31, 2021.

I. The Respondent shall report to the Department the quantity of waste stored in the ten-day yard under the second Emergency Permit, the quantity processed, and the remaining quantity of waste stored in the ten-day yard on May 31, 2021. Respondent shall report to the Department monthly on the amount of waste removed from the emergency storage area and the amount still remaining.

J. Records shall be kept of the results of waste analyses, daily inventory, and any other documentation showing compliance with the requirements of this Amended Consent Order, in the facility operating record for three (3) years; and

K. Emergency permission to store wastes in the ten-day yard may be terminated by the Director of the Department at any time without process if the Director determines that termination is appropriate to protect human health and the environment, per Title 128, Chapter 12, Section –1.4B4).

21. The Respondent shall respond promptly to any written communication by the Department to modify any submitted documents and by making the required modifications or changes no later than 30 days after receipt or date specified in written comments by Department. Any delay in responding to such communication shall be construed as non-compliance with this Amended Consent Order.

22. Information to be submitted under this Order shall be sent to:

Jeff Edwards
Nebraska Dept. of Environment and Energy
PO Box 98922
Lincoln, NE 68509-8922
Telephone: 402-471-8309

VII. COMPLIANCE WITH OTHER LAWS

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

VIII. FORCE MAJEURE

24. Force majeure for the purposes of this Amended Consent Order means any event arising from causes entirely beyond the control of the Respondent and any entity controlled by the Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Amended Consent Order. The Respondent shall exercise best efforts to anticipate any potential force majeure events and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable. The February 2021 weather events which caused the need for the February 19, 2021, Emergency Permit shall not qualify as a force majeure event for purposes of this Amended Consent Order.

25. If any event occurs that may delay the performance of any obligation under this Amended Consent Order, whether or not caused by a force majeure event, the Respondent shall notify the Department by telephone within 24 hours of learning of the event. The Respondent shall provide, in writing within 7 days, the reasons for the delay, the anticipated

duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any action.

26. If the Department agrees that the delay is attributable to a force majeure, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay.

27. The Department, in its discretion, may agree to an extension caused by any other event.

IX. RESERVATION OF RIGHTS

28. Nothing in this Amended Consent Order shall be construed to 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 NEPA and any rules, regulations, orders, or permits issued pursuant to NEPA.

X. NEGATION OF AGENCY RELATIONSHIP

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

XI. AMENDMENT

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

XII. EFFECTIVE DATE

31. This Amended Consent Order shall become effective on the date it is signed by the Director of the Department or his designee.

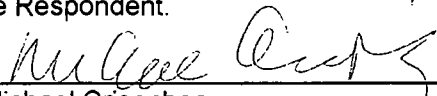
XIII. SEVERABILITY

32. 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

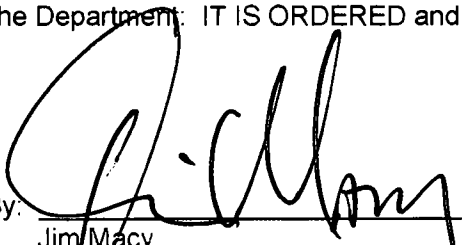
33. For the Respondent: The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Amended Consent Order and to bind the Respondent.

By: 
Michael Crisenbery

Title: Vice President Environmental Compliance

Date: 7/20/21

34. For the Department: IT IS ORDERED and agreed this 20th day of July, 2021.

By: 
Jim Macy
Director
Department of Environment and Energy

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Amended Consent Order, was served by certified United States mail, postage prepaid, return receipt requested this 20th day of July, 2021, upon the Registered Agent listed below:

Clean Harbors Environmental Services, Inc.
C T Corporation System
5601 S 59th St., Suite C
Lincoln, NE 68516
USPS Label #9414811898765807025151


Lauren Triplett
Legal Division – Office Specialist

