

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF WESTERN SUGAR
COOPERATIVE CORPORATION

SCOTTSBLUFF, NEBRASKA

NDEQ # 44141

Respondent

CASE NO. 3418

ORDER FOR COMPLIANCE ON
CONSENT

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (Department) and Western Sugar Cooperative Corporation (Respondent) voluntarily enter into this Order for Compliance on Consent (Consent Order). The Consent Order establishes a schedule of corrective actions necessary to reinforce the structural integrity of Respondent's wastewater lagoon and to conduct discharge and groundwater monitoring associated with the Respondent's wastewater discharges as required by the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2016) and rules and regulations promulgated under such Act.

2. The Respondent owns and operates a sugar beet processing facility located at 2100 E Overland, Scotts Bluff County, Scottsbluff, Nebraska 69361.

3. As part of the beet washing process, Respondent discharges wastewater containing mud and solids to a wastewater lagoon, also known as a retention basin, located between the North Platte River and South Beltline Highway in Sections 31 and 32, Township 22 North, Range 54 West.

II. JURISDICTION

4. 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 Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 81-1532 and all rules, regulations, and orders promulgated thereunder. This Consent Order is issued under the authority vested in the Director of the Department by Neb. Rev. §§ 81-1504(25) and 81-1507(1).

5. The Department made certain allegations in a Complaint, Compliance Order and Notice of Opportunity for Hearing dated August 1, 2017 as a result of a breach of the dike surrounding the Respondent's retention basin.

6. In response to the Complaint, Respondent filed an Answer and Request for hearing, dated September 1, 2017. Respondent has prepared a long term plan to ensure the structural integrity of the retention basin that was the subject of the Department's complaint.

7. The Respondent agrees to not contest the Department's jurisdiction to enforce this Consent Order in any subsequent enforcement proceedings, either administrative or judicial. The Respondents further agree, without making any admissions to liability, to undertake all corrective actions required by and agreed to in this Consent Order.

8. The Department and the Respondent acknowledge that this Consent Order has been negotiated in good faith and the Request for a Hearing for a contested case in this matter is withdrawn upon the signature of the Director of the Department.

III. PARTIES

9. This Consent Order is binding on the Respondent and its employees, agents, contractors, consultants, successors and assigns. Any change in ownership or corporate status of the Respondent, including but not limited to, any transfer of assets or property, shall not alter Respondent's responsibilities and obligations under this Consent Order.

10. The Respondent shall ensure that any contractors implementing any provision of this Consent Order receive a copy of this Consent Order. Respondent shall be responsible for ensuring that its contractors perform work in accordance with this Consent Order.

IV. STATUTORY AND REGULATORY FRAMEWORK

11. Neb. Rev. Stat. § 81-1506(1) makes it unlawful to cause pollution of any waters or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any water or land of the state; or to discharge or emit any wastes into any waters or land of the state which reduce the quality of such waters or land below established standards.

12. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of setting standards for the discharge of wastewater and the operation of wastewater lagoons, as expressed in Neb. Rev. Stat. § 81-1505, the Council adopted and promulgated rules codified as Neb. Adm. Code, Title 119 – *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*.

V. COMPLIANCE ORDER

13. Respondent agrees to maintain their retention basin in good working order and conduct and record the results of weekly inspections of the lagoon walls and dikes and to make such observations available to the Department upon request.

14. Respondent agrees to complete the following actions within the timeframes specified:

- a. Complete as soon as possible but no later than June 1, 2019 the reinforcement of the retention basin walls and dikes in accordance with Specifications and responses to comments prepared by M.C. Schaff and Associates. The Specifications were received by the Department on October 16, 2018 and are identified by the Department as Document No. 20180052984. The response to

comments were received by the Department on November 1, 2018 are identified by the Department as Document No. 20180052985. Such documents are incorporated into and made a part of this Consent Order.

- b. Submit annually on or before December 31 of each year following June 1, 2019, certification stating that the integrity of the Respondent's retention basin walls and dikes is sufficient to prevent a breach from occurring under normal operating conditions. The certification must be signed a Professional Engineer registered in the State of Nebraska.
- c. Implement as soon as possible but no later than March 1, 2019, the Discharge Sampling Plan in accordance with plans prepared by Baker & Associates, Inc. and received by the Department on June 20, 2018. The Discharge Sampling Plan is identified by the Department as Document No. 20180046854 and such document is incorporated into and made a part of this Consent Order.
- d. Implement as soon as possible but no later than March 1, 2019 the Groundwater Sampling and Analyses Plan in accordance with plans prepared by Baker & Associates, Inc. and received by the Department on June 20, 2018. The Groundwater Sampling and Analyses Plan is identified by the Department as Document No. 20180043357 and such document is incorporated into and made a part of this Consent Order.

15. Respondent agrees to respond in writing within seven (7) working days to all requests for information from the Department.

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

16. The 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.

17. Upon completion of the activities required by this Consent Order to the satisfaction of the Department, but no earlier than December 31, 2021, a Satisfaction of Compliance Order stating the Consent Order has been fully and completely satisfied will be filed by the Department.

VII. RESERVATION OF RIGHTS AND PENALTY PROVISIONS

18. The Department reserves the right to require the Respondent to complete additional work or take additional actions as necessary to achieve compliance with all applicable laws and regulations. Further, 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 this Complaint, Compliance Order, and Notice of Opportunity for Hearing. Nothing in this Complaint, Compliance Order, and Notice of Opportunity for Hearing precludes the Department from pursuing such enforcement.

19. Failure to obey this order may result in fines up to \$10,000 per violation per day, as set out in Neb. Rev. Stat. § 81-1508.02.

VIII. NEGATION OF AGENCY RELATIONSHIP

20. 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 Respondents.

IX. AMENDMENT

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

X. EFFECTIVE DATE

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

XI. SEVERABILITY

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

XII. SIGNATURES

For the Respondents: The undersigned certifies that they are fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondents.

For Western Sugar Cooperative Corporation:

By: Rodney Perry Date: Jan. 7th 2019
Rodney Perry, President & CEO
[Name, Title]

For the Department: IT IS ORDERED and agreed this

9th day of January, 2018.⁹

By:

Jim Macy
Jim Macy, Director
Department of Environmental Quality