

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF

MRK, Inc.

FID# 102307

Respondent.

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Case No. 3566

CONSENT ORDER

**I. INTRODUCTION**

1. The Nebraska Department of Environment and Energy (NDEE) and MRK, Inc. (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.* and Nebraska Administrative Code (NAC) Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System* (Title 119).

**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 Title 119.

3. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent 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 MRK, Inc. This Consent Order is binding on NDEE, Respondent, successors, and assigns.



#### **IV. FINDINGS OF FACT**

5. Respondent is the owner and operator of a livestock semi-truck and trailer wash located at 606 E. Prospect Rd., Lexington, Dawson County, Nebraska.

6. On April 1, 2020, Respondent was reissued National Pollutant Discharge Elimination System (NPDES) and Nebraska Pretreatment Program (NPP) permit number NE0139009 by NDEE which authorizes Respondent to discharge pretreated process wastewater to the City of Lexington publicly-owned treatment works (POTW), subject to the terms and conditions of the permit.

7. Among the terms and conditions of its NPDES/NPP permit, Respondent is required to meet numeric limits, as identified in Part 1.A. of the permit, for the discharge of its pretreated process wastewater to the City of Lexington POTW.

8. For the period between April 2020 and July 2021, Respondent failed to meet its numeric limit of 1500 mg/L for the discharge of Total Suspended Solids (TSS) to the City of Lexington POTW in fourteen (14) of fifteen (15) monthly reporting periods. The reported values in exceedance of the TSS numeric limit were:

- a. For April 2020, the actual TSS discharged was 1571 mg/L which was 5% over the permit limit;
- b. For May 2020, the actual TSS discharged was 5600 mg/L which was 273% over the permit limit;
- c. For June 2020, the actual TSS discharged was 2190 mg/L which was 46% over the permit limit;
- d. For July 2020, the actual TSS discharged was 9200 mg/L which was 513% over the permit limit;
- e. For August 2020, the actual TSS discharged was 4100 mg/L which was 173% over the permit limit;
- f. For September 2020, the actual TSS discharged was 5400 mg/L which was 260% over the permit limit;
- g. For October 2020, the actual TSS discharged was 11,000 mg/L which was 633% over the permit limit;
- h. For November 2020, the actual TSS discharged was 4300 mg/L which was 187% over the permit limit;
- i. For December 2020, the actual TSS discharged was 1667 mg/L which was 11% over the permit limit;
- j. For January 2021, the actual TSS discharged was 3800 mg/L which was 153% over the permit limit;

- k. For February 2021, the actual TSS discharged was 2900 mg/L which was 93% over the permit limit;
- l. For March 2021, the actual TSS discharged was 2400 mg/L which was 60% over the permit limit;
- m. For April 2021, the actual TSS discharged was 1600 mg/L which was 7% over the permit limit;
- n. For May 2021, the actual TSS discharged was 1933 mg/L which was 29% over the permit limit; and
- o. For July 2021, the actual TSS discharged was 1750 mg/L which was 17% over the permit limit.

9. For the period between April 2020 and May 2021, Respondent failed to meet its numeric limit of 170 mg/L for the discharge of Ammonia to the City of Lexington POTW in eleven (11) of fourteen (14) monthly reporting periods. The reported values in exceedance of the Ammonia numeric limit were:

- a. For April 2020, the actual Ammonia discharged was 263 mg/L which was 55% over the permit limit;
- b. For May 2020, the actual Ammonia discharged was 215 mg/L which was 26% over the permit limit;
- c. For June 2020, the actual Ammonia discharged was 357 mg/L which was 110% over the permit limit;
- d. For October 2020, the actual Ammonia discharged was 466 mg/L which was 174% over the permit limit;
- e. For November 2020, the actual Ammonia discharged was 249 mg/L which was 46% over the permit limit;
- f. For December 2020, the actual Ammonia discharged was 233 mg/L which was 37% over the permit limit;
- g. For January 2021, the actual Ammonia discharged was 203.5 mg/L which was 20% over the permit limit;
- h. For February 2021, the actual Ammonia discharged was 288 mg/L which was 69% over the permit limit;
- i. For March 2021, the actual Ammonia discharged was 215 mg/L which was 26% over the permit limit;
- j. For April 2021, the actual Ammonia discharged was 322 mg/L which was 89% over the permit limit; and
- k. For May 2021, the actual Ammonia discharged was 199 mg/L which was 17% over the permit limit.

10. On March 10, 2021, NDEE conducted an inspection to evaluate Respondent's compliance with NPDES/NPP Permit # NE0139009 and Title 119. Among the various observations made during the inspection, the inspector noted: "At the time of inspection, the settling pit was full of

solids causing higher concentrations of TSS to be discharged. This could explain the variation in TSS concentrations in monthly samples. If the solids level is the same height as the overflow weir, proper settling will not occur." The inspector also recommended that Respondent "[c]lean out the settling pit more frequently to increase settling and to avoid discharging higher TSS concentrations."

**11.** On March 29, 2021, NDEE sent Respondent a Letter of Noncompliance (LNC) identifying Respondent's ongoing failure to comply with numeric permit limits and late or missing discharge monitoring reports (DMRs) as violations.

**12.** Neb. Rev. Stat. §81-1506(2)(c) and (d) state 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 or operate any facility in a manner that would cause an increase in the discharge of wastes into waters of the state in a manner that is not lawfully authorized.

**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.** Title 119, Chapter 14, Section 001.01 requires Respondent to comply with all terms and conditions of NPDES Permit No. NE0139009 and states that permit noncompliance is grounds for enforcement action.

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

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

**17.** 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 pollution.

**18.** The NDEE Director is authorized under Neb. Rev. Stat. §81-1504(30) "[t]o require the submission of such plans, specifications, and other information as it deems necessary to carry out

the Environmental Protection Act [] or to carry out the rules and regulations adopted pursuant to the acts. When deemed necessary by the director, the plans and specifications shall be prepared and submitted by a professional engineer licensed to practice in Nebraska."

## **V. COMPLIANCE ORDER**

**19. Within 120 days** of entry of this Consent Order, Respondent agrees to submit an engineering evaluation prepared by a professional engineer licensed to practice in Nebraska. The engineering evaluation shall contain:

- a.** An assessment of the causes of the numeric permit limit violations for the wastewater pretreatment system located at Respondent's livestock truck wash with particular, but not exclusive focus on the issue of solids settling and the design, performance, and operation of the existing settling pit;
- b.** Recommended design modifications or modified operational practices, such as triggers for sediment removal based on number of washes or number of operating hours, for both the settling pit and larger pretreatment system that, when complete, will make Respondent's livestock truck wash compliant with its NPDES/NPP Permit and Title 119;
- c.** A project timeline for implementing the recommendations made in paragraph 19.b. that contains a list of tasks, task descriptions, and completion dates for each individual task; and
- d.** If the engineering evaluation to be submitted by Respondent recommends design modifications for Respondent's wastewater pretreatment system requiring the submittal of a wastewater construction permit application under NDEE Title 123 - *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*, Respondent agrees to submit said application in accordance with the requirements of

Title 123 and include the date for application submittal in the project timeline agreed to in paragraph 19.c.

20. Upon agency review and approval of the items to be provided by Respondent under paragraph 19, Respondent agrees to implement and adhere to the project timeline submitted under paragraph 19.c. as a schedule for compliance with its NPDES/NPP Permit and Title 119, with the project to be fully completed and operational **within 18 months** of the effective date of this Consent Order.

21. Information to be submitted under this Consent Order shall refer to FID# 102307 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**

22. 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**

23. 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.

## **VIII. NEGATION OF AGENCY RELATIONSHIP**

24. 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

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

## X. EFFECTIVE DATE

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

## XI. SEVERABILITY

27. 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.

## XII. SIGNATURES

28. For Respondent:

By: Mark McMichael  
Title: President  
Date: 9-14-21

29. For NDEE:

IT IS SO ORDERED and agreed this 20<sup>th</sup> day of September, 2021.

Jim Macy  
Director  
Nebraska Department of Environment and Energy