

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF BESLER  
INDUSTRIES, INC.

NDEQ CASE NO. 3451

NDEQ # 22940

CONSENT ORDER

Respondent

**I. INTRODUCTION**

1. This Consent Order is issued pursuant to Neb. Rev. Stat. § 81-1507 by the Director of the Nebraska Department of Environmental Quality (Department) to Besler Industries, Inc. (Respondent), a domestic corporation whose facility is located at 40855 W HWY 6/34, Cambridge, NE 69022.

2. This Consent Order establishes a schedule of corrective actions necessary to achieve and maintain compliance with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2016) and all rules and regulations promulgated under such Act.

**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), of exercising exclusive general supervision, administration, and enforcement of NEPA, and all rules, regulations, and orders promulgated under such acts.

4. The Department is further charged, pursuant to Neb. Rev. Stat. §81-1504(4), with the duties to act as the state water pollution and waste pollution control agency for all purposes of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., the Clean Air Act, as amended, 42 U.S.C. et seq., 7401 and the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. 6901 et seq.



5. The Respondents agree 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.

6. The Department and the Respondents acknowledge that this Consent Order has been negotiated in good faith.

### **III. PARTIES**

7. The Respondent is the owner of an agricultural equipment manufacturing facility located at 40855 W HWY 6/34, Cambridge, NE 69022.

8. 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 Respondents responsibilities and obligations under this Consent Order.

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

### **IV. STATUTORY AND REGULATORY FRAMEWORK**

10. Neb. Rev. Stat. § 81-1506(1)(a) makes it unlawful to cause pollution or to place or cause to be placed any wastes in a location where they are likely to cause pollution.

11. Neb. Rev. Stat. § 81-1506(2)(b) makes it unlawful to construct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining the necessary permits from the Department.

12. Neb. Rev. Stat. § 81-1508.02(1) makes it unlawful to violate any permit or license condition, any order of the Director or any rules or regulations adopted and promulgated by the council pursuant to NEPA.

13. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of managing groundwater quality, as expressed in Neb. Rev. Stat. § 81-1505(1) and (2), the council adopted and promulgated a rule codified as Neb. Adm. Code Title 118 – *Ground Water Quality Standards and Use Classification*.

14. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of managing the discharge of pollutants, as expressed in Neb. Rev. Stat. § 81-1505(1), (4), (11) and (20), the council adopted and promulgated a rule codified as Neb. Adm. Code Title 119 - *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*.

15. Pursuant to the Council's authority to adopt rules and regulations for the purpose of managing the underground injection of waste, as expressed in Neb. Rev. Stat. § 81- 1505(1) and (9), the council adopted and promulgated a rule codified as Neb. Adm. Code Title 122 - *Rules and Regulations for Underground Injection and Mineral Production Wells*.

16. Pursuant to the Council's authority to adopt rules and regulations for the purpose of managing industrial wastewater, as expressed in Neb. Rev. Stat. § 81-1505(1) and (8), the Council adopted and promulgated a rule codified as Title 123 - *Rules and Regulations for The Design, Operation and Maintenance of Wastewater Works*.

17. Pursuant to the Council's authority to adopt rules and regulations for the purpose of managing on-site wastewater septic systems, as expressed in Neb. Rev. Stat. § 81-1505(1) and (8), the Council adopted and promulgated a rule codified as Title 124 - *Rules and Regulations for the Design, Operation and Maintenance of On-site Wastewater Treatment Systems*.

18. Pursuant to the Council's authority to adopt rules and regulations for the purpose of hazardous waste management, as expressed in Neb. Rev. Stat. §81-1505(1) and (13), the Council adopted and promulgated a rule codified as Neb. Adm. Code, Title 128 – *Nebraska Hazardous Waste Regulations*.

19. Pursuant to the Council's authority to adopt rules and regulations for the purpose of managing air quality, as expressed in Neb. Rev. Stat. §81-1505(1) and (12), the Council adopted and promulgated a rule codified as Neb. Adm. Code, Title 129 – *Nebraska Air Quality Regulations*.

## **V. FINDINGS OF FACT**

20. On or about August 16, 2017, the Department inspected the Respondent's facility and observed that Respondent operated a paint booth and had stored hazardous waste (paint waste) on-site for over 180 days in violation of Title 128 – *Nebraska Hazardous Waste Regulations*.

21. On or about October 6, 2017, the Department issued a Notice of Violation to the Respondent requiring the off-site shipment of all hazardous waste stored over 180 days and the submittal of a closure plan for the paint waste storage area.

22. On or about June 6, 2018, the Department conducted a prearranged follow-up site visit of Respondent's facility for the purpose of gathering information on Respondent's wastewater management activities and to follow up on the August 16, 2017 inspection. During the site visit, Department personnel met with respondent and Respondent's engineer and observed that Respondent had disposed of industrial waste into an onsite septic system and leach field and that the facility was subject to industrial stormwater permitting.

23. On or about June 22, 2018 the Department received a follow up letter to the June 6 site visit signed by Respondent's engineer. The letter stated that as a result of a review of Respondent's operations and a discussion of regulatory programs with the Department, the

engineer had arrived at a list of items for the Respondent to work on, including the need to abandon the on-site septic system and/or potentially remediate groundwater; the requirement to submit a closure plan for the drum container storage area, the need to apply for a stormwater runoff permit, and the need to evaluate the paint booth for air permitting requirements.

24. Pursuant to *Neb. Rev. Stat.* §81-1507, the Director may order necessary corrective action be taken in response to the violations alleged within a reasonable time as described in Section VI, below.

## **VI. COMPLIANCE SCHEDULE**

25. Respondent agrees to comply with the following:

- a. Immediately cease the use of the on-site septic system and leach field for any purpose other than receiving domestic waste.
- b. By November 16, 2018 submit for Department review transfer documents and payment receipts documenting the shipping and disposal of accumulated hazardous waste to a hazardous waste treatment, storage and disposal facility.
- c. By December 14, 2018, submit for Department approval, a Sampling Workplan for the investigation of the leach field and paint storage areas and evaluation of the on-site septic system, including at a minimum:
  - i. Collection and analytical testing of at least two groundwater samples obtained near the middle of the leach field to assess the potential for a release to the environment from past waste disposal practices and the collection and analytical testing of at least one sample obtained from the area northwest (upgradient) of the leach field to determine background parameters.

- ii. Collection and analytical testing of at least three surface and three subsurface soil samples from the Paint Waste Drum Storage Area in order to assess the potential of a release to the environment as a result of hazardous waste storage greater than 180 days.
  - iii. Evaluation of the septic system for ongoing use as a domestic wastewater treatment system and the pumping and analytical testing of the septic tank contents to characterize the wastewater solids for proper disposal.
  - iv. The results of the above leach field, paint storage area and septic system investigations and evaluations must be submitted to the Department by May 1, 2019 unless the Department authorizes a later date in writing.
- d. By December 1, 2018 submit for Department approval a Stormwater Pollution Prevention Plan for coverage under the Title 119, NPDES General Permit (ISW-GP) NER910000. Alternatively, a request can be made for a site-specific NPDES permit.
  - e. By January 1, 2019 submit for Department approval an Air Quality Construction permit application for the paint booth or alternately, submit supporting calculations documenting that such a permit is not necessary.
  - f. Respond in writing within seven (7) working days to all requests for information requested by the Department.

26. Information to be submitted under this ORDER shall refer to IIS# 22940, Case No. 3451, and shall be sent to the attention of:

Attn.: David Lathrop, P.E.  
Nebraska Department of Environmental Quality  
PO Box 98922  
Lincoln, NE 68509-8922  
Telephone (402) 471-4252

## **VII. SATISFACTION AND COMPLIANCE WITH OTHER LAWS**

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

## **VIII. RESERVATION OF RIGHTS**

28. Nothing in this 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.

29. 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, including but not limited to requiring site investigations, site remediation, engineering plans, closure and post-closure care and permits based upon the results of the sampling, testing and investigations carried out in compliance with this Consent Order.

30. 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 Consent Order. Nothing in this Consent Order precludes the Department from pursuing such enforcement.

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

## **IX. 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 the Department and Respondent.

## **X. AMENDMENTS**

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

## **XI. EFFECTIVE DATE**

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

## **XII. SEVERABILITY**

35. If any provision or authority of this Consent 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 Consent Order shall remain in force and shall not be affected thereby.

## **XIII. SIGNATURES**

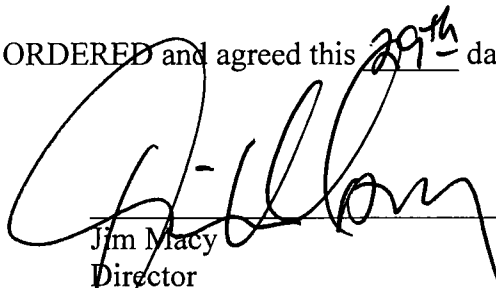
For Respondent: The undersigned representative of Respondent certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to bind Respondent.

By: Herbert C. Besler

Date: 10-24-18

Name: Herbert C. Besler  
Title: President, Besler Industries, Inc.

For the Department: IT IS SO ORDERED and agreed this 29<sup>th</sup> day of October, 2018.



Jim Macy  
Director  
Nebraska Department of Environmental Quality