

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

| | | |
|--------------------------|---|-------------------------------|
| IN THE MATTER OF: |) | CASE NO. 3401 |
| |) | |
| HASTINGS HIDE, INC. |) | COMPLAINT, COMPLIANCE ORDER, |
| Hastings Industrial Park |) | AND NOTICE OF OPPORTUNITY FOR |
| 231 Road 3168 |) | A HEARING |
| Hastings, NE 68901 |) | |
| |) | |
| A Nebraska Corporation, |) | |
| IIS# 128 |) | |
| |) | |
| RESPONDENT. |) | |

I. INTRODUCTION

1. This Complaint, Compliance Order, and Notice of Opportunity for a Hearing ("Order") is issued pursuant to *Neb. Rev. Stat. §81-1507* by the Director of the Nebraska Department of Environmental Quality ("NDEQ" or "Department") to Hastings Hide, Inc. ("Respondent"). Respondent is an active domestic corporation whose facility is located at 231 Road 3168 in the Hastings Industrial Park in Clay County, Nebraska, 68901. Complainant has determined that Respondent is in violation of the Nebraska Environmental Protection Act (NEPA) *Neb. Rev. Stat. §81-1501 et seq.* (Reissue 2014; Cum. Supp. 2016); Title 119, Nebraska Administrative Code (NAC), *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*; Title 132, NAC, *Integrated Solid Waste Management Regulations*; Title 123, NAC, *Rules And Regulations For The Design, Operation And Maintenance Of Wastewater Works*; and Title 118, NAC, *Groundwater Quality Standards and Use Classification*.



20170030792

II. JURISDICTION

2. NDEQ 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, regulations, and orders promulgated under such acts.

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

4. The Nebraska Environmental Quality Council (EQC), pursuant to its authority in *Neb. Rev. Stat.* §81-1505, has promulgated Title 119 to regulate the discharge of pollutants to waters of the State through the issuance of NPDES permits for purposes of CWA.

5. The EQC, pursuant to its authority in *Neb. Rev. Stat.* §81-1505 has promulgated Title 123 to regulate industrial wastewaters and water quality standards with respect to construction, installation, change of, alterations in, or additions to any wastewater treatment works or disposal systems, including issuance of permits and proper abandonment, and requirements necessary for proper operation and maintenance.

6. The EQC, pursuant to its authority in *Neb. Rev. Stat.* §81-1505, has promulgated Title 132 to regulate solid waste management and disposal for purposes of RCRA.

7. Pursuant to *Neb. Rev. Stat.* §81-1507, the Director may order necessary compliance actions be taken in response to the violations alleged within a reasonable time as described in Section V, below.

III. COMPLAINT

8. Respondent, at all times material herein, is an active domestic corporation and has owned and operated a cow hide processing facility at 231 Road 3168 in the Hastings Industrial Park in Clay County, Nebraska, 68901. The legal description is: Parcel IDs 001119000, 001118100, 001118700, 001118200, 001117700, 001118300, 001111700, Section 17, and 001117800, Section 18, Township 7 North, Range 8 West, Clay County, Nebraska.

9. In processing cow hides, Respondent receives unprocessed "green" hides from the meat-packing industry, soaks and cures the hides using a chloride solution brine, defleshes the hides, and ships the hides to tanneries.

10. After using the chloride solution brine, Respondent stores, treats, or disposes the used chloride brine solution in a three cell lagoon system to the southeast of production buildings.

11. On July 31, 2014, NDEQ inspectors conducted a compliance inspection at Respondent's facility during which the production buildings, wastewater works, and surrounding areas were inspected. The inspectors observed discharges of sodium chloride brine and process wastewater, residues, sludges, and other solid waste from production buildings and ground areas at the facility to stormwater ditches. The inspectors further observed:

- a. wastewater had overflowed from cell #1 in the lagoon area; and
- b. an influent basin east of cell #1 in the lagoon area had breached and discharged to neighboring property, and been repaired with waste tires and other fill material;
and
- c. wastewater had overflowed from the west influent basin between cell #1 and cell #2 in the lagoon area.

12. On October 10, 2014, Respondent received authorization (Authorization Number NER900784) under the NPDES Industrial Storm Water General Permit NER900000 to discharge stormwater in accordance with the terms and conditions of the permit. Section 1.1.4.1 of Respondent's NPDES Industrial Storm Water General Permit NER900000 prohibits stormwater discharges that are mixed process materials, process wastewater, or other wastewater.

13. On July 14, 2016, NDEQ inspectors conducted a follow-up inspection to evaluate Respondent's ongoing compliance. The inspectors observed:

- a. chloride brine residue in stormwater drainage ditches outside of production buildings;
- b. open, uncontained storage of solid chloride material in an area where it was susceptible to stormwater runoff;
- c. spillage of process wastewater from the draining system and "wet well" in the flesh storage area;
- d. process wastewater from the flesh storage area escaping the holding area and draining to a stormwater drainage ditch;
- e. areas of chloride brine residue on the ground outside of production buildings where there was no observable vegetation;
- f. chloride brine residue mixed with rainwater in various ditches and creating surface water runoff issues;
- g. areas where chloride brine was discharging to a stormwater outfall and outside Respondent's property boundary;
- h. areas of unpermitted solid waste storage or disposal that had been identified during the 2014 inspection and had not been cleaned up;

- i. areas of soil contaminated with brine, animal hides, trash, burn residue, fuel and other solid waste;
- j. chloride brine leaking from broken plastic totes and other containers that could not be used in the production process and required disposal;
- k. missing items from Respondent's Storm Water Pollution Prevention Plan (SWPPP) including required signatures, a facility map, contact information, and a list of staff assigned to stormwater management tasks;
- l. routine inspections by facility staff and staff training had not been completed pursuant to Respondent's SWPPP and as required by Respondent's NPDES Industrial Storm Water General Permit.

14. On August 26, 2016, the NDEQ Water Permits Division (formerly Water Quality Division) sent Respondent a NOV citing violations of Neb. Rev. Stat. §81-1506(2)(a) and Title 119, Chapters 2 and 14. The NOV required Respondent to: immediately cease all unauthorized discharges of industrial wastewater and provide written verification thereof; begin conducting all tasks required by the SWPPP; submit an updated SWPPP and Notice of Intent for coverage under Industrial Storm Water General Permit NER 910000; conduct and submit copies of inspection reports; and conduct employee training and submit the required completed training form.

15. On August 31, 2016, the NDEQ Waste Management Division sent Respondent a NOV citing violations of Neb. Rev. Stat. §81-1506(3)(d) and Title 132, Chapter 2. The NOV required Respondent to properly dispose of solid waste at the facility within 30 days and provide disposal receipts.

16. On November 8, 2016, Respondent received authorization (Authorization Number NER910275) under the NPDES Industrial Storm Water General Permit NER910000 to discharge stormwater in accordance with the terms and conditions of the permit. The updated permit contains the same prohibition as the previous permit on the discharge of mixtures of stormwater and non-stormwater process materials, and wastewater.

17. On March 22, 2017, an NDEQ inspector conducted a follow-up inspection and again observed areas where chloride brine had been allowed to enter drainage ditches and that Respondent had yet to implement various provisions of its SWPPP intended to prevent the mixing of chloride and stormwater.

IV. VIOLATIONS

18. Respondent's discharge, storage, treatment, or disposal of chloride brine wastewater, wastewater residues, wastewater sludge, solid chloride, and solid waste violates Neb. Rev. Stat. §81-1506(1)(a) which states that "[i]t shall be unlawful for any person [t]o cause pollution of any air, 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 air, waters, or land of the state . . ."

19. Respondent's discharges of industrial wastewater and mixtures of industrial wastewater and stormwater violates Title 119, Chapter 2, 001 and Neb. Rev. Stat. §81-1506(2)(a) which states that "[i]t shall be unlawful for any person to [d]ischarge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., and by [NDEQ] rules and regulations. . ."

20. Respondent's on-site disposal of solid waste and chloride-contaminated soils violates Title 132, Chapter 2, 001 and Neb. Rev. Stat. § 81-1506(3)(a) which states that "[i]t shall be unlawful for any person to [c]onstruct or operate a solid waste management facility without first obtaining a permit required under the Environmental Protection Act or under the Integrated Solid Waste Management Act and the rules and regulations adopted and promulgated by the council pursuant to the acts".

21. Neb. Rev. Stat. § 81-1504(10) authorizes NDEQ "[t]o require submission of plans, specifications, and other data relative to, and to inspect construction of, disposal systems or any part thereof prior to issuance of such permits or approvals as are required by the Environmental Protection Act . . ."

22. Neb. Rev. Stat. § 81-1504(12) authorizes NDEQ "[t]o require proper maintenance and operation of disposal systems".

23. Respondent's failure to comply with its Industrial Storm Water General Permit and incorporated SWPPP violates Title 119, Chapter 14, 001.01.

24. The chloride solution brine that is discharged, treated, stored, or disposed by Respondent is a "pollutant" as defined in Title 118, Chapter 1, 021 and Title 119, Chapter 1, 089; a "wastewater" as defined in Title 123, Chapter 1, 064; and a "process wastewater" as defined in Title 119, Chapter 1, 094.

25. Brine-contaminated soil, hide scraps, flesh pieces, used pallets, discarded containers, and other items of garbage and refuse throughout Respondent's facility are "solid waste" as defined in Title 132, Chapter 1, 117.

26. The lagoon system that Respondent uses to treat, store, or dispose of chloride solution brine and all related collection points and conveyances, designed or actual, between

production areas, storage areas, and lagoons are "wastewater works" as defined in Title 123, Chapter 1, 070 and include both "wastewater collection systems" as defined in Title 123, Chapter 1, 065, and "wastewater lagoons" as defined in Title 123, Chapter 1, 067.

27. Title 123, Chapter 2, 003 states "[w]astewater works that were constructed, installed, modified, or had additions made without a valid construction permit, at a time when State regulations required a construction permit, shall be upgraded to meet current design standards. The owner shall submit to the Department an engineering evaluation of the wastewater facility, prepared by a professional engineer, and correct any deficiencies identified during the Department's review of the engineering evaluation."

28. Title 123, Chapter 5, 001.05 states "[t]he design of wastewater collection systems shall not include overflow structures of any kind. The design of wastewater treatment facilities shall not include passive or unvalved bypass structures that discharge to the ground surface or to waters of the state."

29. Title 123, Chapter 5, 005.06 states "[w]astewater lagoons shall be designed and constructed to prevent storm water runoff from flowing into the cells and to prevent storm water runoff or surface water flow from eroding the earthen dikes."

30. Neb. Rev. Stat. § 81-1504(10) authorizes NDEQ "[t]o require submission of plans, specifications, and other data relative to, and to inspect construction of, disposal systems or any part thereof prior to issuance of such permits or approvals as are required by the Environmental Protection Act . . ."

31. Neb. Rev. Stat. § 81-1504(12) authorizes NDEQ "[t]o require proper maintenance and operation of disposal systems".

32. The Director has determined that the actions required by this Order are necessary and appropriate to protect the public health, welfare, or the environment.

V. COMPLIANCE ORDER

Based upon the Complaint set forth above, IT IS HEREBY ORDERED:

33. Beginning immediately with receipt of this Order, Respondent shall implement and begin conducting all required tasks according to its current SWPPP and as required by its Industrial Storm Water General Permit until a new SWPPP has been submitted and approved by NDEQ in accordance with paragraph 43 below.

34. Beginning immediately with receipt of this Order, Respondent shall start implementing measures to eliminate the discharge of chloride brine solution, solid chloride material, process wastewater, wastewater residues, wastewater sludge, and solid waste, to be completed not later than November 1, 2017. The required corrective action may include, but is not limited to, the removal of brine waste residues, brine contaminated soils, the relocation of chloride storage areas, and improvements or repairs to buildings, walls, foundations, tanks, containers, lagoons, conveyances, or other structures in contact with chloride.

35. Beginning immediately with receipt of this Order, Respondent shall start implementing steps to eliminate the exposure of chloride and wastewater to stormwater, to be completed not later than November 1, 2017. The required corrective action may include, but is not limited to, those actions listed in paragraph 34.

36. Beginning immediately with receipt of this Order, Respondent shall remove and properly dispose all solid waste at the facility and on neighboring properties including, but not limited to, hide scraps, flesh pieces, used pallets, discarded containers, burn residue, brine-

contaminated soil, and other items of garbage and refuse. Respondent shall dispose of both buried solid waste and solid waste on the land surface. Respondent shall submit copies of all landfill disposal receipts to NDEQ not later than November 1, 2017.

37. By November 1, 2017, Respondent shall provide NDEQ with a written description of the corrective action taken by Respondent to comply with paragraphs 34 and 35.

38. By November 1, 2017, Respondent shall submit to NDEQ an engineering evaluation of the wastewater works, prepared by a professional engineer, pursuant to Title 123, Chapter 2, 003, and correct any deficiencies in Respondent's wastewater works identified during the engineering evaluation or NDEQ's review of the engineering evaluation.

39. The engineering evaluation required in paragraph 38 shall include a plan for the disposal of all liquid, solid, and sludge material treated, stored, or disposed in Respondent's wastewater lagoons.

40. Prior to the off-site disposal of any wastewater treated, stored, or disposed in lagoons, collection systems, or any of its wastewater works, Respondent shall first submit plans for wastewater disposal to NDEQ and perform no disposal activity without NDEQ approval.

41. Respondent shall dispose of all liquid, solid, and sludge material treated, stored, or disposed in Respondent's wastewater lagoons by November 1, 2018 in accordance with all applicable NDEQ regulations and Respondent's approved disposal plans as required by paragraphs 39 and 40.

42. If at any time Respondent ceases operation or abandons its wastewater works, Respondent shall comply with the abandonment requirements of Title 123, Chapter 10. Respondent shall notify NDEQ within 10 days of ceasing operation or abandonment and receive NDEQ approval prior to any wastewater disposal, disposal of contaminated soil or other

material, construction or earthmoving activity, or any other work removing the wastewater works from service.

43. By November 1, 2017, Respondent shall update its SWPPP to meet the requirements of ISW-GP NER910000 and submit the updated SWPPP to NDEQ for approval. Upon NDEQ approval, Respondent shall immediately implement the updated SWPPP.

44. In addition to the general requirements of its SWPPP, Respondent shall conduct monthly routine facility inspections, as required by Section 5.1 of its current SWPPP and, by November 1, 2017, submit copies of its monthly routine inspection reports to NDEQ for a period of one (1) year. At the end of one (1) year and considering Respondent's demonstrated compliance with this requirement, NDEQ may allow Respondent to resume conducting routine facility inspections on a quarterly basis, maintain a file of inspection reports at its facility, and cease submitting reports to NDEQ.

45. By November 1, 2017, Respondent shall conduct employee training, as required by Section 3.7 of its current SWPPP and submit a completed employee training form as contained in Attachment G of Respondent's SWPPP.

46. Information to be submitted under this Order shall refer to IIS# 128, Case No. 3401, and shall be sent to submitted to:

Reuel Anderson
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

47. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files an answer and requests, in writing, a hearing no later than thirty days after

receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

48. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Neb. Admin. Code, *Rules of Practice and Procedure*, Chapter 7, and be mailed to: Jim Macy, Director, State of Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or be hand delivered to the Department's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

VII. SETTLEMENT CONFERENCE

49. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Brian McMullen, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

50. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

VIII. RESERVATION OF RIGHTS

51. The NDEQ 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 NDEQ from pursuing such enforcement.

52. The NDEQ, pursuant to Title 119, Chapter 24, 006, reserves the right to modify or revoke and reissue Respondent's NPDES Industrial Storm Water General Permit to remedy the violations identified in this Order. Such modifications may include, but are not limited to, the development of site-specific best management practices.


53. The NDEQ, pursuant to Title 119, Chapter 24, 009, reserves the right to terminate Respondent's Industrial Storm Water General Permit and, pursuant to Title 119, Ch. 10, 002.07, to require Respondent to seek NPDES permit coverage under an individual permit to remedy the violations identified in this Order.

54. The NDEQ, pursuant to Title 118, Appendix A – "GROUND WATER REMEDIAL ACTION PROTOCOL, reserves the right to require Respondent to conduct an Initial Site Assessment for ground water chloride contamination if the engineering evaluation required in paragraph 38 or general site conditions indicate the possibility of ground water contamination.

It is so ORDERED:

Dated this 12th day of September 2017.

BY THE DIRECTOR'S DESIGNEE:


Steve Goans
Deputy Director - Water
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order, and Notice of Opportunity for a Hearing was served by certified United States mail, postage prepaid, return receipt requested this 12th day of September, 2017, upon the Registered Agent for Respondent listed below:

David Fuller
Hastings Hide, Inc.
P.O. Box 2008
Hastings, NE 68902-2008



Brian McMullen
Attorney