

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF	)	Case No. 3565
	)	
OFFUTT AIR FORCE BASE	)	
	)	
NDEE FID #58390	)	CONSENT ORDER
	)	
U.S. EPA/NDEE SITE	)	
IDENTIFICATION# NE8571924648	)	
	)	
RESPONDENT.	)	

**I. INTRODUCTION**

1. The Nebraska Department of Environment and Energy (NDEE or Department) and Respondent Offutt Air Force Base 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 Neb. Admin. Code, Title 128, *Nebraska Hazardous Waste Regulations* (Title 128).

**II. JURISDICTION**

2. NDEE 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 Title 128.

3. NDEE is further charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(4) to act as the state solid waste pollution control agency for all purposes of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6901 *et seq.*, including the hazardous waste management provisions in Subtitle C of RCRA, 42 U.S.C. §§ 6921 through 6939.

4. 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 rights to further hearing as provided in Neb. Rev. Stat. § 81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 to 84-919.

### **III. PARTIES**

5. The parties to this Consent Order are NDEE and Respondent Offutt Air Force Base.

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

6. Respondent is an air national defense facility owned and operated by the United States Department of the Air Force. The facility is located at 106 Peacekeeper Drive, Offutt AFB, NE 68113.

7. On February 28, 2020 and in accordance with routine reporting requirements in Title 128, Ch. 4, 003 and 005, Respondent notified NDEE and the United States Environmental Protection Agency (U.S. EPA) that it is a Large Quantity Generator (LQG) generator of hazardous waste as defined in Title 128, Chapter 10, 001.

8. As a LQG of hazardous waste, Respondent is subject to all requirements and standards of Title 128 applicable to LQGs, including the requirement in Chapter 10, 004.01 that a LQG may accumulate hazardous waste on-site prior to off-site shipment for a maximum of 90 days or less without having to obtain a hazardous waste storage permit as required by Chapter 12, 001.01.

9. On July 1, 2021 and in accordance with a provision in Title 128, Chapter 10, 004.02 allowing for a 30-day extension to the 90-day accumulation time limit for unforeseen, temporary, and uncontrollable circumstances, Respondent requested and was granted by NDEE a 30-day extension to the 90-day accumulation time limit in Chapter 10, 004.01. The extension authorized Respondent to accumulate hazardous waste on-site until August 17, 2021.

10. On July 21, 2021, Respondent notified NDEE that due to a nationwide industry backlog in the treatment, storage, and disposal of hazardous waste, Respondent is anticipating ongoing delays in its off-site shipment of hazardous waste for treatment, storage, and disposal.

11. On August 18, 2021, Respondent is in violation of Title 128, Chapter 10, 004.01, 004.02, and Chapter 12, 001.01.

## **V. COMPLIANCE ORDER**

12. NDEE and Respondent agree that the present national disruption to hazardous waste treatment, storage, and disposal services is an unforeseen, temporary, and uncontrollable circumstance that is not the fault of Respondent and impacts Respondent's best efforts to comply with the requirement in Title 128, Chapter 10, 004.01 that a LQG may accumulate hazardous waste on-site for 90 days or less without having to obtain a hazardous waste storage permit as required by Chapter 12, 001.01.

13. In lieu of the requirement to obtain a hazardous waste storage permit meeting the requirements of Title 128, Chapters 12 through 15, 21 and 22, Respondent agrees to the following actions until such time as timely off-site shipment of hazardous waste can be resumed:

- a. Make all available and best efforts to work with hazardous waste service providers to coordinate the timely transport, treatment, storage, and disposal of hazardous waste generated at Offutt AFB;
- b. Manage 90-day hazardous waste accumulation & storage areas in accordance with the requirements of 40 CFR 265, Subpart I – "Use and Management of Containers", as incorporated by reference in Title 128, Chapter 22, 009;
- c. Increase the frequency for inspections of Respondent's 90-day hazardous waste accumulation & storage areas from weekly to each duty day in fulfillment of the

requirement in Title 128, Chapter 10, 004.01A4 and maintain internal records of each duty day inspection available to NDEE on request. A "duty day" is defined as Monday through Friday, excluding weekends, federal holidays, and inclement weather days resulting in a base shut down; and

- d. Submit monthly reports to NDEE containing the volumes and types of hazardous waste added, removed, and remaining in each 90-day accumulation & storage area by waste code and a short, written description. Respondent agrees to submit monthly reports until such time as regular and timely off-site shipment of hazardous waste from 90-day accumulation & storage areas has resumed. Respondent further agrees to give notice to NDEE by letter accompanying its final monthly report and indicating that regular & timely off-site shipment of hazardous waste has resumed and that the requirement in Title 128, Chapter 10, 004.01 can be met on an ongoing basis.

14. Submittals to the Department under this Order shall refer to FID #58390 and shall be sent to:

Brian Gorman  
Waste Compliance Section  
Nebraska Department of Environment and Energy  
P.O. Box 98922  
Lincoln, NE 68509-8922

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

15. Respondent agrees to 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**

16. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEE to take or order any action necessary to protect public health, welfare, or the environment

or to enforce any provision of NEPA, LWMA, and any rules, regulations, orders, or permits issued pursuant to NEPA or LWMA.

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

17. 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**

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

#### **X. EFFECTIVE DATE**

19. This Consent Order shall become effective on August 18, 2021 and after signature by Respondent and the NDEE Director or his designee.

#### **XI. TERMINATION**

20. This Consent Order shall terminate upon Respondent's written notice to NDEE by letter accompanying its final monthly report and indicating that regular & timely off-site shipment of hazardous waste from 90-day accumulation & storage areas has resumed, pursuant to paragraph 13.d.

#### **XII. SEVERABILITY**

21. 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.

### XIII. SIGNATURES

22. For Respondent Offutt AFB:



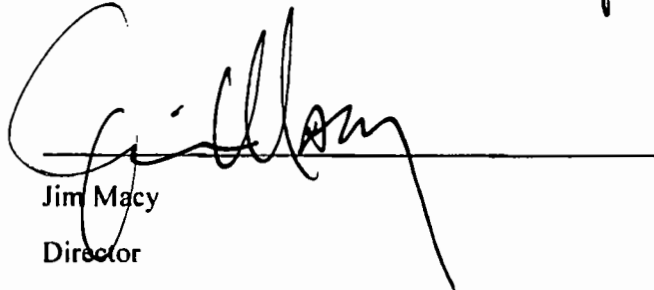
KRISTEN D. THOMPSON, Colonel, USAF  
Commander

55TH WING (ACC) OFFUTT AIR FORCE BASE, NEBRASKA

Date: 16 Aug 2021

23. For NDEE:

IT IS SO ORDERED and agreed this 18<sup>th</sup> day of August, 2021.



Jim Macy  
Director

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY