

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3349
Kings Industries, LLC	)	
	)	COMPLAINT, COMPLIANCE
FID # 88456	)	ORDER AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent.	)	

**I. INTRODUCTION**

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2014). The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent is Kings Industries, LLC (hereinafter "Kings"), whose facility # 88456 is located in Gretna, Sarpy County, Nebraska. Complainant has determined that the Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et. seq. (Reissue 2014), and Title 132, Rules and Regulations for Integrated Solid Waste.

2. The Department 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 the Nebraska Environmental Protection Act, the Integrated Solid Waste Management Act, and all rules and regulations and orders promulgated under such acts.

3. The Complaint below establishes the violations, and the Compliance Order establishes a schedule for corrective actions to be taken by the Respondent.



## **II. COMPLAINT**

4. Respondent is Kings Industries, LLC, Gretna, Nebraska, which owns and operates a temporary storage facility for the accumulation of a variety of recyclable materials at 21866 Williams Circle, Gretna, Nebraska. This 2.11 acre site is in a business park located ¼ mile west of Nebraska Highway 31 and ½ mile south of U.S. Interstate-80.

5. Kings does not have a solid waste management facility permit.

6. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of solid waste management, as expressed in Neb. Rev. Stat. §§ 81-1505(13)(d) and 13-2034 (Reissue 2012), the Council adopted rules and regulations codified as Neb. Adm. Code, Title 132, Integrated Solid Waste Management Regulations.

7. Neb. Rev. Stat. § 13-2033(1) (Reissue 2012) provides in pertinent part as follows: "...no person shall dump or deposit any solid waste at any place other than a landfill approved by the director unless the department has granted a permit which allows the dumping or depositing of solid waste at any other facility."

8. Neb. Rev. Stat. § 81-1506(3) states that: "It shall be unlawful for any person to: ... (d) After October 1, 1993, dispose of any solid waste at a location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act."

9. Nebraska Administrative Code, Title 132, Integrated Solid Waste Management Regulations, Chapter 2, Section 001, prohibits operating a solid waste management facility without a permit.

10. Pursuant to Neb. Rev. Stat. § 81-1508.02 (1) (e), it is unlawful for any person to violate any rule or regulation under the Integrated Solid Waste Management Act.

11. Nebraska Administrative Code, Title 132, Integrated Solid Waste Management Regulations, Chapter 2, Section 002.011, does not require an Integrated Solid Waste Management Permit for:

“002.011 Recycling centers or collection sites, as long as the following conditions are met:

002.0111 Beginning January 1, 2013, and for every odd-numbered year thereafter, for each category of recyclable material, the amount of material resold or transferred offsite during the previous two calendar years must equal at least seventy-five percent (75%) by weight of the inventory of material present on January 1st of the previous odd-numbered year. This calculation must be made for each category of recyclable materials collected or processed at the recycling center or collection site.

002.0111(a) Failure to resell or transfer offsite seventy-five percent (75%) of each category of recyclable material in two (2) calendar years shall be deemed speculative accumulation for the purposes of this chapter. A facility that speculatively accumulates recyclable materials is not exempt from the permit requirements of this chapter.

002.0111(b) Written documentation that verifies seventy-five (75%) of each category of recyclable material was resold or transferred offsite within two (2) calendar years must be maintained at the recycling center or collection site.

002.0112 Recyclable materials that are stored inside buildings or in other suitable containment capable of preventing releases to the environment, are not subject to the requirements of section 002.0111 of this chapter”.

12. Kings was inspected by an NDEQ employee in July of 2012. The employee discussed with Kings' owner, Sunnay Emmanuel, the requirements for operating a recycling center or collection site as defined by Title 132.

13. Kings was inspected by NDEQ on April 1, 2015. The facility was found to have thousands of empty white plastic one quart containers, several hundred empty blue 8-10 gallon water containers, piles of broken and unbroken television and computer monitors, scattered broken unknown electrics, a pile of old carpet pad the size of several pick-up loads, PVC piping, and numerous broken pallets. Some debris of plastics, cardboard and broken pallets were pushed into a drainageway/small stream which is a tributary of Buffalo Creek and its wetlands.

14. A Notice of Violation was issued by NDEQ on April 17, 2015, and reissued on May 25, 2015, requiring Kings to remove all solid waste from the site and properly dispose of this waste in a permitted municipal solid waste disposal facility, provide copies of receipts for proper disposal to NDEQ staff, and notify NDEQ immediately upon cleaning up of the waste. Kings was also required to provide written documentation that verifies the amount of each category of recyclable material by weight present on January 1, 2013, and written documentation that verifies the amount of each category of recyclable material by weight that was resold or transferred offsite in 2013 and 2014.

15. Kings was inspected by NDEQ on October 28, 2015. The inspector found that no cleanup had been completed. Kings was informed that NDEQ had also not received any documentation regarding the recyclable materials.

16. Kings was inspected by NDEQ on December 28, 2015. The inspector found that no cleanup had been completed.

17. As of the date of this order, NDEQ has not received any documentation regarding the recyclable materials.

18. Respondent has been in violation of Neb. Rev. Stat. §§ 13-2033(1) and 81-1506 (3) (d), and Title 132 since April 1, 2015.

19. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(1) and (13) to issue this order requiring enforcement of the Nebraska Environmental Protection Act and the Integrated Solid Waste Management Act.

### **III. COMPLIANCE ORDER**

20. Within thirty (30) days, Respondent shall bring its facility into compliance with all requirements of the Nebraska Environmental Protection Act, the Integrated Solid Waste Management Act, and all rules and regulations and orders promulgated under such acts, including, but not limited to the following:

A. Remove all solid waste from the site and properly dispose of this waste in a permitted municipal solid waste disposal facility. Copies of receipts for proper disposal shall then be submitted to:

William C. Gidley  
Nebraska Department of Environmental Quality  
Suite 400, The Atrium  
1200 N Street  
PO Box 98922  
Lincoln, NE 68509-8922  
Telephone (402) 471-4495

B. Notify this department immediately upon cleaning up the waste.

Notification shall be sent to Mr. Gidley at the address found in Paragraph 20A.

21. Respondent shall report to NDEQ within 30 days, documenting how compliance with paragraph 20 of this Order has been achieved.

22. Respondent shall respond promptly to any written communication by the NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Order.

23. Information to be submitted under this Order shall refer to FID # 62744 and shall be sent to Mr. Gidley at the address found in Paragraph 20A.

#### **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

24. 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.

25. 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. The answer and request for hearing may be filed by mail to: Jim Macy, Director, State of Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the Department's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

## V. SETTLEMENT CONFERENCE

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

27. 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.

## VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

28. 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.

2-29-16  
Date

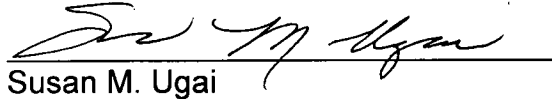
  
\_\_\_\_\_  
Jim Macy, Director  
Nebraska Department of  
Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, was served by certified United States mail, postage prepaid, return receipt requested this 29<sup>th</sup> day of February, 2016, upon the Respondent listed below at his principal and designated office address and at his registered agent and office address:

Sunnay Emmanuel  
5311 S. 145<sup>th</sup> St.  
Omaha, NE 68137

Sunnay Emmanuel  
5086 South 160<sup>th</sup> Circle  
Omaha, NE 68135

  
Susan M. Ugai