

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
VAN DIEST SUPPLY CO.,
Respondent.

Case No. 3120
COMPLAINT, COMPLIANCE ORDER, AND
NOTICE OF OPPORTUNITY FOR
HEARING

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to -1532 (2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (“NDEQ” or “Department”). The Respondent is Van Diest Supply Company, a corporation authorized to do business in the state of Nebraska.
2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) & (4) (2008), of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to -1532, and all rules, regulations, and permits promulgated thereunder. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. §§ 81-1504 (7) & -1507 (2008).
3. At all times material herein, the Defendant owned and operated an agricultural chemical plant (hereinafter “liquid plant”) located at 206 Karrer Street, McCook, Red Willow County, Nebraska 69001.
4. Neb. Rev. Stat. § 81-1502(10) (2008) is in effect at all times material herein and defines Respondent as a “person.”
5. Pursuant to Neb. Rev. Stat. § 81-1508.02(1)(e) (Reissue 2008), it is unlawful for any person to violate any rule or regulation adopted and promulgated pursuant to the Environmental Protection Act. Neb. Admin. Code Title 128, *Nebraska Hazardous Waste Regulations*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505 (1) & (13).
6. Nebraska Administrative Code Title 128, *Nebraska Hazardous Waste Regulations*, Chapter 12 001.02 states, in relevant part, that “[a] post-closure permit is



required by owners or operators of surface impoundments, landfills, land treatment units, and waste pile units” Title 128, Chapter 12 001.06 states, in relevant part, that “no person shall own or operate a hazardous waste treatment, storage, or disposal facility without first obtaining a permit from the Director....”

7. At all times material herein, Respondent has operated the liquid plant as a landfill and as a hazardous waste treatment, storage, or disposal facility without obtaining the required post-closure permit. Respondent has submitted incomplete information that has prevented the Department from issuing a post-closure permit, and repeated requests (including a January 13, 2011 Notice of Deficiencies, a June 29, 2011 Notice of Deficiencies, and a December 23, 2011 Notice of Violation) have failed to elicit a complete post-closure permit application.

8. The Director finds that Respondent has violated Neb. Rev. Stat. § 81-1508.02 and Title 128.

9. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504 (7), (10) & (20) to issue this order requiring Respondent to submit a complete application for a post-closure permit in order to prevent and control pollution and to require that Respondent secure such permit prior to continued operation of the liquid plant.

COMPLIANCE ORDER

10. IT IS THEREFORE ORDERED that the Respondent shall perform, within the following time frames, the following activities:

- a. By July 1, 2012, Respondent shall submit to NDEQ new cover pages for the Part B permit application that include revision dates for the February 6, 2012 submittal and the next submittal.
- b. By July 1, 2012, Respondent shall submit to NDEQ an amendment of Section 2.1 of the Part B permit application which changes all references of “screening level” to “Ground Water Protection Standard.”
- c. By July 1, 2012, Respondent shall submit to NDEQ an originally signed letter of credit amendment to satisfy financial assurance requirements for

the post-closure cost estimate. The post-closure cost estimate has increased from \$1,463,335 to \$2,627,776, and the letter of credit must be amended to reflect this update.

- (1) If at any time NDEQ determines that the letter of credit is inadequate or no longer satisfies the requirements for post-closure financial assurance whether due to an increase in the estimated cost for post-closure or for any other reason, NDEQ shall notify the Respondent in writing. Within thirty days of receipt of notice of NDEQ's determination Respondent shall obtain and present for NDEQ approval a proposal for a revised letter of credit or alternative form of financial assurance as listed in 40 Code of Regulations (CFR) Part 264 §264.151 as adopted by reference in NDEQ Title 128, Chapter 21, Section 008.
- (2) If the financial assurance provider notifies both the Respondent and the NDEQ Director of the decision to cancel, terminate, or not renew the letter of credit within one hundred and twenty days as provided in the letter of credit, the one hundred and twenty days will begin to run with the date of receipt of the notice by both the NDEQ Director and the Respondent. Furthermore, if Respondent has failed to provide an alternate financial assurance and obtain written approval for such alternate financial assurance within ninety days following receipt of such notice by both the Respondent and the NDEQ Director, the NDEQ Director will notify the financial assurance provider in writing prior to the expiration of the letter of credit and the financial assurance provider shall immediately deposit into the standby trust fund the funds obligated under the letter of credit.
- (3) In the event that NDEQ determines the Respondent is deficient or late in meeting the deadlines set forth in this compliance order, NDEQ may issue a written notice to both Respondent and the financial assurance provider of Respondent's failure to perform. The notice issued by NDEQ will specify the grounds upon which such a notice

was issued and will provide the Respondent with a period of ten days which to remedy the circumstance giving rise to the issuance of such notice.

- (4) Failure by the Respondent to remedy the performance failure to NDEQ's satisfaction before the expiration of the ten-day notice period specified in Paragraph 11(c)(3) shall trigger NDEQ's right to have immediate access to and benefit of the financial assurance provided. NDEQ may at any time thereafter direct the financial assurance provider to immediately deposit into the standby trust fund the funds obligated under the letter of credit.
- d. By July 1, 2012, Respondent shall revise diagrams for the warehouse areas in the Part B permit application to reflect the current site conditions with the appropriate number of tanks and tank identification numbers. This will include the diagrams provided in contingency plan dated April 25, 2012 and received by the Director on April 30, 2012. Pursuant to 40 CFR 270.14, the diagrams must be certified by a qualified Professional Engineer.
- e. The contingency plan received by the Director on April 30, 2012 must address all the applicable requirements under 40 CFR 264 Subpart D. If the contingency plan is still deficient, the Department will issue an NOV with the deficiencies/comments that need to be addressed.
- f. By July 1, 2012, Respondent shall submit certification from the fire marshal that the facility has met all the fire protection standards.
- 11. Information to be submitted under this Order shall be sent to:
 - William C. Gidley
 - Waste Management Section
 - Nebraska Department of Environmental Quality
 - P.O. Box 98922
 - Lincoln, Nebraska 68509-8922
 - Telephone number: (402) 471-4495

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

12. 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.

13. 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:

Michael J. Linder, Director
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


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

15. 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

16. 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. Failure to obey this order may result in fine up to \$10,000 per day as set out in Neb. Rev. Stat. § 81-1508.02.

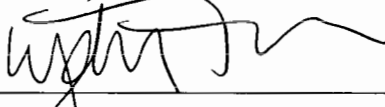
May 2 2012
Date


Michael J. Linder, 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 2 day of May 2012 upon the Respondent listed below:

C T Corporation System
1024 K STREET
Lincoln, NE 68508


Lydia Fiedler
Attorney