

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF A-1 FIBERGLASS,  
INC.

CASE NO. 3415

HASTINGS, NEBRASKA

COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE FOR OPPORTUNITY FOR  
HEARING

NDEQ # 00723

Respondent

**I. INTRODUCTION**

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 81-1532 (Reissue 2014; Cum. Supp. 2016). The Complainant is Jim Macy, Director of the Nebraska Department of Environmental Quality (Department).

2. Respondent is A-1 Fiberglass, Inc. a domestic corporation whose principal office address is 4495 South Gunpowder Circle, Hastings, Nebraska 68901. Respondent's Registered Agent is Michael M. Hupp, Suite 800, 1125 South 103<sup>rd</sup> Street, Omaha, Nebraska 68124.

**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 the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 81-1532 and all rules, regulations, and orders promulgated thereunder.

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



5. Pursuant to the Nebraska Environmental Quality 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 81-1505(13) the Council adopted and promulgated a rule codified as Neb. Adm. Code, Title 128 – *Nebraska Hazardous Waste Regulations*.

6. 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 to be prescribed in such order.

### **III. COMPLAINT**

7. Respondent, at all times material herein has owned and operated a fiberglass manufacturing facility located at 4495 South Gunpowder Circle, Hastings, Adams County, Nebraska 68901. As part of the fiberglass manufacturing process, the Respondent generates hazardous waste consisting of waste resins, gel coats and spent solvents.

8. On or about April 12 and 20, 2017, Department personnel conducted a compliance evaluation inspection of Respondent's facility and observed that Respondent was accumulating hazardous waste in quantities exceeding 6,000 kilograms. Specifically, a total of forty five 55-gallon drums labelled or identified by Respondent as hazardous waste were observed in the Respondent's central accumulation area, which consists of G&G Warehousing Bld 35A and Building 18.

9. During the same April 12 and 20, 2017 compliance evaluation inspection, Department personnel also observed that Respondent was accumulating hazardous waste for over 180 days. Specifically, two 55-gallon drums labeled as hazardous waste with accumulation start dates of July 15, 2016 were observed in Building 18.

10. On or about May 3, 2017 Respondent submitted a “RCRA Subtitle C Identification Form” to the Department identifying Respondent as a small quantity generator of hazardous waste.

11. On or about June 7, 2017, the Department sent Respondent a Notice of Violation (NOV) based on violations identified in the April 12 and 20 compliance inspection including the accumulation of hazardous waste in excess of 6,000 kilograms and accumulation of hazardous waste for over 180 days without a storage permit. The NOV requested Respondent inter alia, to prepare and submit for Department approval a closure plan for Respondent’s container storage area.

12. 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.

13. Neb. Rev. Stat. § 81-1508.02(1)(b) 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 the Environmental Protection Act.

14. Title 128, Ch. 9 § 008 states: “A small quantity generator who accumulates hazardous waste in quantities exceeding 6,000 kilograms or accumulates hazardous waste for more than 180 days (or for more than 270 days if the generator must transport the waste, or offer the waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of Chapters 12 through 15 and Chapters 21 or 22...”

15. Title 128, Ch. 12 § 001.01 states: “A permit is required for the treatment, storage, or disposal of any hazardous waste identified or listed in [Title 128] Chapters 2 and 3. Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit.”

16. Title 128, Ch. 1 § 006 defines ‘active life’ as the period from the initial receipt of hazardous waste at the facility until the Director receives certification of final closure.

17. Title 128, Ch. 21 § 007 states: “The conditions and requirements of 40 CFR Part 264, Subpart G, 264.110 through 264.120, pertaining to closure and post-closure, are hereby adopted and incorporated herein by reference.

18. Title 128, Ch. 21 § 008 states: “The conditions and requirements of 40 CFR Part 264, Subpart H, 264.140 through 264.151, pertaining to financial requirements, are hereby adopted and incorporated herein by reference.”

19. Title 128, Ch. 21 § 009 states: “The conditions and requirements of 40 CFR Part 264, Subpart I, 264.170 through 264.179, pertaining to the use and management of containers, are hereby adopted and incorporated herein by reference.”

20. Respondent is a person as defined in Neb. Rev. Stat. § 81-1502(10).

21. Respondent has accumulated hazardous waste in quantities exceeding 6,000 kilograms and has accumulated hazardous waste on-site for more than 180 days and operates a hazardous waste storage facility in accordance with Title 128, Ch. 9 § 008.

22. As an operator of a hazardous waste storage facility, Respondent must apply for a hazardous waste storage permit or submit certification of final closure of hazardous waste storage units in accordance with Neb. Rev. Stat. §§ 81-1506(1)(a), 81-1508.02(1)(b) and Title 128.

#### **IV. COMPLIANCE ORDER**

23. It is hereby ORDERED that the Respondent shall:

- a. By December 15, 2017, submit for Department review and approval a closure plan for the hazardous waste central accumulation area (G&G Warehousing Bld 35A and Building 18) that meets the requirements of 40 CFR Part 264, Subpart G, H and I as incorporated by Title 128, Ch. 21 §§ 007, 008 and 009.

- b. Within 180 days following Department approval, implement and complete all tasks in the approved, written closure plan.
- c. Respond in writing within seven (7) working days to all requests for information requested by the Department.

24. Information to be submitted under this ORDER shall refer to IIS# 000723, Case No.

3415, and shall be sent to:

William C. Gidley  
Nebraska Department of Environmental Quality  
PO Box 98922  
Lincoln, NE 68509-8922  
Telephone (402) 471-4495

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

25. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless the Respondent files an answer and request, 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.

26. 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  
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.

#### **VII. SETTLEMENT CONFERENCE**

27. Whether or not the Respondent requests a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of

Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

28. 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.

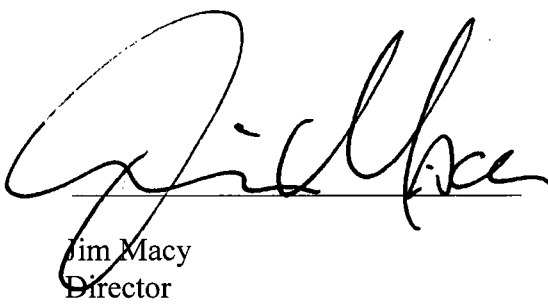
#### **VIII. RESERVATION OF RIGHTS AND PENALTY PROVISIONS**

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. 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 Complaint, Compliance Order, and Notice of Opportunity for Hearing. Nothing in this Complaint, Compliance Order, and Notice of Opportunity for Hearing precludes the Department from pursuing such enforcement.

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

August 18, 2017

Date

A handwritten signature in black ink, appearing to read "Jim Macy", written over a horizontal line.


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 was served by certified United States mail, postage prepaid; return receipt requested this 22 day of August 2017 upon the Respondent listed below:

A-1 Fiberglass Inc.  
c/o Michael M. Hupp  
Suite 800  
1125 South 103rd Street  
Omaha, Nebraska 68124

A handwritten signature in black ink, appearing to read 'Thomas O'Connor', written over a horizontal line.

Thomas O'Connor  
Attorney