

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF WESTERN SUGAR
COOPERATIVE CORPORATION

CASE NO. 3418

SCOTTSBLUFF, NEBRASKA

COMPLAINT, COMPLIANCE ORDER,
AND NOTICE FOR OPPORTUNITY FOR
HEARING

NDEQ # 44141

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 Western Sugar Cooperative Corporation (Western Sugar) whose principal office address is 7555 East Hampden Avenue, Suite 600, Denver, CO 80231. Respondent's registered agent in Nebraska is CSC-Lawyers Incorporating Service Company, 233 South 13th Street, Suite 1900, Lincoln, NE 68508.

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. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of setting standards for wastewater treatment systems and the disposal of industrial wastes, as expressed in Neb. Rev. Stat. §§ 81-1505(1) and 81-1505(8), the



Council adopted and promulgated rules codified as Neb. Adm. Code, *Title 123 – Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*.

5. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of waste determination, 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*.

III. COMPLAINT

6. Neb. Rev. Stat. § 81-1506(2)(b) makes it unlawful for any person to construct, install, modify or operate a wastewater disposal system without obtaining the necessary authorization or permits from the Department.

7. Title 123, Ch. 1 § 070 defines a wastewater works as any facility used for the collection, conveying, storing, pumping and treating of wastewater and the disposal of sludge.

8. Title 123, Ch. 3 § 001 prohibits the construction, installation or modification of wastewater works until a construction permit is issued authorizing the project.

9. Title 128, Ch. 2 provides a definition of solid waste and identifies which wastes are subject to hazardous waste regulations.

10. Respondent, at all times material herein has owned and operated a sugar beet processing facility located at 2100 E. Overland, Scotts Bluff County, Scottsbluff, Nebraska 69361.

11. As part of the sugar beet process, the Respondent has constructed, operates and at all times material herein, collects and during certain times of the year conveys wastewater to a retention basin and an evaporation basin, which are located between the North Platte River and South Beltline Highway in Sections 31 and 32, Township 22 North, Range 45 West.

12. The retention basin receives mud slurry and spent lime as precipitated calcium carbonate (PCC); the evaporation basin receives process discharge water. Wastewater in both basins is

allowed to seep into the ground and the remaining sludge settles out onto the bottom of the basins.

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

14. According to Department records, Respondent's wastewater retention and evaporation basins are not permitted by the Department.

15. The construction and operation of Respondent's unpermitted evaporation basin and retention basin are violations of Neb. Rev. Adm. § 81-1506(2) and Title 123.

IV. COMPLIANCE ORDER

16. It is hereby ORDERED that the Respondent shall:

- a. By December 1, 2017, submit for Department approval a planning document that includes, but is not necessarily limited to:
 - i. A complete description of Western Sugar's beet washing process and records of any permits issued by the Department for the construction and operation of the beet washing facility;
 - ii. A complete description of all wastes that have been held in the retention basin and evaporation basin including flow volumes, waste components and concentrations, and identification of the wastes or sludge in accordance with Title 128, Ch. 2;
 - iii. A description of any conveyance into or discharge or conveyance out of the retention and evaporation basins including a description of the spent lime process and how precipitated calcium carbonate is or has been conveyed to the retention basin and how process discharge water is or has been conveyed into the evaporation basin;
 - iv. For either basin that Western Sugar intends to continue to utilize, a soil evaluation of the basin(s) floor and dikes including depth to groundwater;
- b. By March 2, 2018 submit engineering plans and specifications for either of the basins that will remain in use. The plans and specifications must be signed and sealed by a

Nebraska professional engineer (P.E) and address the upgrades and repairs necessary to bring such basin(s) into compliance with Title 123 requirements and address the management of waste or sludge in accordance with applicable rules and regulations.

- c. By March 2, 2018, cease and desist the operation of any basin for which no engineering plans and specifications were submitted. Such basin(s) must be closed by July 1, 2018 in accordance with the requirements of Title 123, Ch. 10 and the wastes managed in accordance with applicable rule and regulations.
- e. By August 3, 2018, complete the upgrades to the basin(s) in accordance with the engineering plans and specifications submitted to and approved by the Department;
- f. Respond in writing within seven (7) working days to all requests for information requested by the Department.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

17. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless the Respondents file 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.

18. 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

19. 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.

20. 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.

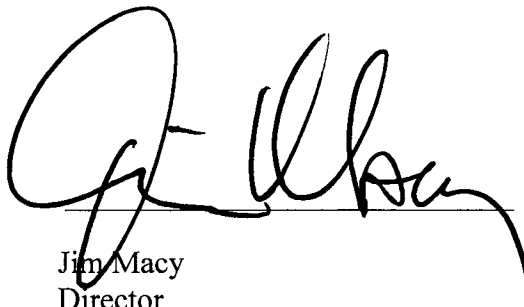
VIII. RESERVATION OF RIGHTS AND PENALTY PROVISIONS

21. 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.

22. 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 1, 2017

Date

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

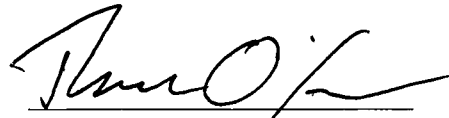
Jim Macy
Director

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 1 day of August 2017 upon the Respondents listed below:

Western Sugar Cooperative Corporation
CSC-Lawyers Incorporating Service Company
233 South 13th Street, Suite 1900
Lincoln, NE 68508

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

Thomas O'Connor
Attorney