

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

THE CASE OF	)	
PACIFIC CAST STONE, INC.	)	CASE NO. 3359
A Nebraska Corporation,	)	
	)	EMERGENCY COMPLAINT
Respondent.	)	AND COMPLIANCE ORDER

This Emergency Complaint and Compliance Order is issued by the Director of the Department of Environmental Quality (hereinafter referred to as "Department") pursuant to Neb. Rev. Stat. §81-1507(4) of the Environmental Protection Act (Act), Neb. Rev. Stat. §81-1501 et seq. (Reissue 2014, Supp. 2015) to require immediate action to protect the public health and welfare. The Department is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. §81-1504(1) to exercise exclusive general supervision of the administration and enforcement of the Environmental Protection Act, and all rules and regulations and orders promulgated under the Act. The Respondent is Pacific Cast Stone, Inc., located at 3300 and 3320 South 6<sup>th</sup> St., in Lincoln, Nebraska. The Complaint below sets out the facts establishing the existence of an emergency and the Compliance Order specifies the immediate action that must be taken to abate the emergency. This Emergency Complaint and Compliance Order is effective immediately. The Respondent shall be afforded the opportunity for a hearing upon application in writing to the Director of the Department, P.O. Box 98922, Lincoln, NE 68509-8922, with such hearing to take place as soon as possible but not later than ten days after a request is made.

COMPLAINT

1. The Respondent owns and operates a manufacturing facility that uses a "wet cast" method to produce cast stone products. The Respondent's manufacturing process employs an acid etching component that uses two acid wash tanks to wash concrete products.



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2. On January 22, 2016, investigators from the Lincoln-Lancaster County Health Department and the Department conducted an investigation at Respondent's facility. The investigators observed a large number of plastic totes, metal drums and other containers containing unidentified liquids located outside the buildings at 3300 and 3320 South 6<sup>th</sup> St., and next to a drainage way that leads into Salt Creek. Field tests on samples taken during this site investigation on a soil sample taken from the drainageway on the property and subsequent laboratory analysis indicated low pH consistent with the discharge of acidic waste.
3. On February 1, 2016, the Department conducted a compliance inspection of the Respondent's facility. During this inspection, the Department inspectors observed approximately fifteen full and three partially full 250-gallon plastic totes containing what were identified by facility employees as waste acid being stored outside on the east and south of the facility building at 3320 South 6<sup>th</sup> St. The inspectors observed that several plastic totes were double stacked and in poor, deteriorating, and damaged condition. In addition, the inspectors observed four 55-gallon metal drums containing an unknown material but after discussion with employees were suspected to contain waste solvent or alcohol. The inspectors observed the drums also appeared to be in a deteriorating condition, were rusting, and had open bungs. The inspectors observed a blue plastic drum located on the north side of the facility building at 3300 South 6<sup>th</sup> St., which was unlabeled and contents unknown. None of the containers were labeled to indicate waste contents. The inspectors obtained Material Safety Data Sheets (MSDS) for materials used at the facility, including lacquer thinner, Bio-Clean Extra STR (an acid product), and denatured alcohol. Based on these MSDSs, the lacquer thinner, acid product, and denatured alcohol would most likely constitute hazardous waste when disposed.

4. Neb. Rev. Stat. §81-1506(1)(a) makes it “unlawful for any person to cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state.”
5. The Respondent is a person as defined in Neb. Rev. Stat. §81-1502(10).
6. Pursuant to the Nebraska Environmental Quality Council’s authority to adopt rules and regulations for hazardous waste management and solid waste disposal in Neb. Rev. Stat. §81-1505(13), the Council adopted and promulgated Neb. Admin. Code, *Title 128, Nebraska Hazardous Waste Regulations*.
7. Neb. Rev. Stat. §81-1502(6) defines solid waste to mean any “discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities.” Neb. Rev. Stat. §81-1502(25) defines hazardous waste and *Title 128, Chapter 2* further defines solid and hazardous wastes subject to regulation.
8. *Title 128, Chapter 2, 003*, defines solid waste as any discarded material that is accumulated or stored before being disposed of. *Title 128, Chapter 2, 004*, defines any solid waste as a hazardous waste if it exhibits any of the characteristics of a hazardous waste, is listed as a hazardous waste in regulation, is a mixture of solid waste and a listed hazardous waste, and not otherwise excluded by regulation.
9. *Title 128, Chapter 4, 002* requires a person who generates a solid waste, as defined in *Chapter 2, 003*, to determine if that waste is a hazardous waste by one of the methods specified by regulation.
10. The Director finds that the Respondent, by storing totes, drums, and other containers of waste materials outdoors at its facility, has generated a solid waste that may be a hazardous waste.

The Director further finds that the Respondent has stored and accumulated this solid waste in a manner and in a location that presents a threat to, is likely to cause, and may already have caused, pollution to the air, waters, and land of the state in violation of state law, rules and regulations. The Director further finds that the condition of these storage containers, their location outdoors in an unsecure area and unprotected from the damaging and destructive elements of weather, is likely to and may have already caused a release of wastes to the environment, and given the unknown, but likely hazardous nature of the wastes, these waste containers must be immediately secured and protected to prevent injury and exposure to the public and the environment.

#### COMPLIANCE ORDER

##### IT IS HEREBY ORDERED THAT:

11. Respondent shall immediately take all measures necessary to prevent further release or discharge of wastes through direct discharge or through stormwater runoff to the drainageway located on its property or any other location consistent with this Compliance Order.
12. Respondent shall immediately secure and inventory all totes, drums, and other containers of waste materials stored outside the two buildings at its facility by closing any open containers and provide safeguards to prevent release of any wastes to the environment or exposure to workers and the public.
13. Respondent shall immediately remove these containers to a safe location that is protected from weather elements provided it can be done safely without further damage to the containers.

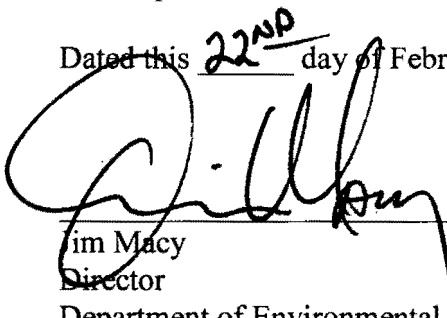
14. Respondent shall take immediate steps to make a hazardous waste determination to be completed no later than March 15, 2016, in accordance with one of the methods listed in *Title 128, Chapter 4, 002*. If Respondent determines that the wastes cannot be safely moved pending a hazardous waste determination, the Respondent shall at a minimum place a secure tarp over the totes, drums, and containers to prevent further releases to the environment and exposure to humans.
15. Respondent shall submit the hazardous waste determinations required by this Compliance Order in writing, including any laboratory analysis, to the Department by March 15, 2016.
16. Respondent shall not later than March 15, 2016, submit a schedule to the Department for review and approval describing proposed proper removal and disposal of the wastes in accordance with the results of the hazardous waste determinations and all applicable *Title 128* regulatory requirements.
17. Respondent shall as expeditiously as possible implement the approved schedule for proper removal and disposal of all waste materials subject to this Compliance Order and submit written receipts documenting proper disposal.
18. Respondent shall not add to, accumulate, or store any other waste materials onsite in the areas of waste accumulation and storage that are the subject of this Compliance Order until the areas have been cleaned and remediated.
19. Information required to be submitted to the Department under this Compliance Order shall be sent to:

William C. Gidley  
Waste Management Section Supervisor  
Nebraska Department of Environmental Quality  
P.O. Box 98922 (1200 N St., Suite 400)  
Lincoln, Nebraska 68509-8922  
(402) 471-4495

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

20. In accordance with Neb. Rev. Stat. §81-1507(4) this Emergency Complaint and Compliance Order shall become effective immediately. The Respondent is required to comply with the Emergency Complaint and Compliance Order upon receipt.
21. The Respondent may request a hearing by submitting a written request to the Director. Such hearing shall be scheduled as soon as possible but not later than ten days after the request is made. The Emergency Complaint and Compliance Order shall remain in effect pending any hearing and shall not relieve the Respondent from immediate compliance.
22. This Emergency Complaint and Compliance Order does not preclude the Department from pursuing additional enforcement by administrative order or for injunctive relief and penalties based on violations of the Act. The Department further reserves the right to impose additional obligations to abate or eliminate the emergency or pollution caused by the Respondent.

Dated this 22<sup>ND</sup> day of February 2016.

  
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Jim Macy  
Director  
Department of Environmental Quality

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Emergency Complaint and Order was served by certified United States mail, postage prepaid, return receipt requested this \_\_\_\_\_ day of February, 2016 upon the Respondent's registered agent listed below:

Terry K. Barber  
Suite 205  
300 N. 44<sup>th</sup> St.  
Lincoln, NE 68503

Alicia Boss