

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF	)	Case No. 3501
Noah's Ark Processors, LLC.	)	
	)	COMPLAINT, COMPLIANCE ORDER
FID #756	)	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 of the Nebraska Department of Environment and Energy (NDEE or Department).

2. The Respondent is Noah's Ark Processors, LLC, owner and operator of a beef slaughter and fabrication-to-box facility located at 1009 West M St. in Hastings, NE. Respondent is a limited liability company incorporated in the state of Minnesota and registered to do business in Nebraska.

3. Complainant has determined the Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2018) and Neb. Admin. Code, Title 119, Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System.

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

**II. COMPLAINT**

5. 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 NEPA and all rules and regulations promulgated under the act.



6. As a regular part of its day-to-day operations, Respondent handles and stores various oil, grease, solids, sludges, paunch, carcass scraps, pretreatment screenings & skimmings, and other materials generated by its production and wastewater pretreatment activities in or near outside areas which are in contact with storm water that discharges to Pawnee Creek, a water of the state as defined in Neb. Rev. Stat. §81-1502(21). The oil, grease, solids, sludges or other materials generated by Respondent's wastewater pretreatment and storm water management activities is water pollution as defined in Neb. Rev. Stat. §81-1502(20).

7. Pursuant to Neb. Rev. Stat. §81-1505(1) and (11), the EQC adopted a rule in Title 119, Ch. 10, 002.01 stating that "[n]o person shall discharge storm water containing any pollutant except as authorized by a NPDES permit or this Chapter."

8. On November 30, 2016, Respondent received NDEE authorization to discharge storm water, subject to the terms and conditions of NPDES Industrial Storm Water General Permit (ISW-GP) NER 910000 and Respondent's Storm Water Pollution Prevention Plan (SWPPP) as required by ISW-GP permit condition 5 and its subsections.

9. As a regular part of its day-to-day operations, Respondent discharges process wastewater generated by its beef slaughter and fabrication activities to the City of Hastings, NE wastewater treatment facility (WWTF), a publicly-owned treatment works (POTW). The chemical and physical composition of wastewater discharged by Respondent to the City of Hastings makes Respondent a significant industrial user of the POTW.

10. Pursuant to Neb. Rev. Stat. §81-1505(1), (6), and (11), the EQC adopted a rule in Title 119, Ch. 2, 003 stating that "[a]ny industrial user discharging pollutants into a POTW where such source meets the definition of a significant industrial user, must apply for and have a permit to discharge to such POTW."

11. On April 5, 2018, Respondent was reissued Nebraska Pretreatment Program (NPP) permit number NE0132919 by NDEE, authorizing Respondent to discharge pretreated wastewater to the Hastings WWTF, subject to the terms and conditions of the permit.

12. Pursuant to Neb. Rev. Stat. §81-1505(1) and (11), the EQC adopted a rule in Title 119, Ch. 14, 001.01 stating that "[t]he permittee must comply with all conditions of the permit. Any permit noncompliance constitutes a violation of the Federal and State Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application."

13. On July 12, 2018, an NDEE inspector conducted a routine inspection at Respondent's facility located in Hastings, Nebraska to evaluate compliance with Respondent's NPP permit, ISW general permit, and NAC Title 119. During the July 12, 2018 inspection, the NDEE inspector observed and documented:

- a. Non-storm water had discharged from a sump pit, trailers, paunch piles, and sludge storage areas in violation of ISW-GP permit conditions 1.1.3 and 2.1.2;
- b. Facility staff had not documented nor evaluated the non-storm water discharges from the sump pit, trailers, paunch, and sludge storage areas as required by ISW-GP permit condition 5.1.3.4;
- c. Facility staff had not conducted quarterly visual assessments of storm water discharges as required by ISW-GP permit condition 4.2; and
- d. Facility staff had not conducted comprehensive annual inspections as required by ISW-GP permit condition 4.3;
- e. In July 2017 and February 2018, the facility reported wastewater pH values below 5 in violation of NPP permit condition I.A.; and
- f. Facility staff had not submitted a non-compliance report to NDEE or provided 24 hour notification to the Hastings WWTF for the pH violations, as required by NPP permit condition II.D and Title 119, Ch. 26, 004.06 and 004.07.

14. On July 26, 2018, NDEE sent Respondent a Notice of Violation (NOV) letter outlining the violations identified on the July 12, 2018 inspection and requiring Respondent to complete and submit copies to NDEE of a non-storm water discharge evaluation, quarterly visual

inspection report, and comprehensive annual inspection report within 45 days. To date, Respondent has not replied to the July 26, 2018 NOV.

**15.** On July 31, 2019, an NDEE inspector conducted another routine inspection at facility located in Hastings, Nebraska to evaluate compliance with Respondent's NPP permit, ISW general permit, NAC Title 119, and the July 26, 2018 NOV. During the July 31, 2019 inspection, the NDEE inspector observed and documented:

- a.** Non-storm water had discharged from a sump pit, trailer, and bone pad in violation of ISW-GP permit conditions 1.1.3 and 2.1.2;
- b.** Facility staff had not documented nor evaluated the non-storm water discharges from the sump pit, trailer, and bone pad as required by ISW-GP permit condition 5.1.3.4;
- c.** Facility staff had not conducted quarterly visual assessments of storm water discharges for 3 out of 4 quarters as required by ISW-GP permit condition 4.2;
- d.** Facility staff had not conducted comprehensive annual inspections as required by ISW-GP permit condition 4.3;
- e.** Facility staff had not completed and documented staff training as required by ISW-GP permit conditions 2.1.2.9 and 5.4; and
- f.** In June and July 2019, the facility reported five (5) samples with wastewater pH values below 5 in violation of NPP permit condition I.A.

**16.** On August 23, 2019, NDEE mailed Respondent a copy of the July 31, 2019 compliance inspection report with a cover letter summarizing the violations and requiring corrective action. To date, Respondent has not responded to the August 23, 2019 letter and inspection report.

### **III. COMPLIANCE ORDER**

**17.** Immediately cease all non-storm water discharges from Respondent's beef slaughter and fabrication-to-box facility located at 1009 West M St. in Hastings, NE.

**18.** Within 45 days of receiving this Order, complete the following tasks, including submittal of corrective action reports for each task documenting it has been completed in accordance with the requirements of NEPA, Title 119, and all applicable permit conditions:

- a.** Complete non-storm water evaluations for the recent discharges from the sump pit system and bone pad as required ISW-GP permit condition 5.1.3.4;

- b.** Begin quarterly visual assessments of storm water discharge as required by ISW-GP permit condition 4.2; and
- c.** Begin comprehensive annual inspections as required by ISW-GP permit condition 4.3.

**19.** Within 45 days of receiving this Order, Respondent shall submit a corrective action plan for conducting wastewater pH measurements on-site and without exceeding established pH sample hold times for the sampling method used. The corrective action plan for pH sampling shall:

- a.** Identify the location sampled;
- b.** Identify the pH meter used by make and model;
- c.** Describe testing and calibration methods used to ensure accurate readings and their frequency;
- d.** Describe the sampling procedures used;
- e.** Describe record-keeping procedures that will be used to document sample values, hold times, and those staff performing sampling duties; and
- f.** Describe non-compliance reporting procedures that will be used to meet the requirements of NPP permit condition II.D and Title 119, Ch. 26, 004.06 and 004.07.

**20.** Within 60 days of receiving this Order, Respondent shall submit all training materials and records of staff training as required by ISW-GP permit conditions 2.1.2.9 and 5.4.

**21.** Within 90 days of receiving this Order, Respondent shall evaluate and submit a written summary of possible physical upgrades to the bone pad area such as heightening or extending curbing, drain repair or replacement to a larger size, improved grating, screening, etc.

**22.** Within 90 days of receiving this Order, Respondent shall submit an amended Storm Water Pollution Prevention Plan (SWPPP) containing additional control measures in Section 5.1.4 and additional schedules and procedures in Section 5.1.5 to address the following operational deficiencies which have caused non-storm water discharges:

- a.** Regular inspection, cleaning, testing, and other related maintenance of the bone pad drain to eliminate non-storm water discharges from this area;
- b.** Regular inspection, cleaning, testing, and other related maintenance of the sump pit system and its conveyances to eliminate non-storm water discharges from these areas;

- c. Regular inspection, containment, cleanup, and other practices at trailer storage areas to eliminate non-storm water discharges from these areas;

**23.** Upon Department review and approval of the SWPPP amendments required above, Respondent shall implement all additional control measures, schedules, and procedures in the amended SWPPP to eliminate non-storm water discharges from the bone pad, sump pit system, trailer storage areas, and all other areas of Respondent's beef slaughter and fabrication facility.

**24.** By May 1, 2020, Respondent shall prepare and re-seed, with an appropriate seed mix, all outside areas that have been de-vegetated or otherwise impacted by non-storm water discharges in order to re-establish permanent vegetation by the end of the 2020 growing season.

Respondent shall remove and properly dispose of any contaminated soils and solid waste.

Removed soil may be replaced with uncontaminated topsoil as necessary.

**25.** Information to be submitted under this Order shall refer to FID #756 and shall be sent to:

Reuel Anderson  
NPDES Permits and Compliance Section  
Nebraska Department of Environment and Energy  
P.O. Box 98922  
Lincoln, NE 68509-8922

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

**26.** This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless 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.

**27.** A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Neb. Admin. Code, Title 115, Rules of Practice and Procedure. The answer and request for hearing may be filed by mail to: Jim Macy, Director, State of Nebraska Department of Environment and Energy, 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**

**28.** Whether or not Respondents request a hearing, an informal settlement conference may be requested by writing to Brian McMullen, Attorney, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

**29.** 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**

**30.** The NDEE 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 NDEE from pursuing such enforcement.

Dated this 10<sup>th</sup> day of January, 2020

BY THE DIRECTOR



Jim Macy, Director  
NEBRASKA DEPARTMENT OF  
ENVIRONMENT AND ENERGY

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 13<sup>th</sup> day of January, 2020, upon the Respondent listed below:

Noah's Ark Processors LLC  
Fischel Ziegelheim  
1009 West M St.  
Hastings, NE 68901

  
Lauren Triplett  
Staff Assistant - Legal Division

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