

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3271
CLEAN HARBORS ENVIRONMENTAL	)	
SERVICES, INC.,	)	
A Massachusetts Corporation,	)	CONSENT ORDER
	)	
Respondent.	)	

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (NDEQ) and the Respondent Clean Harbors Environmental Services, Inc. (CHESI), voluntarily enter into this Consent Order. The Consent Order establishes a schedule of compliance for changes to the Respondent's hazardous waste treatment and storage facility necessary to achieve and maintain compliance with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2008, Cum. Supp. 2013), and Title 128, Nebraska Administrative Code, *Nebraska Hazardous Waste Regulations*. This Consent Order also provides for the performance of activities specified in Section VI.

II. JURISDICTION

2. The NDEQ 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 NEPA. This Consent Order is issued under the authority vested in the Director of the NDEQ by Neb. Rev. Stats. §§ 81-1504(25) and 81-1507(1).

3. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent agrees that it will not



contest the basis or validity of this Consent Order in any proceedings by the NDEQ to enforce this Consent Order.

### III. PARTIES

4. This Consent Order is binding on the NDEQ and the Respondent and its successors and assigns.

5. The Respondent shall ensure that any contractors, sub-contractors, and representatives implementing any provision of this Consent Order receive a copy of this Consent Order. The Respondent shall be responsible for any noncompliance with this Consent Order.

6. The Respondent admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law referenced within Section IV herein.

### IV. FINDINGS OF FACT

7. At all times material herein the Respondent, CHESI, has owned and operated a facility at 2247 South Highway 71, Kimball, Kimball County, Nebraska (hereinafter the "Facility") which is used to treat, store, or dispose of hazardous waste.

8. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the issuance of operating permits for sources of hazard waste treatment and storage, as expressed in Neb. Rev. Stat. § 81-1505(13), the Council adopted a rule and standard codified as Title 128, Nebraska Administrative Code, *Nebraska Hazardous Waste Regulations*.

9. Pursuant to Title 128, the Defendant had been issued a "Hazardous Waste Treatment and Storage Permit" (hereinafter "RCRA Permit") June 1, 2009, by the Department and that said RCRA Permit was at all times material herein, in full force and effect.

10. On or about May 16, 2013 to June 12, 2013 the Defendant accepted and stored a waste containing a concentration of equal to or greater than fifty (50) milligrams per kilogram of Polychlorinated-Biphenyls (PCB) in violation of Section III, C.1 of the RCRA Permit and Title 128, Chapter 14, section 002.01.

11. Plaintiff's allegations in paragraphs 6 through 9 of the complaint constitute approximately twenty-eight (28) days of violation for the purpose of Neb. Rev. Stat. § 81-1508.02 (2).

12. On or about June 12, 2013, the Defendant incinerated waste containing a concentration of equal to or greater than fifty (50) milligrams per kilogram of Polychlorinated-Biphenyls (PCB) in violation of Section V. B. 2 of the RCRA Permit and Title 128, Chapter 14, section 002.01.

13. On or about July 7, 2013, the Defendant incinerated wastes in excess of the maximum allowable metal feed rate for mercury based on an hourly rolling average in violation of Section V. F. 5a of the RCRA permit and Title 128, Chapter 14, section 002.01.

14. Neb. Rev. Stat. § 81-1508.02 (1)(b) states that it is unlawful for any person to violate a permit or license condition or limitation and any provision or duty imposed by rules and regulations.

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

16. Respondent has violated Neb. Rev. Stat. § 81-1508.02 (1) (b).

17. The Director of the Department is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) to issue this order requiring the modification of the hazardous waste treatment and storage facility as necessary to prevent, control, or abate pollution.

#### VI. COMPLIANCE ORDER

18. Respondent agrees to perform the following activities:

A. Begin implementation of revised SOP COMP-003, no later than November 1, 2014. This Demonstration of PCB Sampling shall continue for two years. The SOP will be revised to include the extended time frame for sampling.

B. By November 1, 2014, implement a scanning program to assign box numbers to a specified incineration blend. The CHESI Incineration Blends Chemist will create and enter a batch of box numbers that will be assigned to the blend. When an Incineration technician goes to dump a box they will scan the box against the current blend and the scanner will give them a pass/fail message. This new scanning program will automate the box selection process and eliminate human error.

C. It is the Respondent's responsibility to notify NDEQ when the implementation of the new scanning program is completed. This scanning

program and procedure will then be integrated into the Respondent's RCRA permit.

19. The Respondent shall respond promptly to any written communication by the NDEQ to modify any submitted documents and by making the required modifications or changes no later than 30 days after receipt or date specified in written comments by NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Consent Order.

20. Information to be submitted under this Order shall be sent to:

William C. Gidley  
Waste Management Section Supervisor  
Nebraska Dept. of Environmental Quality  
PO Box 98922  
Lincoln, NE 68509-8922  
Telephone: 402-471-4210

#### VII. COMPLIANCE WITH OTHER LAWS

21. The Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permits.

#### VIII. FORCE MAJEURE

22. Force majeure for the purposes of this Consent Order means any event arising from causes entirely beyond the control of the Respondent and any entity controlled by the Respondent, including its contractors and subcontractors, that delays the timely performance of any obligation under this Consent Order. The Respondent shall exercise best efforts to anticipate any potential force majeure events and address the potential effects as the event is occurring, and

following the event, to ensure that any delay is minimized to the greatest extent practicable.

23. If any event occurs that may delay the performance of any obligation under this Consent Order, whether or not caused by a force majeure event, the Respondent shall notify the NDEQ by telephone within 24 hours of learning of the event. The Respondent shall provide, in writing within 7 days, the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any action.

24. If the NDEQ agrees that the delay is attributable to a force majeure, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay.

25. The NDEQ, in its discretion, may agree to an extension caused by any other event.

#### IX. RESERVATION OF RIGHTS

26. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEQ to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA and any rules, regulations, orders, or permits issued pursuant to NEPA.

#### X. NEGATION OF AGENCY RELATIONSHIP

27. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the NDEQ and the Respondent.

#### XI. AMENDMENT

28. This Consent Order may be modified and amended in writing by mutual agreement of the NDEQ and the Respondent.

#### XII. EFFECTIVE DATE

29. This Consent Order shall become effective on the date it is signed by the Director of the NDEQ or his designee.

#### XIII. SEVERABILITY

30. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

#### XIV. SIGNATURES

31. For the Respondent: The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By: William Connors



Title: Senior Vice President

Date: October 17, 2014

32. For the NDEQ: IT IS ORDERED and agreed this 23rd day of October,  
2014.

By: Patrick W. Rice  
Patrick W. Rice  
Acting Director  
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 23rd day of  
October, 2014, upon the Registered Agent listed below:

Clean Harbors Environmental Services, Inc.  
C T Corporation System  
5601 S 59TH ST  
LINCOLN, NE 68516

Susan M. Ugai  
Susan M. Ugai  
Staff Attorney