

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	Case No. 3487
	)	
Frenchman Valley Farmers Cooperative,	)	
Inc.	)	CONSENT ORDER
	)	
FID #58903	)	
Respondent.	)	

**I. INTRODUCTION**

1. The Nebraska Department of Environmental Quality (NDEQ) and Frenchman Valley Farmers Cooperative, Inc., (Respondent) voluntarily enter into this Consent Order. The Consent Order establishes a schedule for Respondent to comply with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2014; Cum. Supp. 2016); Nebraska Administrative Code (NAC) Title 129, *Nebraska Air Quality Regulations* (Title 129); and NAC Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*.

**II. JURISDICTION**

2. NDEQ is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504, of exercising exclusive general supervision, administration, and enforcement of NEPA and all rules and regulations and orders promulgated under such acts, including NAC Titles 129 and 119.

3. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent agrees not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. Respondent waives its right to further hearing as provided in Neb. Rev. Stat. §81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. §84-901 *et seq.* for the violations alleged herein.



### **III. PARTIES**

4. The parties to this Consent Order are NDEQ and Respondent Frenchman Valley Farmers Cooperative, Inc. This Consent Order is binding on NDEQ, Respondent and all successors and assigns.

### **IV. FINDINGS OF FACT**

5. Respondent is the owner and operator of a grain mill located at 301 West A Street in the town of McCook, Red Willow County, Nebraska.

6. As a regular part of its day-to-day operations, Respondent mills, grinds, and crushes grain for mixing, processing, packaging and sale as animal feed. Such milling, grinding, crushing, mixing, processing and packaging of grain and animal feed generates dust, which has the potential to constitute an air contaminant as defined in *Neb. Rev. Stat. §81-1502(1)*.

7. As a regular part of its operations, Respondent often adds custom medication to livestock producers' feed ingredients to treat herd-specific illnesses and other conditions.

8. As a regular part of its operations, Respondent often receives truck traffic on its premises and engages in the loading and unloading of grain and animal feed. Such traffic, and the loading and unloading of grain and animal feed, generate dust which has the potential to constitute an air contaminant as defined in *Neb. Rev. Stat. §81-1502(1)*.

9. On December 29, 2015; October 24, 2016; August 8, 2017; August 29, 2018; and February 21, 2019; NDEQ inspectors observed and documented dust and particulate matter generated by Respondent becoming airborne in such quantities and concentrations that it remained visible in the ambient air beyond Respondent's premises at 301 West A Street in McCook, Nebraska.

10. On June 17, 2014 and February 2, 2019, NDEQ complaint investigations documented Respondent rinsing off the accumulated grain and animal feed dust from various areas of its premises at 301 West A Street to storm drains, ditches and open channels.

11. Pursuant to *Neb. Rev. Stat.* §81-1505(1) and (12), the Nebraska Environmental Quality Council (DQC) adopted a rule in Title 129, Ch. 32, for handling, transportation and storage facilities which prohibits dust and particulate matter from originating on one property and crossing to another. The rule reads:

001 Handling, Transportation, Storing. No person may cause or permit the handling, transporting or storage of any material in a manner which may allow particulate matter to become airborne in such quantities and concentrations that it remains visible in the ambient air beyond the premises where it originates.

002 Construction, Use, Repair, Demolition. No person may cause or permit a building or its appurtenances or a road, or a driveway, or an open area to be constructed, used, repaired or demolished without applying all such reasonable measures to prevent particulate matter from becoming airborne so that it remains visible beyond the premises where it originates. The Director may require such reasonable measures as may be necessary to prevent particulate matter from becoming airborne, including but not limited to paving or frequent cleaning of roads, driveways and parking lots; application of dust-free surfaces; application of water; and the planting and maintenance of vegetative ground cover.

003 Notwithstanding any other provision of this Chapter, the Department shall not regulate emissions from normal farming practices, on-farm crop drying and handling, and animal feeding activities, provided that reasonable and practical measures to limit particulate matter from such sources are utilized.

12. 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.”

## **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

13. Respondent is a corporation registered to do business in Nebraska and a “person” as defined in *Neb. Rev. Stat.* §81-1502(10).

14. One or more complaints were received by NDEQ from a third-party contending that Respondent is in violation of Title 129, Ch. 32, 001.

15. NDEQ asserts that its inspections between 2015 and 2019 document that Respondent violated Title 129, Ch. 32, 001 and that corrective action would be required to bring Respondent into compliance with that rule if the violations were conclusively established in this proceeding.

16. Pursuant to *Neb. Rev. Stat.* §81-1507, the NDEQ Director is authorized to order necessary corrective action be taken within a reasonable time in response to the violations alleged herein.

17. Pursuant to *Neb. Rev. Stat.* §81-1504(7), NDEQ is authorized to issue orders “(a) prohibiting or abating discharges of wastes into the air, waters, or land of the state and (b) requiring the construction of new disposal systems or any parts thereof or the modification, extension, or adoption of other remedial measures to prevent, control or abate pollution.”

18. Pursuant to *Neb. Rev. Stat.* §81-1504(10), NDEQ is authorized “[t]o require submission of plans, specifications, and other data relative to, and to inspect construction of, disposal systems or any part thereof prior to issuance of such permits or approvals as are required by the Environmental Protection Act...”

19. Pursuant to *Neb. Rev. Stat.* §81-1504(12), NDEQ is authorized “[t]o require proper maintenance and operation of disposal systems.”

20. Pursuant to *Neb. Rev. Stat.* §81-1504(25), NDEQ is authorized “[t]o develop and enforce compliance schedules, under such conditions as the director may prescribe and consistent with the standards, rules and regulations adopted by the council, to prevent, control or abate pollution.”

21. Pursuant to *Neb. Rev. Stat.* §81-1504(30), NDEQ is authorized “[t]o require the submission of such plans, specifications, and other information as it deems necessary to carry out the Environmental Protection Act ... or to carry out the rules and regulations adopted pursuant to the

acts. When deemed necessary by the director, the plans and specifications shall be prepared and submitted by a professional engineer licensed to practice in Nebraska.”

## **VI. COMPLIANCE ORDER**

22. Within 120 days, Respondent agrees to submit an engineering evaluation prepared by a professional engineer licensed to practice in Nebraska. The engineering evaluation shall contain:

- a. A facility-wide assessment of the potential causes for fugitive dust leaving the premises at Respondents feed mill at 301 West A Street in McCook, Nebraska which includes but is not limited to evaluations of the facility’s structures, grain & air handling systems, and operational practices;
- b. Recommended upgrades, modifications, repairs and maintenance to the structures and grain & air handling systems to deter the likelihood of fugitive dust leaving the premises at Respondent's feed mill at 301 West A Street in McCook, Nebraska.
- c. A compliance schedule for implementing the reasonable recommendations made in paragraph 22.a. and 22.b. containing a list prepared by the engineer and approved by Respondent of the tasks, task descriptions and dates to be completed.

23. Upon submittal of a complete engineering evaluation satisfying items 22.a. through 22.c., Respondent agrees to full implementation of the compliance schedule agreed to in 22.c. by the dates as listed therein and approved by NDEQ.

24. Within 120 days, Respondent agrees to submit a fugitive dust management plan to achieve compliance with Title 132, Ch. 32, 001 on a permanent basis. The plan shall address any deficient operational practices identified in 22.a. and be kept on-site to be used as an operating and training document at the facility throughout its operation and after upgrading, modification, repair, and maintenance work on the physical plant is complete.

25. Within 120 days, Respondent agrees to obtain coverage under National Pollutant Discharge Elimination System (NPDES) Industrial Stormwater General Permit (ISW-GP) NER910000 and comply with all terms and conditions of the ISW-GP for facilities having the Standard Industry Classification (SIC) code of 2048.

26. Within 120 days, Respondent Agrees to develop a Stormwater Pollution Prevention Plan (SWPPP) meeting the requirements of Part 5 of the ISW-GP.

27. Within 120 days, Respondent agrees to select, design, install and implement control measures in accordance with Part 2.1 of the ISW-GP.

28. For paragraphs 22 through 24, information to be submitted under this Consent Order shall refer to FID # 58903 and shall be sent to:

Brad Pracheil  
Air Quality Compliance Section  
Nebraska Department of Environmental Quality  
PO Box 98922  
Lincoln NE 68509-8922

29. For paragraphs 25 through 27, information to be submitted under this Consent Order shall refer to FID # 58903 and shall be sent to:

Reuel Anderson  
NPDES Permits and Compliance Section  
Nebraska Department of Environmental Quality  
PO Box 98922  
Lincoln NE 68509-8922

## **VII. SATISFACTION AND COMPLIANCE WITH OTHER LAWS**

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

## **VIII. RESERVATION OF RIGHTS**

31. 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.

32. NDEQ reserves the right to review all items submitted under paragraphs 22 through 27 for completeness and compliance with NEPA, Title 129 and Title 119 and require reasonable revisions when specific deficiencies are identified.

## **IX. NEGATION OF AGENCY RELATIONSHIP**

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

## **X. AMENDMENT**

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

## **XI. EFFECTIVE DATE**

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

## **XII. SEVERABILITY**

36. 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.

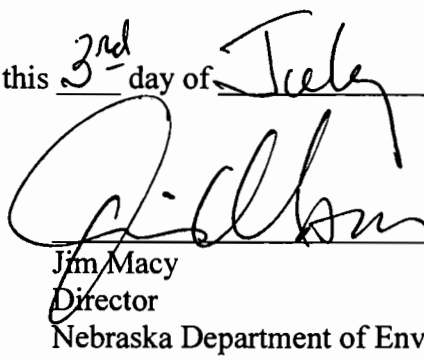
### XIII. SIGNATURES

37. For Respondent:

By: M. John Bender  
Title: CEO  
Date: 26 Feb 2019

38. For NDEQ:

IT IS SO ORDERED and agreed this 3<sup>rd</sup> day of July, 2019.

  
\_\_\_\_\_  
Jim Macy  
Director  
Nebraska Department of Environmental Quality



# NEBRASKA

Good Life. Great Resources.

DEPT. OF ENVIRONMENT AND ENERGY

July 3, 2019



M. John Bender, CEO  
Frenchman Valley Farmers Cooperative, Inc.  
202 Broadway  
Imperial, NE 69033

Re.: Legal Case No. 3487 / Facility ID No. 58903

Dear Mr. Bender:

Thank you for your signature and return of the Administrative Consent Order in your case. Attached to this letter, you will find a copy for your files containing both your signature and the signature of the NDEE Director.

Sincerely,

Lauren Triplett  
Staff Assistant  
NDEE – Legal Division Attorney

CC: Mr. Bill Kutilek  
Crosby Guenzel, LLP  
134 South 13th Street, Suite 400  
Lincoln, NE 68508-1901