

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

Case No. 3378

Prairieland Dairy, LLC.

FID# 73762

Respondent

CONSENT ORDER

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (NDEQ) and Prairieland Dairy, LLC, (Respondent) voluntarily enter into this Consent Order. The Consent Order requires Respondent to achieve and maintain compliance with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 et seq. (Reissue 2014); the Integrated Solid Waste Management Act (ISWMA), Neb. Rev. Stat. §§13-2001 et seq. (Reissue 2012); and Title 132, Nebraska Administrative Code (N.A.C.), *Integrated Solid Waste Management Regulations*.

2. This Consent Order is limited to the requirements for Respondent's Solid Waste Compost Facility permit and Respondent's compliance obligations under the applicable solid waste management and composting provisions of NEPA, ISWMA, and Title 132. This Consent Order does not include requirements that Respondent is subject to under Title 119, N.A.C., *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*; Title 123, N.A.C., *Rules and Regulations for the Design, Operation and Maintenance of Wastewater Works*; Title 130, N.A.C., *Livestock Waste Control Regulations*. All requirements under these other Titles remain applicable and will be addressed outside the scope of this Consent Order or by amendment to this Consent Order.



II. JURISDICTION

3. 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 NEPA, ISWMA, and all rules, regulations and orders promulgated under such acts. The authority of NDEQ to require compliance measures is provided in Neb. Rev. Stat. §§81-1504(7) and 81-1507.

4. Respondent admits to and agrees not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order.

5. Respondent acknowledges signing this Consent Order 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

6. The parties to this Consent Order are the Nebraska Department of Environmental Quality (NDEQ) and Prairieland Dairy, LLC, (Respondent). This Consent Order is binding on NDEQ, Respondent, and Respondent's successors and assigns.

IV. FINDINGS OF FACT

7. Prairieland Dairy, LLC, (Respondent) is an active, Nebraska limited liability company and has, at all relevant times herein, owned and operated a solid waste compost facility in Lancaster County, Nebraska. The legal description of Respondent's compost facility is SE ¼, Section 20, Township 7 North, Range 8 East, Lancaster County, Nebraska.

8. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for purposes of solid waste management and composting, as provided in Neb. Rev.

Stat. §§81-1505(13)(d); 81-1505(15); and 13-2034, the Council adopted rules and regulations codified as Title 132, N.A.C., *Integrated Solid Waste Management Regulations*.

9. Pursuant to NDEQ's authority to issue permits for solid waste compost facilities, as provided in Neb. Rev. Stat. §81-1505(15)(b); Title 132, Chapter 2, Section 001; and Title 132, Chapter 6, Respondent was issued Solid Waste Compost Facility Permit (Permit No. NE0204617) by NDEQ on November 25, 2014, containing the terms and conditions for Respondent's design, operation, and closure of a solid waste compost facility.

10. On August 19, 2016, an NDEQ inspector from the Waste Management Section conducted a compliance evaluation inspection at Respondent's compost facility to observe compliance with Respondent's Solid Waste Compost Facility permit and Title 132 regulations. The inspector observed: the accumulation and storage of packaged food wastes in areas other than the dumping pad or compost pad; plastic packaging throughout the compost pad; dewatering of meat processing wastes prior to incorporation into a composting windrow; unloading of solid wastes in unapproved areas; and failure to incorporate solid waste into compost windrows.

11. On September 2, 2016, a fire occurred at Respondent's compost facility in the area where packaged food waste was being stored outside of compost windrows. The fire destroyed the packaged food waste's value for use as compostable material.

12. On September 14, 2016, NDEQ sent Respondent a Notice of Violation (NOV) citing violations of Title 132 identified during the August 19, 2016, inspection. The NOV required Respondent to:

- a. discontinue the accumulation and storage of packaged food wastes in areas other than the dumping pad or compost pad until a permit modification has been obtained allowing this activity;

- b. provide confirmation that the plastic packaging throughout the compost has been picked up and properly disposed; and
- c. provide an explanation of how the practice of dewatering food and meat processing wastes prior to incorporation into a windrow will be discontinued.

13. On September 23, 2016, an NDEQ inspector conducted a complaint inspection at Respondent's compost facility. The inspector observed:

- a. packaging and other litter had blown onto adjacent properties;
- b. meat wastes had been off-loaded in an area outside the compost pad where surface water run-off entered adjacent properties and that run-off and truck traffic had damaged the complainant's corn fields located north of the compost facility;
- c. a perimeter drainage ditch along the north edge of the compost facility that is used to intercept run-off to adjacent properties and divert the run-off to a lined collection pond was silted-in with compost material; and
- d. piles of fire residue, soil, candy, sugar waste, and mixtures of each were in various stages of drying in and around the area where the fire had occurred.

14. During the September 23, 2016, inspection, the NDEQ inspector also observed construction of a "Nutrient Recovery Building" and informed the General Manager of Prairieland Dairy, LLC, that Respondent was required to notify NDEQ of the building's construction in order to determine whether permit modifications would be necessary.

15. The Department sent a follow-up letter to Respondent on October 13, 2016, repeating violations cited in the September 14, 2015, NOV and requiring Respondent to take actions to correct Respondent's non-compliance with Title 132.

16. On October 24, 2016, an NDEQ inspector conducted a follow-up inspection at Respondent's compost facility. The inspector observed: fire-damaged wastes had yet to be fully disposed; the drainage ditch receiving run-off from the fire debris had yet to be cleaned out, aside from placing round bales in the waterway; perimeter ditches remained silted in; and compost material that had been dumped off the compost pad had not been pushed back onto the compost pad.

17. Between November 10, 2016, and March 3, 2017, an NDEQ inspector conducted four follow-up inspections at Respondent's compost facility. During the first three of these inspections, the inspector observed: fire-damaged wastes and other solid wastes had yet to be fully disposed; the drainage ditch receiving run-off from the fire debris contained a sugary liquid and had yet to be cleaned out; perimeter ditches remained silted in; and compost material that had been dumped off the compost pad had not been pushed back onto the compost pad.

18. On the fourth inspection on March 3, 2017, the inspector observed: fire-damaged wastes had been removed; the drainage ditch receiving run-off from the fire debris had yet to be cleaned out, aside from disking work, and contained a syrupy liquid and packages of candy bags; compost material that had been dumped off the compost pad had not been pushed back onto the compost pad; and the perimeter drainage ditch along the north edge of the compost facility was still silted-in.

19. On April 3, 2017, the NDEQ Waste Management Section sent a letter notifying Respondent that its proposed use of the Nutrient Recovery Building to handle and screen compostable materials prior to composting will require a modification of the existing compost facility permit.

V. STATUTORY AND REGULATORY FRAMEWORK

20. Neb. Rev. Stat. §81-1506(1)(a) states that "[i]t shall be unlawful for any person [t]o 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 . . ."

21. Neb. Rev. Stat. §81-1506(3)(a) states that "[i]t shall be unlawful for any person to [c]onstruct or operate a solid waste management facility without first obtaining [the required] permit . . ."

22. Neb. Rev. Stat. §81-1506(3)(b) states that "[i]t shall be unlawful for any person to [v]iolate any term or condition of a solid waste management facility permit. . ."

23. Title 132 contains the following requirements:

- a. Chapter 2, Section 001 states that "[n]o person shall construct or operate a solid waste management facility without a permit. . ."
- b. Chapter 2, Sections 010.01 and 010.01B state that "[a]ny permit issued by the Department, may be modified, suspended, or revoked, in whole or in part during its term for . . . failure to disclose fully all relevant facts . . ."
- c. Chapter 6, Section 004 states that "[o]perations of all solid waste processing facilities shall be in accordance with the approved operational plan and Chapter 2 requirements."
- d. Chapter 6, Section 004.02 states that "[l]itter shall be controlled at solid waste processing facilities."
- e. Chapter 6, Section 004.03 states that "[a]n owner or operator of a solid waste processing facility shall prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment."

- f. Chapter 6 Section 004.10 states that "[u]nloading of solid waste at a facility shall be confined to designated areas."

24. Respondent's approved Solid Waste Compost Facility permit contains the following requirements:

- a. Section C.1 requires Respondent to control and pick up litter, at the earliest opportunity, at the compost site, access roads, and adjacent properties.
- b. Section C.2 requires Respondent to control disease vectors by keeping the site clean and free of static piles.
- c. Section C.5 requires Respondent to maintain the compost facility and its associated drainage ditches to prevent surface water discharges of pollutants to waters of the state.
- d. Section C.7 requires Respondent to keep records of all incoming and outgoing loads.
- e. Section C.13 requires Respondent to incorporate loads of waste into compost windrows upon receipt and does not allow for the dewatering of meat or other wastes at the site prior to composting.
- f. Section E.1.b requires Respondent to use designated unloading areas only, consisting of the dumping pad and compost windrows.

VI. ALLEGED VIOLATIONS

25. Respondent's failure to maintain drainage ditches which are both connected to Respondent's lined collection ponds and unconnected to these ponds, and flow off the property to adjacent properties and ephemeral streams, is a violation of Neb. Rev. Stat. §§81-1506(1)(a) and 81-1506(3)(b); and Section C.5 of Respondent's Solid Waste Compost Facility permit.

26. Respondent's unpermitted accumulation and storage of solid waste in static piles and in areas other than compost pad is unpermitted solid waste management activity requiring a new permit or permit modification and is a violation of Neb. Rev. Stat. §§81-1506(3)(a) and 81-1506(3)(b); Title 132, Chapter 2, Section 001; and Section C.2 of Respondent's Solid Waste Compost Facility permit.

27. Respondent's dewatering of food wastes and meat processing wastes prior to incorporation into compost windrows has caused odor and vector attraction problems and is a violation of Neb. Rev. Stat. §§81-1506(1)(a) and 81-1506(3)(b); Title 132, Chapter 6, Section 004.03; and Section C.2 of Respondent's Solid Waste Compost Facility permit.

28. Respondent's dumping of solid waste at locations other than the dumping pad or compost pad is a violation of Neb. Rev. Stat. §§81-1506(1)(a) and 81-1506(3)(b); Title 132, Chapter 6, Section 004.10; and Section E.1.b of Respondent's Solid Waste Compost Facility permit.

29. Respondent's failure to exclude and remove packaging from the compost pad and to prevent packaging from becoming windblown litter off-site is a violation of Neb. Rev. Stat. §§81-1506(1)(a) and 81-1506(3)(b); Title 132, Chapter 6, Section 004.02; and Section C.1 of Respondent's Solid Waste Compost Facility permit.

30. Respondent's construction of a Nutrient Recovery Building as part of its compost facility is a relevant fact that requires Respondent to give notice to NDEQ prior to construction and seek the appropriate permit modification to its Solid Waste Compost Facility Permit. Respondent's failure to give notice to NDEQ and seek the appropriate permit modification to its Solid Waste Compost Facility Permit prior to construction of a Nutrient Recovery Building is a violation of Neb. Rev. Stat. §81-1506(3)(a) and Title 132, Chapter 2, Sections 010.01 and 010.01B.

31. The Director has determined that the actions required by this Consent Order are necessary and appropriate to protect the public health, welfare, or the environment.

VII. COMPLIANCE ORDER AND SCHEDULE

32. Respondent has begun work on the following compliance tasks as required by the September 14, 2016, NOV and this Consent Order: partially incorporating static piles of meat and other food wastes into compost windrows; rejecting certain incoming loads of high-moisture content meat wastes and other food wastes; and removing fire debris and solid waste from the drainage ditch flowing to the east and not connected to Respondent's lined collection ponds.

33. NDEQ and Respondent agree that other compliance tasks remain to be completed or must be maintained for Respondent to be compliant with NEPA, ISWMA, Title 132, and the terms and conditions of its Solid Waste Compost Facility permit.

34. Respondent shall ensure that **DRAINAGE DITCHES** are managed as follows:

- a. by July 1, 2017, Respondent shall remove all compost material, sediment, and other material from the perimeter drainage ditch around the compost pad that is used to intercept run-off to adjacent properties and divert the run-off to a lined collection pond.
- b. Respondent shall restore and maintain all perimeter drainage ditches to operate as designed and to achieve their intended surface water management functions.
- c. by September 1, 2017, Respondent shall complete remedial work on the drainage ditch receiving run-off from the area where fire-damaged wastes and fire debris had been stored. This drainage ditch flows to the east and not to a lined collection pond.

The required remedial work includes:

- i. keeping the ditch free of all packaged food wastes, candy wastes, and other solid wastes;
- ii. removing all sugary/syrupy solids, liquids, and mixtures of sugary/syrupy soils, solids, and liquids; and
- iii. re-vegetating the drainage ditch with a plant species mix and density adequate to prevent erosion and pollutant run-off.

35. Respondent shall ensure that **STATIC PILES** are managed as follows:

- a. by November 1, 2017, Respondent shall incorporate all remaining static piles of meat wastes and other solid wastes into compost windrows. If Respondent cannot incorporate all static piles into windrows by this date, Respondent shall dispose of all material in static piles at a permitted municipal solid waste landfill;
- b. until November 1, 2017, static piles being stored off the compost pad will be protected from runoff by temporary earthen berms until removed or incorporated into windrows; and
- c. Respondent shall not add compost material, solid waste, or other material to existing static piles and agrees not to create new static piles of these or other materials.

36. Respondent shall ensure that all **SOLID WASTE DELIVERIES** are managed as follows:

- a. Deliveries must be unloaded onto the dumping pad, compost pad, or loading dock;
- b. Deliveries and dumping does not occur in areas other than the dumping pad, compost pad, or loading dock; and
- c. Incoming loads will be rejected upon delivery if containing non-compostable materials that cannot be removed or composted within 24 hours of delivery.

37. Respondent shall ensure that **NON-COMPOSTABLE MATERIAL, LITTER, AND WINDBLOWN LITTER** are managed as follows:

- a. Respondent shall pick up and properly dispose of litter in and around the compost facility on a daily basis and prior to becoming windblown and entering adjacent properties; and
- b. Respondent shall make all reasonable efforts to pick up litter within 24 hours on adjacent properties when notified by adjacent property owners that windblown litter has left Respondent's property and has been given permission by adjacent property owners to enter adjacent property for the sole purpose of retrieving Respondent's windblown litter.

38. Beginning with the effective date of this Consent Order, Respondent shall submit to NDEQ a **MONTHLY PROGRESS REPORT**, containing the following information:

- a. an **INBOUND WASTE SUMMARY** that lists the wastes received for composting by source, waste type, and total tonnage by source per month;
- b. a **REJECTED WASTE SUMMARY** that lists the wastes rejected for composting by source, waste type, reason for rejection, and total tonnage by source per month; and
- c. a **RESIDUAL WASTE SUMMARY** that lists the wastes not used for composting and sent for recycling or energy recovery by waste type and total tonnage per month.

39. Prior to having received an approved permit modification to its Solid Waste Compost Facility permit, Respondent and NDEQ agree that Respondent may use its **DEPACKAGING MACHINE** within the Nutrient Recovery Building, **PROVIDED** that:

- a. all product received will be unloaded into the building, and no product will be stored outside of the building;

- b. all organic materials will be taken directly from the depackager to the compost site or feed center and not temporarily stored in the building; and
- c. no waste milk or other packaged liquids will be processed through the depackaging machine until such time as operation of the Nutrient Recovery Building is covered under an approved permit issued by the NDEQ Water Permits Division.

40. PRIOR TO USE OF THE NUTRIENT RECOVERY BUILDING for the comingling of livestock waste, food waste, or other solid waste, Respondent shall have submitted and received from NDEQ an approved permit modification to its Solid Waste Compost Facility permit (Permit No. NE0204617).

41. All other terms and conditions of Respondent's Solid Waste Compost Facility permit (Permit No. NE0204617) shall stay in full force and effect for the duration of the permit term.

42. Information to be submitted under this Order shall refer to FID# 73762 and shall be sent to:

Brian Gorman
Waste Management Section
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

VII. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

43. 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

44. 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, ISWMA, and any rules, regulations, orders, or permits issued pursuant to NEPA or ISWMA.

IX. NEGATION OF AGENCY RELATIONSHIP

45. 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

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

XI. EFFECTIVE DATE

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

XII. SEVERABILITY

48. 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

49. For Respondent: The undersigned representatives of Respondent certify that each is fully authorized to enter into the terms and conditions of this Consent Order and to bind Respondent.

By: Clifford P. Obbink

Title: President

Date: 6-27-17

Clifford P. Obbink

Obbink Farms, Inc.,

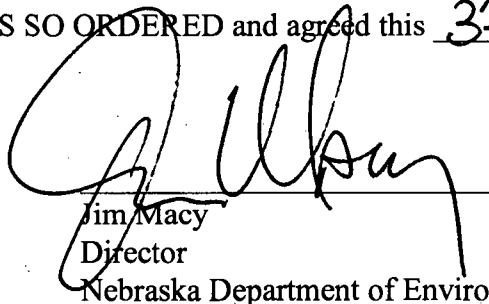
By: Daniel G. Rice

Title: General Manager

Date: 6-27-17

Daniel G. Rice

50. For NDEQ: IT IS SO ORDERED and agreed this 3rd day of July, 2017.



Jim Macy
Director
Nebraska Department of Environmental Quality