

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF TODD'S BBI  
INTERNATIONAL, INC.

FID #84354

Respondent.

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Case No. 3529

COMPLAINT, COMPLIANCE ORDER  
AND NOTICE OF  
OPPORTUNITY FOR HEARING

**I. INTRODUCTION**

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507. The Complainant is the Director of the Nebraska Department of Environment and Energy (NDEE or Department).
2. The Respondent is Todd's BBI International, Inc., a foreign corporation organized in Iowa and registered to transact business in Nebraska. At all times material herein, Respondent has owned and operated a facility which processes and packages food products in Madison, 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, 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. JURISDICTION**

5. NDEE 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 such acts.



6. Pursuant to the Nebraska Environmental Quality Council's authority to adopt and promulgate rules and regulations as expressed in Neb. Rev. Stat. § 81-1505, the Council adopted rules and regulations codified as Neb. Admin. Code, Title 119, Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System (Title 119).

### **III. COMPLAINT**

7. As a regular part of its day-to-day operations, Respondent discharges contact and non-contact cooling water to Union Creek; segment EL1-22000 of the Elkhorn River Basin, and discharges pretreated process wastewater to the City of Madison, 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 Madison makes Respondent a significant industrial user of the POTW.

8. Title 119, Ch. 2, 001 states that "[n]o person shall discharge any pollutant into any waters of the state from a point source without first having obtained a permit from the Department for such discharge." Title 119, Ch. 2, 003 states 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."

9. On August 26, 2016, NPDES/NPP Permit No: NE0137740 (permit) was issued to Respondent. The permit contained effluent limits and monitoring requirements for three outfalls. Outfall 001 was permitted for the discharge of contact and non-contact cooling water to Union Creek, subject to the terms and conditions of the permit. Outfalls 002 and 003 were permitted for the discharge of pretreated wastewater to the City of Madison WWTF, subject to the terms and conditions of the permit.

10. The permit required monitoring reports to be submitted quarterly on a Discharge Monitoring Report (DMR). DMRs were to be submitted according to the schedule in Table 1.

Table 1:	
Monitoring Quarters	DMR Reporting Deadlines
January – March	April 28
April – June	July 28
July – September	October 28
October - December	January 28

**11.** Respondent did not submit DMRs for the period of October 2016 through September 2017 for Outfalls 001, 002, and 003.

**12.** Respondent submitted DMRs after the DMR Reporting Deadlines contained in the permit for the monitoring periods of October 2017 through December 2018 on four occasions for Outfalls 001 and 002 and five occasions for Outfall 003.

**13.** On December 11, 2018, NDEE reissued NPDES/NPP Permit No: NE0137740 (reissued permit) to Respondent, with an effective date of January 1, 2019. The reissued permit contained effluent limits and monitoring requirements for the three outfalls. A subsequent permit correction was issued on January 29, 2019 to correct a typographical error.

**14.** The reissued permit modified the requirements for Outfall 001 based on statements made by Respondent during the application process regarding Respondent's plan to modify the use of Outfall 001. The reissued permit authorized the discharge of process wastewater from Outfall 001 to the City of Madison WWTF, and included additional effluent limitations and monitoring requirements for Biochemical Oxygen Demand (BOD) and Total Suspended Solids (TSS).

**15.** On August 15, 2019, an NDEE inspector conducted a routine inspection at Respondent's facility located in Madison, Nebraska, to evaluate Respondent's compliance with the reissued permit and Title 119. During the August 15, 2019 inspection, the NDEE inspector observed and documented that Outfall 001 discharged to Union Creek without first passing through the City of Madison WWTF.

**16.** Respondent reported a value of zero or provided no value for BOD and TSS on DMRs for Outfall 001 for the period of March 31, 2019 through June 30, 2020. The reported values call into question the accuracy of monitoring performed by Respondent.

**17.** Title 119, Ch. 14, 001.08 states that “[t]he permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing or terminating this permit or determine compliance with this permit.”

**18.** On or about February 6, 2020, NDEE sent a letter to Respondent requesting, among other things, that Respondent provide laboratory testing results for the 2018 and 2019 monitoring periods. NDEE has not received the requested information.

**19.** Respondent submitted DMRs for Outfalls 001, 002, and 003 after the DMR Reporting Deadlines contained in the reissued permit for the monitoring periods of January 2019 through June 2020 on five occasions.

**20.** Title 119, Ch. 14, 001.01 states 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.”

**21.** Respondent’s failure to submit DMRs for the period of October 2016 through September 2017 and failure to submit DMRs in accordance with the DMR Reporting Deadlines contained in permit NE0137740 are violations of Title 119.

**22.** Respondent’s discharge from Outfall 001 to Union Creek without first passing through the City of Madison WWTF following the January 1, 2019 is a violation of Title 119.

**23.** Respondent’s failure to provide laboratory testing results as requested in the February 6, 2020 letter from NDEE to Respondent is a violation of Title 119.

### **III. COMPLIANCE ORDER**

**24.** Immediately cease discharging anything other than contact and non-contact wastewater to Outfall 001. The effluent limits and monitoring requirements for Outfall 001 contained in NPDES/NPP Permit No: NE0137740 with an effective date of January 1, 2019 remain in effect until the permit is modified by NDEE.

**25.** Within 30 days of receiving this Order, submit laboratory testing results for the 2018, 2019, and 2020 monitoring periods to the Department.

**26.** Submissions to the Department under this Order shall refer to FID #84354 and shall be sent to:

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

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

**27.** This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files an answer and requests, 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.

**28.** 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**

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

30. 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**

31. 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 17<sup>th</sup> day of September, 2020.

BY THE DIRECTOR

  
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Jim Macy  
Director

## 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 18<sup>th</sup> day of September, 2020, upon the Respondent listed below at their registered agent and office address:

Andy Holt  
109 South Main St.  
Madison, NE 68748

A handwritten signature in cursive script, reading "Lauren Triplett", is written over a horizontal line.

Lauren Triplett  
Legal Division – Staff Assistant