

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF
Swift Beef Company

FID #24352

Respondent.

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Case No. 3535

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 (Reissue 2014; Cum. Supp. 2018, Supp. 2019).

2. Complainant is the Director of the Nebraska Department of Environment and Energy (NDEE or Department).

3. Respondent is Swift Beef Company, owner and operator of a beef slaughter and processing facility located at 555 S. Stuhr Rd, Grand Island, NE 68801. Respondent is a domesticated foreign corporation incorporated in the state of Delaware and registered to do business in Nebraska.

4. Complainant has determined Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014; Cum. Supp. 2018, Supp. 2019) and Neb. Admin. Code, Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*.

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

II. COMPLAINT

6. 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 by the Nebraska Environmental Quality Council (EQC) under the act.



7. As a regular part of its day-to-day operations, Respondent engages in various beef slaughter and processing activities that generate various liquid, solid, semi-solid, viscous, sludge, and mixed waste pollutants that are partially treated in Respondent's wastewater treatment facility (WWTF) before being discharged to the City of Grand Island publicly-owned treatment works (POTW). The pollutants that are "pretreated" in Respondent's WWTF before discharge to the City of Grand Island POTW for further treatment include, but are not limited to: process wastewater, post-knock waste, pen waste, and rendering waste.

8. The volume and composition of pretreated wastewater discharged by Respondent to the City of Grand Island POTW makes Respondent a significant industrial user of the POTW as defined by Title 119, Ch. 1, 103.

9. 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."

10. On January 1, 2015, and January 1, 2020, Respondent was reissued National Pollutant Discharge Elimination System (NPDES) and Nebraska Pretreatment Program (NPP) permit number NE0113891 by NDEE, authorizing Respondent to discharge pretreated wastewater to the City of Grand Island POTW, subject to the terms and conditions of the permits. Certain discharge limits, monitoring requirements, and other permit conditions were revised and updated between the permits, each issued for a five (5) year term length.

11. As a regular part of its day-to-day operations, Respondent engages in various beef slaughter and processing activities that generate pollutants which have the potential to be released with storm water during a precipitation event and then discharged to the City of Grand Island municipal separate storm sewer system (MS4). The pollutants generated include, but are not limited to: cattle manure; paunch & partially digested stomach contents, wash down water; dry & liquid blood; discarded animal debris; rodenticides & insecticides; air scrubber chemicals & chemical storage totes; bone meal; beef tallow; and used oil.

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."

13. On November 8, 2016, Respondent was issued NDEE authorization #NER910263 to discharge storm water, subject to the terms and conditions of NPDES Industrial Storm Water General Permit (ISW-GP) NER910000 and Respondent's Storm Water Pollution Prevention Plan (SWPPP) as required by ISW-GP permit condition 5 and its subsections.

14. Neb. Rev. Stat. §81-1506(2)(c) states that "[i]t shall be unlawful for any person to increase in volume or strength any waste in excess of permitted discharges specified under any existing permit".

15. 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."

16. Respondent's wastewater pretreatment discharges to the City of Grand Island POTW and storm water management discharges to the City of Grand Island MS4 are water pollution as defined in Neb. Rev. Stat. §81-1502(20) and unlawful under Neb. Rev. Stat. §81-1506(2)(c) and Title 119, Ch. 14, 001.01 when not in compliance with the terms and conditions of NPDES/NPP Permit # NE0113891 and authorization #NER910263 under ISW-GP NER910000.

17. On December 16, 2019, NDEE conducted a spill investigation at Respondent's beef slaughter and processing facility located in Grand Island, Nebraska to investigate the cause of blood and chemical spills that resulted in the unlawful "bypass" of untreated or insufficiently-treated pollutants to the City of Grand Island POTW, resulting in "interference" to the POTW's treatment operations. On the December 16, 2019 spill investigation, NDEE documented:

- a.** A blood bypass on December 3, 2019 in violation of NPDES/NPP permit conditions IV.B.; Standard Condition 15.d.; and Title 119, Chapter 26, 003.02D.

- b. Eight (8) days of numeric violations for Respondent's ammonia discharge limit of 1,065 lbs/day in violation of NPDES/NPP permit condition II.B.; Title 119, Ch. 14, 001.01; and Neb. Rev. Stat. §81-1506(2)(c);
- c. Two (2) days of numeric violations for Respondent's Total Kjeldahl Nitrogen (TKN) discharge limit of 1,775 lbs/day in violation of NPDES/NPP permit condition II.B.; Title 119, Ch. 14, 001.01; and Neb. Rev. Stat. §81-1506(2)(c);
- d. A chemical release of approximately 1,000 gallons of Purac CL 21/80 sometime between December 7th and 9th, 2019 in violation of NPDES/NPP permit conditions I.B. ; IV.B.; and Title 119, Chapter 26, 003.02D; and
- e. Facility staff had not submitted a non-compliance report to NDEE or provided 24 hour notification to the Grand Island POTW for the above violations, as required by NPDES/NPP permit conditions IV.E. and IV.J.; Standard Conditions 14.f. and 19.c.; and Title 119, Ch. 26, 004.06 and 004.07.

18. On January 21, 2020, NDEE sent Respondent a Notice of Violation (NOV) identifying violations observed as a result of the December 16, 2019 spill investigation and requiring Respondent to complete and submit two (2) corrective measures reports to NDEE.

19. On January 23, 2020, Respondent reported to NDEE that on January 21, 2020, 5,000 gallons of wastewater effluent had overflowed the clarifier in Respondent's wastewater treatment system resulting in unscheduled bypass.

20. During the year 2020, Respondent submitted fourteen (14) NPDES/NPP Noncompliance Reports reporting the following violations of NPDES/NPP permit condition I.B.; Title 119, Ch. 14, 001.01; and Neb. Rev. Stat. §81-1506(2)(c):

- a. An exceedance of the monthly average chloride discharge permit limit of 10,000 lbs/day for the month of December with a monthly average chloride actual discharge amount of 11,664 lbs/day;
- b. Repeated exceedances of the daily total suspended solids (TSS) discharge permit limit of 11,095 lbs/day on the following days and in the following amounts:
 - i. On January 24, 2020 with an actual TSS discharge of 13,185.85 lbs;
 - ii. On February 4, 2020 with an actual TSS discharge of 13,156.1 lbs;
 - iii. On March 12, 2020 with an actual TSS discharge of 12,586.4 lbs;
 - iv. On March 13, 2020 with an actual TSS discharge of 12,659.7 lbs;
 - v. On June 11, 2020 with an actual TSS discharge of 14,704 lbs;
 - vi. On August 23, 2020 with an actual TSS discharge 23,599.7 lbs;
 - vii. On August 25, 2020 with an actual TSS discharge of 34,952.9 lbs;
 - viii. On August 31, 2020 with an actual TSS discharge of 22,132.3 lbs;
 - ix. On September 1, 2020 with an actual TSS discharge of 26,412 lbs;
 - x. On September 2, 2020 with an actual TSS discharge of 13,786 lbs;
 - xi. On September 11, 2020 with an actual TSS discharge of 21,208.3 lbs;
 - xii. On September 12, 2020 with an actual TSS discharge of 15,384.5 lbs;
 - xiii. On September 17, 2020 with an actual TSS discharge of 17,580 lbs;
 - xiv. On September 24, 2020 with an actual TSS discharge of 17,387 lbs;

- xv. On October 3, 2020 with an actual TSS discharge of 15,430.9 lbs;
- xvi. On October 5, 2020 with an actual TSS discharge of 11,520 lbs;
- xvii. On October 6, 2020 with an actual TSS discharge of 12,407.4 lbs;
- xviii. On October 13, 2020 with an actual TSS discharge of 13,204.4 lbs;
- xix. On October 24, 2020 with an actual TSS discharge of 13,209 lbs;

21. On June 22, 2020, Respondent reported that it had discharged animal grease through storm water outfall #05 to the City of Grand Island MS4 on or around June 14, 2020. The storm water discharge is a violation of ISW-GP NER910000 condition 2.1.2.3.

22. On or around August 11, 2020, Respondent submitted digital photos depicting a sludge blanket 2.5 to 3 feet thick in the final clarifier segment of Respondent's WWTF. In follow up correspondence, Respondent stated the cause of the sludge blanket was due to a bent and inoperative skimmer arm, caused by a broken shear pin for which Respondent did not keep a replacement part in supply. The facility stated the final clarifier would not be repaired until September 9, 2020.

23. On or around August 11, 2020, Respondent submitted digital photos depicting two (2) broken belt presses housed in a building west of the waste water operator's building. The belt presses had not been operational since June 2020 and had contributed to violations of Respondent's TSS permit limit.

24. On August 19, 2020, NDEE conducted a remote inspection to evaluate Respondent's compliance with NPDES/NPP Permit # NE0113891 and authorization #NER910263 under ISW-GP NER910000. On the August 19, 2020 compliance inspection, NDEE documented:

- a. Non-storm water discharges of process water and animal fat from storm water outfalls #02 and #05 in violation of violation of ISW-GP NER910000 condition 2.1.2.3; Title 119, Ch. 14, 001.01; and Neb. Rev. Stat. §81-1506(2)(c);
- b. Permit limit exceedances for Ammonia (NH3), Total Suspended Solids (TSS), Biochemical Oxygen Demand (BOD), and Total Kjeldahl (TKN) in violation of NPDES/NPP permit condition I.B.; Title 119, Ch. 14, 001.01; and Neb. Rev. Stat. §81-1506(2)(c);
- c. Chloride permit limit exceedances for the July through September 2019, October through December 2019, and January through March 2020 monitoring periods in violation of NPDES/NPP permit condition I.B.; Title 119, Ch. 14, 001.01; and Neb. Rev. Stat. §81-1506(2)(c);
- d. Failure to comply with operation and maintenance requirements, applicable to the inoperative clarifier skimmer arm and belt presses, in violation NPDES/NPP permit condition I.B.; Standard Condition 7; Title 119, Ch. 14, 001.05; and Neb. Rev. Stat. §81-1506(2)(c);
- e. Failure to provide the correct certifying official and an authorized representative on the signatory authorization form in violation of Title 119, Ch. 13, 002.01 and 003.

25. On August 31, 2020, NDEE sent Respondent a Letter of Noncompliance (LNC) identifying violations observed as a result of the August 19, 2020 compliance inspection and requiring Respondent to complete (4) corrective measures, which have been only partially completed to date.

26. Pursuant to Neb. Rev. Stat. §81-1504(7) the NDEE Director is authorized to issue this order requiring remedial measures to prevent, control, or abate water pollution from Respondent's beef slaughter and processing facility and associated WWTF.

III. COMPLIANCE ORDER

27. IT IS THEREFORE ORDERED, pursuant to Neb. Rev. Stat. §§81-1504(7) and 81-1507, Respondent complete the following remedial measures to address the violations alleged above and within the time frames listed below.

28. Within 30 days, submit an updated Storm Water Pollution Prevention Plan (SWPPP) to address the nonnumeric technology-based effluent limitation violations. The updates will include storm drain identification and labeling, identification of areas where non-storm water discharges may occur, routine inspections of these areas, and updated employee training for the SWPPP.

29. Within 30 days, submit a written description of the following wastewater operation and maintenance procedures:

- a. Identify all employees involved in operation of the WWTF and their current Operator Certification Class as required by Title 197, *Rules and Regulations for The Certification of Wastewater Treatment Operators*;
- b. Identify operator scheduling by name, job title, shift, and the operational & maintenance duties performed by each employee;
- c. Identify all employees responsible for conducting wastewater treatment facility repairs and ordering equipment repairs;
- d. Identify employees responsible for providing noncompliance notification to the City and the State, and the protocol for notification;
- e. Describe daily operation and maintenance activity, including process control sampling, scheduled maintenance and equipment repairs; and
- f. Identify a list of WWTF parts that are prone to failure or breakage in regular operation, such as the shear pin for the clarifier skim arm, to be kept in stock at the WWTF for prompt replacement when failure or breakage occurs.

30. Within 30 days, provide all process control data collected by your staff for the operation of your wastewater treatment facility for the time period beginning July 1, 2020 to the present.

31. Within 30 days, identify all disinfectants, corrosives or any other additives used that could create operational problems at the facility.

32. Within 30 days, identify all wastewater treatment equipment repaired since July 1, 2020. Identify equipment needing repair.

33. Within 60 days, complete all repairs to wastewater treatment equipment and restore the full operational capabilities of the WWTF to design specifications.

34. Information to be submitted under this Order shall refer to FID #24352 and shall be sent to:

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

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

35. 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.

36. 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.

V. SETTLEMENT CONFERENCE

37. Whether or not Respondent requests 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.

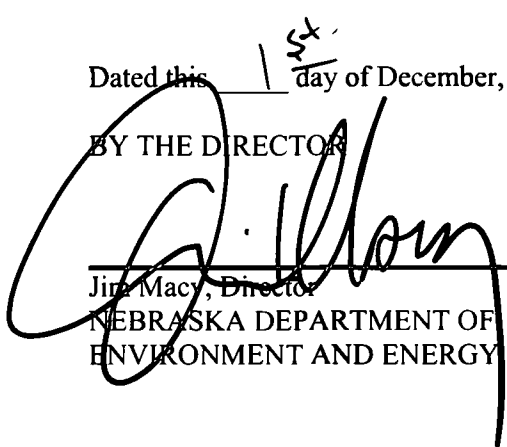
38. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

39. 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 1st day of December, 2020

BY THE DIRECTOR

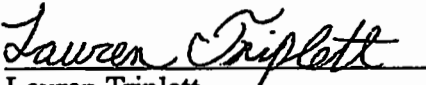


Jim Macy, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complain, Compliance Order and Notice of Opportunity for Hearing, was served by certified United States mail, postage prepaid, return receipt requested this 2nd day of December, 2020, upon the Registered Agent listed below:

CSC – Lawyers Incorporating Service Company
233 South 13th St.
Suite 1900
Lincoln, NE 68508


Lauren Triplett
Staff Assistant – Legal Division

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