

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
HUSKER AG, LLC

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Respondent.)

CASE NO. 3308

CONSENT ORDER

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (NDEQ) and the Respondent Husker Ag, LLC (Husker Ag) voluntarily enter into this Consent Order. The Consent Order establishes changes to the Respondent's air quality emissions performance testing 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), Title 129, Nebraska Administrative Code Nebraska Air Quality Regulations, and Husker Ag's air quality operating permit OP04S2-003. This Consent Order also provides for 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. Stat. §§ 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.



4. Respondent waives its right to receipt of a complaint and all notice and hearing requirements provided in Neb. Rev. Stat. §81-1507 for the violations alleged herein.

III. PARTIES

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

6. 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.

7. 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

8. At all times material herein the Respondent, Husker Ag, has owned and operated an ethanol manufacturing facility at 54048 Highway 20, Plainview, Pierce County, Nebraska (hereinafter the "Facility").

9. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the issuance of operating permits for the purpose of air pollution control, as expressed in Neb. Rev. Stat. § 81-1505(12), the Council adopted a rule codified as Title 129, Nebraska Administrative Code, Nebraska Air Quality Regulations.

10. Pursuant to Title 129, the Respondent was issued an "Air Quality Class II Operating Permit" #OP04S2-003 (hereinafter "Permit"), on June 25, 2010, by the Department and said Permit has, at all times material herein, been in full force and effect.

11. 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.

12. Provision III(B)(4)(c) of the permit requires Respondent “to demonstrate compliance with the VOC and HAP limitations in Conditions II.(G) and III.(B)(3),” by conducting “performance testing for VOCs and HAPs on scrubbers S-40 and S-40B.” Respondent is required to perform annual performance testing in the third quarter of each year. These test results are also used by the Respondent to make changes in its operating parameters.

13. Respondent's conducted the required performance test September 16-17, 2014. Testing showed scrubber S-40 had VOC emissions of 1.70 Lbs/Hr. and HAP emissions of .841 Lbs/Hr. single and .841 Lbs/Hr. combined. Testing showed scrubber S-40B had VOC emissions of 5.81 Lbs/Hr. and HAP emissions of 1.86 Lbs/Hr. single and 1.86Lbs/Hr. combined.

14. Respondent conducted another performance test on its scrubbers January 14-15, 2015 for the purpose of determining compliance with its Permit. Testing showed scrubber S-40 had VOC emissions of 1.03 Lbs/Hr. and HAP emissions of .221 Lbs/Hr. single and .221 Lbs/Hr. combined. Testing showed scrubber S-40B had VOC emissions of 1.97 Lbs/Hr. and HAP emissions of .666 Lbs/Hr. single and .666 Lbs/Hr. combined.

15. Respondent's January 14-15, 2015 test was performed outside of the Permit conditions. The test performed was a performance test and it was performed correctly, but it was not conducted in the time frame prescribed in the Permit to demonstrate compliance with the Permit or for the Facility to use to make changes to its operating parameters. Respondent relied on the January test to make changes to operating parameters at the facility, i.e. the amount of

water used in scrubber S-40 was reduced from 40 gallons per minute to 35 gallons per minute.

This change was made in violation of the Permit.

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

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

18. The Director of the Department is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) to enter into this Order requiring the modification of monitoring and emissions testing as necessary to prevent, control, or abate pollution.

V. STIPULATION

19. Respondent's performance test conducted January 14-15, 2015, was an effort by the Respondent to identify the reasons why the September 16-17, 2014, annual test results were inconsistent with historic test data. The parties agree that the performance test conducted by Respondent January 14-15, 2015, was conducted in accordance with the procedures outlined in Title 129, Chapter 34, and was a valid test. The NDEQ was on-site to observe the conduct of the test. The January 14-15, 2015, test was not conducted pursuant to Provision I.(N) of the Permit. However, the NDEQ agrees to make an exception in this case and agrees that the results from the January 14-15, 2015, test may be used by the Respondent to determine compliance with the Permit for the period from the January 14-15, 2015, test dates until the next scheduled quarterly performance test.

VI. COMPLIANCE ORDER

20. Respondent agrees to perform the following activities:

(A) Commencing on the effective date of this Consent Order, conduct quarterly performance tests on Scrubbers S-40 and S-40B. Test protocols shall follow all requirements of the Permit. Quarterly testing shall continue until one of the following occurs:

1. Respondent installs a Continuous Emissions Monitoring System (CEMS) or
2. Compliance with the 10/25 source-wide HAP limitations is demonstrated over a period of eight consecutive quarters on each scrubber.

(B) Respondent may install a CEMS on either S-40 or S-40B in a phased or pilot approach. Upon installation on either scrubber, the quarterly performance tests may cease for that scrubber. The remaining scrubber would then be subject to the performance tests frequency under the permit.

(C) The performance test conducted in January and April 2015 will be allowed as the first two quarterly tests under this Compliance Order.

21. The Respondent shall provide semiannual reports to the NDEQ regarding progress towards installation of a CEMS at its facility by June 30 and December 31 of each year until paragraph 20(A) is complied with by the Respondent.

22. All terms and references used in this Consent Order shall have the same meaning as in the Permit. No other terms or conditions of the Permit are affected by this Consent Order.

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

Air Quality Division
Nebraska Dept. of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922
Telephone: 402-471-4210

VII. COMPLIANCE WITH OTHER LAWS

24. 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

25. 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.

26. 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.

27. 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.

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

IX. RESERVATION OF RIGHTS

29. 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

30. 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

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

XII. EFFECTIVE DATE

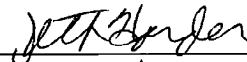
32. This Consent Order shall become effective on the date it is signed by the Director of the NDEQ or his designee.

XIII. SEVERABILITY

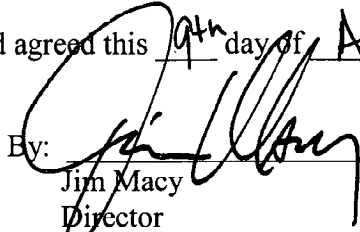
33. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and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

XIV. SIGNATURES

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: 
Title: General manager for Husker Ag LLC
Date: 4-2-2015

For the NDEQ: IT IS ORDERED and agreed this 9th day of April, 2015.

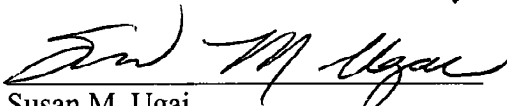
By: 
Jim Macy
Director
Department of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Consent Order were served by certified United States mail, postage prepaid, return receipt requested this 10th day of April, 2015, upon the Respondent at:

Michael J. Linder
Koley Jessen P.C., L.L.O.
1125 S. 103rd St., Suite 800
Omaha, NE 68124

Seth Harder
Husker Ag, LLC
54048 Hwy 20
Plainview, NE 68769


Susan M. Ugai
Staff Attorney