

BEFORE THE DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)
)
FOUR W OIL CO., LLC) Case No. 3604
FID: 71688) CONSENT ORDER
)
Respondent.)
)

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (“Department”) and Four W Oil Co., LLC (“Respondent”), voluntarily enter into this Consent Order. The Consent Order establishes a Compliance Schedule for Respondent to comply with the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. §§ 81-1501 to 81-1532, and Title 119 of the Nebraska Administrative Code (“NAC”) – *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*.

2. The Department and Respondent agree that settlement of this matter is in the public interest to ensure compliance with state laws, rules, and regulations, adopted and issued to protect the environment.

3. This Consent Order supersedes the Administrative Order issued on July 13, 2023.

II. JURISDICTION

4. The Department 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.

5. The Department is further charged with the duty to act as the state water pollution agency for all purposes of the Clean Water Act, 33 U.S.C. § 1251 *et seq.* Neb. Rev. Stat. § 81-1504(4).



6. The Nebraska Environmental Quality Council adopted Title 119 of the NAC pursuant to Neb. Rev. Stat. § 81-1505.

7. 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 rights to further hearing as provided in Neb. Rev. Stat. § 81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 *et seq.*

III. PARTIES

8. The parties to this Consent Order are the Department and Respondent, a Nebraska Limited Liability Company with its principal office located at 112 West 17th Street, Falls City, Nebraska 68355. This Consent Order is binding on the Department, Respondent, and any successors and assigns of the parties. Respondent shall ensure that all contractors hired to perform work required by this Consent Order are informed of applicable requirements.

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

IV. FINDINGS OF FACT

10. Respondent is engaged in the extraction of subterranean crude oil and operates several oil wells in Richardson County.

11. As part of Respondent's activities, Respondent operates a three-cell separation lagoon system which receives and treats a mixture of crude oil and process wastewater, and discharges treated effluent to waters of the State. The discharges of treated effluent flow to an undesignated tributary of an unnamed creek of the Big Nemaha River Basin (Segment NE2-11500).

12. The lagoon system is located on the real property legally described as:

The West Half of the Southeast Quarter and the East Half of the Southwest Quarter of Section Seven, Township One North, Range

Sixteen East of the Sixth Principal Meridian, Richardson County, Nebraska, containing 151.5 acres, more or less.

13. On or about June 24, 2022, the Department issued NPDES Permit No. NE0130656 (“Permit”) to Respondent. The Permit became effective on or about July 1, 2022, and expires on or about June 30, 2027.

14. On or about December 13, 2016, the Department issued NPDES Permit No. NE0130656 (“Prior Permit”). The Prior Permit became effective on or about January 1, 2017, and modified as of September 3, 2021, to reflect a change in ownership to Respondent. The Permit and Prior Permit are consistent in all material respects. Any reference to “Permit” shall also mean “Prior Permit” for dates prior to July 1, 2022.

15. Neb. Rev. Stat. § 81-1506(3)(c) makes it unlawful to violate or fail to perform any duty imposed pursuant to the NEPA or the rules or regulations promulgated thereunder.

16. Respondent is required to comply with all conditions of the Permit. 119 NAC 14-001.01.

17. Respondent is further required to submit reports of monitoring results at the intervals specified in the Permit. 119 NAC 14-001.12D.

18. Appendix A, § 14(d)(iii), of the Permit specifies that Respondent must electronically submit quarterly Discharge Monitoring Reports (“DMRs”), via the NetDMR reporting tool, no later than 28 days following the end of the preceding quarter.

19. Part IV(5) of the Permit requires that all pits or ponds used to retain produced water “[b]e fenced, screened, or netted to prevent access by livestock, wildlife, and migratory birds, if free oil is likely to be discharged to the pits.”

20. On or about March 2, 2022, the Department conducted an inspection (“March 2 Inspection”), during which the Department inspector observed free oil in Lagoon Cell-2, which

sits between Lagoon Cell-1 (the westernmost lagoon cell) and Lagoon Cell-3 (the easternmost lagoon cell).

21. During the March 2 Inspection, the Department inspector also observed that Lagoon Cell-2 did not have any fencing, screening, or netting to prevent access by livestock, wildlife, and migratory birds.

FIRST CAUSE OF ACTION

22. On or about October 29, 2022, Respondent violated a reporting requirement contained in a rule or regulation adopted and promulgated pursuant to the Environmental Protection Act by failing to report monitoring results within twenty-eight days after the quarter ending September 30, 2022, as specified in Appendix A, § 14(d)(iii) of the Permit. 119 NAC 14-001.12D. Respondent’s failure to report monitoring results is a violation of Neb. Rev. Stat. § 81-1506(3)(c).

SECOND CAUSE OF ACTION

23. On or about January 29, 2023, Respondent violated a separate reporting requirement contained in a rule or regulation adopted and promulgate pursuant to the Environmental Protection Act by failing to report monitoring results within twenty-eight days after the quarter ending December 31, 2022, as specified in Appendix A, § 14(d)(iii) of the Permit. 119 NAC 14-001.12D. Respondent’s failure to report monitoring results is a violation of Neb. Rev. Stat. § 81-1506(3)(c).

THIRD CAUSE OF ACTION

24. On or about March 2, 2022, the Department discovered that Respondent was in violation of Part IV(5) of the Permit by failing to install fencing, screening, or netting around Lagoon Cell-2 to prevent livestock, wildlife, or migratory birds from accessing a pit or pond in which

free oil is present. Respondent's failure to install fencing, screening, or netting around Lagoon Cell-2 is a violation of Neb. Rev. Stat. § 81-1506(3)(c).

V. COMPLIANCE SCHEDULE

25. By October 1, 2023, Respondent agrees to:

- a.** Submit all delinquent Discharge Monitoring Reports electronically via NetDMR.

26. By November 1, 2023, Respondent agrees to:

a. With respect to Lagoon Cell-2:

- i.** Repair or install new fencing, screening, or netting to prevent livestock, wildlife, or migratory birds, from accessing Lagoon Cell-2, unless such repair or installation has already been completed; and

- ii.** In the manner prescribed in 26(b), provide the Department with photographic documentation that such fencing, screening, or netting has been repaired or installed; and

- b.** Submit all required photographs via electronic mail to Phillip Halsted, Environmental Supervisor, Inspection and Compliance Division (phillip.halsted@nebraska.gov).

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

27. Respondent agrees to perform all actions required in this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permit.

VII. RESERVATION OF RIGHTS

28. Nothing in this Consent Order shall be construed to limit the power and authority of the Department to take or order any action necessary to protect the public health, the public welfare, or the environment or to enforce any provision of the NEPA or any rules, regulations, orders, or permits, issued pursuant to the NEPA. The Department reserves the right to pursue any other

remedies to which it is entitled for violations of this Consent Order or the underlying violations alleged herein, including penalties or injunctive relief.

VIII. NEGATION OF AGENCY RELATIONSHIP

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

IX. AMENDMENTS

30. This Consent Order may be amended upon the mutual written agreement of the Department and the Respondent.

X. EFFECTIVE DATE

31. This Consent Order shall become effective on the date the Director of the Department or the Director's designee signs the Consent Order.

XI. TERMINATION

32. Upon completion of the Compliance Schedule, Respondent will be notified by NDEE in writing that the Compliance Schedule has been completed and the present administrative case is closed. Such notification shall be issued within 90 days of the Department determining that the terms of the Compliance Schedule have been met.

XII. SEVERABILITY

33. If any provision or authority of this Consent Order or the application of this Agreement 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 Agreement shall remain in force and shall not be affected thereby.

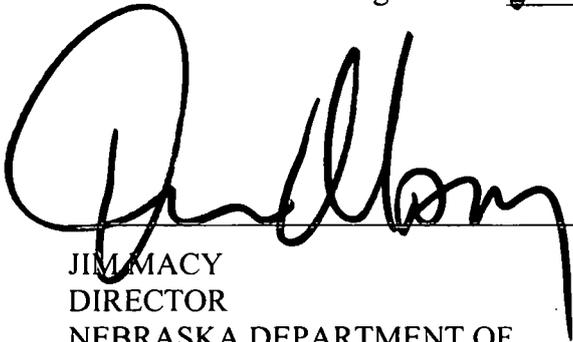
XIII. SIGNATURES

34. For Respondent: The undersigned certifies that the undersigned possesses actual authority to enter into this Consent Order on behalf of Respondent and to bind Respondent.

Signature: 
Title: *Owner*
Date: *9/14/23*

35. For the Department:

IT IS SO ORDERED and agreed this *27th* day of *September* 2023.



JIM MACY
DIRECTOR
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY