

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)	
MILK SPECIALTIES COMPANY,)	CASE NO. 3640
)	
FID # 35131)	EMERGENCY COMPLAINT
)	AND ORDER
Respondent.)	

This Emergency Complaint and Order is issued by the Interim Director of the Department of Environment and Energy (hereinafter referred to as "Department") pursuant to Neb. Rev. Stat. § 81-1507(4) of the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq., to require immediate action to protect the public health and the environment. The Department is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504(1) to exercise exclusive general supervision of the administration and enforcement of the Environmental Protection Act ("NEPA"), the Integrated Solid Waste Management Act ("ISWMA") (collectively referred to as the "Acts"), and all rules and regulations and orders promulgated under the Acts. The Respondent is Milk Specialties Company, (hereinafter "Respondent"), whose Facility is located in Norfolk, Madison County, Nebraska.

The complaint below sets out the facts establishing the existence of an emergency, and the order specifies the immediate action that must be taken to abate the emergency. This Emergency Complaint and Order is effective immediately. The Respondent shall be afforded the opportunity for a hearing upon application in writing to the director of the Department, such hearing to take place as soon as possible but not later than ten days after a request is made.

I. COMPLAINT

1. Respondent is Milk Specialties Company, owner of the manufacturing plant (hereinafter "Facility") at 805 Omaha Ave., Norfolk, Madison County, Nebraska 68701. Milk



Specialties Company is a foreign corporation registered to do business in Nebraska and organized in the state of Delaware.

2. The Respondent's manufacturing plant processes dairy based products to produce human and animal protein and fat based nutritional ingredients. The waste products include wastewater, solid waste, and potentially include hazardous waste.

3. The Facility discharges processed wastewater through two outfalls to the City of Norfolk's wastewater treatment facility (WWTF) under Nebraska pretreatment permit NE0000965.

4. On September 10, 2024, two Department employees accompanied a U.S. Environmental Protection Agency (EPA) inspector and several representatives of Respondent on an inspection of the Facility. During the inspection, Respondent's representatives stated that "high strength waste", consisting of first flushes and line rinses at the Facility, is separated from the industrial wastewater stream that is discharged to the City of Norfolk WWTF. Respondent's representatives stated that approximately 250,000 pounds or 60,000 – 80,000 gallons of the high strength waste was removed from the Facility by truck every day. Respondent's representatives did not provide any information regarding the shipping or final destination of the high strength waste removed from the Facility. See Attachment A, September 13, 2024, Memo – Milk Specialties Company – Joint inspection with EPA, hereby incorporated into this Order.

5. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of water pollution control, 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) and Neb. Admin. Code, Title 128, Nebraska Hazardous Waste Regulations (Title 128).

6. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of water pollution control, as expressed in Neb. Rev. Stat. § 81-1505 and Neb. Rev. Stat. §§ 13-2033 and 13-2034, the Council adopted rules and regulations codified as Neb. Admin. Code, Title 132, Integrated Solid Waste Management Regulations (Title 132).

7. "Person" means "any: Individual; partnership; limited liability company; association; public or private corporation; trustee; receiver; assignee; agent; municipality or other governmental subdivision; public agency; other legal entity; or any officer or governing or managing body of any public or private corporation, municipality, governmental subdivision, public agency, or other legal entity." Neb. Rev. Stat. § 81-1502(10).

8. "Solid waste" means "any garbage, refuse, or sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, and mining operations and from community activities. Solid waste shall not include slag, a product that is a result of the steel manufacturing process and is managed as an item of value in a controlled manner and not as a discarded material; solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Clean Water Act, as amended, 33 U.S.C. 1251 et seq." Neb. Rev. Stat. § 81-1502(26).

9. Any person who generates a solid waste, as defined in Chapter 2 of Title 128, must determine if that waste is a hazardous waste using the method prescribed in Chapter 4 of Title 128. 128 Neb. Admin. Code § 4-002.

10. The high strength waste generated at the Facility is a solid waste as defined by the Acts and Title 128, Chapter 2. Respondent's failure to make a hazardous waste

determination on the solid waste prior to transporting the solid waste is a violation of 128 Neb. Admin. Code § 4-002.

11. It is unlawful for any person to “dispose of any solid waste at any location other than a solid waste management facility holding a current permit issued by the department pursuant to the Integrated Solid Waste Management Act.” Neb. Rev. Stat. § 81-1506(3)(d).

12. Under the ISWMA, “no person shall dump or deposit any solid waste at any place other than a landfill approved by the director unless the department has granted a permit which allows the dumping or depositing of solid waste at any other facility.” Neb. Rev. Stat. § 13-2033(1)

13. “Solid waste management facility” means “a public or private site, location, tract of land, installation or building which has been used for the collection, source separation, storage, transportation, transfer, processing, treatment, or disposal of solid waste, and shall include solid waste disposal areas and solid waste processing facilities.”

14. Respondent does not hold any permits from the State of Nebraska authorizing the operation of a solid waste management facility.

15. The Director finds that Respondent’s failure to provide information regarding the shipping or final destination of the approximately 250,000 pounds, or 60,000 – 80,000 gallons, of solid waste removed from the Facility daily, creates a presumption that the solid waste is being disposed of in violation of Neb. Rev. Stat. §§ 81-1506(3)(d) and 13-2033(1).

16. “Land pollution” means the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental

to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state.” Neb. Rev. Stat. § 81-1502(19).

17. “Water pollution” means “the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water.” Neb. Rev. Stat. § 81-1502(20).

18. It is unlawful for any person to “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.” Neb. Rev. Stat. § 81-1506(1)(a).

19. The Director finds that any disposal by Respondent of solid waste at a site that is not a permitted solid waste management facility under Title 132 and the ISWMA, is likely to cause land pollution and/or water pollution and would be unlawful under Neb. Rev. Stat. § 81-1506(1)(a).

20. The Director finds that the Respondent, by failing to make a hazardous waste determination in accordance with Title 128, and by failing to dispose of the solid waste in compliance with the Acts, and Title 132, has operated its Facility in a manner that presents an emergency and constitutes a threat to human health and the environment.

21. The Director finds that the Respondent, by its actions, is likely to cause and may already have caused pollution to the air, waters, and land of the state in violation of state law and rules and regulations.

22. The Director further finds that the Facility must immediately make a hazardous waste determination in accordance with Title 128 on all solid waste generated at the Facility and must dispose of all solid waste in accordance with the Acts, Title 128, and Title 132.

II. COMPLIANCE ORDER

IT IS HEREBY ORDERED THAT:

23. Respondent must immediately make a hazardous waste determination on all solid waste generated at the Facility in accordance with Title 128.

24. Respondent must treat and/or dispose of all hazardous waste generated at the Facility in accordance with Title 128.

25. Respondent must provide the Department with the results of all hazardous waste determinations made for solid waste generated at the facility within twenty-four (24) hours of making such determination, for a period of one (1) month from the effective date of this order.

26. Respondent must not remove solid waste from the Facility, except in accordance with standards and conditions of Title 128 and Title 132.

27. Prior to the removal of solid waste from the Facility, except for waste going to a municipal solid waste landfill permitted under Title 132, Respondent must inform the Department how the solid waste will be disposed.

28. Upon request, Respondent must provide to the Department all shipping manifests, bills of lading, and invoices documenting the transportation and/or disposal of solid wastes generated at the Facility.

29. Respondent shall promptly respond to any written communication by the Department within three (3) calendar days. Any delay in responding to such communication shall be construed as non-compliance with this Order.

III. SUBMITTALS

37. All information or verification required to be submitted to the Department pursuant to this Order shall refer to FID #35131 and shall through email to:

ndee.ecmupload@nebraska.gov

and

Jeffery L. Edwards

Supervisor, Waste Compliance Section
jeffery.edwards@nebraska.gov

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

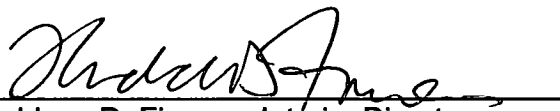
38. In accordance with Neb. Rev. Stat. §18-1507(4) this Emergency Complaint and Order shall become effective immediately. The Respondent is required to comply with the Emergency Order upon receipt.

39. The Respondent may request a hearing by submitting a written request to the Director. The request for hearing may be filed by mail to: Thaddeus D. Fineran, Interim 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 245 Fallbrook Blvd., Lincoln, Nebraska. Such hearing shall be scheduled as soon as possible but not later than ten days after the request is made. The Emergency Complaint and Order shall remain in effect pending any hearing and shall not relieve the Respondent from immediate compliance.

40. This Emergency Complaint and Order does not preclude the Department from pursuing additional enforcement by administrative order for injunctive relief and penalties based on violations of the Acts.

41. The Department further reserves the right to impose additional obligations to abate or eliminate the emergency or pollution caused by the Respondent.

Dated this 17th day of September, 2024.



Thaddeus D. Fineran, Interim Director
Nebraska Department of Environment and Energy

Information Transmittal

To: Milk Specialties Company dba Milk Specialties Global (MSG) (NE0000965)
From: Phillip Halsted
Date: 9-9-11-2024
FID: 35131
Subject: EPA Inspection

On September 9, 2024 EPA Clean Water Act Inspector Joe Heafner arrived on site at 1:00 p.m. with Grace Dana (Environmental Specialist with NDEE) at MSG in Norfolk, Nebraska. During the opening conference with Keith Mason, (VP of Operations, MSG), and Eric Olfert (Director of Operations, MSG), Mr. Heafner asked for a general summary of processes throughout the facility. The facility explained they have four lines: protein processing/concentration, spray drying/packaging, whey processing, and a lactose line. The lactose line has not been online since April 2024. He then asked for an overview of the wastewater treatment they have on site. They are currently sending 400,000 – 500,000 gallons per day to the city of Norfolk WWTF, but the facility is proposing 750,000 gallons per day to be the limit in the city's updated permit. There's an EQ tank on site with pH adjustment, and there is another large calamity tank to store whey/animal biproducts. Mr. Heafner asked if the byproducts were introduced back into the wastewater stream or what was done with them. The facility stated that the byproducts go to the calamity tank and then are tanked off-site by Midwest PMS (a cattle liquid feed supplement company). There are approximately 6-8 trucks carrying the product off-site daily; no final destination was given. On September 10, 2024, Phillip Halsted (NPDES Compliance Supervisor) arrived on site at MSG at 9:00 a.m. with Grace Dana, Mr. Heafner joined soon after. Present at the September 10, 2024 meeting were Peter Thein (Regional EHS, MSG), Michael Lackey (Site EHS Manager, MSG), Keith Mason, (VP of Operations), and Eric Olfert (Director of Operations, MSG). During the September 10, 2024 meeting, Mr. Lackey explained that the facility's lactose line had been offline since April. Mr. Olfert said that all production water goes to the EQ Basin. He went on to explain that the EQ Basin is an open-air tank that has a capacity of a million gallons and they currently had approximately 500,000 gallons of production water in it. Mr. Heafner asked where the high strength waste water was being taken since Mr. Olfert said they had not been sending it to the city of Norfolk since October 2023 due to BOD loading issues. Mr. Olfert said he would "need to pull that data" and "did not have that information in front of him", though he did confirm that the high strength waste was being taken offsite each day. Mr. Olfert said the approximate volume of high strength waste being taken offsite each day is 250,000 pounds (60,000-80,000 gallons). He said again he did not have the final destination information on the high strength waste. Mr. Olfert said the high strength waste come from first flushes and line rinses at the facility. He went on to explain that they should have bills of lading for the trucks leaving site. Upon further questioning by Mr. Heafner, Mr. Olfert said the high strength waste is "monitored" but did not provide details on the monitoring. Mr. Olfert said that the high strength waste is processed through their evaporator and then put into tanks on site before being taken off site at inconsistent times each day. Mr. Heafner, Ms. Dana, and myself all viewed the tank room on site, hoses ran all across the room and we stepped through a large puddle of white/yellow liquid. Tanks 101, 103, 104, 105, and 106 are where the high strength waste is stored prior to being loaded on to trucks and taken off-site per Mr. Olfert. Tank 102 is used occasionally but tends to leak according to Mr. Olfert and is currently unhooked. Mr. Lackey

mentioned that MSG had almost reached an agreement with the City of South Sioux City to take the high strength waste, but nothing materialized. Mr. Olfert said multiple trucks leave the site daily with the high strength waste, but he didn't have specific volumes on record at the time. He explained the EQ basin is aerated, but the aeration system is not functioning correctly, and they would need to drop the level in the EQ basin to repair the system (which would go to the City of Norfolk wastewater plant) but assured us he would notify the city prior to doing so. We then went on to talk about the frac tanks on site that hold wastewater from during the time the City of Norfolk shut off the plant from late March to early April. Mr. Lackey said a Toxicity Characteristic Leaching Procedure (TCLP) had been run on all 7 frac tanks on the site. Mr. Lackey said that 3 of the tanks have come back "clean" and they were waiting on the results of the other 4. Mr. Lackey explained that the 4 non-received TCLP results have been rejected twice due to "sample temperature issues". Mr. Heafner asked the facility for copies of TCLP results, any other process sampling, internal COD sample results, and any shipping information on the high strength waste. When later doing a site tour, Mr. Lackey explained to me that the tanks the facility had bought to help treat the high strength waste failed internal and third-party testing. They could not hold water and a third-party tester condemned one and said the other needed extensive repairs. Mr. Olfert explained that new tanks had been ordered from Mexico and should be on site in a few weeks with the high strength system up and running in mid-October 2024. EPA and NDEE staff left the site at 11:45 a.m. The same EPA and NDEE personnel returned on site September 11, 2024 for a stormwater inspection.



Phillip Halsted, Environmental
Supervisor

9/12/2024

Date



Grace Dana, Environmental
Specialist

09/16/2024


Date

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Emergency Order and Complaint, was served by certified United States mail, postage prepaid, return receipt requested this 17th day of September 2024, upon the Respondent's Registered Agent listed below at their mailing address:

Milk Specialties Company
c/o C T Corporation System
5601 South 59th Street, Ste C
Lincoln, NE 68516

USPS Label # 9402811898765484980267



Lauren Triplett
Paralegal, Legal Division

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Emergency Order and Complaint, was served personally upon ERIC OLFERT, acting in his or her capacity as - COLLECTOR OF PASTEURIZED MILK for Milk Specialties Company, on September 17 at 11:34 o'clock A M, at 805 Omaha Ave., Norfolk, Madison County, Nebraska 68701.

Philip G. Hales