

BEFORE THE DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)	Case No. 3611
)	
)	
TECUMSEH POULTRY, LLC)	CONSENT ORDER
FID: 84157)	
)	
Respondent.)	

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (“Department”) and Tecumseh Poultry, 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 129 of the Nebraska Administrative Code – *Air Quality Regulations*.

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.

II. JURISDICTION

3. 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 and Title 129.



4. The Department is further charged with the duty to act as the state air pollution control agency for all purposes of the Clean Air Act, as amended, 42 U.S.C. § 7401 *et seq.* NEB. REV. STAT. § 81-1504(4).

5. 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

6. The parties to this Consent Order are the Department and Respondent, Tecumseh Poultry, LLC, a Nebraska Limited Liability Company. This Consent Order is binding on the Department, Respondent, and any successors and assigns of the parties. Respondent does not make any admission with respect to any factual allegation contained in this Consent Order or to any liability to any third party.

IV. FINDINGS OF FACT

7. Respondent is engaged in the production of poultry and operates a facility (identified by Respondent as “MBA Broilers East”)—located at 62168 730 Road, Tecumseh, NE 68450—used for that purpose.

8. Respondent’s facility currently houses two “incinerator[s],” as defined in 129 NAC 1-002.50, each of which is an “emissions unit,” as defined in 129 NAC 1-002.37.

9. Emissions Unit 3 (“EU-3”) was constructed in or around 2009, pursuant to Air Quality Construction Permit Number CP09-005 (“Previous Construction Permit”).

10. Emissions Unit 4 (“EU-4”) was constructed in or around 2018, pursuant to Air Quality Construction Permit Number CP18-020 (“Active Construction Permit”), which superseded the Previous Construction Permit.

11. In or about November 2022, the Department issued to Respondent Air Quality Class II General Operating Permit Number GOP-INCIN-2022 (“Operating Permit”).

12. Pursuant to § II(I) of the Operating Permit, all applicable requirements contained in the Active Construction Permit are incorporated into the Operating Permit.

13. The NEPA outlaws violating any term or condition of an air pollution permit. NEB. REV. STAT. § 81-1506(4)(b).

14. The NEPA further prohibits violating any rule or regulation adopted and promulgated pursuant to the NEPA. NEB. REV. STAT. § 81-1508.02(1)(b).

15. On or about April 18, 2023, Respondent submitted to the Department a letter dated April 14, 2023 (“April 14 Letter”), disclosing that, with respect to both Emissions Unit 3 and Emissions Unit 4, “large sections of refractory were missing; there were gaps and holes around the lid; the seams and lids would not shut; and door gaskets were missing.”

16. Respondent further disclosed in the April 14 Letter that Emissions Unit 4 “was not being operated at the time of the inspection and has not been operated since due to the afterburner temperature not reaching the required 1600 °F.”

17. In the April 14 Letter, Respondent further stated, with respect to Emissions Unit 3:

The concerns with Avian Influenza and the possible spread by scavenging animals and transportation of chicken carcass off site carried too high of a risk. Therefore, Management determined that continuing to operate incinerator . . . EU-3 in [its] current condition was the best course of action for the business to avoid a possible outbreak of Avian Influenza within the farms and face the risk of a mass culling of the flock.

18. Finally, Respondent stated in the April 14 Letter that “return[ing] to compliance with incinerators . . . EU-3 and EU-4 will require purchasing two new Burn Easy incinerators to replace EU-3 and EU-4.”

FIRST CAUSE OF ACTION

19. From on or about March 8, 2023, to on or about the date of the execution of this Consent Order, Respondent violated a rule or regulation adopted and promulgated pursuant to the NEPA, to wit, 129 NAC 14-006, by operating an incinerator that did not consist of an adequate refractory lined combustion furnace, to wit, Emissions Unit 3, all in violation of Neb. Rev. Stat. § 81-1508.02(1)(b).

SECOND CAUSE OF ACTION

20. From on or about March 8, 2023, to on or about the date of the execution of this Consent Order, Respondent violated a condition of an air pollution control permit, to wit, § I(H)(2)(a)–(c) of the Operating Permit, by failing to properly operate and maintain Emissions Unit 3 in a manner that minimized the amount of uncontrolled pollutants that were released to the atmosphere, to wit, operating Emissions Unit 3 without first (1) repairing the gaps and holes around the lid, (2) repairing or replacing the non-closing lid, (3) repairing the seams that would

not shut, and (4) replacing the missing gaskets, all in violation of Neb. Rev. Stat. § 81-1506(4)(b).

THIRD CAUSE OF ACTION

21. From on or about March 8, 2023, to on or about the date of the execution of this Consent Order, Respondent violated a condition of an air pollution control permit, to wit, § I(H)(2)(a)–(c) of the Operating Permit, by failing to properly maintain Emissions Unit 4 in a manner that minimized the amount of uncontrolled pollutants released to the atmosphere, to wit, failing to (1) repair the gaps and holes around the lid, (2) repair or replace the non-closing lid, (3) repair the seams that would not shut, and (4) replace the missing gaskets, all in violation of Neb. Rev. Stat. § 81-1506(4)(b).

V. COMPLIANCE SCHEDULE

22. Respondent agrees to:

- a. Within 30 days of the execution of this Consent Order:
 - i. Purchase all equipment necessary to complete the “construction,” as defined in 129 NAC 1-002.28, of two incinerators to replace Emissions Unit 3 and Emissions Unit 4 (“necessary construction equipment”), unless such purchase has already been made, and
 - ii. Submit to the Department:
 - A. A copy of each invoice that documents the purchase of the necessary construction equipment,

- B.** Information related to the date on which the necessary construction equipment is expected to be delivered to Respondent,
 - C.** Any tracking number(s) associated with the shipment or delivery of the necessary construction equipment,
 - D.** A “complete,” as defined in 129 NAC 1-002.27, application for an Air Quality Construction Permit, and
 - E.** Attach to the Air Quality Construction Permit application referred to in ¶ 22(a)(ii)(D) the manufacturer’s certification of emissions for the incinerators purchased;
- b.** Notify the Department that the necessary construction equipment has been delivered within two business days of receipt;
- c.** Within 60 days of the delivery of the necessary construction equipment or 60 days of the Department issuing to Respondent an Air Quality Construction Permit, whichever is later:
 - i.** “Commence,” as defined in 129 NAC 1-002.25, and complete all “construction,” as defined in 129 NAC 1-002.28, related to the replacement of Emissions Unit 3 and Emissions Unit 4, and
 - ii.** Submit to the Department photographic evidence documenting the completion of the construction referred to in ¶ 22(c)(i) of this Consent Order;

- d. No later than 30 days after the completion of the construction referred to in ¶ 22(c)(i) of this Consent Order, submit to the Department a “complete,” as defined in 129 NAC 1-002.27, application for an Air Quality Class II General Operating Permit;
- e. Within 15 days of the issuance of the Air Quality Class II General Operating Permit, submit to the Department a certification, signed by the Responsible Official, stating that the incinerators are operating in compliance with the issued Air Quality Class II General Operating Permit; and
- f. Send all submissions and notifications required in ¶¶ 22(a)(ii)(A)–(C), 22(b), 22(c)(ii), and 22(e) of this Consent Order:
 - i. Via postal mail: Brad Pracheil, Administrator, Inspection and Compliance Division, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, NE 68509-98922, or
 - ii. Via electronic mail to: brad.pracheil@nebraska.gov; and
- g. Notwithstanding any other deadline imposed in ¶ 22 of this Consent Order, achieve full compliance with the provisions of this Compliance Schedule no later than 240 days after the execution of this Consent Order.

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

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

VII. RESERVATION OF RIGHTS

24. 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.

VIII. NEGATION OF AGENCY RELATIONSHIP

25. 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

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

X. EFFECTIVE DATE

27. This Consent Order shall become effective on the date it is signed by the Director of the Department or the Director's designee.

XI. TERMINATION

28. Upon completion of the Compliance Schedule, this Consent Order shall terminate upon order of the Department. Such order shall be issued within 90 days of the Department determining that the terms of the Compliance Schedule have been met.

XII. SEVERABILITY

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

XIII. SIGNATURES

30. For Respondent Tecumseh Poultry, LLC:

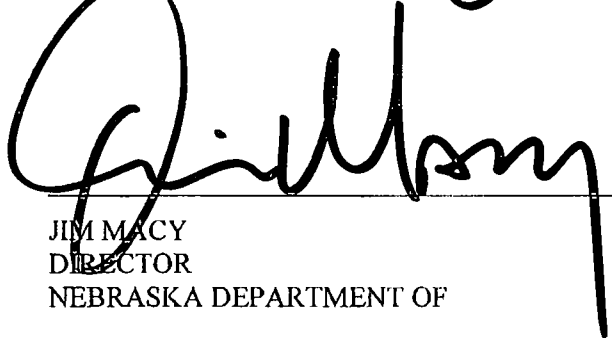


SCOTT PAVEL
SENIOR VICE PRESIDENT
TECUMSEH POULTRY, LLC

Date: 6/28/2023

31. For the Department:

IT IS SO ORDERED and agreed this 3rd day of July, 2023.



JIM MACY
DIRECTOR
NEBRASKA DEPARTMENT OF

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ENVIRONMENT AND ENERGY