

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF  
U.S. CHICORY, INC.,  
Respondent.

Case No. 3127  
COMPLAINT, COMPLIANCE ORDER,  
AND NOTICE OF OPPORTUNITY  
FOR HEARING

COMPLAINT

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing, is issued pursuant to Neb. Rev. Stat. § 81-1507(1) of the Nebraska Environmental Protection Act § 81-1501 *et seq* (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to herein as NDEQ). The Respondent is U.S. Chicory, Inc., a corporation authorized by the State of Nebraska, and doing business in Scotts Bluff County, Nebraska.

2. The Complainant, NDEQ, is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. § 81-1504(1) and (4) (Reissue 2008) of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.*, and all rules, regulations and permits promulgated thereunder. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. § 81-1504 (7) and § 81-1507 (Reissue 2008).

3. The Respondent owns and operates a chicory processing plant in Scotts Bluff County, Nebraska. The Respondent was issued an air quality construction permit related to the plant on April 25, 2007. The permit is in effect at all times material herein and provides in part as follows:

“XIII ...(D) PM/PM<sub>10</sub> emissions from the chicory processing equipment shall not exceed the following limits (3-hour or test method average) in the table below:

Emission Point	PM/PM <sub>10</sub> Emissions (lb/hr)
Dryer Cyclone #1 Stack	4.31
Dryer Cyclone #2 Stack	4.31
Dryer Cyclone #3 Stack	4.31
Dryer Cyclone #4 Stack	4.31
Dryer Cyclone #5 Stack	4.31



Dryer Cyclone #6 Stack	4.31
Dryer Cyclone #7 Stack	4.31
Dryer Cyclone #8 Stack	4.31
Rotary Drum Coolers <sup>a</sup>	0.01
Roaster	0.59
Roaster Cooler	0.01

<sup>a</sup>Only one cooler may operate at a time.

"(E) In order to demonstrate compliance with Condition XIII.(D) and to verify the assumptions used in the permit application, the source shall conduct a performance test for PM/PM<sub>10</sub> (both filterable and condensable) on at least one of the dryer cyclone stacks (#1-8), the rotary drum coolers stack, the roaster, and the roaster cooler. In addition, the performance test shall determine the PM/PM<sub>10</sub> control efficiency of the rotary drum dryer multiclones, and the rotary drum cooler and roaster cooler cyclones. The performance test shall be conducted in accordance with Conditions XIII. (F) and shall include quantification of the PM and PM<sub>10</sub> composition of the emissions from the above units. (Title 129, Chapter 34)

"(F) The performance tests required in Condition XIII.(E) must be completed and submitted to the Department as follows: (Title 129, Chapter 34)

- (1) Unless otherwise specified in this permit, the performance tests shall be conducted while operating at full capacity within 60 days after reaching the maximum capacity but not more than 180 days after the start-up of operations.
- (2) Testing methods shall be from 40 CFR 60 Appendix A, or other method approved by the NDEQ.
- (3) An emission testing protocol shall be submitted to the Department at least 45 days prior to testing.
- (4) The owner or operator of a source shall provide the Department 30 days notice prior to testing to afford the Department an opportunity to have an observer present.
- (5) The permittee shall monitor the operating parameters of process and control equipment during the performance testing required in the permit (e.g., production rate). The operating parameters shall be submitted with the test results.

(6) A certified written copy of the test results shall be provided to the Department within 45 days of completion of the test."

4. More than 180 days have passed since start-up of the Respondent's operations yet to the date of this order the respondent has failed to complete performance testing of any of the elements for which compliance testing was required in the permit. This failure is a violation of the permit.

#### COMPLIANCE ORDER

5. IT IS THEREFORE ORDERED that the Respondent shall on or before December 1, 2012, make all physical modifications necessary, including correcting cyclonic flow, building stacks and installing ports, and at the conclusion of such modifications perform the initial performance test of the dryer cyclones, rotary drum cooler, the roaster, and the roaster cooler, as required by the permit condition XIII.(E) of the construction permit of April 25, 2007. IT IS FURTHER ORDERED that the Respondent shall on or before June 30, 2012, identify in writing to NDEQ all such necessary physical modifications taken by the Respondent to that date; and as to all such modifications remaining to be implemented, the Respondent shall provide a written plan including a reasonable timeframe for completion of such measures before the required performance test.

#### NOTICE OF OPPORTUNITY TO REQUEST A HEARING

6. Pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2008) the Respondent has the right to apply for a hearing to contest a Complaint, and Compliance Order by making a request for such hearing to the Director no later than 30 days after service hereof. Nebraska Department of Environmental Quality, Rules of Practice and Procedure, Title 115, Chapter 7, provides the procedure of such hearings.

ADVISEMENT OF POSSIBLE PENALTIES

7. The NDEQ 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 NDEQ from pursuing such enforcement. Failure to obey this Order may result in fines of up to \$10,000 per day as set out in Neb. Rev. Stat. §81-1508.02 (Reissue 2008).

Dated: February 23 2012

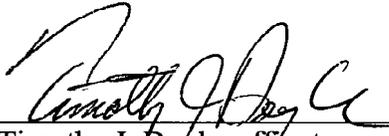
By:   
Michael J. Linder, Director  
Nebraska Department of  
Environmental Quality

AFFIDAVIT

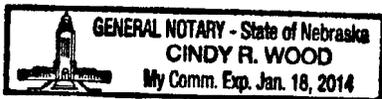
STATE OF NEBRASKA | SS  
COUNTY OF LANCASTER |

The undersigned oath deposes and says that on the 24<sup>th</sup> day of February, 2012, he caused an exact copy of the attached Complaint, Compliance Order on Consent, and Notice of Opportunity for Hearing, to be served by mailing the same in the regular United States Mail, first class, postage prepaid, certified with return receipt requested, addressed as follows:

C.D. Hergert  
U.S. Chicory, Inc.  
1424 Avenue B  
Scottsbluff, Nebraska 69361

  
Timothy J. Doyle, affiant

Subscribed and sworn to before me, a Notary Public, on the 24<sup>th</sup> day of February, 2012.



  
Notary Public