

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

BEFORE THE ADMINISTRATOR

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|------------------------------------|---|-----------------------------|
| IN THE MATTER OF |) | |
| |) | Docket No. CWA-07-2016-0061 |
| Gibbon Packing, LLC |) | |
| Gibbon, Nebraska |) | FINDINGS OF VIOLATION |
| |) | AND ORDER FOR COMPLIANCE |
| Respondent |) | |
| |) | |
| Proceeding under Section 309(a)(3) |) | |
| of the Clean Water Act, |) | |
| 33 U.S.C. § 1319(a)(3) |) | |
| _____ |) | |

I. Statutory Authority

1. This FINDINGS OF VIOLATION and ORDER FOR COMPLIANCE is issued to Respondent Gibbon Packing, LLC (hereafter “Respondent” or “Gibbon Packing, LLC” or “Gibbon Packing”) pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency (“EPA”), by Section 309(a)(3) of the Clean Water Act (“CWA” or the “Act”), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator to the Regional Administrator, EPA Region 7, and further delegated to the Director, Water, Wetlands and Pesticides Division, EPA Region 7.

2. Section 301(a) of the Act, 33 U.S.C. § 1311 (a), prohibits discharge of pollutants from a point source into navigable waters of the United States, except in compliance with, inter alia, Sections 307 and 402 of the Act, 33 U.S.C. §§ 1317 and 1342. Section 402 provides that pollutants may be discharged into navigable waters of the United States only in accordance with the terms of a National Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to that section. Section 307 provides for the promulgation of regulations establishing pretreatment standards for introduction of pollutants into publicly owned treatment works (“POTW”).

3. Pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b), EPA promulgated regulations codified at 40 C.F.R. Part 403, entitled the General Pretreatment Regulations. These regulations control the introduction of pollutants by industrial users into POTWs which may pass through or interfere with treatment processes of such treatment works, or which may contaminate sewage sludge.

4. The General Pretreatment Regulations at 40 C.F.R. § 403.3(i) and (n) set forth definitions for interference and pass through, respectively. Specifically:

- a. "Interference" is defined, in pertinent part, as a discharge of pollutants, which alone or in conjunction with other sources, inhibits or disrupts the treatment processes or operations of a POTW, and which therefore is a cause of a violation of any requirement of a POTW's NPDES permit; and
- b. "Pass through" is defined, in pertinent part, as a discharge of pollutants which exits a POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with other sources, is a cause of a violation of any requirement of a POTW's NPDES permit.

5. 40 C.F.R. § 403.5(a) sets forth general prohibitions that users shall not introduce pollutants into a POTW which result in the "pass through" of pollutants through the POTW, or "interference" with the operations of the POTW.

6. A "Significant Industrial User" is defined by 40 C.F.R. § 403.3(t)(ii) as a contributing industry that has (1) a flow of 25,000 gallons or more per average workday, or (2) has an average daily flow or load greater than five percent (5%) of the flow or load carried by the POTW or (3) has significant impact on the POTW or the quality of the POTW's effluent.

7. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), requires NPDES permits for storm water discharges "associated with industrial activity."

8. EPA regulations define the term "storm water discharge associated with industrial activity" as "the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." See 40 C.F.R. § 122.26(b)(14). Section 502(12) of the Act, 33 U.S.C. § 1362(12) defines the term "discharge of a pollutant" to include "any addition of any pollutant to navigable waters from any point source." 33 U.S.C. § 1362(12).

9. “Pollutants” within the meaning of the CWA include “biological materials . . . and industrial . . . and agricultural waste discharged into water.” 33 U.S.C. § 1362(6). Navigable waters are “waters of the United States.” 33 U.S.C. § 1362(7).

10. Persons who discharge or who propose to discharge “storm water associated with industrial activity” are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. 40 C.F.R. § § 22.21(a) and (c).

11. The Nebraska Department of Environmental Quality (“NDEQ”) is the state agency with the authority to administer the federal NPDES program. EPA authorized Nebraska to administer the NPDES program pursuant to Section 402(b) of the CWA, 33 U.S.C. § 1342(b), in June of 1974, and later authorized Nebraska to administer the Pretreatment Program in September of 1984. NDEQ has issued general storm water permits for industrial sites, which govern and set forth conditions for stormwater discharges associated with industrial activity, including prohibitions of discharges not authorized by the permits.

II. Findings of Violations

General Allegations

12. EPA retains concurrent enforcement authority under Sections 309 of the CWA, 33 U.S.C. §§ 1319 for violations of the NPDES and pretreatment programs.

13. Respondent does business as Gibbon Packing, LLC (hereafter, “Gibbon Packing”). Respondent is incorporated in, and doing business in, the State of Nebraska.

14. Respondent is a “person” within the meaning of Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

15. At all times relevant to this action, Respondent was, and still is, the owner and/or operator of a cattle slaughter and hide processing facility located at 218 East Highway 30, P.O. Box 730, Gibbon, Nebraska 68840 (“the Facility”).

16. The City of Gibbon (“the City”), Nebraska is a “person” as defined by Section 502 of the Act, 33 U.S.C. § 1362(5), that owns and operates a POTW for the treatment of both domestic and industrial wastewater, including a treatment facility (“Treatment Facility”) that includes two covered anaerobic lagoons and three sequencing batch reactors (“SBR”).

17. Wood River is considered a “navigable water” of the United States, as defined by Section 502(7) of the CWA, 33 U.S.C. § 1362(7).

18. The City’s POTW is a “point source” that “discharges pollutants” into the Wood River, as these terms are defined by Section 502(14) and (12) of the CWA, respectively, 33 U.S.C.

§ 1362(14) and (12). The City's discharge of pollutants from its POTW requires a NPDES permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. Effective June 1, 2007, NDEQ issued the City's POTW a NPDES permit that established the terms and conditions for authorized discharges to the Wood River (Permit No. NE0029297). Effective October 1, 2012, NDEQ reissued the City's POTW's NPDES permit ("2012 City Permit").

20. Respondent directly discharges non-contact cooling water to the Wood River via Outfall 001, and therefore is a "point source" that "discharges pollutants" into waters of the United States, as these terms are defined by Section 502(14) and (12) of the CWA, respectively, 33 U.S.C. § 1362(14) and (12).

Pretreatment

21. Respondent Gibbon Packing discharges process wastewater from the Facility into the City's POTW, and therefore is an "industrial user," as defined by 40 C.F.R. § 403.3(h). Respondent's discharges to the POTW constitute an estimated 90-95% of total loadings of Biochemical Oxygen Demand ("BOD"), Total Suspended Solids ("TSS"), and ammonia treated by the POTW.

22. Gibbon Packing is a Significant Industrial User based on discharges to the City's POTW in excess of 25,000 gallons of wastewater per day, discharging greater than 5% of loadings, and potential to impact the POTW.

23. Respondent's wastewater is a "pollutant," and contains "pollutants," as defined by Section 502(6) of the CWA.

24. On or about October 1, 2007, Respondent's facility was issued a NPDES/Nebraska Pretreatment Permit ("NPP") by NDEQ (2007 Permit, Permit No. NE0124061). This permit was reissued on or about September 20, 2014 (2014 Permit).

25. Respondent's 2007 and 2014 Permits authorized only the discharge of non-contact cooling water via Outfall 001. The 2007 and 2014 Permits did not establish numeric limits on pollutants for Outfall 001. Respondent's 2007 and 2014 Permits also established numeric limits on pollutants contained in the wastewater discharged to the POTW via Outfall 002 (Beef Slaughter Process wastewater) and Outfall 003 (Hide Process wastewater). The numeric limits for Outfalls 002 and 003 were based on the design capacity of the City's POTW/Treatment Facility and therefore were intended to prevent "interference" and/or "pass through" at the POTW/Treatment Facility. Respondent's Permits also require monitoring and reporting of monitoring results to NDEQ by discharge monitoring reports ("DMRs").

26. Part III.B (Prohibited Discharge Standards) of Respondent's 2007 and 2014 Permits also prohibits discharges that cause and/or contribute to "interference" and/or "pass through." In addition to the requirements of Respondent's 2007 and 2014 Permits, Respondent is also subject to the General Pretreatment Regulations at 40 C.F.R. Part 403, including the prohibition of causing and/or contributing to the "interference" and/or the "pass through" of pollutants at the POTW.

27. As an industrial discharger to the City's POTW, Gibbon Packing is also subject to the City's municipal ordinance which requires Respondent to pay surcharges for discharges to the POTW above specified limits, based on monitoring performed by the City.

Stormwater

28. NDEQ issued and implemented a General Permit for the discharge of industrial stormwater in 1997 (Permit number NE-R000000, "1997 NDEQ General Permit"). In 1998 Respondent received authorization under the 1997 NDEQ General Permit (Permit authorization NE-R000206). NDEQ reissued the General Permit in July 2011 ("2011 NDEQ General Permit"). Respondent submitted a Notice of Intent to discharge under the 2011 NDEQ General Permit on or about August 9, 2012, and received authorization number NE-R900567, effective August 14, 2012.

29. Section 1.1.4.1 of the 2011 NDEQ General Permit, as applicable to the Respondent's Gibbon facility, authorizes only discharges composed entirely of stormwater.

30. Sections 4.1.1 and 4.1.2 and 8.U.5 of the 2011 NDEQ General Permit, as applicable to the Respondent's Gibbon facility, requires that at least quarterly qualified personnel perform and document the inspection of areas of the Facility exposed to stormwater, and more frequently as appropriate.

31. Section 4.2.1 of the 2011 NDEQ General Permit, as applicable to the Respondent's Gibbon facility, requires that at least quarterly qualified personnel collect samples and perform visual assessments of stormwater discharges for the presence of various parameters that would indicate the discharge of unauthorized pollutants (including but not limited to floating solids, suspended solids, sheen, and "other obvious indicators of stormwater pollution).

32. Sections 4.3.1 and 4.3.2 of the 2011 NDEQ General Permit, as applicable to the Respondent's Gibbon facility, requires that qualified personnel annually conduct and document a comprehensive site evaluation of all areas covered by the permit, potential discharges and the effectiveness of the controls. Section 4.3.2, the General Permit requires the permittee to take and document appropriate corrective actions to address observed deficiencies.

33. Section 6.2.1 of the 2011 NDEQ General Permit, as applicable to the Respondent's Gibbon facility, requires that a permittee conduct quarterly benchmark testing (for the first 4

quarters of the permit term) of monitoring data to determine the overall effectiveness of control measures to prevent pollution from entering stormwater. Section 6.2.1 of the General Permit requires a permittee to take appropriate actions and to document corrective actions necessary to address detected bench mark exceedances.

34. Section 5 of the 2011 NDEQ General Permit, as applicable to the Respondent's Gibbon facility, requires that a permittee prepare and implement a Stormwater Pollution Prevention Plan (SWPPP).

EPA's investigations

35. During the period between June 2011 and the date of issuance of this Order, the City has been in nearly continuous non-compliance with the City's 2012 NPDES permit limits for ammonia (NH₃). Additionally, the City has repeatedly violated the City's applicable NPDES permit's limits for chloride, BOD and TSS, and has also violated the applicable permit's limits for whole effluent toxicity (See Attachment 1 to this Order).

36. During October 20 – 24, 2014, EPA conducted inspections of both the City's POTW and Respondent's Gibbon facilities to determine compliance with the CWA, including investigating the potential impact of discharges of Respondent Gibbon Packing on the ability of the City to comply with its applicable NPDES permit.

37. On or about, July 8, 2015, EPA issued the City of Gibbon and Respondent Gibbon Packing a Request for Information, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. 1318. Respondent's response to the July 2015 Request was received by EPA on about August 14, 2015. The City's response to the July 2015 Request was received by EPA on or around August 17, 2015.

38. Through the date of issuance of this Order, EPA has reviewed available information and documentation from EPA's investigations and NDEQ that describe both the City of Gibbon's and Gibbon Packing's noncompliance with the applicable NPDES, pretreatment and/or industrial stormwater permits. From at least the date of EPA's 2014 inspection to the present, Respondent has been aware of the City of Gibbon's non-compliance with the City's NPDES permit. As alleged below, thru the date of issuance of this Order, Respondent has violated 40 C.F.R. 403.5 and the NPDES/NPP and stormwater permits applicable to its Gibbon facility.

Count 1

Violations of Respondent's 2007 and 2014 NPDES/NPP Permits

39. Paragraphs 1 to 38, above, are hereby incorporated by reference.

40. During no less than the occasions described in Attachment 2 to this Order, Respondent's discharges of wastewater thru Outfall 001 contained pollutants (Oil and Grease)

other than non-contact cooling water in violation of the specific authorization for discharges of only non-contact cooling water as set forth in the 2007 and 2014 NPDES/NPP permits.

41. During no less than the occasions described in Attachment 3 to this Order, Respondent violated the numeric limits for Outfall 002 (Slaughter facility) and/or Outfall 003 (Hide) as set forth in the 2007 and 2014 NPDES/NPP permits. These violations include, but are not limited to, violations of these permits' limits for Oil and Grease, BOD, TSS and chlorides.

42. Respondent's pollutant discharges to Outfall 001, or to the POTW thru Outfalls 002 and/or 003 (via the POTW's collection system), in violation of the applicable 2007 and/or 2014 NPDES/NPP permits are violations of Section 301(a), 307(d) and 402 of the CWA, 33 U.S.C. §§ 1311(a), 1317(d) and 1342.

Count 2
Violations of the prohibition against Interference and Pass through

43. The facts stated in Paragraphs 1 through 42 above, are incorporated herein by reference.

44. Under 40 C.F.R Part 403 and the 2014 NPDES/NPP permit, Respondent is prohibited from the discharge of pollutants which cause or contribute to interference or process upset at the City's treatment facility, or that cause or contribute to the pass through of pollutants in violation of the City's NPDES permit.

45. The City violated the limits of the 2007 and 2012 NPDES Permits on no less than the occasions indicated in Attachment 1 to this Order.

46. Additionally, during the EPA inspection in 2014, the EPA observed and documented that the City of Gibbon's Treatment Facility was not operating as designed. Specifically, at the time of EPA's inspection, the City was operating only one of the three sequencing batch reactors at the Treatment Facility, and had also been operating without one or two reactors for much of the prior two years, although loadings from Respondent's facility to the POTW had increased during this period.

47. During no less than the period of violations described in Count 1, above, and set forth in Attachment 3 to this Order, Respondent discharged an estimated 90 percent of the loadings to the POTW, and caused and/or contributed to the pass through of pollutants in violation of the City's NPDES permit and/or the interference of the POTW's treatment processes and operations.

48. The occasions of pass through and/or interference by Respondent described above, are violations of the General Pretreatment Regulations at 40 C.F.R. 403.5(a)(1), the Respondent's 2014 NPDES/NPP permit and Sections 301(a) and 307(d) of the CWA, 33 U.S.C. §§ 1311(a) and 1317(d).

Count 3
Violations of 2011 NDEQ General Permit (Stormwater)

49. Paragraphs 1 to 48, above, are hereby incorporated by reference.
50. During no less than the period of violations described in Attachment 2 to this Order, Respondent's discharges of wastewater thru Outfall 001 contained pollutants (Oil and Grease) other than stormwater, in violation of the specific authorization for discharges of only stormwater, in violation of Section 1.1.4.1 of the 2011 NDEQ General Permit.
51. At the time of EPA's 2014 inspection, Respondent provided EPA inspection reports (dated December 23, 2013, January 25, 2014, April 24, 2014, and August 30, 2014) that failed to meet the required elements for stormwater inspection and/or documentation of inspection, in violation of Sections 4.1.1 and 4.1.2 and 8.U.5 of the 2011 NDEQ General Permit.
52. During the third quarter of 2013 (July to August) and the first quarter of 2014 (January to March), Respondent failed to collect samples and perform visual assessments of stormwater discharges for the presence of required parameters, in violation of Section 4.2.1 of the 2011 NDEQ General Permit.
53. For the year of 2013, Respondent failed to conduct and/or document an annual comprehensive stormwater site evaluation, in violation of Sections 4.3.1 and 4.3.2 of the 2011 NDEQ General Permit.
54. During 2013 and 2014 Respondent performed benchmark testing and the results of these samples exceeded the General Permit's benchmarks that required corrective action. At the time of EPA's inspection, Respondent was not able to produce documentation demonstrating that appropriate action was taken in response to benchmark exceedances. Respondent failed to take appropriate actions to address the results of benchmark testing that exceeded the General Permit's benchmarks designed to determine the effectiveness of the Respondent's controls, in violation of Section 6.2.1 of the 2011 General Permit.
55. Respondent's violations of its authorization to discharge stormwater under the 2011 DEQ's General permit, are violations of Section 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p).

III. Order for Compliance

Based on the foregoing Findings of Violation, and pursuant to the authority of Sections 309(a)(3) of the Act, 33 U.S.C. § 1319(a)(3), Respondent Gibbon Packing, LLC, is hereby ORDERED AS FOLLOWS:

Pretreatment Compliance

56. Within five (5) business days of the effective date of this Order, Respondent shall submit to EPA and NDEQ (pursuant to Paragraph 69, below) a written description of the immediate interim measures that Respondent shall take to reduce pollutant loadings in the discharges of its wastewater to the POTW in order to achieve compliance with its 2014 NPDES/NPP Permit. Respondent shall perform these interim measures until such time as the Pretreatment Compliance Plan required by Paragraph 57, below, can be developed, approved by EPA, and implemented by Respondent.

57. Within fifteen (15) calendar days of the effective date of this Order, Respondent shall provide EPA a proposed Pretreatment Compliance Plan for EPA's review and comment that shall describe in detail how Respondent will achieve compliance with its Nebraska Pretreatment Permit, and how Respondent shall come into compliance with 40 C.F.R. Part 403. At a minimum, the proposed Pretreatment Compliance Plan shall include:

- a. A description of any process changes Respondent proposes to undertake at the Gibbon facility to reduce loadings of pollutants in the wastewater discharged to the POTW;
- b. A description of wastewater treatment installations or modifications Respondent proposes to undertake at the facility to eliminate or reduce the quantity of the pollutants in its wastewater discharge to the POTW to achieve compliance with the discharge limits in the 2014 NPDES/NPP permit;
- c. A description of any proposed modifications and/or additions to the POTW that will improve the ability of the POTW to treat Respondent's wastewater; and
- d. A schedule for implementation of the proposed action(s) to be completed no later than October 1, 2016.

58. Required Communication with the City of Gibbon to prevent interference and/or pass through: Within five (5) days of the effective date of this Order, Respondent shall create a Communications Logbook for the purpose recording all communications between Gibbon Packing and the City regarding the City's POTW's ability to treat loadings from Gibbon Packing and obtain and maintain compliance with the City's NPDES Permit.

59. Respondent shall memorialize and place records/copies of all communications with the City and/or the City's representatives regarding the City's compliance with the City's NPDES

permits and/or the treatment of Gibbon Packing loadings to the POTW into the Communications Logbook (including, but not limited to, telephone conversation records, emails, and meeting minutes).

60. At least once per seven (7) days, Respondent shall contact the operator of the City of Gibbon's POTW and inquire and obtain copies of the results of all samples taken by the City to determine the POTW's compliance with its applicable NPDES permit during the prior seven (7) days, and copies of the results of all samples taken by the City to bill Respondent for its loadings to the POTW. Respondent shall inquire and document the City's POTW's current operational status and expected ability to treat expected loadings from Gibbon Packing and to maintain compliance with the City's NPDES Permit. A record of communication that documents these communications between the City and Respondent shall be placed in the Communications Logbook that includes at a minimum the following information:

- a. The sample results provided by the City to determine compliance with the applicable NPDES permit limits (daily maximum, weekly average and monthly average);
- b. The reported operational status of treatment equipment at the POTW (Sequencing Batch Reactors, pacing weir, etc.);
- c. The date and time of the communication(s); and
- d. The names of all representatives of the City and the Respondent involved in the communication(s).

61. In the first month of each calendar quarter (January, April, July and October, Respondent shall contact the operator of the City of Gibbon's POTW and obtain a copy of the quarterly report of DMRs submitted by the City to NDEQ for the prior calendar quarter.

62. Respondent shall take timely and appropriate actions to limit and/or reduce its loadings to the City's POTW as necessary to prevent "interference" and/or "pass through" and violations of the prohibition of 40 C.F.R. 403.5.

Industrial Stormwater Compliance

63. Stormwater Compliance: Within fifteen (15) days of the effective date of this Order, Respondent shall take whatever corrective action is necessary to correct the deficiencies and eliminate and prevent recurrence of the violations cited in Count 3 above, and to come into compliance with all of the applicable requirements of its industrial stormwater permit (currently the 2011 NDEQ General Permit).

64. Within the first required quarterly report, Respondent shall provide a written description of the compliance actions by Respondent to correct the deficiencies and eliminate and prevent recurrence of the violations cited in Count 3, above.

65. At least once per seven (7) days, Respondent shall visually inspect and take a date stamped photo of the wet well from which Outfall 001 discharges for the presence of Oil and Grease, and document whether Oil and Grease is present in a written report.

66. Respondent shall take timely and appropriate actions to identify, document and eliminate the source(s) of any observed Oil and Grease in the wet well from which Outfall 001 discharges, and document the actions taken in a written report.

Quarterly Reporting

67. Beginning July 28, 2016, Respondent shall submit to EPA a Quarterly Report (postmarked no later than January 28, April 28, July 28 and October 28). Quarterly Reports shall be submitted until Respondent is notified by the EPA that the reporting may cease or this Order is terminated pursuant to Paragraph 79, below. The Quarterly Report shall contain the following information regarding actions taken to comply with this Order during the prior calendar quarterly period (January to March; April to June; July to September; October to December):

- a. Copies of all records of communication with the City, as required by Paragraphs 58 to 61, above;
- b. Copies of all sample results received from the City, as required by Paragraph 60, above ;
- c. Copies of all inspections reports required by the applicable industrial stormwater permit;
- d. Copies of all inspection reports of the wet well from Outfall 001 discharges, as required by Paragraph 65, above;
- e. A detailed description of all actions taken to comply the applicable NPDES/NPP and industrial stormwater permits;
- f. A detailed description of all actions taken to implement Respondent's Pretreatment Compliance Plan;
- g. A detailed description of all actions taken to prevent interference and pass through, in violation of 40 C.F.R. 403.5 and the 2014 NPDES/NPP permit; and
- h. A detailed description of all actions taken to identify, document the sources of, and eliminate Oil and Grease from discharging from Outfall 001, as required by Paragraph 66, above.

EPA Review of Required Submittals

68. EPA will review all proposed submittals (Pretreatment Compliance Plan), and notify Respondent in writing of EPA's comments on the submittal, or any part thereof. Within fifteen (15) days of receipt of EPA's comments pertaining to any submittal, Respondent shall provide a written response to EPA's comments, and resubmit same to EPA.

69. All documents required for submittal to EPA (including the Pretreatment Compliance Plan, and other documents required to be submitted pursuant to this Order) shall be hand delivered or sent by certified mail, return receipt requested, to the following:

Mr. Paul Marshall
Pretreatment Coordinator
Water Enforcement Branch
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
11201 Renner Blvd
Lenexa, Kansas 66219;

with copies also transmitted to:

Steve Goans
Nebraska Department of Environmental Quality
1200 N Street, Suite 400, The Atrium
Lincoln, Nebraska 68509-8922

General Provisions

Effect of Compliance with the Terms of this Order

70. Compliance with the terms of this Order shall not relieve the Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

71. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. The EPA retains the right to seek any and all remedies available under Sections 309(b), (c), (d) or (g) of the CWA, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

72. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect the Respondent's facility, and/or to request additional information from the Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

73. If any provision or authority of this Order, or the application of this Order to the Respondent, is held by federal judicial authority to be invalid, the application to the Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Parties Bound

74. This Order shall apply to and be binding upon the Respondent, its agents, successors and assigns. Respondent shall ensure that any directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for it with respect to matters included herein comply with the terms of this Order.

Failure to Comply

75. Failure to comply with the terms of this Order may result in your liability for significant statutory civil penalties for each violation under Section 309(d) of the CWA, 33 U.S.C. § 1319(d), as modified by 40 C.F.R. Part 19. Upon suit by EPA, the United States District Court for the District of Nebraska may impose such penalties if, after notice and opportunity for a hearing, the court determines that you have violated the Act as described above and failed to comply with the terms of this Order. In determining the amount of any penalty the court will consider the seriousness of your violations, your economic benefit resulting from the violations, any history you may have of such violations, any good faith efforts you have made to comply with legal requirements, the economic impact a penalty may have upon you, and such other matters as justice may require. The district court has the authority to impose separate civil penalties for any violations of the CWA and for any violations of this Order.

Judicial Review

76. Respondent has the right to seek immediate federal judicial review of the Order pursuant to Chapter 7 of the Administrative Procedure Act, 5 U.S.C. § 701-706. Section 706, which is set forth at <http://uscode.house.gov/download/pls/05C7.txt>, provides the grounds for such review.

Opportunity to Confer

77. Respondent has the opportunity to confer with and/or submit information to EPA concerning the validity of this Order, including the basis for the Order, the terms of the Order, and the applicability of this Order to the Respondent. Within ten (10) days of receipt of this Order, Respondent may request a conference regarding the Order or to submit information to the EPA. If Respondent requests a conference or wishes to submit information, the conference or submission of information shall take place within twenty (20) days of receipt of this Order. EPA shall deem a failure to request a conference or to submit information as a waiver of the opportunity to confer.


Effective Date

78. The terms of this Order shall be effective and enforceable against Respondent thirty (30) days after receipt of an executed copy of the Order. Deadlines for submittals or performance may be extended by EPA, at its sole discretion, without further amendment to this Order. EPA will provide Respondent written confirmation and documentation of any such extensions of time.

Termination

79. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of EPA. Such notice shall not be given until all of the requirements of this Order have been met.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY


for Karen Flournoy, Director
Water, Wetlands and Pesticides Division


Howard C. Bunch
Senior Assistant Regional Counsel

CERTIFICATE OF SERVICE

I further certify that on the date noted below I sent by email, telefax and certified mail, return receipt requested, a true and correct copy of the signed original Findings of Violation and Order for Compliance to:

Gibbon Packing, LLC
Attention: Charles Austen, Safety Manager
and Rusty Oliver, Vice President of Operations
218 East Highway 30, P.O. Box 730
Gibbon, Nebraska 68840

and a true and correct copy by email and regular, first class mail to:

Steve Goans
Nebraska Department of Environmental Quality
1200 N Street, Suite 400, The Atrium
Lincoln, Nebraska 68509-8922

6-8-2016
Date



| New Permit Limits in effect Oct 1, 2012 | FLOW | Chlorides | | | | NH3 | | | |
|--|------|---------------|----------|-----------|-----------|---------------|-----------|------------|------------|
| | | Concentration | | Mass | | Concentration | | Mass | |
| | | Dmax | Mo.avg | Dmax | Mo.avg | Dmax | Mo.avg | Dmax | Mo.avg |
| | | 483 mg/l | 241 mg/l | 2445 kg/d | 1219 kg/d | 2.32 mg/l | 1.16 mg/l | 11.73 mg/l | 24.96 kg/d |
| | | 399 mg/l | 199 mg/l | 1946 kg/d | 970 kg/d | 5.01 mg/l | 2.50 mg/l | 24.40 mg/l | 20.84 kg/d |
| Oct-12 | | 21.5 | 21.7 | 5265.4 | 3983.2 | 35 | 14.6 | 177.7 | 82.3 |
| Nov-12 | | 512 | 462 | 3247.5 | 2701.6 | 36.5 | 15.1 | 197.6 | 84.8 |
| Dec-12 | | 922 | 711 | 5196.1 | 3576.4 | 10.2 | 8.1 | 58.8 | 40.9 |
| Jan-13 | | 496 | 361 | 2915 | 2129 | 36.5 | 24.6 | 214.5 | 145.4 |
| Feb-13 | | 501 | 400 | 2973 | 1782 | 33 | 23.8 | 151.2 | 94.5 |
| Mar-13 | | 429 | 354 | 1847 | 1590 | 22 | 16 | 134.14 | 91.61 |
| Apr-13 | | 340 | 330 | 1933 | 1825 | 41.9 | 38.4 | 225.54 | 211.97 |
| May-13 | | 319 | 277 | 1773 | 1431 | 69.8 | 54.5 | 405.3 | 290.9 |
| Jun-13 | | 241 | 167 | 980 | 604 | 64.6 | 34.3 | 214.9 | 140.8 |
| Jul-13 | | 206 | 154 | 1175 | 698 | 44 | 31.9 | 251 | 154.5 |
| Aug-13 | | 128 | 110 | 745.1 | 488.9 | 16.6 | 13.5 | 96.6 | 75.6 |
| Sep-13 | | 113 | 106 | 555.3 | 489.1 | 15.3 | 11.1 | 5.2 | 52.4 |
| Oct-13 | | 298 | 204 | 2140 | 1211 | 75.5 | 30.8 | 422.4 | 171 |
| Nov-13 | | 227 | 209 | 1261 | 1065 | 72 | 56.6 | 400 | 284 |
| Dec-13 | | 241 | 227 | 1530 | 1289 | 63.4 | 50.6 | 328.3 | 285.7 |
| Jan-14 | | 249 | 235 | 1631.1 | 1509.5 | 31.1 | 17.9 | 197.5 | 17.9 |
| Feb-14 | | 234 | 245 | 158.7 | 147 | 78 | 45.3 | 477.6 | 271.7 |
| Mar-14 | | 227 | 234 | 1353.3 | 1331.2 | 41.3 | 17.2 | 232.6 | 97.2 |
| Apr-14 | | 216 | 190 | 1373 | 1125 | 48.5 | 31.1 | 293.3 | 183.6 |
| May-14 | | 255 | 205 | 1369 | 1146 | 16.1 | 9.28 | 92.53 | 53.1 |
| Jun-14 | | 262 | 220 | 1668 | 1348 | 17.2 | 6.33 | 104.03 | 38.37 |
| Jul-14 | | 177 | 204 | 1585 | 1188 | 106.5 | 59.96 | 565.49 | 342.49 |
| Aug-14 | | 184 | 167 | 1004 | 928 | 54 | 28.05 | 306 | 159 |
| Sep-14 | | | 153 | 1113 | 900 | 43.5 | 35.3 | 260.67 | 205.27 |
| Oct-14 | | 213 | 179 | 1296 | 1063 | 84 | 66.78 | 499.99 | 395 |
| Nov-14 | | 191 | 184 | 1119 | 1037 | 83 | 50 | 439 | 281 |
| Dec-14 | | 191 | 155 | 1155 | 926 | 40.7 | 21.8 | 246.2 | 130 |
| Jan-15 | | 142 | 105 | 1073.5 | 745.2 | 73.3 | 21.7 | 554.1 | 161.3 |
| Feb-15 | | 140 | 126 | 1058 | 920 | 61 | 46.3 | 461.1 | 338.5 |
| Mar-15 | | 170 | 153 | 1149 | 1112 | 45.4 | 32.9 | 343.22 | 239.16 |
| Apr-15 | | 227 | 2.16 | 1543 | 1386 | 11.8 | 6.7 | 73.11 | 42.72 |
| May-15 | | 186 | 174 | 1026 | 972 | 0.2 | 0.13 | 1.09 | 0.7 |
| Jun-15 | | 156 | 132 | 929 | 770 | 2.7 | 1.28 | 12.81 | 7.51 |
| Jul-15 | | 206 | 174 | 1354 | 998 | 0.6 | 0.45 | 6.8 | 2.42 |
| Aug-15 | | 213 | 164 | 1369 | 1055 | 11.5 | 3.08 | 73.9 | 19.76 |
| Sep-15 | | 213 | 187 | 1449 | 1271 | 28.9 | 13.93 | 196.64 | 94.75 |
| Oct-15 | | 163 | 115 | 844 | 587 | 18.7 | 6.04 | 97.55 | 31.23 |
| Nov-15 | | 178 | 123 | 908 | 633 | 1.6 | 0.9 | 9 | 4.8 |
| Dec-15 | | 163 | 110 | 840 | 574 | 21 | 9.9 | 108 | 51.32 |
| Jan-16 | | 121 | 95.5 | 642.19 | 827.26 | 5.4 | 3.125 | 36.22 | 20.71 |
| Feb-16 | | 191 | 125.25 | 1273.71 | 825.04 | 12.3 | 4 | 82.02 | 26.68 |
| Mar-16 | | 199 | 107 | 1322.02 | 687.52 | 48.9 | 17.06 | 324.85 | 111.34 |

| | FLOW | CBOD | | | | TSS | | | |
|--------|------|---------------|---------|----------|----------|---------------|---------|----------|----------|
| | | Concentration | | Mass | | Concentration | | Mass | |
| | | 7 DA AVG | Mo Avg | 7 DA AVG | Mo Avg | 7 DA AVG | Mo Avg | 7 DA AVG | Mo Avg |
| | | mg/l | mg/l | kg/d | kg/d | mg/l | mg/l | kg/d | kg/d |
| | | 45 | 30 kg/d | 341 | 227 kg/d | 45 | 30 kg/d | 341 | 227 kg/d |
| Oct-12 | | 12 | 10 | 70.9 | 57.4 | 11 | 6 | 57.5 | 32.3 |
| Nov-12 | | 9 | 6 | 36.7 | 24.9 | 9 | 6 | 50.7 | 32.9 |
| Dec-12 | | 8 | 5 | 47.4 | 26.1 | 7 | 5 | 41.6 | 29.7 |
| Jan-13 | | 16 | 9 | 94 | 53 | 12 | 6 | 70.5 | 33.8 |
| Feb-13 | | 12 | 8 | 47 | 28 | 11 | 2 | 57 | 33 |
| Mar-13 | | 15 | 10 | 56 | 43 | 12 | 9 | 71 | 48 |
| Apr-13 | | 20 | 18 | 113.7 | 99.9 | 17 | 16 | 96.6 | 88.7 |
| May-13 | | 25 | 14 | 161.6 | 77.7 | 20 | 18 | 129.3 | 93.1 |
| Jun-13 | | 23 | 15 | 92.2 | 47.8 | 27 | 16 | 124.5 | 65.5 |
| Jul-13 | | 39 | 20 | 196.1 | 91.2 | 29 | 1 | 145.8 | 83.6 |
| Aug-13 | | 10 | 7.5 | 58.2 | 42.4 | 20 | 16 | 105.8 | 87.9 |
| Sep-13 | | 7 | 5.5 | 34.4 | 25.8 | 12 | 8 | 51.3 | 35.5 |
| Oct-13 | | 31 | 16 | 173 | 91 | 55 | 35 | 308 | 197 |
| Nov-13 | | 54 | 34 | 261 | 172 | 50 | 41 | 242 | 206 |
| Dec-13 | | 16 | 12 | 82.8 | 68.4 | 30 | 25 | 215 | 195 |
| Jan-14 | | 20 | 8 | 130.8 | 52 | 40 | 24.4 | 208.1 | 121.7 |
| Feb-14 | | 23 | 16 | 140.8 | 96.5 | 40 | 28 | 257 | 170.3 |
| Mar-14 | | 18 | 10.5 | 102 | 59.7 | 30 | 20.8 | 169 | 117.6 |
| Apr-14 | | 16 | 9.5 | 96.8 | 56.4 | 67 | 28 | 405.2 | 165.3 |
| May-14 | | 17 | 12 | 90 | 67 | 28 | 15.2 | 169 | 85 |
| Jun-14 | | 8 | 6 | 49 | 35 | 15 | 10 | 69 | 61 |
| Jul-14 | | 23 | 12 | 139 | 73 | 30 | 24 | 137 | 181 |
| Aug-14 | | 25 | 14 | 142 | 78 | 20 | 16 | 113 | 89 |
| Sep-14 | | 21 | 15.5 | 127 | 91 | 85 | 41 | 514 | 245.7 |
| Oct-14 | | 43 | 28 | 262 | 167 | 153 | 67 | 868 | 391 |
| Nov-14 | | 36 | 14 | 211 | 79 | 50 | 30 | 293 | 169 |
| Dec-14 | | 16 | 11 | 97 | 65.8 | 45 | 29 | 266 | 174 |
| Jan-15 | | 9 | 6 | 68 | 41.2 | 30 | 22 | 226.8 | 158.9 |
| Feb-15 | | 12 | 8 | 862 | 549 | 93 | 46 | 670 | 338 |
| Mar-15 | | 11 | 9 | 83 | 66 | 60 | 333 | 453 | 244 |
| Apr-15 | | 17 | 8 | 105 | 49 | 40 | 17 | 240 | 108 |
| May-15 | | 9 | 5 | 49 | 29 | 32 | 11 | 175 | 61 |
| Jun-15 | | 3 | 2.5 | 17 | 15 | 8 | 4.5 | 48 | 26 |
| Jul-15 | | 3 | 2 | 13.6 | 11.82 | 16 | 7.5 | 108.86 | 40.26 |
| Aug-15 | | 17 | 7 | 109 | 45 | 14 | 6.25 | 90 | 40 |
| Sep-15 | | 4 | 3 | 27 | 20 | 6 | 3.5 | 41 | 24 |
| Oct-15 | | 3 | 2.6 | 15 | 13 | 24 | 10 | 122 | 49 |
| Nov-15 | | 3 | 3 | 17 | 14 | 8 | 5 | 45 | 27 |
| Dec-15 | | 8 | 5 | 41 | 25 | 25 | 10 | 129 | 53 |
| Jan-16 | | 5 | 3 | 20.63 | 20.01 | 27 | 21.75 | 180.3 | 145.22 |
| Feb-16 | | 7 | 5.25 | 46.68 | 34.38 | 12 | 13.75 | 92.15 | 80.02 |
| Mar-16 | | 11 | 6.8 | 73.07 | 44.74 | 24 | 16.8 | 109.29 | 156.73 |

Attachment 2:

Documented incidents of observed Oil and Grease in wet well for Outfall 001
In violation of Respondent's NPDES/NPP permit and Industrial Stormwater permits

1. May 9, 2012 NDEQ Stormwater Inspection
2. August 14, 2014 Report from City
3. October 20 – 24, 2014 EPA inspection of Respondent's Gibbon facility
4. November 2014 Inspection by the City of Gibbon POTW Operator
5. March 10, 2015 NDEQ site visit

Attachment 3
 Respondent's Violations of Numeric limits of 2014 NPDES/NPP permit

| New Permit Limits in effect Oct 1, 2014 | BOD 002 | | TSS 002 | | TSS 003 | | O&G 002 | | Chloride, T 002 | |
|---|---------|--------|---------|--------|---------|--------|---------|--------|-----------------|--------|
| | Mass | | Mass | | Mass | | Mass | | Mass | |
| | Dmax | Mo Avg | Dmax | Mo Avg | Dmax | Mo Avg | Dmax | Mo Avg | Dmax | Mo Avg |
| | kg/d | kg/d | kg/d | kg/d | kg/d | kg/d | kg/d | kg/d | kg/d | kg/d |
| | 20000 | 10000 | 22500 | 11250 | 1098 | 549 | 12000 | 6000 | | varies |
| Oct-14 | 9733 | 5328 | 9007 | 4783 | 429 | 291 | 6065 | 4766 | 1216 | 1003 |
| Nov-14 | 12066 | 6091 | 9001 | 5328 | 437 | 301 | 5132 | 4099 | 986 | 943 |
| Dec-14 | 12991 | 8598 | 9896 | 6474 | 385 | 227 | 4551 | 4212 | 1182 | 1085 |
| Jan-15 | 12137 | 7754 | 12628 | 6615 | 481 | 225 | 18838 | 16158 | 1028 | 948 |
| Feb-15 | 12991 | 7217 | 18448 | 6240 | 321 | 147 | 11757 | 10821 | 1016 | 943 |
| Mar-15 | 9962 | 5374 | 9997 | 4973 | 359 | 222 | 12662 | 11734 | 955 | 762 |
| Apr-15 | 9994 | 4710 | 9074 | 4293 | 359 | 221 | 11494 | 5280 | 1085 | 939 |
| May-15 | 11588 | 5439 | 9999 | 4661 | 717 | 281 | 9102 | 6518 | 979 | 828 |
| Jun-15 | 10832 | 5888 | 14520 | 4803 | 332 | 240 | 11201 | 7918 | 1054.017 | 890 |
| Jul-15 | 10106 | 6129 | 7740 | 4875 | 306 | 206 | 6961 | 6625 | 880 | 812 |
| Aug-15 | 16423 | 8829 | 12550 | 6341 | 794 | 141 | 8364 | 5421 | 1087 | 890 |
| Sep-15 | 36843 | 13737 | 23617 | 7537 | 747 | 106 | 17524 | 11178 | 1031 | 966 |
| Oct-15 | 37498 | 12369 | 28746 | 6829 | 341 | 57 | 4949 | 2362 | 984 | 965 |
| Nov-15 | 83223 | 21228 | 70712 | 13449 | 614 | 223 | 13191 | 7249 | 1314 | 829 |
| Dec-15 | 24089 | 9632 | 21939 | 6720 | 3822 | 938 | 7450 | 3896 | 980 | 896 |
| Jan-16 | 30924 | 16625 | 25063 | 13198 | 4194 | 727 | 16929 | 11368 | 841 | 757 |
| Feb-16 | 34455 | 18236 | 26848 | 11331 | 447 | 285 | 10459 | 6292 | 920 | 748 |
| Mar-16 | 44937 | 17768 | 43404 | 13404 | 174 | 418 | 19531 | 9859 | 874 | 721 |