

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF )  
BNSF RAILWAY COMPANY, )  
ALLIANCE FACILITY )  
FID # 1897 )  
Respondent )

CASE NO. 3337

**CONSENT ORDER**

**I. INTRODUCTION**

1. The Nebraska Department of Environmental Quality (NDEQ) and BNSF Railway Company (Respondent), voluntarily enter into this Consent Order. The Consent Order requires Respondent to achieve and maintain compliance with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2014); Title 129, Nebraska Administrative Code, Nebraska Air Quality Regulations; and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers Area Sources (40 CFR Part 63, Subpart JJJJJ). This Consent Order also requires Respondent to comply with the activities and schedules specified in Section VI.

**II. JURISDICTION**

2. The NDEQ 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. This Consent Order is issued under the authority vested in the Director of the NDEQ by Neb. Rev. Stat. §§ 81-1504(25) and 81-1507(1).

3. The Respondent admits to and agrees not to contest the jurisdictional allegations referenced herein.



4. Respondent waives its right to receipt of a complaint and all notice and hearing requirements provided in Neb. Rev. Stat. §81-1507 for the violations alleged herein.

### **III. PARTIES**

5. The parties to this Consent Order are the Nebraska Department of Environmental Quality (NDEQ) and BNSF Railway Company (Respondent). This Consent Order is binding on the NDEQ and the Respondent and its successors and assigns.

### **IV. FINDINGS OF FACT**

6. At all times material herein the Respondent has owned and operated a railroad locomotive service, repair, and maintenance and railroad car repair shop located in Alliance, Box Butte, County, Nebraska (hereinafter the "Facility").

7. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the issuance of operating permits for the purpose of air pollution control, as expressed in Neb. Rev. Stat. § 81-1505(12), the Council adopted a rule codified as Title 129, Nebraska Administrative Code, Nebraska Air Quality Regulations.

8. Pursuant to Title 129, the Respondent was issued Air Quality Operating Permit # OPSP-0027 (hereinafter "Permit"), on December 27, 2005, by the NDEQ and said Permit has, at all times material herein, been in full force and effect.

9. The Respondent operates three coal-fired boilers at the Alliance Facility diesel shop. The coal-fired boilers are subject to the notification, compliance demonstration, and emission limit requirements of 40 CFR Part 63 Subpart JJJJJJ (§63.11225 and §63.11205) and Nebraska Title 129, Ch. 28 001.71 for industrial boilers.

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

11. Neb. Rev. Stat. §81-1508.02 (1) states that it is unlawful for any person to violate any order of the Director or to make any false statements, representations or certifications in any permit application filed with NDEQ, or violate a permit or license condition or limitation and any provision or duty imposed by rules and regulations.

#### **V.STIPULATION**

12.. By executing this consent order, Respondent does not admit liability or admit NDEQ's factual allegations set forth in the Consent Order. Respondent's execution of this consent order does not constitute a waiver or admission of any kind, including without limitation a waiver of any defense, legal or equitable, which Respondent may have in this or any other administrative or judicial proceeding, other than a proceeding to enforce this Consent Order.

13. The Respondent agrees to undertake all actions required by the terms and conditions of this Consent Order. The Respondent agrees that it will not contest the basis or validity of this Consent Order in any proceedings by the NDEQ to enforce this Consent Order.

14. The Respondent shall be responsible for any noncompliance with this Consent Order by itself, its contractors, sub-contractors, and representatives.

15. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504 to enter into this Order requiring Respondent to modify their Facility as necessary to prevent, control, or abate pollution and to submit an air quality construction permit as required by this Order.

#### **VI.COMPLIANCE ORDER**

16. Respondent agrees to perform the following activities:

- A. Operate the existing coal-fired boilers under existing permit conditions on an as-needed basis only through May 31, 2016.
- B. If applicable, submit a permit application for the installation of two new natural gas-fired boilers as soon as possible but no later than December 1, 2015.
- C. Remove the existing coal-fired boilers from the Facility by October 1, 2016.
- D. Operate the new natural gas-fired boilers according to the terms and conditions of any applicable permit.

17. All terms and references used in this Consent Order shall have the same meaning as in the Permit. No other terms or conditions of the Permit are affected by this Consent Order.

18. Information to be submitted under this Order shall be sent to:

Air Quality Division  
Nebraska Dept. of Environmental Quality  
PO Box 98922  
Lincoln, NE 68509-8922  
Telephone: 402-471-2189

#### **VII. SATISFACTION AND COMPLIANCE WITH OTHER LAWS**

19. The Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations and permits. Upon satisfactory completion of the activities required by this Consent Order, the NDEQ shall file a Satisfaction of Compliance Order stating the Consent Order has been fully and completely satisfied.

#### **VIII. RESERVATION OF RIGHTS**

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

#### **IX. NEGATION OF AGENCY RELATIONSHIP**

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

#### **X. AMENDMENT**

22. This Consent Order may be modified and amended in writing by mutual agreement of the NDEQ and the Respondent.

#### **XI. EFFECTIVE DATE**

23. This Consent Order shall become effective on the date it is signed by the Director of the NDEQ or his designee.

#### **XII. SEVERABILITY**

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

#### **XIII. SIGNATURES**

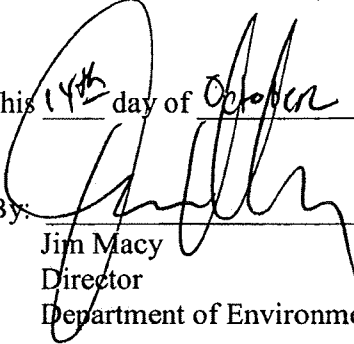
For the Respondent: The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By: Gregory C. Fox

Title: EUP Operations

Date: 10/1/15

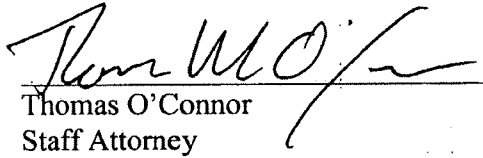
For the NDEQ: IT IS ORDERED and agreed this 14<sup>th</sup> day of October, 2015.

By:   
Jim Macy  
Director  
Department of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Consent Order was sent certified U.S. mail, postage prepaid this 14 day of October, 2015, to the Respondent at:

Mathew Rhodes  
Manager Environmental Operations  
BNSF Railway  
201 N. 7<sup>th</sup> Street  
Lincoln, NE 68508

  
Thomas O'Connor  
Staff Attorney