

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3326
UNITED STATES DEPARTMENT	)	
OF AGRICULTURE, AGRICULTURAL	)	
RESEARCH SERVICE, MEAT ANIMAL	)	
RESEARCH CENTER	)	COMPLAINT, COMPLIANCE
CLAY CENTER, NE	)	ORDER AND NOTICE OF
FACILITY NO. 5975	)	OPPORTUNITY FOR HEARING
	)	
Respondent.	)	

**I. INTRODUCTION**

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507 (Reissue 2014). Complainant has determined that Respondent is in violation of the Nebraska Livestock Waste Management Act, Neb. Rev. Stat. §54-2416 et. seq. (Reissue 2010; Cum. Supp. 2014) and Title 130, *Livestock Waste Control Regulations*.

2. The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent is the United States Agricultural Research Service Meat Animal Research Center (USMARC), who owns and operates a large concentrated animal feeding operation located in Clay Center, Clay County, Nebraska. The Complaint below establishes the violations.

**II. COMPLAINT**

3. Respondent is the USMARC, who owns and operates a large concentrated animal feeding operation located in the SE 1/4, Section 4 & 5, Township 6N, Range 7W; SW 1/4, Sec. 19, NW 1/4, Sec. 30, and Sec. 32, Township 7N, Range 7W; S 1/2, Sec. 24 & N 1/2, Sec. 25, Township 7N, Range 8W, Clay County, Nebraska.



4. Neb. Rev. Stat. §54-2432(1) makes it unlawful to construct or operate an animal feeding operation prior to an inspection by the Department.

5. Neb. Rev. Stat. §54-2432(2) makes it unlawful to construct a livestock waste control facility without first obtaining a construction and operating permit from the Department.

6. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the issuance of operating permits for the purpose of livestock waste control, as expressed in Neb. Rev. Stat. § 81-1505(10), the Council adopted a rule codified as Title 130, Nebraska Administrative Code, *Livestock Waste Control Regulations*.

7. Title 130, Ch. 2, 008.06 prohibits the construction of an animal feeding operation prior to an inspection by the Department.

8. Title 130, Ch. 2, 008.07 prohibits the construction of a livestock waste control facility without a construction and operating permit or Department approval, unless exempted.

9. Title 130, Chapter 3, 002 states that any person who fails to request an inspection pursuant to Neb. Rev. Stat. §54-2423 shall be assessed, except for good cause shown, a late fee of five hundred dollars for a large animal feeding operation for each offense. Each month a violation continues constitutes a separate offense.

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

11. On or before July 1, 2014, Respondent constructed an animal feeding operation without first requesting an inspection by the Department and constructed a livestock waste control facility without a permit or prior Department approval.

12. Respondent has violated Neb. Rev. Stat. §54-2432(1), Neb. Rev. Stat. §54-2432(2), and Title 130 Ch. 2, 008.06 and Ch. 2, 008.07.

13. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. §81-1504(7) to issue this order to prohibit or abate discharges of waste and to require the submission of permit applications and plans and specifications.

### **III. COMPLIANCE ORDER**

14. The Respondent shall, as soon as possible, submit a complete and accurate application to the Department for a livestock waste control facility construction and operating permit and for modified coverage under the National Pollution Discharge Elimination System (NPDES) individual permit. The permit application must include the required items described in Title 130, *Livestock Waste Control Regulations*, Ch.4, 001 and Ch. 5, 003.

15. Respondent may populate the two newly constructed swine buildings at their existing location, pending the approval of a construction and operating permit application. Until such time as a permit application is approved and a construction and operating permit is issued by the Department, the operation shall conform to the effluent limitations and the applicable operating, monitoring, inspection and record keeping requirements included in the January 17, 2006 approved application, the Livestock Waste Management Act, the Nebraska Environmental Protection Act and Title 130 regulations:

16. The Respondent shall implement every reasonable measure to prevent the discharge of pollutants to waters of the State and Respondent shall assume all liability in the event of a pollutant discharge due to negligence or construction quality deficiencies.

17. Respondent assumes the risk that the underlying application for the construction and operating permit may not be approved and that the permit, if issued may contain other provisions or limitations as a result of Department review and public comment.

18. Respondent shall pay late fees in the sum of \$1,000 (two months at \$500/month; July and August, 2014) as required in the August 31, 2015 Notice of Violation letter. If not already submitted, Respondent shall submit the late fees to the Department within thirty (30) days of the receipt of this Order.

19. Information and fees to be submitted under this Order shall be sent to attention:

Mr. Blake Onken  
Agricultural Section Supervisor  
Water Quality Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922  
Telephone number (402) 471-2186

#### **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

20. This Order shall become final, pursuant to Neb. Rev. Stat. §81-1507(1), unless Respondent files an answer and requests, in writing, a hearing no later than thirty (30) days after receipt of this Order. Failure to answer within thirty (30) days shall be deemed an admission of the allegations of the Complaint.

21. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Neb. Admin. Code, *Rules of Practice and Procedure*, Ch. 7. The answer and request for hearing may be filed by mail to: Jim Macy, Director, State of Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the Department's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

22. This Compliance Order shall terminate and expire upon approval or disapproval of the pending construction and operating permit application or upon further order of the Director, whichever shall occur first.

#### **V. SETTLEMENT CONFERENCE**

23. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Tom O'Connor, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

24. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

#### **VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS**

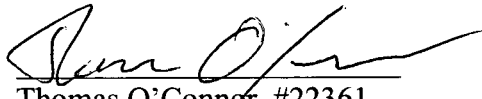
25. The NDEQ reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil or criminal penalties for any violations that are the subject of this Complaint, Compliance Order and Notice of Opportunity for Hearing. Nothing in this Complaint, Compliance Order and Notice of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement. Failure to obey this order may result in fines up to \$10,000 per day as set out in Neb. Rev. Stat. Section 81-1508.02.

9-3-15

Date

  
Jim Macy, Director  
NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

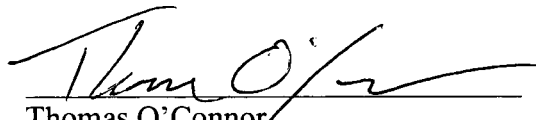
Prepared By:

  
Thomas O'Connor, #22361  
Staff Attorney  
Department of Environmental Quality  
Suite 400, The Atrium  
1200 N Street  
P.O. Box 98922  
Lincoln, NE 68509-8922

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, was served by certified United States mail, postage prepaid, return receipt requested this 3<sup>rd</sup> day of September 2015 upon the Respondent listed below:

E. John Pollak  
USDA, ARS, U.S. Meat Animal Research Center  
PO Box 166  
Clay Center, Nebraska 68933

  
Thomas O'Connor  
Staff Attorney