

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF
WLASCHIN CATTLE, LLC

FID #24202

Respondent.

Case No. 3537

CONSENT ORDER

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (NDEE or Department) and Wlaschin Cattle, LLC, voluntarily enter into this Consent Order. The Consent Order establishes a schedule for Respondent to comply the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532; the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 54-2416 to 54-2438; and Neb. Admin. Code, Title 130, Livestock Waste Control Regulations (Title 130).

II. JURISDICTION

2. NDEE 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 NEPA and LWMA and all rules and regulations promulgated under such acts, including Title 130.

3. NDEE is further charged with the duty, pursuant to Neb. Rev. Stat. § 54-2418(2), to “administer the state program for construction and operating permits and major modification approval for animal feeding operations and livestock waste control facilities provided under the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.”

4. 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 right to further hearing as provided in Neb. Rev. Stat. § 81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. §§ 84-901 to 84-919 for the violations alleged herein.

5. The Department and Respondent agree that settlement of this matter is in the public interest to ensure compliance with state laws, rules and regulations, and permits that have been adopted and issued to protect the environment.

6. The Respondent categorically denies the allegations contained in Section IV of this Complaint.

III. PARTIES

7. The parties to this Consent Order are NDEE and Respondent Wlaschin Cattle, LLC. This Consent Order is binding on NDEE, Respondent, and all successors and assigns.

IV. FINDINGS OF FACT

8. Respondent owns and operates a large animal feeding operation (AFO) as defined by Title 130, Chapter 1, 024.03.

9. The AFO is located at SW 1/4, Section 24, Township 20N, Range 9W, Greeley County, NE.

10. The AFO's lots drain to the south and east and enter various surface water bodies and watercourses including streams, ponds, waterways, and drainage systems on properties both owned by Respondent and not owned by Respondent. These various surface water bodies and watercourses discharge to the Cedar River, which is located 2 ½ miles to the south of Respondent's AFO.

11. The Cedar River and the various surface water bodies and watercourses that discharge to the Cedar River are waters of the state under Neb. Rev. Stat. § 81-1502(21).

12. On January 31, 2019, NDEE inspected Respondent's AFO and observed a livestock head count of approximately 2,000 cattle and the discharge of livestock waste to a neighboring property, making the AFO a "concentrated animal feeding operation" (CAFO) under Title 130,3 Ch. 1, 008, and subject to the permit requirements of Title 130, Ch. 2, 004 and related requirement of Title 130, Ch. 2, 003 that Respondent construct and operate a livestock waste control facility (LWCF) to control its discharge of livestock waste to the environment.

13. On or around May 3, 2019 and based on the findings of its January 31, 2019 inspection, NDEE notified Respondent by letter of the NDEE's determination that Respondent's CAFO was required to construct and operate a LWCF and apply for both a Construction and Operating (C&O) Permit and a National Pollutant Discharge Elimination System (NPDES) Permit. The letter contained an application submittal deadline of November 1, 2019 for both the C&O and NPDES permit applications.

14. On October 31, 2019, Respondent submitted the required applications to NDEE. Respondent submitted addendums to the applications on January 21, January 30, February 18, and February 19, 2020.

15. On February 27, 2020, NDEE issued Respondent a C&O Permit with a construction completion deadline of October 15, 2020 and communicated its intent to issue Respondent a NPDES permit upon completing construction of the LWCF designs contained in the application.

16. To date, Respondent has not completed construction of its two (2) LWCFs pursuant to the terms and conditions of its C&O Permit issued on February 27, 2020.

17. Neb. Rev. Stat. § 54-2432 states that it shall be unlawful for any person to:

“(3) Operate an animal feeding operation prior to construction of an approved livestock

waste control facility [...]

(4) Discharge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a National Pollutant Discharge Elimination System permit, a construction and operating permit, or an exemption from the department, if required by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts”.

18. Title 130, Chapter 2, states that:

“003 A livestock waste control facility is required for an existing or proposed animal feeding operation when livestock wastes have discharged or have the potential to discharge in a manner that is not lawfully authorized by permit or these regulations.

004 When livestock waste control facilities are required by the Department, the owner or operator of the animal feeding operation is required to apply for construction and operating permit as provided in Chapter 4. In the case of an existing animal feeding operation, the owner or operator will be notified in writing following an inspection by the Department whether or not a facility is required and, if required, the applicant shall submit an application according to the compliance dates in the notification.”

19. Title 130, Chapter 4, 006, states that “[a]ny person who obtains or has obtained a construction approval or a construction and operating permit shall:

006.01 Comply with any construction or compliance schedule established by the Department;”

20. Since January 31, 2019 or earlier, Respondent has operated its large AFO and CAFO located at SW ¼, Section 24, Township 20N, Range 9W, in Greeley County, NE, in violation of Neb. Rev. Stat. § 54-2432(3) and (4) and Title 130, Ch. 2, 003.

21. Between January 31, 2019 or earlier and October 31, 2019, Respondent operated its large AFO and CAFO in violation of Title 130, Ch. 2, 004.

22. Since October 15, 2020, Respondent has operated its large AFO and CAFO in violation of Title 130, Chapter 4, 006.01.

V. COMPLIANCE ORDER

23. By December 31, 2021, Respondent agrees to:
- a. complete construction of both LWCFs and all related appurtenances, as designed in its October 31, 2019, C&O permit application and described in that application as Holding Ponds #1 and #2;5
 - b. submit all required construction certification documents in accordance with Title 130, Chapter 4, 006.03.
24. Submissions to the Department under this Order shall refer to FID #24202 and

shall be sent to:

Dan Ross
Agriculture Compliance Section Supervisor
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

25. 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

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

VIII. NEGATION OF AGENCY RELATIONSHIP

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

IX. AMENDMENT

28. This Consent Order may be modified and amended in writing by mutual agreement of NDEE and Respondent.

X. EFFECTIVE DATE

29. This Consent Order shall become effective on the date it is signed by the NDEE Director or his designee.

XI. SEVERABILITY

30. 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.

XII. SIGNATURES

31. For Respondent:

8-16-21
Date

08/16/2021
Date


By: Jason Wlaschin, Manager
Wlaschin Cattle, LLC
50957 Highway 91
Spalding, NE 68665
jasonwlaschin@gmail.com


By: Stephen D. Mossman, Attorney
Mattson Ricketts Law Firm
134 S. 13th Street, Suite 1200
Lincoln, NE 68508-1901
sdm@mattsonricketts.com

32. For NDDE:

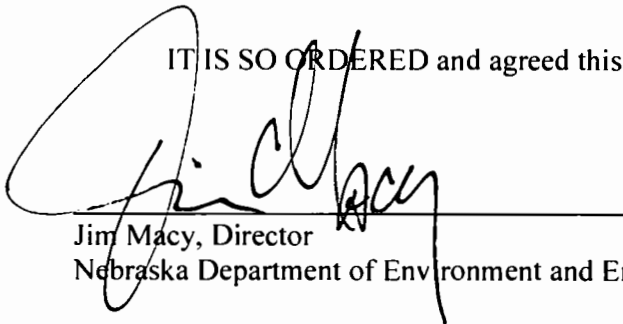
August 16, 2021

Date



By: Brian McMullen, Attorney
Nebraska Department of
Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922
brian.mcmullen@nebraska.gov

IT IS SO ORDERED and agreed this 18th day of August, 2021.



Jim Macy, Director
Nebraska Department of Environment and Energy