

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)
LIVINGSTON ENTERPRISES, INC.)
JEFFERSON COUNTY, NEBRASKA)
FACILITY NO. 70926)
Respondent.)

CASE NO. 3330

CONSENT ORDER

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (NDEQ) and Livingston Enterprises, Inc. (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); the Livestock Waste Management Act, Neb. Rev. Stat. §52-2416 et. seq. (Reissue 2010; Cum. Supp. 2014); and Title 130, Nebraska Administrative Code, *Livestock Waste Control Regulations*. 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 and the Livestock Waste Management Act.

3. 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.



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III. PARTIES

5. The parties to this Consent Order are the Nebraska Department of Environmental Quality (NDEQ) and Livingston Enterprises, Inc. (Respondent). This Consent Order is binding on the NDEQ and Respondent and its successors and assigns.

IV. FINDINGS OF FACT

6. Respondent owns and operates a large concentrated animal feeding operation located in the NW 1/4, Sec. 36, T1N, R1E and the S 1/2, Sec. 35, T1N, R1E, Jefferson County, Nebraska. Such facility operates under a duly issued permit from the NDEQ.

7. Such facility suffered a catastrophic fire on March 22, 2015 which destroyed all of the farrowing barns. Reconstruction of the farrowing barns and the underfloor pits was determined to constitute a "major modification" under Title 130, Chapter 1,028.

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

9. 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, the Council adopted a rule codified as Title 130, Nebraska Administrative Code, Livestock Waste Control Regulations. Title 130, Ch. 2, 008.07 prohibits any person who owns or operates an animal feeding operation from constructing a livestock waste control facility, including a major modification, without a construction and operating permit or approval by the Department.

10. Respondent is a "person" as defined in Neb. Rev. Stat. §81-1502(10).
11. On or before September 1, 2015, Respondent constructed a livestock waste control facility major modification without a permit or Department approval.
12. Respondent has violated Neb. Rev. Stat. §54-2432(2), and Title 130, Ch. 2, 008.07.

V. STIPULATION

13. Respondent agrees not to contest, but does not admit, the findings of fact and conclusions of law referenced in Section IV, above.
14. 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.
15. Respondent shall be responsible for any noncompliance with this Consent Order by itself, its contractors, sub-contractors, and representatives.
16. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504 to enter into this Order to prohibit or abate discharges of waste and to require Respondent to obtain a permit and operate its facility as required by this Order.

VI. COMPLIANCE ORDER

17. Respondent may populate the newly constructed swine buildings at their existing location, pending approval of the application for Major Modification filed by Respondent on August 13, 2015. 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 Respondent's August 19, 2014 approved application, the Livestock Waste Management Act, the Nebraska Environmental Protection Act and Title 130 regulations.

18. 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.

19. 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, or that the permit may ultimately be denied.

20. Information 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

VII. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

21. Respondent shall perform all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations and permits.

VIII. RESERVATION OF RIGHTS

22. 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 the NEPA and any rules, regulations, orders, or permits issued pursuant to the NEPA. The NDEQ may terminate this Consent Order unilaterally without notice to Respondent in the event a permit for the facility is ultimately denied.

IX. NEGATION OF AGENCY RELATIONSHIP

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

X. AMENDMENT

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

XI. EFFECTIVE DATE

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

XII. SEVERABILITY

26. 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

27. For Respondent: The undersigned representative of 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: Bruce D. Livingston

Title: President

Date: 9/10/2015

For the NDEQ: IT IS ORDERED and agreed this 17th day of September 2015.

By: Jim Macy
Jim Macy, Director
Department of Environmental Quality

CERTIFICATE OF SERVICE

The undersigned certifies that on the 18th day of September, 2015, she caused an exact copy of the attached Consent Order to be sent by mailing the same in the regular United State Mail, first class, postage prepaid, to the following:

Bruce Livingston
Livingston Enterprises, Inc.
500 4th Street
Fairbury, NE 68352

and

Michael J. Linder
KOLEY JESSEN
1125 S. 103rd St.
Suite 800
Omaha, NE 68124



Annette Kovar