

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF	)	CASE NO. 3447
Bartling Brothers, Inc.,	)	
dba Tricep,	)	
	)	CONSENT ORDER
FID # 77350	)	
	)	
Respondent.	)	

**I. INTRODUCTION**

1. The Nebraska Department of Environment and Energy (Department hereinafter "Department") and Bartling Brothers Inc. (hereinafter "Bartling") voluntarily enter into this Consent Order to implement improvements to monitoring and environmental management controls at the Respondent's facility. This Consent Order requires Respondent to comply with the activities and schedules specified in Section V. (Compliance Order and Schedule) below in accordance with the Nebraska Environmental Protection Act (the "Act"), Neb. Rev. Stat. §§ 81-1501 et. seq. (Reissue 2014, Cum. Supp. 2016); the Livestock Waste Management Act ("LWMA"), Neb. Rev. Stat. §§ 54-2416 to 2438 (Reissue 2010, Cum. Supp. 2016); Neb. Admin. Code Title 130, Livestock Waste Control Regulations, and Neb. Admin. Code Title 178, Water Well Construction, Pump Installation, and Water Well Decommissioning Standards Regulations.

2. 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. This Consent Order supersedes Administrative Order, Case No. 3447, issued by NDEQ on December 17, 2018.



## **II. JURISDICTION**

3. The Department is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1), to exercise exclusive general supervision of the administration and enforcement of the Act and the LWMA, and all permits, rules and regulations and orders promulgated under such acts.

4. Respondent is Bartling, which owns a livestock feeding operation ("facility") at 73451 616 Ave, Sterling, Johnson County, Nebraska, 68443, FID # 77350, dba Tricep. The legal description is SE ¼, NE ¼, Section 22, Township 06N Range 10E, Johnson County, Nebraska. Bartling Brothers, Inc., is a Nebraska corporation.

## **III. PARTIES**

5. The parties to this Consent Order are the Department and the Respondent, and their employees, successors, and assigns. Respondent shall ensure that all contractors hired to perform work required by this Consent Order are informed of applicable requirements.

## **IV. COMPLAINT**

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

7. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for enforcement of the Livestock Waste Management Act, as expressed in Neb. Rev. Stat. §§ 81-1505(1), (10), the Council adopted rules and regulations codified as Neb. Adm. Code, Title 130, Livestock Waste Management Regulations.

8. Nebraska Administrative Code, Title 130, Livestock Waste Management Regulations, Chapter 9, Section 002, states that

"The Department will not accept an application or issue a permit for an animal feeding operation with an existing livestock waste control facility if the facility is located within 100 feet of a domestic water well not owned by the operation. The Department may permit an existing livestock waste control facility, located within 100 feet of a well owned by the operation, based upon an evaluation of the following conditions:

- 002.01 Depth to ground water;
- 002.02 Known flow direction of ground water;
- 002.03 Structural integrity of the facility and, if known, the well; and
- 002.04 Any other circumstance that may adversely affect ground water quality."

9. Nebraska Administrative Code, Title 178, Water Well Construction, Pump Installation, and Water Well Decommissioning Standards Regulations, Chapter 12, Section 011.01F, states that:

"Repair or Modifications to Pumps and Pumping Equipment: Upon the removal of, or the repair and/or modification to the pump or pumping equipment in which replacement of original equipment is required, current pump and pumping equipment installation standards must be followed. This includes replacement of, or modification to the electrical wiring and/or controls located in the electrical layout serving the pump and pumping equipment including connection to the load side of the service disconnect or breaker. Any upgrade of this electrical system must be in compliance with all current applicable state or national electrical codes, and be installed according to the manufacturer's specifications."

10. Nebraska Administrative Code, Title 178, Water Well Construction, Pump Installation, and Water Well Decommissioning Standards Regulations, Chapter 12, Section 011.03D, states that:

"12-011.03D Discharge Piping includes any and all piping beginning at the discharge head or pitless unit tapping, extending to the first shut off valve or backflow preventer.

12-011.03D2 Underground Discharge Piping must be equipped with a curb stop valve and schedule 80 plastic or metal riser within one foot of the discharge, and be in compliance with 178 NAC 12-011.01."

11. On October 24, 2007, the previous owner of facility # 77350 signed an NDEQ Form E Transfer Request for their permit, the transfer to Bartling to be effective December 1, 2007. On November 25, 2016, the previous owner of facility # 77350

signed an NDEQ Form D Permit Transfer Request for their Construction and Operating Permit, the transfer to Bartling to be effective December 1, 2016. The transferred permit allowed for the feeding of 1490 head of swine over 55 pounds in the three existing shallow pit buildings, but did not include authorization for any new construction.

12. NDEQ inspectors visited the facility on November 15, 2018. They examined two livestock wells at the facility. Neither are registered with the Nebraska Department of Natural Resources, but they were installed prior to 1993, so are not required to be registered. The wells are located at 40.47232, -96.2622 ("West Well") and 40.47236, -96.27608 ("East Well"). Both wells are less than 100 feet from the livestock buildings. The East Well has a broken cover on the electrical junction at the well head, and the pitless unit is not 12 inches above grade. The West Well does not have a curb stop within one-foot of the discharge, and the wiring does not meet current electrical code.

13. Bartling has submitted documentation from a licensed well driller attesting that the livestock wells were believed to be in compliance with state regulations in effect at the time of construction and when the permit was transferred to Bartling. The licensed well driller further attested that Bartling has no alternative land which is suitable for new wells.

## **V. COMPLIANCE ORDER**

14. Bartling shall bring their facility into compliance with all requirements of the Act, the LWMA and all rules and regulations and orders promulgated under such acts, including, but not limited to completing the following:

A. By September 15, 2019, bring both existing wells into compliance with the standards of Neb. Admin. Code, Title 178, Chapter 12, Water Well Construction, Pump Installation, and Water Well Decommissioning Standards. This includes upgrading the electrical systems for the existing wells in compliance with Neb. Admin. Code, Title 178, Chapter 12, Section 011.01F, and

installation of a curb stop valve and extension of piping pursuant to Neb. Admin. Code, Title 178, Chapter 12, Section 011.03D.

B. By September 15, 2019, submit a ground water monitoring plan to Department, which includes required well testing at least twice a year.

15. Respondents shall report to the Department by September 30, 2019, documenting how compliance with paragraph 14 of this Order has been achieved.

16. Respondents shall respond promptly to any written communication by the Department. Any delay in responding to such communication shall be construed as non-compliance with this Order.

17. Information to be submitted under this Order shall refer to FID # 77350 and shall be sent to:

Agriculture Section  
Nebraska Department of Environment and Energy  
PO Box 98922  
Lincoln, NE 68509-8922

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

18. The Department 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 the Complaint, Compliance Order and Notice of Opportunity for Hearing issued on December 18, 2018, in this case. Nothing in this Consent Order precludes the Department from pursuing such enforcement.

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

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

## **VIII. RESERVATION OF RIGHTS**

20. Nothing in this Consent Order shall be construed to sanction any violation of State or Federal law or limit the power and authority of the Department to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of the Act and any rules, regulations, orders, or permits issued pursuant to the Act. The Department reserves the right to pursue any other remedies to which it is entitled for violations of this Consent Decree or the underlying violations alleged herein, including penalties or injunctive relief.

## **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 Department and Respondent.

## **X. AMENDMENT**

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

## **XI. EFFECTIVE DATE**

23. This Consent Order shall become effective on the date it is signed by the Director of the Department.

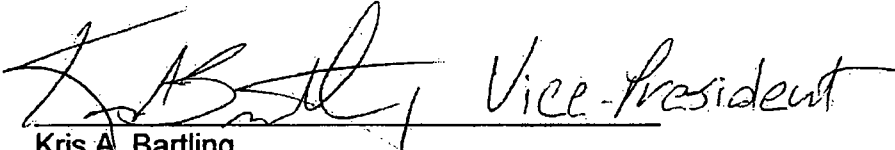
## **XII. SEVERABILITY**

24. If any provision or authority of this Consent Order or the application of the Consent Order to any party or circumstances is held by any judicial or administrative

authority to be invalid, the remainder of the Consent Order shall remain in force and shall not be affected thereby.

### XIII. SIGNATURES

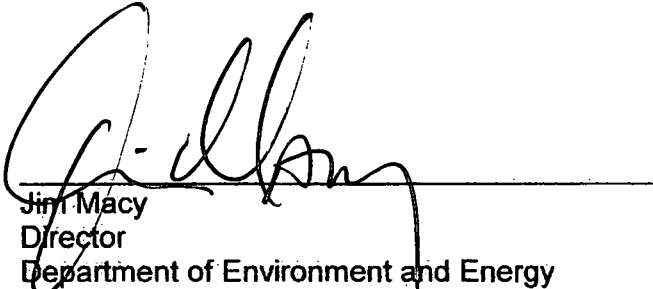
For the Respondent: The undersigned representative of Bartling Brothers, Inc., certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By:  Vice-President  
Kris A. Bartling  
Vice President, Bartling Brothers, Inc.

Date: 8/16/19

For the Department: IT IS ORDERED and agreed this 23<sup>rd</sup> day of August

2019.

By:   
Jim Macy  
Director  
Department of Environment and Energy