

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

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| IN THE CASE OF |) | |
| Robb Feedyard, Inc., |) | CASE NO. 3456 |
| A Nebraska Corporation, |) | |
| and Greg W. Robb, an Individual |) | |
| |) | |
| Facility ID 66179, |) | ADMINISTRATIVE SETTLEMENT |
| |) | AND CONSENT ORDER |
| |) | |
| Respondents. |) | |

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (Department), Greg W. Robb, an individual, and Robb Feedyard, Inc., a Nebraska Corporation, voluntarily enter into this Consent Order. Together Greg W. Robb and Robb Feedyard, Inc. are referred to herein as "Robb." The Consent Order establishes a schedule for actions necessary to achieve and maintain compliance with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 et seq. (Reissue 2014 and 2016 Cum. Supp.) and the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 54-2416 to 2438 (Reissue 2010 and 2016 Cum. Supp.) and all rules and regulations created thereunder.

II. JURISDICTION

2. The Department 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 LWMA. The Department also has authority to administer the National Pollutant Discharge Elimination System (NPDES) under the Clean Water Act (CWA) Section 402 (b) and 40 CFR Part 123. This Consent Order is issued under the authority vested in the Director of the Department by Neb. Rev. Stat. §§ 81-1504(25) and 81-1507(1).

3. Robb agrees to undertake all actions required by the terms and conditions of this Consent Order in settlement and resolution of the claims arising from or relating to the circumstances leading to the Notice of Violation (NOV) described more fully below. Robb admits to, and agrees not to contest, the jurisdictional allegations herein and agrees not to contest the factual findings referenced herein in any proceeding to enforce this Consent Order. Robb 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. Robb shall be responsible for any noncompliance with this Consent Order by its employees or others for whom Robb is legally liable.

III. PARTIES

4. The parties to this Administrative Settlement and Consent Order are the Nebraska Department of Environmental Quality (Department), Greg W. Robb, and Robb Feedyard, Inc. (together Robb). This Consent Order is binding on Robb, its employees, agents, contractors, consultants, successors and assigns.

5. Robb shall ensure that any contractors, sub-contractors, and representatives implementing any provision of this Consent Order receive a copy of this Consent Order.

6. Greg W. Robb owns the property located at the NE ¼ of Section 36, Township 10N, Range 10W, Hall County, Nebraska and Robb Feedyard, Inc. has used said property for the purpose of feeding cattle and in connection with Robb Feedyard, Inc.'s cattle feeding business, and specifically the grazing of agricultural land surrounding the aforementioned property.

IV. FINDINGS OF FACT

7. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 81-1505 and 54-2435, the Council adopted rules and regulations codified as *Title 130, Neb. Admin. Code, Livestock Waste Control Regulations* (Title 130).

8. A Notice of Violation (NOV) was issued to Robb Feedyard, Inc. on January 26, 2018, alleging a failure to submit complete Construction and Operating Permit and NPDES Permit applications by the compliance date (March 1, 2017) established by the Department, and allegedly continuing to confine livestock at an unpermitted and uncontrolled operation in alleged violation of the LWMA and Title 130.

9. The NOV required Robb Feedyard, Inc.:

- A. By April 15, 2018, remove all livestock from the facility.
- B. By May 15, 2018, clean and scrape the pens to remove all livestock waste from the operation. All livestock waste shall be land applied to area crop ground at agronomic rates or stockpiled in a location that will not discharge to waters of the State.
- C. By December 31, 2018, remove all fences, bunk lines, and all other equipment from the abandoned pens that had been used to feed or confine cattle.

10. Without admitting to the alleged violations, Robb has revised plans for the subject property, which the Department agrees will allow Robb to operate without a Construction and Operating Permit or an NPDES Permit. Per this revised plan, Robb agrees to perform the actions set forth in Section V. below.

V. COMPLIANCE ORDER AND SCHEDULE

11. The four west pens at the above-described property have been abandoned such that they cannot be used for the confined feeding of cattle, and all interior fencing

previously forming these four pens has been removed. Robb may continue to use the bunk line for the four west pens for the purpose of supplemental feed cattle in or about the fall/winter seasons while cattle are present on the adjacent or nearby agricultural land. Robb will only place cattle upon the agricultural land when vegetation or post-harvest crop residues is present.

12. In addition, Robb agrees to perform the following:

A. By December 31, 2018, remove all interior fencing that forms the two east pens. The bunk line for the two east pens may be used for supplemental feeding of cattle in or about the fall/winter seasons while cattle are present on the adjacent or nearby agricultural land. Robb will only place cattle upon this agricultural land when vegetation or post-harvest crop residue is present.

B. By December 31, 2018, remove all cattle from the two north pens. Thereafter, Robb will create fenced lane areas providing access to the bunks. Cattle may be placed on the adjacent or nearby agricultural land and, when present on the adjacent or nearby agricultural land, may have access to the two north pen bunk lane areas for supplemental feeding purposes. The remainder of the two north pens will be scraped of livestock waste and vegetation established. No cattle can return to the two north pens until the pens are adequately revegetated. The pens must be adequately vegetated during all times they are occupied by cattle. Robb shall notify the Department upon completion of the new fenced area and prior to placing cattle back into the vegetated north pens. Robb will only place cattle upon the adjacent or nearby agricultural land when vegetation or post-harvest crop residues is present.

13. Robb shall respond with reasonable promptness to any written communication by the Department. In any such written communication, the Department will provide a deadline for response that is reasonable under the circumstances, and in no event less than five (5) business days following Robb's receipt of such written communication. Undue delay in responding to such communication may be construed as non-compliance with this Consent Order.

14. Information to be submitted under this Consent Order shall be sent to:

Agriculture Section, Water Permits Division
Nebraska Department of Environmental Quality
P.O. Box 98922 (1200 N St., Suite 400)
Lincoln, NE 68509-8922
Telephone: 402-471-2186

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

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

VII. RESERVATION OF RIGHTS

16. 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. Should Robb fail to comply with this Consent Order, 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. If, however, Robb complies with this Consent Order, then the Department compromises and releases any claim or right to pursue other remedies based upon the

actions or inactions of Robb that form the basis of the alleged underlying violations identified herein.

VIII. NEGATION OF AGENCY RELATIONSHIP

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

IX. AMENDMENT

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

X. EFFECTIVE DATE

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

XI. SIGNATURES

For the Respondents Greg W. Robb and Robb Feedyard, Inc.: The undersigned certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondents.

Date: 11/23/2018 By: SW Robb (Individual)
SW Robb, President Robb Feedyard Inc.
Greg W. Robb, individually and as
President of Robb Feedyard, Inc.

For the Department: IT IS ORDERED and agreed this 11th day of
December, 2018.

By: [Signature]
Jim Macy, Director
Department of Environmental Quality