

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
K8 FARMS, INC.,
Respondent.

Case No. 2997

COMPLAINT, COMPLIANCE ORDER ON
CONSENT AND WAIVER OF OPPORTUNITY
FOR HEARING

1. This Complaint, Compliance Order on Consent, and Waiver of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) (Reissue 2008) of the Nebraska Environmental Protection Act §§ 81-1501 to -1532 (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to hereinafter as NDEQ or Department). The Respondent is K8 Farms, Inc., a domestic corporation doing business in Platte County, Nebraska.

2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) & (4) (Reissue 2008), to exercise exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to -1532 (Reissue 2008) and all rules, regulations, and permits promulgated under these acts. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. §§ 81-1504 (7) and -1507 (Reissue 2008).

3. Respondent, K8 Farms Inc., is a corporation authorized to do business in Nebraska which owns an animal feeding operation located at 39445 445th Street near Lindsay, Nebraska, legally described as SE 1/4, SW 1/4, Section 26, Township 20N, Range 3W, Platte County, Nebraska. The Respondent is a “person” as defined in Neb. Rev. Stat. § 81-1502(10).

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COMPLAINT

4. Neb. Rev. Stat. § 81-1506(1)(a) states that it is unlawful to place any wastes in any location where they are likely to cause pollution to waters or lands of the state. Neb. Rev. Stat. § 81-1506(5)(b) states that it is unlawful to violate any provision of the Livestock Waste Management Act. Neb. Rev. Stat. § 54-2428(1) states that any person required to obtain a permit for a livestock waste control facility shall file an application with the Department. Neb. Rev. Stat. § 54-2432 states that “it shall be unlawful for any person to ...[o]perate an animal feeding operation prior to construction of an approved livestock waste control facility.”

5. After an inspection of the Respondent’s operation on November 19, 2003, Respondent was informed that a Livestock Waste Control Facility is required. However, the Respondent never filed an accurate and complete application with the Department to build such a facility. Further, Respondent continues to operate without a Livestock Waste Control Facility and place livestock waste in a location where they are likely to cause pollution to lands and waters of the state in violation of Neb. Rev. Stat. § 81-1506(1)(a).

6. Respondent has violated Neb. Rev. Stat. §§ 81-1506(5)(b), 81-1506(1)(a), 54-2428(1), and 54-2432.

7. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) to issue this order requiring the construction of livestock waste control facilities or any parts thereof to prevent, control, or abate pollution.

COMPLIANCE ORDER

8. IT IS THEREFORE ORDERED AND AGREED that the Respondent shall perform, within the times stated, the following activities:

- a. On or before October 1, 2010, Respondent shall begin construction on the approved plan submitted to the Department on August 3, 2010.
- b. By January 1, 2011, Respondent shall complete construction according to the approved plan.

9. Once construction is complete, Respondent shall operate its livestock facility in accordance with all relevant statutes and NDEQ rules and regulations.

10. Information to be submitted under this Order shall be sent to:

Dennis Heitmann
Agriculture Section Supervisor, Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number: (402) 471-2186

WAIVER OF OPPORTUNITY TO REQUEST A HEARING

11. Pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2008) the Respondent has the right to apply for a hearing to contest a Complaint and Compliance Order by making a request for such hearing to the Director no later than 30 days after service hereof. Nebraska Department of Environmental Quality, Rules of Practice and Procedure, Title 115, Chapter 7, sets forth the procedure of such hearings. Notwithstanding such rights, the Respondent agrees to the entry of this Order and the requirements imposed herein without contest, without further notice, and waives its opportunity for hearing.

ADVISEMENT OF POSSIBLE PENALTIES

12. 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 on Consent, and Waiver of Opportunity for Hearing. Nothing in this Complaint, Compliance Order on Consent, and Waiver of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement. Failure to obey this Order may result in fine up to \$10,000 per day as set out in Neb. Rev. Stat. § 81-1508.02 (Reissue 2008).

IT IS SO ORDERED AND AGREED

Dated: 9-16-2010

By: /s/ Michael J. Linder
Michael J. Linder, Director
Nebraska Department of
Environmental Quality

Dated: 9-13-2010

By: /s/ Tony Klassen Jr.
Tony Klassen, Jr.
39445 445th St.
Lindsay, NE 68644