

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3355
Broken Bow Dairy, LLC	)	
	)	COMPLAINT, COMPLIANCE
FID # 72400	)	ORDER, AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent.	)	

I. INTRODUCTION

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2014). The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter “NDEQ” or “Department”). The Respondent is Broken Bow Dairy, LLC (hereinafter “Dairy”), whose facility # 72400 is located near Milburn, Custer County, Nebraska. Complainant has determined that the Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et. seq. (Reissue 2014, 2015 Supp.); the Livestock Waste Management Act, Neb. Rev. Stat. §§ 54-2416 to 54-2438 (Reissue 2010); and Nebraska Administrative Code, Title 130, Livestock Waste Control Regulations.

2. The Department is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. §§ 54-2418 and 81-1504, of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, the Livestock Waste Management Act, and all rules, regulations, and orders promulgated under such acts.



3. The Complaint below establishes the violations, and the Compliance Order establishes a schedule for corrective actions to be taken by the Respondent.

## **II. COMPLAINT**

4. Respondent is Broken Bow Dairy, LLC, Milburn, Nebraska, which owns and operates a dairy cattle and milk production facility at 81800 Gates Road, Milburn, Nebraska. The legal description is W1/2, SE1/4 Section 19 Township N 20 Range W 20, Custer County, Nebraska.

5. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of livestock waste management, as expressed in Neb. Rev. Stat. §§ 81-1505(13)(d) and 54-2418, the Council adopted rules and regulations codified as Neb. Adm. Code, Title 130, Livestock Waste Control Regulations.

6. Neb. Rev. Stat. § 54-2432 states that,

It shall be unlawful for any person to: . . .

(2) Construct a livestock waste control facility without first obtaining a construction and operating permit from the department . . .

(5) Violate the terms of a National Pollutant Discharge Elimination System permit or construction and operating permit or any provision of the Livestock Waste Management Act and rules and regulations adopted and promulgated by the council pursuant to the act.

7. Neb. Rev. Stat. § 81-1506(2) states, "[i]t shall be unlawful for any person to: . .

. (b) Construct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department."

8. Neb. Rev. Stat. § 81-1506(5) states that:

It shall be unlawful for any person to: . . .

(b) Violate any provision of the Livestock Waste Management Act;

(c) Violate any term or condition of an animal feeding operation permit; or

(d) Violate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the Livestock Waste Management Act.

9. Pursuant to Neb. Rev. Stat. § 81-1506(3)(c), it is unlawful for any person to violate any rule or regulation under the Livestock Waste Management Act.

10. Nebraska Administrative Code, Title 130, Chapter 2, Section 008.07 states

that

008 Any person who owns or operates an animal feeding operation shall not: . . .

008.07 Construct a livestock waste control facility without a construction and operating permit, or construction approval or not in compliance with a construction and operating permit or construction approval issued by the Department.

11. Nebraska Administrative Code, Title 130, Chapter 2, Section 008.13 states

that

008 Any person who owns or operates an animal feeding operation shall not: . . .

008.13 Violate the terms of an operating permit, construction approval, construction and operating permit or NPDES permit or any provision of the Livestock Waste Management Act and regulations.

12. Nebraska Administrative Code, Title 130, Chapter 4, Section 006.01 states

that

006 Any 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.

13. Nebraska Administrative Code, Title 130, Chapter 4, Section 006.07 states

that

006 Any person who obtains or has obtained a construction approval or a construction and operating permit shall:

006.07 Follow any additional terms or conditions deemed necessary by the Department to ensure compliance with these regulations.

14. The Dairy was issued a Phased Construction and Operating Permit on June 2, 2015.

15. The Dairy was inspected on November 5, 2015, by an NDEQ Inspector. The following violations of state statutes and Title 130 were found:

A. Cells 1A and 1B, Cell 2 and the Feed Storage Pond were all being operated prior to receiving written authorization from the Department.

B. A pipe was installed connecting the Feed Storage Pond to Cell 2 without receiving approval from the Department.

C. The berm of the existing Earthen Storage Pit was cut allowing the contents to drain into the Feed Storage Pond and then into Cell 2. This method of dewatering was not described in the operation's approved livestock waste control facility closure plan.

D. A fresh water flush system from the Sargent Canal was installed without receiving approval from the Department.

E. A permanent lift station/recirculating pump for Cell 2 was installed without receiving approval from the Department.

F. Clean Water Diversion 5 (Phase 1E) was not constructed prior to Phase 1D as required in the Construction and Operating permit issued on June 2, 2015.

G. Clean Water Diversions 3 and 4 were not constructed as indicated in the approved application.

16. A Notice of Violation was issued by NDEQ on November 19, 2015, requiring Dairy to:

1. Submit as-built plans and drawings for the operation.
2. Submit revised site plans identifying all the drainage areas within the footprint of the operation. A plan shall be submitted for both the as-built operation and for the final proposed operation.
3. Submit the appropriate engineering calculations to verify the ability of Cell 2 to contain the additional runoff volume now entering the cell.
4. Submit updated stage storage tables with the appropriate critical levels identified.
5. Submit information regarding the size, elevation and capacity of the pipe connecting the Feed Storage Pond to Cell 2.

6. Submit an updated Operation and Maintenance Plan. The plan shall include, but shall not be limited to, information relevant to the fresh water flush system and the permanent lift station.

7. Submit a proposed future site plan with all intentions for use finalized.

8. Immediately remove the manure stockpiles from the areas adjacent to or in the clean water diversion. At no time shall livestock waste runoff be allowed to enter a clean water diversion.

9. Runoff from the manure stockpile areas shall be contained by a LWCF. The Department recommends designating one manure stockpile area and relocating all the piles to this one specific area. The manure stockpile area(s) shall be identified on the plans requested above in items #2 and #7.

10. Remove all the ditches and grade the area around the Feed Storage Pond to allow all runoff from this drainage area to enter the pond.

11. The west section of Clean Water Diversion 2 must be graded to allow all runoff in this drainage area to enter the diversion and not pool between the barns.

12. Submit a description of the intended use for the concrete scrape pit/load out located on the south side of the south barn.

13. Submit an evaluation of Monitoring Well 1 verifying the runoff from the "far-off" open lot pen does not enter the well.

14. Water from Clean Water Diversions 3 and 4 must not be allowed to pool around Monitoring Well 3.

15. Submit the results of seam testing for the Feed Storage Pond and Cell 2.

17. After the November 19, 2015, Notice of Violation was issued, response documents were filed by the Dairy's consulting engineer. After review of these documents, NDEQ found the following items continue to violate state statutes and Title

130:

A. Clean Water Diversion 5 has not been constructed. The June 2, 2015, construction and Operating Permit required the construction of this structure prior to modification of the Feed Storage Pond. The Certification of Completion for the Feed Storage Pond was received on October 19, 2015.

B. Clean Water Diversions 3 and 4 were not constructed as described in the approved application. As a result, runoff from the "far off" pen discharges directly into the clean water diversion.

C. Closure of the existing Earthen Storage Pit has not followed the approved closure plan.

D. The liner testing results for Cell 2 and the Feed Storage Pond do not adhere to the specifications approved in the application.

18. A Notice of Violation was issued by NDEQ on February 26, 2016,

requiring the Dairy to:

1. Immediately complete construction of Phase 1E (Clean Water Diversion 5) as required by the June 2, 2015 Construction and Operating Permit. This shall include the immediate abandonment of the “post wean heifer” pen located north of the Feed Storage Pond and the “close up” pen located west of the Milking Parlor.

2. Immediately abandon the “far off” pen adjacent to the Clean Water Diversion 3 and 4.

3. Immediately complete Phase 1F (closure of existing Earthen Storage Pit) according to the approved closure plan.

4. Submit clarification for the liner seam testing results for Cell 2 and the Feed Storage Pond. This shall include:

a. Criteria for a “passing” designation.

b. Numerical and pass/no pass results of the pressure testing of all seams in Cell 2.

c. Submission of the installation specification manual used by the installer, signed and sealed by a Nebraska Registered Professional Engineer.

5. Submit an updated Operation and Maintenance Plan which describes the “emergency use” of the concrete scrape pit/load out located south of the south barn. The plan shall define what constitutes emergency use and identify the method of transport and final storage location for the effluent.

6. The winter pump down level (180-day storage) in Cell 2, as defined in the stage/storage table, may not provide enough storage for the liquid portion of the waste that will gravity drain from Cell 1A and Cell 1B. Clarify how Cell 1A and Cell 1B will be able to hold enough liquid waste, especially their portion of the winter storage requirement, without it gravity draining into Cell 2. If a valve is to be used, please clarify where it will be located and how it will be operated. If the winter pump down level in Cell 2 is to be adjusted to provide the needed capacity, please provide revised stage/storage tables.

19. The Dairy was inspected by NDEQ on May 19, 2016. The two inspectors

found the following violations of the Dairy’s construction permit, state statutes and Title

130.

A. Construction of Feed Storage Pond (Phase 1D) prior to the construction of Phase 1E (Clean Water Diversion #5). This is a violation of the terms of the June 2, 2015, Phased Construction and Operating Permit.

B. Operating LWCFs (Cells 1A, 1B, Cell 2, Feed Storage Pond, and North Free Stall Barn Expansion) prior to receiving an approval to operate from the Department.

C. Because the LWCFs were in operation prior to the post construction inspection, a complete and proper inspection could not be performed (Cells 1A, 1B, Cell 2, and Feed Storage Pond). A certificate of completion has not been received for the North Free Stall Barn Expansion. The barn is in use.

D. Seam testing of the liner for Cell 2 was not conducted as per the approved application. The submission of inadequate seam testing results is a violation of the terms of the June 2, 2015, Phased Construction and Operating Permit.

E. Existing Storage Pit was not closed according to approved closure plan. This is also a direct violation of the June 2, 2015, Phased Construction and Operating Permit.

F. Fresh water flush system, lift station for Cell 2, and pipe from Feed Storage Pond to Cell 2 were installed without Department approval. This is a violation of the June 2, 2015, Phased Construction and Operating Permit.

20. Respondent has been in violation of Neb. Rev. Stat. §§ 54-2432(2), 43-2432(5), 81-1506(2)(b), 81-1506(5)(b), 81-1506(5)(c), 81-1506(5)(d), and Title 130 since November 5, 2015.

21. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(1) and (13) to issue this order requiring enforcement of the Nebraska Environmental Protection Act and the Livestock Waste Management Act.

### **III. COMPLIANCE ORDER**

22. Within thirty (30) days, Respondent shall bring its facility into compliance with all requirements of the Nebraska Environmental Protection Act, the Livestock Waste Management Act, and all rules and regulations and orders promulgated under such acts, including, but not limited to completing the following:

A. Construct Clean Water Diversion #5 and remove cattle from the open lots that drain into this diversion. Cattle from the "Post Wean Heifer Pen" and the "Close Up" pens must be removed and the pens scraped and cleaned of manure.

B. Remove cattle from North Free Stall Barn Expansion, power wash the area where the animals were housed, and request an inspection of that area of the barn.

C. Seam testing information has been submitted, but testing results are still incomplete. Provide complete seam testing information for Cell 2.

D. Repair the berm of the existing Earthen Storage Pit to prevent additional drainage from entering the Feed Storage Pond.

23. Respondent shall report to NDEQ within thirty (30) days, documenting how compliance with paragraph 22 of this Order has been achieved.

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

25. Information to be submitted under this Order shall refer to FID # 72400 and shall be sent to:

Nick Weaver  
Grand Island Field Office  
Agriculture Section, Water Permits Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, NE 68509-8922



#### **IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

26. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files an answer and requests, in writing, a hearing no later than thirty (30) days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

27. A written answer to the Complaint, Compliance Order, and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Neb. Admin. Code, Rules of Practice and Procedure, Chapter 7. The answer and request for hearing may be filed by mail to: Jim Macy, Director, State of Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the Department's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

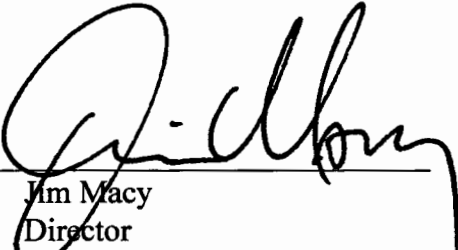
#### **V. SETTLEMENT CONFERENCE**

28. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Susan M. Ugai, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

29. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

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

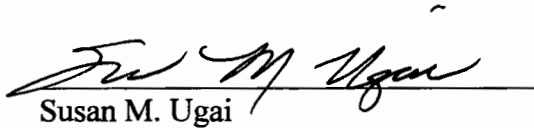
30. The NDEQ reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil or criminal penalties for any violations that are the subject of this Complaint, Compliance Order, and Notice of Opportunity for Hearing. Nothing in this Complaint, Compliance Order, and Notice of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement.

June 23, 2016        
Date      Jim Macy  
Director  
Nebraska Department of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, was served by certified United States mail, postage prepaid, return receipt requested this 23<sup>rd</sup> day of June, 2016, upon the Respondent listed below at their registered agent and office address:

Broken Bow Dairy, LLC  
Linda Hodorff  
81800 Gates Road  
Milburn, NE 68813

  
Susan M. Ugai