

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF	)	
Nebraska Beef Packers, Inc.,	)	CASE NO. 3443
dba Nebraska Beef Farms South,	)	
	)	COMPLAINT, COMPLIANCE
FID # 45480	)	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 Environment and Energy (hereinafter "NDEE" or "Department"). The Respondent Nebraska Beef Packers, Inc., a Nebraska corporation, (hereinafter "Respondent"), whose facility # 45480 (Nebraska Beef Farms South) is located in Gordon, Sheridan 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, Cum. Supp. 2018); the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 54-2416 to 2438 (Reissue 2010, Cum. Supp. 2018); and Neb. Admin. 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. § 81-1504(1), of exercising exclusive general supervision, administration, and enforcement of the NEPA and LWMA, and all rules and 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 Nebraska Beef Packers, Inc., which owns and operates a livestock feeding operation ("facility") at Nebraska Highway 27 South, Gordon, Nebraska 69343. The legal description is W ½ Section 31, Township 33N Range 41W, Sheridan County, Nebraska.

5. 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 Control Regulations.

6. Neb. Rev. Stat. § 54-2432 states that it shall be unlawful for any person to:

"(1) Construct or operate an animal feeding operation prior to an inspection from the department, unless exempted from inspection by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

...

(3) Operate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirement for a livestock waste control facility by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts;

(4) Discharge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a National Pollutant Discharge Elimination System permit, a construction and operating permit, or an exemption from the department, if required by the Environmental Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts; or

(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 provides:

“(1) It shall be unlawful for any person:

(a) To cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state; or

(b) To discharge or emit any wastes into any air, waters, or land of the state which reduce the quality of such air, waters, or land below the air, water, or land quality standards established therefor by the council. Any such action is hereby declared to be a public nuisance.”

8. Neb. Admin. Code, Title 130, Livestock Waste Control Regulations, Ch. 2

Animal Feeding Operations: Requirements and Prohibitions, states:

“002 Any person owning or operating a large or medium animal feeding operation that does not have a NPDES permit, construction approval, operating permit or construction and operating permit, has not been notified that no permit is required, or any person proposing an expansion or increase to the lot area or feeding area of a large or medium animal feeding operation, shall submit an inspection request to the Department on a form provided by the Department (see Appendix A). The inspection fee established in Chapter 3 shall accompany the inspection request.

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

008.02 . . . apply livestock waste on or into waters of the State, or to otherwise allow or cause a discharge; . . .

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.”

9. Neb. Admin. Code, Title 130, Livestock Waste Control Regulations, Chapter 2,

Section 008.06, states that any person who owns or operates an animal feeding operation shall not:

“Construct an animal feeding operation or any portion thereof prior to an inspection by the Department, unless exempted from inspection by the Nebraska Environmental Protection Act, Livestock Waste Management Act, or these regulations.”

10. Neb. Admin. Code, Title 130, Livestock Waste Control Regulations, Chapter 2, Section 008.08, states that any person who owns or operates an animal feeding operation shall not:

“Operate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirements for a construction and operating permit by the Nebraska Environmental Protection Act, Livestock Waste Management Act, or these regulations.”

11. Neb. Admin. Code, Title 130, Livestock Waste Control Regulations, Chapter 2, Section 008.09, states that any person who owns or operates an animal feeding operation shall not:

“Operate an animal feeding operation without a construction approval, operating permit, construction and operating permit or a NPDES permit as required in Chapter 5 of these regulations, unless exempted from permitting under these regulations.”

12. Neb. Admin. Code, Title 130, Livestock Waste Control Regulations, Chapter 3, Section 002, states:

“Any person who fails to request an inspection as required in Neb. Rev. Stat. § 54-2423 shall be assessed, except for good cause shown, a late fee of fifty dollars for a small or a medium animal feeding operation or a late fee of five hundred dollars for a large animal feeding operation for each offense. Each month a violation continues constitutes a separate offense.”

13. On March 26, 2019, NDEE representatives conducted a drive-by inspection of Nebraska Beef Farms South, observing the property from public roads on the south, west, and north of the operation. Respondent’s cattle feeding operation was expanded on the east side of the property between 2016 and 2018. Respondent’s cattle feeding operation was expanded on the south side prior to November 2015.

14. Respondent’s cattle feeding operation was previously designated a medium animal feeding operation (AFO), with a limit of 999 head of cattle. Observation by

NDEE representatives found respondent's cattle feeding operation is now a large concentrated AFO, with approximately 2,500 head of cattle on site.

15. Respondent never submitted a request for expansion nor inspection of their facility before enlarging and operating their concentrated AFO.

16. The NDEE representatives observed evidence of wastewater running from the feeding operation to waters of the State of Nebraska.

17. The Director of the NDEE is authorized pursuant to Neb. Rev. Stat. § 81-1504(1), (7), and (13) to issue this order requiring enforcement of the NEPA.

### **III. COMPLIANCE ORDER**

18. Respondent shall bring their facility into compliance with all requirements of the NEPA, LWCF, and all rules and regulations and orders promulgated under such acts, including, but not limited to completing the following:

A. Within thirty days of receipt of this order, file a Title 130, Form A, Request for Inspection of Animal Feeding Operation with the Department and the required \$ 500.00 inspection fee.

B. Within six months of receipt of this order, apply for a new construction and operating permit and new NPDES general permit coverage utilizing Title 130, Form; and Neb. Admin. Code Title 130, Chapters 4 and 5.

C. Once a construction and operating permit is issued, comply with all LWCF construction schedules included in the construction and operating permit.

D. By August 1, 2019, submit \$22,500 in late fees related to operation of a large concentrated AFO without proper inspections. Late fees are assessed at \$500.00 per month based upon 45 months (November of 2015 through July of 2019) of operating in violation of the regulatory requirement. The Respondent will be subject to additional late fees if Item A. is not completed by the required compliance date.

19. Respondents shall respond promptly to any written communication by the NDEE.

Any delay in responding to such communication shall be construed as non-compliance with this Order.

20. Information to be submitted under this Order shall refer to FID # 45480 and shall be sent to:

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

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

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

22. 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 Environment and Energy, 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.

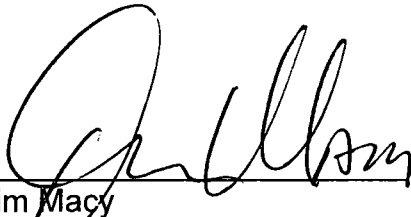
#### **V. SETTLEMENT CONFERENCE**

23. Whether or not Respondents request a hearing, an informal settlement conference may be requested by writing to Susan M. Ugai, Attorney, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

24. 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**

25. The NDEE 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 NDEE from pursuing such enforcement.

July 3, 2019   
Date Jim Macy  
Director  
Nebraska Department of Environment and Energy

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, were served by certified United States mail, postage prepaid, return receipt requested this 9th day of July, 2019, upon the Respondent listed below at their registered agent and office address:

Elizabeth Stanko  
129 W. Hwy 20  
PO Box 509  
Gordon, NE 69343

  
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Susan M. Ugai