

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	CASE NO. 2997
Klassen Farms Inc.)	
Platte County, Nebraska)	COMPLAINT, COMPLIANCE
)	ORDER AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Respondent.)	

I. INTRODUCTION

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2008). Complainant has determined that the respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 *et. seq.* (Reissue 2008) and the Livestock Waste Management Act, Neb. Rev. Stat. § 54-2416 *et seq.* (Reissue 2004). The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter “NDEQ” or “Department”). The Respondent is Klassen Farms Inc., Platte County, Nebraska. The Complaint below establishes the violations.

II. FIRST CLAIM

1. Respondent is Klassen Farms Inc., a corporation authorized to do business in Nebraska which owns animal feeding operations in Platte County, Nebraska.

2. 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.

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§ 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.”

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

4. Respondent's animal feeding operations include one located at 39445 445th Street near Lindsay, Nebraska, legally described as SW 1/4, SE 1/4, Section 26, Township 20N, Range 3W, Platte County, Nebraska

5. After an inspection of the above operation on November 19, 2003, Respondent was informed that a Livestock Waste Control Facility is required. However, the Respondent has not 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.

III. SECOND CLAIM

8. The plaintiff hereby incorporates the allegations contained in paragraphs 1, 2, and 3 of its first claim above.

9. Respondent operates an animal feeding operation located at 44496 400 Avenue near Lindsay, Nebraska, legally described as SE 1/4, SE 1/4, Section 34, Township 20N, Range 3W, Platte County.

10. On July 9, 2007, the Department approved an application sent by Respondent on May 1, 2005 for construction of a Livestock Waste Control Facility at the above operation. The Construction Permit was issued July 19, 2007 and a Construction and Operating Permit was issued August 13, 2009. The Construction and Operating Permit sent by the Department requested completion of the Livestock Waste Control Facility as approved by December 31, 2009. Respondent has not constructed the required facility. Even so, 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).

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

12. 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.

IV. COMPLIANCE ORDER

13. The Respondent shall perform, within the following time frames, the following activities:

- A. By July 1, 2010, reduce the cattle numbers at both above named operations to less than 300 head and fence off and abandon any portion of the existing pens which are within 100 feet of any road ditch. The operations may not repopulate these fenced-off areas until a permitted and approved Livestock Waste Control Facility has been constructed.
- B. By August 1, 2010, submit a complete and accurate plan for construction of a Livestock Waste Control Facility by submitting an application for a construction and operating permit and an application for a general or individual National Pollutant Discharge Elimination System permit for the 39445 445th Street operation. Also, begin construction on the approved Livestock Waste Control Facility at the 44496 400th Avenue operation.
- C. By December 1, 2010, begin construction on the approved Livestock Waste Control Facilities at the 39445 445th Street operation.
- D. By January 1, 2011, complete construction of the Livestock Waste Control Facilities at the 44496 400th Avenue operation, as approved by NDEQ, in accordance with plans and specifications and meet all other regulatory requirements. If

construction is not completed and all necessary permits obtained by January 1, 2011, all cattle shall be immediately removed from the operation. These animals shall stay removed and the portions of any fenced area used to contain them shall be abandoned until the construction of a Livestock Waste Control Facility is completed at the operation and all necessary permits are issued by NDEQ for the operation.

- E. By July 1, 2011, complete construction of the Livestock Waste Control Facilities at the 39445 445th Street operation, as approved by NDEQ, in accordance with plans and specifications and meet all other regulatory requirements. If construction is not completed and all necessary permits obtained by July 1, 2011, all cattle shall be immediately removed from the operation. These animals shall stay removed and the portions of any fenced area used to contain them shall be abandoned until the construction of a Livestock Waste Control Facility is completed at the operation and all necessary permits are issued by NDEQ for the operation.

14. Respondent shall submit monthly progress reports to NDEQ on the activities listed in paragraph 13 of this Order. These reports shall contain information regarding the activities associated with the project, construction schedule and completion date.

15. The Respondent shall respond promptly to any written communication by the NDEQ to modify any submitted documents and by making the required modifications or changes no later than 30 days after receipt or date specified in written comments by NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Order.

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

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

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

17. 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 days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

18. 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:

Michael J. Linder, Director
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

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

20. 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

21. 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. 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.

May 12, 2010
Date

/s/ Michael J. Linder
Michael J. Linder, 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 14 day of May 2010 upon the Respondent listed below:

John Klassen, Registered Agent
Klassen Farms Inc.
43085 400th Avenue
Lindsay, NE 68644

/s/ Lydia Fielder
Lydia Fiedler
Staff Attorney