

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF
WLASCHIN CATTLE, LLC

FID #24202

Respondent.

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Case No. 3537

COMPLAINT, COMPLIANCE ORDER
AND NOTICE OF
OPPORTUNITY FOR HEARING

I. INTRODUCTION

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2014; Cum. Supp. 2018). The Complainant is the Director of the Nebraska Department of Environment and Energy (NDEE or Department). The Respondent is Wlaschin Cattle, LLC, owner and operator of a cattle feeding operation located in Greeley County, NE.

2. Complainant has determined the Respondent is in violation of the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 54-2416 to 54-2438 (Reissue 2010; Cum. Supp. 2018); and Neb. Admin. Code, Title 130, *Livestock Waste Control Regulations* (Title 130).

II. JURISDICTION

3. NDEE 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 Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.*, LWMA and Title 130.

4. NDEE is further charged with the duty, pursuant to Neb. Rev. Stat. § 54-2418(2), to “administer the state program for construction and operating permits and major modification approval for animal feeding operations and livestock waste control facilities provided under the



Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.”

III. COMPLAINT

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

6. Respondent owns and operates a large animal feeding operation (AFO) as defined by Title 130, Chapter 1, 024.03.

7. The AFO is located at SW $\frac{1}{4}$, Section 24, Township 20N, Range 9W, Greeley County, NE.

8. The AFO's lots drain to the south and east and enter various surface water bodies and watercourses including streams, ponds, waterways, and drainage systems on properties both owned by Respondent and not owned by Respondent. These various surface water bodies and watercourses discharge to the Cedar River, which is located 2 $\frac{1}{2}$ miles to the south of Respondent's AFO.

9. The Cedar River and the various surface water bodies and watercourses that discharge to the Cedar River are waters of the state under Neb. Rev. Stat. § 81-1502(21).

10. On January 31, 2019, NDEE inspected Respondent's AFO and observed a livestock head count of approximately 2,000 cattle and the discharge of livestock waste to a neighboring property, making the AFO a "concentrated animal feeding operation" (CAFO) under Title 130, Ch.1, 008, and subject to the permit requirements of Title 130, Ch. 2, 004 and related requirement of Title 130, Ch. 2, 003 that Respondent construct and operate a livestock waste control facility (LWCF) to control its discharge of livestock waste to the environment.

11. On or around May 3, 2019 and based on the findings of its January 31, 2019 inspection, NDEE notified Respondent by letter of the NDEE's determination that Respondent's CAFO was required to construct and operate a LWCF and apply for both a Construction and Operating (C&O) Permit and a National Pollutant Discharge Elimination System (NPDES) Permit. The letter contained an application submittal deadline of November 1, 2019 for both the C&O and NPDES permit applications.

12. On October 31, 2019, Respondent submitted the required applications to NDEE. Respondent submitted addendums to the applications on January 21, January 30, February 18, and February 19, 2020.

13. On February 27, 2020, NDEE issued Respondent a C&O Permit with a construction completion deadline of October 15, 2020 and communicated its intent to issue Respondent a NPDES permit upon completing construction of the LWCF designs contained in the application.

14. To date, Respondent has not completed construction of its two (2) LWCFs pursuant to the terms and conditions of its C&O Permit issued on February 27, 2020.

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

"(3) Operate an animal feeding operation prior to construction of an approved livestock waste control facility [...]

(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".

16. Title 130, Chapter 2, states that:

“003 A livestock waste control facility is required for an existing or proposed animal feeding operation when livestock wastes have discharged or have the potential to discharge in a manner that is not lawfully authorized by permit or these regulations.

004 When livestock waste control facilities are required by the Department, the owner or operator of the animal feeding operation is required to apply for construction and operating permit as provided in Chapter 4. In the case of an existing animal feeding operation, the owner or operator will be notified in writing following an inspection by the Department whether or not a facility is required and, if required, the applicant shall submit an application according to the compliance dates in the notification.”

17. Title 130, Chapter 4, 006, states that “[a]ny 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;”

18. Since January 31, 2019 or earlier, Respondent has operated its large AFO and CAFO located at SW ¼, Section 24, Township 20N, Range 9W, in Greeley County, NE, in violation of Neb. Rev. Stat. § 54-2432(3) and (4) and Title 130, Ch. 2, 003.

19. Between January 31, 2019 or earlier and October 31, 2019, Respondent operated its large AFO and CAFO in violation of Title 130, Ch. 2, 004.

20. Since October 15, 2020, Respondent has operated its large AFO and CAFO in violation of Title 130, Chapter 4, 006.01.

III. COMPLIANCE ORDER

21. By December 31, 2021, Respondent shall:

- a. complete construction of both LWCFs and all related appurtenances, as designed in its October 31, 2019, C&O permit application and described in that application as Holding Ponds #1 and #2;
- b. submit all required construction certification documents in accordance with Title 130, Chapter 4, 006.03.

22. Submissions to the Department under this Order shall refer to FID #24202 and shall be sent to:

Dan Ross
Agriculture Compliance Section Supervisor
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

23. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files 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.

24. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Neb. Admin. Code, Title 115, Rules of Practice and Procedure. 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 245 Fallbrook Boulevard, Lincoln, Nebraska.

V. SETTLEMENT CONFERENCE

25. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Brian McMullen, Attorney, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.


26. 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

27. 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.

Dated this 29th day of April, 2021.

BY THE DIRECTOR

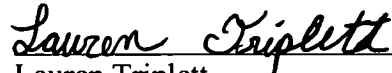


Jim Macy, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, was served by certified United States mail, postage prepaid, return receipt requested this 3rd day of May, 2021, upon the Respondent listed below:

Andrew C. Sigerson, P.C., L.L.O.
Andrew C Sigerson
9859 S 168th Ave
Omaha, NE 68136
USPS Label # 9414811898765891503603



Lauren Triplett
Staff Assistant - Legal Division