

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	CASE NO. 3133
Heartland Swine, Inc.)	
Clay County, Nebraska)	COMPLAINT, COMPLIANCE
FID# 81547)	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 2088, Cum. Supp. 2010). 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, Cum. Supp. 2010) and Title 130, *Rules and Regulations Pertaining to Livestock Waste Control*. The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent is Heartland Swine, Inc., Clay County, Nebraska. The Complaint below establishes the violations.

II. COMPLAINT

1. Respondent Heartland Swine, Inc., owns a swine feeding operation in Clay County, Nebraska, located at SW1/4, Section 8, Township 7N, Range 5W, Clay County, Nebraska.

2. Neb. Rev. Stat. § 81-1506 (5)(c) states that it is unlawful for any person to violate any term or condition of a livestock waste control permit.



3. Neb. Rev. Stat. § 81-1506 (2)(b) states that it is unlawful to construct, install, modify or operate any disposal system or part thereof or any extension or addition thereto without obtaining the necessary permits from the department.

4. Over the last 6 years the Respondent, in Clay County, Nebraska, has been operating part of a livestock waste control facility involving piping waste to a conservation pond without obtaining the necessary operating permit from the NDEQ.

5. The Respondent is a "person" as defined in Neb. Rev. Stat. §81-1502(10).

6. Respondent has violated Neb. Rev. Stat. §81-1506 (5)(c) and (2)(b).

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 or to issue an order requiring the Respondent to cease operating in violation of statute.

III. COMPLIANCE ORDER

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

- A. By June 1, 2012– remove unpermitted piping from conversation pond. Failure by the Respondent to comply with this requirement may result in an immediate order to cease operation of the facility.

B. By August 1, 2012- submit an application for a new construction and operation permit, application for an NPDES permit and a revised Comprehensive Nutrient Management Plan.

C. By May 1, 2013 – operate the Livestock Waste Control facility as designed and constructed in accordance with plans and specifications as approved by NDEQ and meet all other regulatory requirements.

9. Respondent shall submit monthly progress reports to NDEQ on the activities listed in paragraph 8 of this Order. These reports shall contain information regarding the activities associated with the project, construction schedule and completion date.

10. 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.

11. 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

12. 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.

13. 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, 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

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


15. 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

16. 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. Section 81-1508.02.


April 23 2012
Date


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 24th day of April 2012 upon the Respondent listed below:

Kenneth Lorenzen, Registered Agent
2331 Hwy. 6
P.O. Box 660
Sutton, NE 68979


Steven J. Moeller
Staff Attorney