

JUL 28 1998

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

NEBRASKA DEPT. OF
ENVIRONMENTAL QUALITY

IN THE MATTER OF JANET SLEGGERS,
DBA ASPEN DAIRY,
APPLICATION FOR VARIANCE
dated July 23, 1998.

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Case No. 2018

ORDER OF VARIANCE

NOW this matter came before the Director on the application of Janet Slegers, doing business as Aspen Dairy, for a variance from the provisions of Title 130, Chapter 3, requiring that certain sources obtain construction permits for livestock waste control facilities prior to initiation of construction as defined in Title 130, Chapter 1, to include devices utilized to control livestock wastes. The applicant proposes to construct a dairy operation at the following location: NW1/4, SW1/4 Section 33, Township 2N, Range 23W, Buffalo County, Nebraska. The applicant claims that she will experience serious hardship without equal or greater benefits to the public by virtue of the requirement to obtain a construction permit prior to initiation of construction. The applicant claims that she will suffer serious economic hardship if required to construct in cold weather and if site is prohibited from borrowing soil from the proposed lagoon area. April 15, 1998, is the effective date of LB1209 which modified the State's permit requirements for livestock waste control facilities and broadened application of the permit requirement to include, in certain cases, the livestock operation as a whole.

The applicant specifically requests that she be allowed to construct a concrete cross alley between the proposed free stall barns. The cross alley would be used to get cattle to the milking parlor and to take flushed water and manure to the settling basin. In addition, the applicant requests to be able to borrow soil from the proposed lagoon area to use for building pads.

The Director finds that if the construction of a cross alley between the proposed free stall barns is not commenced prior to the cold weather months, there will be a significant economic hardship on the applicant. The Director further finds that the applicant is not likely to receive her construction permit in a time frame that will enable her to commence construction of the cross alley before the cold weather months arrive. Construction of the cross alley will not result in the discharge of livestock waste and, therefore, the Director finds that prohibiting its construction prior to issuance of a



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construction permit would produce serious hardship without equal or greater benefits to the public.

The Director finds that the use of borrow soil from the proposed lagoon area for building pads would result in significant cost savings over transporting soil to the site. Use of borrow soil from the proposed lagoon area will not result in discharges of livestock waste and, therefore, the Director finds that prohibiting its use prior to issuance of a construction permit would produce serious hardship without equal or greater benefits to the public.

IT IS THEREFORE ORDERED THAT:

1. The applicant may forthwith commence construction of its cross alley between the free stall barns and may use borrow soil from the proposed lagoon area for building pads without the observance of the provisions of Title 130, Rules and Regulations Pertaining to Livestock Waste Control as cited above.
2. The applicant is hereby notified that any construction commenced under the authority of the Variance is undertaken at the applicant's risk of not obtaining a construction permit for this facility which has not yet been reviewed by this agency.
3. The applicant may not operate its facility without obtaining a construction and operating permit under Title 130.
4. This Variance allows the activity described in Paragraph 1 until such time as a permit is issued or until the time that the permit may be denied.
5. Any construction commenced under this Variance may be subject to change based upon permit review.

Dated this 28 day of July, 1998.

BY THE DIRECTOR:



Randolph Wood, P.E., Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

AFFIDAVIT

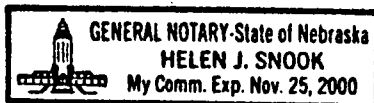
STATE OF NEBRASKA
COUNTY OF LANCASTER ss.

COMES NOW the affiant, Gayle S. Mason, who upon being first sworn on oath, deposes and says that on the 28th day of July, 1998, she caused an exact copy of the foregoing Variance to be mailed, certified, showing to whom and date delivered, in the regular channels of the United States mail, addressed as follows:

Janet Slegers
Aspen Dairy
10241 Edison Avenue
Chino, CA 91710

Gayle S. Mason
Affiant

SUBSCRIBED AND SWORN to before me, A Notary Public, on this
28th day of July, 1998.



Helen J. Snook
Notary Public