

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE CASE OF	)	
KCC Feeding, Inc.,	)	CASE NO. 3411
A Nebraska Corporation,	)	
	)	
Facility ID 072493,	)	CONSENT ORDER
	)	
Respondent.	)	

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (Department) and KCC Feeding, Inc. (KCC), a Nebraska Corporation, voluntarily enter into this Consent Order. The Consent Order establishes a schedule for actions necessary to achieve and maintain compliance with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 et seq. (Reissue 2014 and 2016 Cum. Supp.) and the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 54-2416 to 2438 (Reissue 2010 and 2016 Cum. Supp.) and all rules and regulations created thereunder.

II. JURISDICTION

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. This Consent Order is issued under the authority vested in the Director of the Department by Neb. Rev. Stat. §§ 81-1504(25) and 81-1507(1).

3. KCC agrees to undertake all actions required by the terms and conditions of this Consent Order. KCC admits to and agrees not to contest the jurisdictional allegations or factual findings referenced herein in any proceeding to enforce this Consent Order. KCC waives its right to receipt of a complaint and all notice and hearing requirements



provided in Neb. Rev. Stat. § 81-1507 for the violations alleged herein. KCC shall be responsible for any noncompliance with this Consent Order by its employees, contractors, and representatives.

### III. PARTIES

4. The parties to this Consent Order are the Nebraska Department of Environmental Quality and KCC Feeding, Inc. (KCC). This Consent Order is binding on KCC, its employees, agents, contractors, consultants, successors and assigns.

5. KCC shall ensure that any contractors, sub-contractors, and representatives implementing any provision of this Consent Order receive a copy of this Consent Order. KCC shall be responsible for any noncompliance with this Consent Order.

6. KCC owns and operates a cattle feeding operation located at the NW ¼ of Section 04, Township 05N, Range 13W, Kearney County, Nebraska, also known as the "Main Yard".

### IV. FINDINGS OF FACT

7. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the Livestock Waste Management Act, Neb. Rev. Stat. §§ 81-1505 and 54-2435, the Council adopted rules and regulations codified as *Title 130, Neb. Admin. Code, Livestock Waste Control Regulations* (Title 130).

8. KCC filed an application for a Major Modification for the Main Yard on June 18, 2012, including an Operation and Maintenance Plan. KCC was issued a Construction and Operating Permit on October 15, 2012, adopting the Major Modification filed by KCC. This permit includes Holding Ponds 1A and 1B.

9. In the Operation and Maintenance Plan, Section 4.4 Critical Stage Storage Depths defines how holding pond volumes are to be managed. This includes the Stage Storage data table which identifies the critical stage storage depths by which to manage the pond volumes.

10. Section 4.4.1 Maximum Sludge Depth states that: "Maximum sludge depth is the greatest depth to which sludge will be allowed to accumulate. This depth is calculated on the Stage Storage and Pond Level Worksheet."

11. Section 4.4.2. Start Pumping Level states that: "The Start Pumping Level is where pumping shall begin to restore the capacity needed for the accumulation of effluent until the next scheduled pumping can be accomplished. Pumping must begin any time the liquid level exceeds the Start Pumping Level and land application must begin as soon as possible based on suitable soil conditions to restore the 25 year/24 hour pumping event and may cease when the level reaches the Start Pumping Level as identified in the Stage Storage Data table."

12. Section 4.4.3 Winter Time Pump Down states that: "The pond(s) will be pumped down to or below the maximum sludge depth prior to the winter months to maximize the space available for accumulation during the winter months."

13. Holding Pond 1B reached start pump level on April 18, 2017, and surpassed start pump level on April 28, 2017.

14. On May 25, 2017, a representative of the Department investigated a discharge of livestock waste from the KCC concentrated animal feeding operation (CAFO). The investigation revealed effluent had overtopped the southeast corner of Holding Pond 1B and entered an intermittent drainage and freshwater pond.

15. The holding pond level and precipitation log records reviewed during the investigation indicate the winter pump down level had not been achieved prior to entering the 2016/17 winter months.

16. The records also revealed the must pump level for the holding pond was exceeded on April 28, 2017, and no dewatering days were utilized to restore the necessary storage volume before the discharge occurred.

17. KCC's actions violated their October 15, 2012 Construction and Operating Permit and Neb. Rev. Stat. §§ 54-2432(4), (5); 81-1506 (1)(a) & (b) and Title 130, Chapter 2, 008, 008.02, 008.13, and Chapter 11, 003.

18. A Notice of Violation (NOV) was issued to KCC on June 12, 2017, for a discharge resulting from a failure to properly manage the operation's livestock waste control facilities. This discharge is considered a non-permitted discharge to waters of the State.

19. The NOV required KCC to:

A. Use every available dewatering day to pump the holding ponds and restore their 25-year, 24-hour storm storage capacity. The Department must be notified, in writing, upon achieving this work. The ponds are to be operated at or below the must pump level (16 feet) during the spring, summer and fall months. Any time the must pump level is exceeded, all available dewatering days must be utilized until adequate storage is restored.

B. Winter pumpdown level in the holding ponds must be reached prior to entering the winter months each year.

C. Remove the sludge accumulation in the holding ponds or submit an evaluation of the accumulated sludge for each pond verifying it has not exceeded the approved volume or impeded the required storage capacity. This work shall be completed by November 15, 2017, with written notification submitted to the Department upon completion of the work.

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

(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.

21. 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.

22. 130 Neb. Admin. Code Ch. 2 Animal Feeding Operations: Requirements and

Prohibitions, states:

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.

23. 130 Neb. Admin. Code Ch. 11 Best Management Practices states:

003 Any time the waste storage volume in the livestock waste control facility exceeds the level identified in 008.02 in Chapter 8 (i.e. the "must pump level"), livestock wastes shall be land applied on all available dewatering days until adequate storage is restored.

## V. COMPLIANCE ORDER AND SCHEDULE

24. KCC agrees to perform the following:

A. By November 15, 2017, remove the sludge accumulation in Holding Ponds 1A and 1B or submit an evaluation of the accumulated sludge for each pond verifying it has not exceeded the approved volume or impeded the required storage capacity.

B. Submit monthly reports to the Department for a period of two years from the date of this order. The monthly report shall list the levels of Holding Ponds 1A and 1B each week and after precipitation events, the dates the pond(s) were de-watered, where the pond(s) were de-watered and the volume de-watered. The reports must be submitted by the 15<sup>th</sup> of each month for the previous month's activity.

25. KCC shall respond promptly to any written communication by the Department. Any delay in responding to such communication shall be construed as non-compliance with this Consent Order.

26. Information to be submitted under this Consent Order shall be sent to:

Agriculture Section, Water Permits Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922 (1200 N St., Suite 400)  
Lincoln, NE 68509-8922  
Telephone: 402-471-2186

## VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

27. KCC shall perform and conduct all actions required by this Consent Order in accordance with all applicable local, state, and federal laws, regulations and permits.

## VII. RESERVATION OF RIGHTS

28. Nothing in this Consent Order shall be construed to sanction any violation of State or Federal law or limit the power and authority of the Department to take or order any action necessary to protect public health, welfare, or the environment or to enforce

any provision of the Act and any rules, regulations, orders, or permits issued pursuant to the Act. The Department reserves the right to pursue any other remedies to which it is entitled for violations of this Consent Decree or the underlying violations alleged herein, including penalties or injunctive relief.

#### VIII. NEGATION OF AGENCY RELATIONSHIP

29. Nothing contained in this Consent Order shall be construed to create, either expressly or by implication, the relationship of agency between the Department and KCC.

#### IX. AMENDMENT

30. This Consent Order may be modified and amended in writing by mutual agreement of the Department and KCC.

#### X. EFFECTIVE DATE


31. This Consent Order shall become effective on the date it is signed by the Director of the Department or his designee.

#### XI. SEVERABILITY

32. If any provision or authority of this Consent Order or the application of this Consent Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other party or circumstances and the remainder of the Consent Order shall remain in force and shall not be affected thereby.

## XII. SIGNATURES

For the Respondent KCC Feeding, Inc.: The undersigned certifies that he is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

Date: 6/29/2017 By:   
John H. Wubbenhorst, President  
KCC Feeding, Inc.

For the Department: IT IS ORDERED and agreed this \_\_\_\_ day of

July 10, 2017.

By:   
Jim Macy, Director  
Department of Environmental Quality