

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE CASE OF	)	
Kenneth C. Lorenzen	)	CASE NO. 3430
d/b/a Heartland Swine Sutton Unit,	)	
	)	COMPLAINT, COMPLIANCE
Facility ID 81547,	)	ORDER, AND NOTICE OF
	)	OPPORTUNITY FOR HEARING
Respondent.	)	

**I. INTRODUCTION**

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2014). The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent is Kenneth C. Lorenzen, dba Heartland Swine Sutton Unit whose facility # 81547 is located near Sutton, Clay County, Nebraska. Complainant has determined that the Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 et seq. (Reissue 2014 and 2016 Cum. Supp.), the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 54-2416 to 2438 (Reissue 2010 and 2016 Cum. Supp.) and Nebraska Administrative Code, Title 130, Livestock Waste Control Regulations.

**II. JURISDICTION**

2. The Department is the agency of the State of Nebraska charged with the duty pursuant to Neb. Rev. Stat. §§ 54-2418 and 81-1504, of exercising exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, the Livestock Waste Management Act, and all rules, regulations, and orders promulgated under such acts.



### **III. COMPLAINT**

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

4. Respondent is Kenneth C. Lorenzen, dba Heartland Swine Sutton Unit, Sutton, Nebraska, who owns and operates a swine production facility at 2231 Hwy 6, Sutton, Nebraska. The legal description is SW ¼ of Section 08, Township 07N, Range 05W, Clay County, Nebraska.

5. An Administrative Order was issued on April 24, 2012, requiring the Respondent to construct livestock waste control facilities or any parts thereof to prevent, control, or abate pollution. Respondent was ordered to submit an application for a new construction and operating permit, an application for an NPDES permit, and a revised Comprehensive Nutrient Management Plan by August 1, 2012.

6. During inspections by NDEQ employees on October 16, 2014, and October 27, 2014, the employees found extensive erosion to the outside wall of the earthen storage pit's west berm at the Respondent's facility. Evidence indicated effluent overtopped the berm at this location resulting in a discharge of livestock waste into School Creek.

7. A Notice of Violation (NOV) was issued to Respondent on November 5, 2014, for a discharge into School Creek 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.

8. The NOV required Respondent to submit an application for a Construction and Operating Permit as soon as possible, provide NDEQ with a licensed professional engineering evaluation of the earthen storage pit within fifteen (15) days of receipt of the

NOV, complete repairs and compaction testing of the earthen storage pit by December 15, 2014; and submit a Mortality Management Plan by December 14, 2014, describing the method of mortality disposal to be implemented by the operation and aligning with Nebraska Department of Agriculture animal mortality regulations.

9. During an inspection of the facility on May 11, 2016, an NDEQ inspector found that repairs had been completed to the berm of the earthen storage pit but no compaction tests had been completed.

10. On October 27, 2017, a letter was received from Nutrient Advisors stating that the Respondent had hired the firm to complete an engineering evaluation of the earthen storage pit and an application for a Construction and Operating Permit.

11. As of the date of this Order, NDEQ has not received a completed application for a Construction and Operating Permit, an engineering evaluation of the earthen storage pit, or a Mortality Management Plan.

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

- “(2) Construct a livestock waste control facility without first obtaining a construction and operating permit from the department. . . .
- (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.”

13. 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  
(c) 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. . . .

(2) It shall be unlawful for any person to: . . .

(b) Construct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department.”

14. Neb. Rev. Stat. § 81-1506(3) states that it shall be unlawful for any person to:

“(a) Construct or operate a solid waste management facility without first obtaining a permit required under the Environmental Protection Act or under the Integrated Solid Waste Management Act and the rules and regulations adopted and promulgated by the council pursuant to the acts.”

15. Pursuant to Neb. Rev. Stat. § 81-1506(3)(c), it is unlawful for any person to violate any rule or regulation under the Livestock Waste Management Act.

16. Neb. Rev. Stat. § 81-1506(5) states that it shall be unlawful for any person to:

“(b) Violate any provision of the Livestock Waste Management Act;  
(c) Violate any term or condition of an animal feeding operation permit; or  
(d) Violate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the Livestock Waste Management Act.”

17. Neb. Rev. Stat. § 81-1508.02(1)(b) states it shall be unlawful for any person to violate any order of the director issued pursuant to the Livestock Waste Management Act.

18. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of livestock waste management, as expressed in Neb. Rev. Stat. §§ 81-1505(13)(d) and 54-2418, the Council adopted rules and regulations codified as *Neb. Adm. Code, Title 130, Livestock Waste Control Regulations* (Title 130).

19. *Nebraska Administrative Code, Title 130, Chapter 2*, states that:

“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; .  
008.07 Construct a livestock waste control facility without a construction and  
operating permit, or construction approval or not in compliance with a  
construction and operating permit or construction approval issued by the  
Department. . . .  
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.”

20. *Nebraska Administrative Code, Title 130, Chapter 4*, states that:

“009 The Department shall be notified if sloughing, slope failure, or excessive erosion of a facility occurs, or where other failure has occurred. The owner or permittee may be required to provide an engineering evaluation and any other information the Department determines necessary to ensure that the design and construction is acceptable such that the excessive erosion or other failure is not likely to recur. In the event the existing design or construction is determined to be inadequate, the owner or permittee may be required to submit an application for a major modification.”

21. Respondent’s actions as cited above in Paragraphs 4 through 11 have violated the provisions of the Nebraska statutes and rules and regulations as cited in Paragraphs 12 through 20.

#### **IV. COMPLIANCE ORDER AND SCHEDULE**

22. Within thirty (30) days, Respondent shall bring his facility into compliance with all requirements of the Nebraska Environmental Protection Act, the Livestock Waste Management Act, and all rules and regulations and orders promulgated under such acts, including, but not limited to completing the following:

A. Submit a complete application for a new Construction and Operating Permit, an application for an NPDES permit, and a revised Mortality Management Plan to the Department describing the methods of mortality disposal to be implemented by the

operation. The Mortality Management Plan must align with the Nebraska Department of Agriculture animal mortality regulations.

B. Provide NDEQ with compaction tests for the repaired berm in accordance with *Title 130, Chapter 4, 009*, to verify structural stability.

C. Provide NDEQ with a licensed professional engineering evaluation of the earthen storage pit.

D. Repair any additional inadequacies identified in the professional engineering evaluation of the earthen storage pit.

23. Respondent 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.

24. Information to be submitted under this Order shall refer to FID # 81547 and shall be sent to:

Brad Edeal  
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

#### **V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

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

26. 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: Jim Macy, 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.

## **VI. SETTLEMENT CONFERENCE**

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

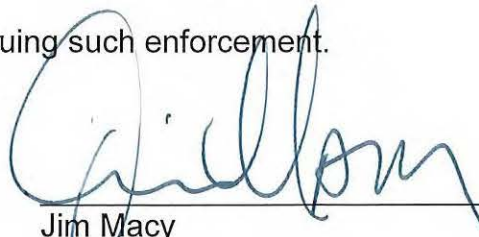
28. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

## **VII. INJUNCTIVE RELIEF AND PENALTY PROVISIONS**

29. 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.

April 24, 2018

Date



Jim Macy  
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 was served by certified United States mail, postage prepaid, return receipt requested this 25th day of April, 2018, upon the Respondent at the following addresses:

Kenneth Lorenzen  
dba Heartland Swine, Inc. – Sutton Unit  
PO Box 386  
York, NE 68467

Kenneth Lorenzen  
dba Heartland Swine, Inc. – Sutton Unit  
2231 Hwy 6  
PO Box 660  
Sutton, Nebraska 68979

  
\_\_\_\_\_  
Susan M. Ugai