

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
GARY MOODY d/b/a
KMM CATTLE PARTNERSHIP

FID # 66315

Respondent.

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CASE NO. 3344

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(1) of the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to 81-1532 (Reissue 2014), the Livestock Waste Management Act, Neb. Rev. Stat. §§ 54-2416 to 54-2438 and in conformance with Neb. Admin. Code, *Title 130 – Livestock Waste Control Regulations*. The Complainant is Jim Macy, Director of the Nebraska Department of Environmental Quality (Department or NDEQ). The Respondent is Gary Moody d/b/a KMM Cattle Partnership. Respondent Gary Moody resides at 1602 East 11th Road, Aurora, Nebraska, 68818.

2. The Department is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 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 thereunder.

3. At all times material herein the Respondent, Gary Moody has owned and operated a concentrated cattle feeding operation located in the NE ¼, Section 16, Township 10N, Range 06W in Hamilton County, Nebraska (Facility). Respondent's Facility has also been known as and has conducted business as KMM Cattle Partnership.

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

II. COMPLAINT

5. The Department is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. §§ 81-1504(4) and 54-2418 of administering the National Pollutant Discharge Elimination System (NPDES) of the federal Clean Water Act, 33 U.S.C. 1251 et seq., and administering the state program for construction and operating permit approval provided under the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.

6. 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(1) and 54-2435, the Council adopted and promulgated rules and regulations codified as Neb. Adm. Code, *Title 130, Livestock Waste Control Regulations*.

7. The Respondent is a person as defined in Neb. Rev. Stat. § 81-1502.

8. Neb. Rev. Stat. § 81-1506 makes it unlawful for any person:

“(1)(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...(2)(a) Discharge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System created by the Clean Water Act, as amended, 33 U.S.C. 1251 et seq., and by rules and regulations adopted and promulgated pursuant to section 81-1505;...(5)(a) Construct or operate an animal feeding operation without first obtaining a permit if required under the Livestock Waste Management Act or under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to such acts; (b) Violate any provision of the Livestock Waste Management Act; . . . 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.”

9. Neb. Rev. Stat. § 54-2432 makes it unlawful for any person to:

“...(3) Operate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirement for a livestock waste control facility 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; (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...”

10. Title 130, Ch. 2, 008.08 prohibits operation of an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted. Title 130, Ch. 2, 008.09 prohibits operation of an animal feeding operation without a construction and operating permit or a NPDES permit, unless exempted. Title 130, Ch. 2, 008.10 prohibits the discharge of animal waste without first obtaining a NPDES permit, a construction and operating permit, or construction approval if required by the Environmental Protection Act, the Livestock Waste Management Act or regulations.

11. Title 130, Ch. 2, 010 requires any person who owns or operates an animal feeding operation to report a discharge to the NDEQ within twenty-four (24) hours of the event and provide a written report within five (5) days of the event.

12. On or about May 13, 2014 and again on or about June 18, 2015 a NDEQ inspector observed a discharge of livestock waste from the Respondent’s Facility to an unlined pond.

13. The Respondent did not report the May 13, 2014 and June 18, 2015 discharges and did not submit written reports to the Department.

14. On or about June 26, 2014 and again on or about January 4, 2016 the Department requested Respondent submit a construction and operating permit application and a NPDES permit application.

15. The Respondent has not submitted the requested construction and operating permit and NPDES permit applications.

16. At all times material herein Respondent has operated a concentrated cattle feeding operation without required permits and without an approved livestock waste control facility.

17. Respondent has violated Neb. Rev. Stat. § 81-1506(1), (2), and (5); Neb. Rev. Stat. § 54-2432(3) and (4), Title 130, Ch. 2, 008.08 through 008.10 and Title 130, Ch. 2, 010.

18. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. §§ 81-1504 and 81-1507 to issue this order requiring Respondent to modify the facility or any part thereof and to apply for a permit to prevent, control or abate discharges.

III. COMPLIANCE ORDER

19. It is hereby ORDERED that by June 17, 2016 Respondent shall:

- a. Cease discharge from the Facility to the conservation pond;
- b. Construct and maintain diversion berms and sediment settling area(s) such that all discharge to waters of the state from Respondent's Facility shall cease.
- c. Confine and feed no more than 925 cattle at any one time at the Facility without Department approval.
- d. Respondent shall not exceed 925 head of cattle until the Respondent has constructed livestock waste control facilities in accordance with a

Construction and Operating permit and/or a NPDES permit issued by the Department.

20. Respondent shall respond in writing within seven (7) working days to all requests for information requested by the Department.

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

21. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondent files an answer and requests a hearing, in writing, 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.

22. 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
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 68508.

V. SETTLEMENT CONFERENCE

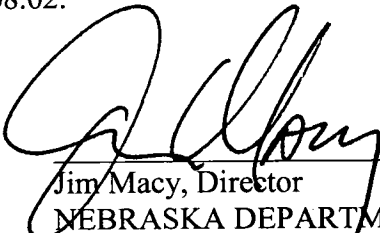
23. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Thomas O'Connor, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

24. 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

25. 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 Department from pursuing such enforcement. Failure to obey this order may result in fines up to \$10,000, per violation, per day, as set out in Neb. Rev. Stat. § 81-1508.02.

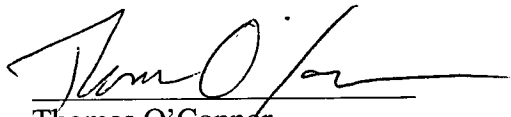
3-17-16
Date


Jim Macy, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY

VII. 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 18th day of March, 2016 upon the Respondent listed below:

Gary Moody
1602 East 11th Road
Aurora, Nebraska, 68818


Thomas O'Connor
Staff Attorney