

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Case No. 3021

IN THE MATTER OF
SHERIDAN LIVESTOCK
AUCTION CO., INC.,
Respondent.

COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY
FOR HEARING

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507(1) (Reissue 2008) of the Nebraska Environmental Protection Act § 81-1501 to -1532 (Reissue 2008). The Complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to hereinafter as NDEQ or Department). The Respondent is Sheridan Livestock Auction Co., Inc., a corporation organized under the laws of the State of Nebraska and operating in Sheridan County, Nebraska.

2. The Complainant, NDEQ, is the agency of the state of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504(1) & (4) (Reissue 2008), to exercise exclusive general supervision, administration, and enforcement of the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 to -1532 (Reissue 2008), the Livestock Waste Management Act, Neb. Rev. Stat. § 54-2401 to -2435 (Reissue 2004, Supp. 2008), and all rules, regulations, and permits promulgated under these acts. The authority of NDEQ to require compliance measures is expressed in Neb. Rev. Stat. §§ 81-1504 (7) and -1507 (Reissue 2008).

3. The Respondent, Sheridan Livestock Auction Co., Inc., owns and operates a sale barn and truck wash located at 501 Sale Barn Road, Rushville, Sheridan County, Nebraska.

20100026532

COMPLAINT

FIRST CLAIM

4. Neb. Rev. Stat. § 81-1506(2)(b) (Reissue 2008) states that it is unlawful to “[c]onstruct, install, modify, or operate any disposal system or part thereof or any extension or addition thereto without obtaining necessary permits from the department...” Nebraska Administrative Code Title 123, *Rules and Regulations for The Design, Operation And Maintenance Of Wastewater Works*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008). Title 123, Chapter 3, Section 001, states that “[n]o person shall construct, install, modify, or make additions to a wastewater works until a construction permit is issued authorizing the project.”

5. On or about October, 2008, Respondent constructed a wastewater lagoon to capture wash water and manure from its truck wash operation. Respondent never sought or received a construction permit for this wastewater system and has operated the lagoon since this time without a permit.

6. The Director finds that Respondent has violated Neb. Rev. Stat. § 81-1506 and Title 123.

7. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) & (10) (Reissue 2008) to issue this order requiring submission of plans and appropriate modification of the wastewater works as necessary to prevent, control, or abate pollution.

SECOND CLAIM

8. Complainant hereby incorporates by reference each and every allegation contained in the paragraphs above.

9. Nebraska Administrative Code Title 130, *Livestock Waste Control Regulations*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008). Title 130, Chapter 1, Section 029, states that “‘Major modification’ means ... change in the methods of waste treatment, waste storage, or land application of waste...or change in the size or location of the livestock waste control facility.”

11. Neb. Rev. Stat § 54-2423 (Reissue 2004, Supp. 2008) states that “[i]f any person owning or operating an animal feeding operation ...(c) is not exempt under

section 54-2422 [due to size], such person shall, on forms prescribed by the department, request the department to inspect such person's animal feeding operation to determine if a livestock waste control facility is required.” Nebraska Administrative Code Title 130, *Livestock Waste Control Regulations*, was promulgated pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008). Title 130, Chapter 3, Section 001 states that “[a]ny person owning or operating an animal feeding operation which does not hold a [permit], has not been notified by the Department that no [] permit is required, or is not exempt ... shall submit the required inspection request with the appropriate fee...”

10. In a March 13, 2006 letter to Respondent, NDEQ exempted Respondent’s sale barn and the associated lagoon from the requirement to obtain a construction approval or a National Pollution Discharge Eliminations System (NPDES) permit. Included in the letter was the requirement that “[p]rior to making any major modification (Title 130, Chapter 1) to the operation, [Respondent] must submit a Request for Inspection form to the Department, with the appropriate fee. The Department will then conduct an inspection of the operation to re-evaluate the need for a Construction Approval or an NPDES Permit.”

11. Between January 24, 2006 and June 19, 2009, Respondent modified the livestock waste lagoon associated with its sale barn. At no time during this period did Respondent seek or receive the proper permits from NDEQ, submit a Request for Inspection to NDEQ, or notify NDEQ of the proposed modifications to Respondent’s animal feeding operation and livestock waste control facility. Therefore, the exemption for the livestock waste lagoon is no longer effective.

12. The Director finds that Respondent has violated Neb. Rev. Stat. § 54-2423 and Title 130.

13. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) & (10) (Reissue 2008) to issue this order prohibiting the discharge of pollutants and requiring the submission of data and the inspection of facilities as necessary to prevent and abate pollution.

THIRD CLAIM

14. Complainant hereby incorporates by reference each and every allegation contained in the paragraphs above.

15. Title 123, Chapter 5, Section 005.01 states that “[t]he seepage rate of wastewater lagoons shall not exceed one-eighth inch per day at the design maximum water depth. A lower seepage rate, or zero seepage, shall be required if the Department determines that additional ground water protection is required.”

16. On or about June 17, 2009, the Department received permeability test results which indicated that the unpermitted lagoon has a seepage rate up to 16 feet per day, approximately 1500 times the allowable rate. Furthermore, the unpermitted lagoon is located in the wellhead protection area for the city of Rushville.

17. The Director finds that Respondent has violated Title 123.

18. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(7) & (12) (Reissue 2008) to issue this order requiring proper maintenance and operation of the wastewater system or, if such operation is impossible, to order reconstruction or abandonment of the wastewater system as necessary to prevent and abate pollution.

COMPLIANCE ORDER

19. IT IS THEREFORE ORDERED that the Respondent shall perform, within the following time frames, the following activities:

- a. Immediately, Respondent shall submit a Request for Inspection form to the Department, with the appropriate fee, for inspection of the livestock waste lagoon associated with Respondent’s sale barn.
- b. On or before December 1, 2010, Respondent shall submit to NDEQ an engineering report, performed by a qualified professional engineer, or test results which verify that the previously-exempted livestock waste lagoon conforms to Department-mandated design standards found in Title 130, including appropriate seepage rates that comply with NDEQ requirements.
- c. On or before January 1, 2011, the Respondent shall either abandon the truck wash lagoon or submit plans, created by a qualified professional engineer, for modification of the waste system as determined to be necessary by the Department to comply with all relevant statutes and

regulations. As needed, this submission shall include plans for a lagoon liner, solids handling, and an irrigation system for land application of wastewater. Plans shall ensure that lagoon seepage rates comply with Department requirements.

- d. By April 1, 2011, Respondent shall submit to NDEQ a plan for a qualified professional to take groundwater samples, at least one directly below the truck wash lagoon and one upgradient from the lagoon. Once NDEQ approves the submitted plan, Respondent shall immediately execute the plan and submit the results to NDEQ.
- e. By June 1, 2011, Respondent shall apply for an NPDES permit as needed for proper operation of the truck wash lagoon and proper waste disposal.
- f. By January 1, 2012, Respondent shall complete construction of all necessary modifications in order for the waste system to comply with all applicable statutes and regulations, including Title 123. By this date, Respondent shall also properly abandon any unpermitted or noncompliant facilities.

20. Once constructed, and the proper permits are obtained, Respondent shall operate its wastewater system in accordance with all Department rules and regulations, including the requirements of Title 123.

21. Information to be submitted under this Order shall be sent to:

Steve Goans
Wastewater Section Supervisor, Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number: (402) 471-2186

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

22. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1) (Reissue 2008), 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.

23. A written answer to the Complaint, Compliance Order, and Notice of Opportunity for Hearing must conform to the requirements of Neb. Admin. Code Title 115, *Rules of Practice and Procedure*, Chapter 7. The answer and request for hearing may be filed by mail to:

Michael J. Linder, 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.

SETTLEMENT CONFERENCE

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

25. 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.

INJUNCTIVE RELIEF AND PENALTY PROVISIONS

26. 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. § 81-1508.02 (Reissue 2008).

September 1, 2010

Date

/s/ Michael J. Linder

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 2nd day of September 2010 upon the Respondent listed below:

Dan Otte
Salesbarn Road
PO Box 378
Rushville, NE 69360

/s/ Lydia Fiedler

Lydia Fiedler
Staff Attorney