

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF
SHOEMAKER FARMS, INC.,

FID # 71907

Respondent.

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CASE NO. 3522

CONSENT ORDER

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (Department or NDEE) and Shoemaker Farms, Inc., (Respondent) voluntarily enter into this Consent Order. This Consent Order establishes a schedule for Respondent to comply with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501, et seq. (Reissue 2014), Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §54-2416, et seq. (Reissue 2010), and rules and regulations promulgated under such acts. This Consent Order supersedes the requirement to submit an application for a construction and operating permit found in paragraph 18 of the Administrative Order issued by NDEE on May 27, 2020 for Case No. 3522.

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), to exercise exclusive general supervision of the administration and enforcement of NEPA, LWMA, and all rules, regulations, and orders promulgated under the such acts.

3. Respondent agrees to undertake all actions required by this Consent Order. Respondent admits to the Department's jurisdiction over the subject matter of this Consent Order. Respondent further agrees to and will not challenge the jurisdictional allegations of this Consent Order or the Department's authority to issue and enforce this Consent Order. Respondent waives



its right to receive a formal complaint and to hearing requirements as provided in Neb. Rev. Stat. §81-1507. Respondent agrees it will not contest the basis or validity of this Consent Order in any proceeding by the Department to enforce this Consent Order.

III. PARTIES

4. The parties to this Consent Order are the Department and Respondent, and their employees, successors, and assigns.

IV. COMPLAINT

5. Respondent is Shoemaker Farms, Inc., a domestic corporation that owns and operates a medium animal feeding operation (AFO) located at N1/2, SW1/4, Section 28, Township 17N, Range 13W, Valley County, NE.

6. Respondent is a person as defined in Neb. Rev. Stat. § 81-1502(10).

7. On or about June 25, 2007 the Department issued Respondent a construction and operating permit (permit).

8. Neb. Rev. Stat. § 54-2432(5) states that is unlawful for any person to “Violate the terms of a [...] 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.”

9. Pursuant to the Nebraska Environmental Quality Council’s authority to adopt and promulgate rules and regulations as expressed in Neb. Rev. Stat. §§ 81-1505(10) and 54-2435, the Council adopted rules and regulations codified as Neb. Admin. Code, Title 130, Livestock Waste Control Regulations.

10. Neb. Admin. Code, Title 130, Chapter 2, Section 002, states that:

“[A]ny person proposing an expansion or increase to the lot area or feeding area of a large or medium animal feeding operation, shall submit an inspection request to the Department on a form provided by the Department...”

11. Neb. Admin. Code, Title 130, Chapter 2 states:

“008 Any person who owns or operates an animal feeding operation shall not:
008.01 Provide or present false or misleading information to the Department or omit relevant facts when submitting reports or applications to the Department;
...
008.09 Operate an animal feeding operation without a construction approval, operating permit, construction and operating permit or a NPDES permit as required in Chapter 5 of these regulations, unless exempted from permitting under these regulations.”

12. Neb. Rev. Stat. § 54-2417(10) defines a major modification as "an expansion or increase to the lot area or feeding area; change in the location of the animal feeding operation; change in the methods of waste treatment, waste storage, or land application of waste; increase in the number of animals; change in animal species; or change in the size or location of the livestock waste control facility.”

13. Neb. Admin. Code, Title 130, Chapter 3 states:

“003 [...] Any modification meeting the definition of a major modification in Neb. Rev. Stat. § 54-2417(10) and these regulations requires the submittal of an application for a major modification and an application fee.”

14. On February 13, 2020, the Department conducted a site inspection of Respondent’s AFO and observed, among other violations, that Respondent constructed and operated a pen (aka the north pen) outside of the AFO’s permitted footprint without requesting an inspection or submitting an application for a major modification and failed to abandon certain existing livestock pens (aka the west pens) as indicated in the permit application.

15. The items noted in Paragraphs 14 above are violations of Neb. Admin. Code, Title 130, Chapter 2, Sections 002, 008.01, and 008.09 and Title 130, Chapter 3, Section 003.

V. COMPLIANCE ORDER AND SCHEDULE

16. Respondent agrees to submit for Department approval an application for a major modification in accordance with Title 130 within sixty (60) days from the effective date of this consent order.

A. Neb. Admin. Code, Title 130, Chapter 4 states:

“002 Each application for a major modification of an operating permit, a construction approval, or a construction and operating permit or an application for a construction and operating permit shall include the following:

002.01 The application fee;

002.02 A completed Form B (see Appendix B);

002.03 A completed Applicant Disclosure (see Appendix C);

002.04 A detailed description of the major modification requested. For a major modification involving construction, include the appropriate construction details listed in Section 001.06 through Section 001.09 above;

002.05 A completed nutrient management plan and supporting documentation as specified in Chapter 14, unless such information has been previously submitted and is unchanged;

002.06 Five copies of the application in addition to the original.”

17. Respondents shall respond promptly to any written communication by the NDEE.

Any delay in responding to such communication shall be construed as non-compliance with this Order.

VI. SUBMITTALS

18. All documents required to be submitted to the Department pursuant to this Consent Order shall refer to FID # 71907 and shall be sent to:

Cay Ewoldt
NPDES & State Permits Section Supervisor
Nebraska Department of Environment and Energy
PO Box 98922
Lincoln, NE 68509-8922

VII. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

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

VIII. RESERVATION OF RIGHTS

20. 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 NEPA, LWMA, and any rules, regulations, orders, or permits issued pursuant to the such acts. 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.

IX. NEGATION OF AGENCY RELATIONSHIP

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

X. AMENDMENT

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

XI. EFFECTIVE DATE

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

XII. SEVERABILITY

24. If any provision or authority of this Consent Order or the application of the Consent Order to any party or circumstances is held by any judicial or administrative authority to be

invalid, the remainder of the Consent Order shall remain in force and shall not be affected thereby.

XIII. SIGNATURES

For the Respondent: The undersigned representative of Shoemaker Farms, Inc., certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondent.

By: Charles L. L.
Title: Sec.
Date: 4/25/21

For the Department: IT IS ORDERED and agreed this 26th day of May, 2021.

By: Jim Macy
Jim Macy
Director
Department of Environment and Energy