

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

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. The Complainant is the Director of the Nebraska Department of Environment and Energy (NDEE or Department). The Respondent is Shoemaker Farms, Inc., a domestic corporation that owns and operates a cattle-feeding operation located in Valley County, NE.

2. Complainant has determined the Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532; the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 54-2416 to 54-2438; and Neb. Admin. Code, Title 130, Livestock Waste Control Regulations.

**II. JURISDICTION**

3. NDEE 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 NEPA and LWMA and all rules and regulations promulgated under such acts.

4. NDEE is further charged with the duty to “administer the state program for construction and operating permits and major modification approval for animal feeding operations and livestock waste control facilities provided under the Environmental Protection Act, the Livestock



Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.” Neb. Rev. Stat. § 54-2418(2)

5. 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 (Title 130).

### **III. COMPLAINT**

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

7. Respondent operates a medium animal feeding operation as defined by Title 130, Chapter 1, 029, located at N1/2, SW1/4Section 28, Township 17N, Range 13W, Valley County, NE. Runoff from the Respondent’s animal feeding operation drains to the south to Davis Creek, a tributary of the Loup River, which are waters of the state as defined by Neb. Rev. Stat. § 81-1502(21).

8. On or about June 25, 2007 the Department issued Respondent a construction and operating permit, which required among other things, that certain existing livestock pens (aka the west pens) were to be removed, that new pens were to be constructed, and that livestock waste control facilities (LWCF) were to be constructed in accordance with the application for a permit which was submitted by Respondent.

9. On February 13, 2020, the Department conducted a site inspection of Respondent’s livestock feeding operation and observed, among other violations, the following:

- a. The west pens were still in use and new pens had not been constructed in accordance with Respondent’s construction and operating permit;

- b.** Drainage from the west pens flows through a culvert into a ditch which empties into Davis Creek. Livestock waste was found in the ditch;
- c.** A new pen (north pen) has been constructed to the north of the operation:
  - i.** No inspection request had been made by Respondent, and
  - ii.** No construction and operating permit had been obtained prior to construction of the north pen;
- d.** Intermittent drainage runs from the north pen, through a channelized path, to Davis Creek; and
- e.** Records were not being maintained in accordance with the requirements of Title 130, Ch. 12.

**10.** On or about March 17, 2020, based on the site inspection, the Department mailed a Notice of Violation to Respondent requesting that Respondent, among other things, cease all discharge of livestock waste from the west pens, block or remove all culverts from the pen(s), remove livestock waste from and fill with soil the ditch that carries livestock waste to Davis Creek, and implement a record-keeping protocol.

**11.** Respondents' operation of the west pens in violation of permit conditions is an unlawful act under Neb. Rev. Stat. §§ 81-1506(5) and 54-2432(3).

**12.** Respondent's discharge of livestock waste from the west pens to Davis Creek is an unlawful act under Neb. Rev. Stat. §§ 81-1506(1) and 54-2432(4) and a violation of Title 130, Ch. 2, 008.02.

**13.** Constructing the north pen without requesting an inspection or obtaining a construction and operating permit is an unlawful act under Neb. Rev. Stat. §§ 81-1506(5) and 54-2432(1) and a violation of Title 130, Ch. 2, 002 and 008.06.



14. Respondent's unpermitted discharge of runoff from the north pen to drainage of Davis Creek is an unlawful act under Neb. Rev. Stat. §§ 81-1506(1) and 54-2432(4) and a violation of Title 130, Ch. 2, 008.02.

15. Respondent's failure to maintain required records is a violation of Title 130, Ch. 12, 001 and unlawful under Neb. Rev. Stat. § 81-1506(5)(d).

### **III. COMPLIANCE ORDER**

16. Respondent shall immediately cease all discharge of livestock waste from the west pens and the north pen.

17. Respondent shall immediately remove or block the culvert located south of the west pens, clean livestock waste from all ditches that carry waste to Davis Creek, and fill said ditches with soil.

18. Within 180 days of receiving this Order, Respondents shall submit a new application for a construction and operating permit in accordance with the requirements of Title 130. The application shall describe the proposed construction of livestock waste control facilities which will prevent discharges to waters of the State.

19. Respondent shall immediately begin a record-keeping protocol in accordance with Title 130, Ch. 12, 001 requirements.

20. Submissions to the Department under this Order shall refer to FID#71907 and shall be sent to:

Cay Ewoldt  
Agriculture Section Supervisor  
Nebraska Department of Environment and Energy  
P.O. Box 98922  
Lincoln, NE 68509-8922

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

**21.** This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondents file an answer and request, 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.

**22.** 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. The answer and request for hearing may be filed by mail to: Jim Macy, Director, State of Nebraska Department of Environment and Energy, 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.

#### **V. SETTLEMENT CONFERENCE**

**23.** Whether or not Respondents request a hearing, an informal settlement conference may be requested by writing to Steve Thomas, Attorney, Nebraska Department of Environment and Energy, 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.

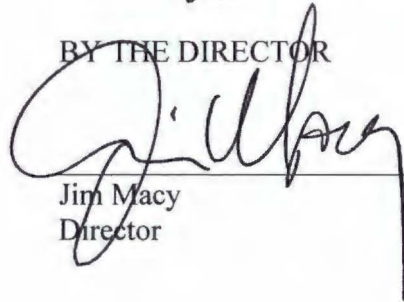
#### **VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS**

**25.** The NDEE 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 NDEE from pursuing such enforcement.

Dated this 27<sup>th</sup> day of May, 2020.


BY THE DIRECTOR

  
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Jim Macy  
Director

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complain, Compliance Order and Notice of Opportunity for Hearing, was served by certified United States mail, postage prepaid, return receipt requested this 2<sup>nd</sup> day of June, 2020, upon the Respondent listed below:

Shoemaker Farms Inc.  
Martha Shoemaker  
48240 799A Road  
North Loup, NE 68859

  
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Lauren Triplett  
Staff Assistant – Legal Division