

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF)	Case No. 3436
)	
Donald D. and Patricia K. Jensen,)	
d/b/a JENSEN CATTLE COMPANY)	CONSENT ORDER
)	
FID #75413)	
)	
Respondents)	

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (NDEQ) and Donald D. and Patricia K. Jensen d/b/a Jensen Cattle Company (Respondents) voluntarily enter into this Consent Order. The Consent Order requires Respondents to achieve and maintain compliance with the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2014; Cum. Supp. 2016); the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. § 54-2416 *et seq.* (Reissue 2010); and Nebraska Administrative Code (NAC) Title 130, *Livestock Waste Control Regulations* (Title 130). The Consent Order also requires Respondents to comply with the activities and schedules specified in Section V, below. When signed by both parties, the Consent Order shall resolve and replace the prior Administrative Order in this case issued on January 26, 2018.

II. JURISDICTION

2. NDEQ is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. §§ 81-1504 and 54-2418, of exercising exclusive general supervision, administration, and enforcement of NEPA, LWMA, and all rules and regulations and orders promulgated under such acts.



3. The authority of NDEQ to require compliance measures is provided in Neb. Rev. Stat. §§81-1504(7) and 81-1507.

4. In signing this Consent Order, Respondents admit to and agree not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order.

5. In signing this Consent Order, Respondents waive their right to further hearing as provided in Neb. Rev. Stat. §81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. §84-901 *et seq.* for the violations alleged herein.

III. PARTIES

6. The parties to this Consent Order are NDEQ and Donald D. and Patricia K. Jensen d/b/a Jensen Cattle Company. This Consent Order is binding on NDEQ and Respondents and all successors and assigns.

IV. FINDINGS OF FACT

1. Respondents own and operate a medium animal feeding operation near St. Paul in Howard County, Nebraska. The NDEQ facility ID is #75413. The legal description is SW 1/4 & W 1/2 of SE 1/4, Section 08, Township 15N, Range 10W, Howard County, Nebraska. The Howard County Assessor Parcel ID # is 470849165.

2. "Cedar Creek" is directly adjacent to Respondents' animal feeding operation and is the receiving water for uncontrolled discharges of livestock waste from Respondents' animal feeding operation.

3. Cedar Creek is a perennial stream and first order tributary to the North Loup River, which is located approximately one-half mile from Respondents' animal feeding operation.

4. Cedar Creek is a "Water of the State" under NEPA, in Neb. Rev. Stat. § 81-1502(21).

5. The LWMA, in Neb. Rev. Stat. § 54-2432, states that it shall be unlawful for any person to:

- "(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; or
- (5) Violate the terms of a National Pollutant Discharge Elimination System permit or 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."

6. Pursuant to the authority of the Nebraska Environmental Quality Council to adopt rules and regulations for the purpose of livestock waste management, as provided in Neb. Rev. Stat. §§ 81-1505(13)(d) and 54-2418, the Council has adopted rules and regulations codified as Title 130, *Livestock Waste Control Regulations*. The rules and regulations in Title 130 require that discharges of livestock waste to the environment be eliminated or minimized and that animal feeding operations with the potential to discharge obtain permits and have engineering controls, operating requirements, and environmental monitoring.

7. Title 130, *Livestock Waste Control Regulations*, Chapter 2, 008.13 states that:

- "008 Any person who owns or operates an animal feeding operation shall not:
...
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."

8. On September 28, 2012, NDEQ issued Respondents a Title 130 Livestock Waste Control Facility (LWCF) Construction and Operating Permit for up to 999 head of feeder or fat cattle at the facility.

9. Among other terms and conditions, Respondents' Construction and Operating Permit states that "[t]he operation and LWCF shall be operated in compliance with the approved application, this permit, Title 130 regulations, and the laws of the State of Nebraska."

10. On June 23, 2016, NDEQ conducted a routine compliance inspection of Respondents' animal feeding operation. The inspectors observed:

- a. livestock feeding pens to the east and south of the main pens that had no livestock waste controls, were not exempt from regulation, and had the potential to discharge to Cedar Creek, a water of the state, in violation of Title 130, Chapter 2, 003 and Neb. Rev. Stat. § 54-2432(4).
- b. a livestock waste holding pond level that was approximately 1.5 feet above the maximum allowed operating level and approximately 4.8 feet about the "must pump" level in violation of Title 130, Chapter 11, 003;
- c. no implementation of the approved groundwater monitoring plan despite cattle feeding activity in violation of Title 130, Chapter 4, 006.06 and permit condition #2 of Respondents' Construction and Operating Permit;
- d. no implementation of the soil analysis and sampling procedures in Respondents' nutrient management plan and Construction and Operating Permit;
- e. no amended nutrient management plan in violation of Title 130, Chapter 4, 006.01, 006.07, and permit condition #6 of Respondents' Construction and Operating Permit;
- f. no facility record-keeping in violation of Title 130, Chapter 12, 001 and 002;
- g. livestock allowed to enter and have contact with livestock waste holding ponds in violation of Title 130, Chapter 11, 010;
- h. dead livestock allowed to remain in a pen for over 36 hours in violation of Title 130, Chapter 12, 003; Respondents' mortality management plan; and Respondents' Construction and Operating Permit;
- i. an inadequately labeled permanent depth marker in a livestock waste holding pond in violation of Title 130, Chapter 8, 008; and
- j. an unmaintained settling basin with accumulated solids and sediment preventing the structure from performing its designed function in violation of Respondents' issued Construction and Operating Permit, approved LWCF engineering design, and approved Operation and Maintenance Plan.

11. On July 25, 2016, NDEQ sent Respondents a Letter of Warning (LOW) identifying the alleged violations observed on the June 23, 2016, inspection and requiring Respondents to address the items listed in paragraph 10 above.

12. Respondents did not respond to NDEQ's July 25, 2016, LOW and made no showing to demonstrate compliance with the identified violations.

13. On March 30, 2017, NDEQ conducted a re-inspection of Respondents' animal feeding operation. The NDEQ inspector again observed all physical conditions, operational practices, and violations identified on the June 23, 2016, inspection and as listed in paragraph 10, above.

14. During the March 30, 2017, re-inspection, the NDEQ inspector also observed:

- a.** areas of standing water, livestock waste, or mixtures of standing water and livestock waste in drainage ditches that connect Respondents' east and south cattle pens to Cedar Creek, indicating past discharges or, at a minimum, the potential to discharge to a water of the state in violation of Title 130, Chapter 2, 003 and Neb. Rev. Stat. § 54-2432(4);
- b.** areas of washout and erosion leading from the southwest corner of Respondents' livestock waste holding pond to an adjacent field, indicating that the holding pond had overtopped and discharged to the environment and, potentially, a water of the state in violation of Title 130, Chapter 7, 001; Chapter 11, 003; and
- c.** the discharge from the southwest corner of Respondents' livestock waste holding pond had not been reported to NDEQ within 24 hours in violation of Title 130, Chapter 11, 009.

15. During the March 30, 2017, re-inspection, Respondent Donald Jensen stated that Respondents' livestock waste holding pond had overtopped and discharged to the environment in March 2017.

16. On April 6, 2017, NDEQ sent Respondents a "Construction and Operating Permit Required" letter requiring Respondents to submit a LWCF permit application by October 13, 2017, pursuant to Title 130, Chapter 4, 001, to control the unpermitted, uncontrolled east and south cattle pens that have actually discharged or have the potential to discharge to Cedar Creek.

17. On April 25, 2017, NDEQ sent Respondents a Notice of Violation (NOV) requiring Respondents to address all violations identified in both the June 23, 2016, inspection and March 30, 2017, re-inspection – all of which remained unaddressed.

18. On June 9, 2017; August 3, 2017; November 22, 2017; November 30, 2017; and March 22, 2018 NDEQ conducted brief re-inspections at Respondents' animal feeding operation to determine Respondents' compliance status. On these five re-inspections, the NDEQ inspector again observed the physical conditions, operational practices, and violations identified on the June 23, 2016, and March 30, 2017, inspections.

19. NDEQ received groundwater monitoring reports from Respondents on September 25, 2017, and June 25, 2018. All other required actions in NDEQ's July 25, 2016, Letter of Warning; April 6, 2017, "Construction and Operating Permit Required" letter; and April 25, 2017, Notice of Violation remain unaddressed.

20. NDEQ has made every effort to obtain voluntary compliance, consistent with Neb. Rev. Stat. § 81-1510(1), and has provided compliance assistance to Respondent Donald Jensen on June 23, 2016; March 30, 2017; June 9, 2017; and June 6, 2018, detailing how Respondents could correct the violations at their animal feeding operation and comply with NEPA, LWMA, and Title 130.

21. Respondents have been in violation of Neb. Rev. Stat. §§ 54-2432(4) and (5) and Title 130, Chapter 2, 003 and 008.13; Chapter 4, 006.01 and 006.07; Chapter 8, 008; Chapter 11, 003 and 010; and Chapter 12, 001 through 003 since June 23, 2016.

22. Respondents have been in violation of Title 130, Chapter 7, 001 and Chapter 11, 009 since March 30, 2017.

23. Respondents have been in violation of Title 130, Chapter 2, 008.02 since August 3, 2017 or earlier.

24. Respondents have been in violation of Title 130, Chapter 2, 003 and 004 since October 14, 2017.

25. Title 130, Chapter 4, 006 states that "[a]ny person who obtains or has obtained a construction approval or a construction and operating permit shall comply with any compliance schedules established by the Department."

26. The compliance order below contains the activities and schedules required for Respondents' lawful operation of their animal feeding operation in Howard County, NE. Each condition was discussed in detail at a final compliance assistance meeting between NDEQ, Respondent Donald D. Jensen, and Respondents' Agricultural Consultant on June 6, 2018.

V. COMPLIANCE ORDER

27. Respondents agree to manage the **LIVESTOCK WASTE HOLDING POND** as follows:

- a. Respondents shall immediately begin dewatering the holding pond and have dewatered the holding pond to its start pump level by November 1, 2018.

Land application of livestock waste shall be done at agronomic rates and at approved land application sites in accordance with Respondents' most recent Nutrient Management Plan, approved by the Department on January 25, 2005, until such time as Respondents have an updated, approved Nutrient Management Plan as required by paragraph 30, below.

- b. By October 1, 2018, Respondents shall fence off and install gates as necessary to prevent cattle from entering the holding pond and debris basin areas.

Respondents shall not allow cattle access to these areas at any time.
- c. By November 15, 2018, Respondents shall submit to NDEQ copies of records of the holding pond level, weather conditions, and pumping activity for the previous month (October 2018) and shall continue submitting these records by the 15th of each month for a period of one (1) year, ending on October 15, 2019. If compliant for one year, Respondents may resume maintaining these records on-site.
- d. By November 15, 2018, Respondents shall complete an inspection of sludge and sediment accumulation in the holding pond and debris basin and submit the inspection results to NDEQ. Respondents must conduct this inspection annually and maintain a copy in the facility record to comply with Title 130, Chapter 12, 001.06.
- e. By November 15, 2018, Respondents must ensure that the permanent depth marker in the holding pond reflects the approved stage storage table data, designates one-foot increments, includes a clearly identifiable elevation reference number, and has the appropriate critical levels marked as required by Title 130, Chapter 8, 008. Any re-installation of the permanent depth marker shall not damage the holding pond liner.
- f. By May 15, 2019, Respondents shall remove all accumulated sludge, sediment, and other solids from the holding pond to maintain its designed

storage capacity as approved by NDEQ on May 19, 2005. The removal of sludge, sediment, and other solids shall not damage the holding pond liner.

- g. By May 15, 2019, Respondents shall remove all accumulated sludge, sediment, and other solids from the debris basin to maintain its designed function of completely de-watering within seventy-two (72) to eighty-four (84) hours following a runoff event.

28. Respondents agree to manage the **UNCONTROLLED SOUTH FEEDING AREA** as follows:

- a. By January 1, 2019, Respondents shall remove all livestock feed bunks from the area.
- b. By October 1, 2018, Respondents shall discontinue the use of any livestock watering tanks located in the area.
- c. By October 1, 2018, Respondents shall install fencing on the west side of this area to limit access to the area.
- d. By May 15, 2019, Respondents shall plant the area to row crops or perennial vegetation. If planted to row crops, crop residue must be maintained at all times outside of the growing season. If planted to perennial vegetation, vegetation must be maintained at all times.
- e. Respondents shall not feed, water, or confine livestock in the area.
- f. If Respondents intend to feed, water, or confine livestock in the area, prior to such activities Respondents shall submit a Title 130-Form A "Request for Inspection", pay the required fee, and, if required upon inspection, submit a complete application for major modification to Respondents' Construction and

Operating Permit, in accordance with the requirements described in Title 130, Chapter 4. This submittal shall include design criteria for the construction of a Livestock Waste Control Facility that will contain runoff from the uncontrolled south feeding area.

29. Respondents agree to manage the **UNCONTROLLED EAST PEN AREA** as follows:

- a. By January 15, 2019, Respondents shall remove the entire north and east fences.
- b. By March 1, 2019, Respondents shall scrape the area of all livestock waste.
- c. By May 15, 2019, Respondents shall plant the area to row crops or perennial vegetation. If planted to row crops, crop residue must be maintained at all times outside of the growing season. If planted to perennial vegetation, vegetation must be maintained at all times.
- d. Respondents shall allow livestock full access to the cropped field to the east and pasture to the north of this area at all times.
- e. Respondents may utilize loading and working areas, defined as provided and pursuant to the approximate dimensions and characteristics drawn and diagrammed in Attachment 'A' hereby incorporated into this Consent Order. Such areas are to be used for husbandry practices directly associated with loading, doctoring, or working livestock. Respondents use of loading and working areas shall be limited to temporary use, with no full time feeding.

f. If Respondents intend to feed or confine livestock in the area, prior to such activities Respondents shall submit a Title 130-Form A “Request for Inspection”, pay the required fee, and, if required upon inspection, submit a complete application for major modification to Respondents' Construction and Operating Permit, in accordance with the requirements described in Title 130, Chapter 4. This submittal shall include design criteria for the construction of a Livestock Waste Control Facility that will contain runoff from the uncontrolled east pen area.

30. By November 1, 2018, Respondents shall submit an amended nutrient management plan and supporting documentation meeting the requirements of Title 130, Chapter 14.

31. By November 1, 2018, Respondents shall implement and maintain a record-keeping system for a medium permitted animal feeding operation that meets the requirements of Title 130, Chapter 12 and Chapter 14, 001.10F, 001.11, and 002.09.

32. Respondents shall submit documentation to NDEQ whenever a compliance task in paragraphs 27 through 31 has been completed. Attachment ‘B’ – “Jensen Feedyard Compliance Schedule” is incorporated into this Order and attached as a reference to facilitate completion and reporting of the compliance tasks in paragraphs 27 through 31.

33. Respondents shall respond promptly to any written or other communication by NDEQ. Any unreasonable delay in responding to such communication shall be construed as non-compliance with this Order.

34. Information to be submitted under this Order shall refer to FID # 75413 and shall be sent to:

Brad Edeal
Agriculture Section
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

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

VII. RESERVATION OF RIGHTS

36. Nothing in this Consent Order shall be construed to limit the power and authority of the NDEQ to take or order any action necessary to protect public health, welfare, or the environment or to enforce any provision of NEPA, LWMA, and any rules, regulations, orders, or permits issued pursuant to NEPA or LWMA.

VIII. NEGATION OF AGENCY RELATIONSHIP

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

IX. AMENDMENT

38. This Consent Order may be modified and amended in writing by mutual agreement of NDEQ and Respondent.

X. EFFECTIVE DATE

39. This Consent Order shall become effective on the date it is signed by the NDEQ Director or his designee.

XI. SEVERABILITY

40. If any provision or authority of this Order or the application of this Order to any party or circumstances is held by any judicial or administrative authority to be invalid, the application of such provisions to other parties or circumstances and the remainder of the Order shall remain in force and shall not be affected thereby.

XII. SIGNATURES

41. For Respondents:

By: Donald D. Jensen

Respondent Donald D. Jensen

Date: 10-10-18

By: Patricia K. Jensen

Respondent Patricia K. Jensen

Date: 10-10-18

42. For NDEQ: IT IS SO ORDERED and agreed this 17th day of October, 2018.



Jim Macy
Director

Nebraska Department of Environmental Quality

Attachment A.

Google Maps



ATTACHMENT 'B'

JENSEN CATTLE COMPANY COMPLIANCE SCHEDULE

Compliance Task	Deadline	Citation
Begin dewatering holding pond	immediately	¶ 27.a.
Install fencing and gates around holding pond	October 1, 2018	¶ 27.b.
Discontinue use of watering tanks in south feeding area	October 1, 2018	¶ 28.b.
Install west fencing in south feeding area	October 1, 2018	¶ 28.c.
Complete dewatering holding pond to start pump level	November 1, 2018	¶ 27.a.
Submit amended nutrient management plan	November 1, 2018	¶ 30
Maintain facility records	November 1, 2018	¶ 31
Submit records of holding pond operation to NDEQ	Begin November 15, repeat monthly on 15 th for one year	¶ 27.c.
Inspect sludge and sediment accumulation in holding pond and debris basin and submit results to NDEQ	November 15, 2018	¶ 27.d.
Install depth marker in holding pond meeting Title 130 requirements	November 15, 2018	¶ 27.e.
Remove feed bunks in south feeding area	January 1, 2019	¶ 28.a.
Remove north and east fencing in east pen area	January 15, 2019	¶ 29.b.
Scrape livestock waste in east pen area	March 1, 2019	¶ 29.a.
Plant row crops or perennial vegetation in south feeding area and east pen area and maintain crop residue or vegetation at all times outside of the growing season	May 15, 2019	¶ 28.d. ¶ 29.c.
Remove accumulated sludge and solids from holding pond and debris basin	May 15, 2019	¶ 27.f. and g.