

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE CASE OF	)	
KIRBY L. MYERS, COREY J. MYERS,	)	
AND KELLY J. MYERS, DBA	)	
MYERS BROTHERS FEEDLOT,	)	CASE NO. 3407
	)	
Facility ID 86875,	)	CONSENT ORDER
	)	
Respondent.	)	

I. INTRODUCTION

1. The Nebraska Department of Environmental Quality (Department) and Kirby L. Myers, Corey J. Myers, and Kelly J. Myers, dba Myers Brothers Feedlot (Myers) voluntarily enter into this Consent Order. The Consent Order establishes a schedule for actions necessary to achieve and maintain compliance with the Nebraska Environmental Protection Act (Act), Neb. Rev. Stat. §§ 81-1501 et seq. (Reissue 2014 and 2016 Cum. Supp.) and the Livestock Waste Management Act, Neb. Rev. Stat. §§ 54-2416-2438 (Reissue 2010 and 2016 Cum. Supp.) and all rules and regulations created thereunder.

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) of exercising exclusive general supervision, administration, and enforcement of the Act. This Consent Order is issued under the authority vested in the Director of the Department by Neb. Rev. Stat. §§ 81-1504(25) and 81-1507(1).

3. Myers agrees to undertake all actions required by the terms and conditions of this Consent Order. Myers admits to and agrees not to contest the jurisdictional



allegations or factual findings referenced herein in any proceeding to enforce this Consent Order. Myers waives its right to receipt of a complaint and all notice and hearing requirements provided in Neb. Rev. Stat. § 81-1507 for the violations alleged herein. Myers shall be responsible for any noncompliance with this Consent Order by its employees, contractors, and representatives.

### III. PARTIES

4. The parties to this Consent Order are the Nebraska Department of Environmental Quality and Kirby L. Myers, Corey J. Myers, and Kelly J. Myers, dba Myers Brothers Feedlot (Myers). This Consent Order is binding on Myers, its employees, agents, contractors, consultants, successors and assigns.

5. Myers shall ensure that any contractors, sub-contractors, and representatives implementing any provision of this Consent Order receive a copy of this Consent Order. Myers shall be responsible for any noncompliance with this Consent Order.

6. Myers owns and operates a cattle feeding operation located at the NW ¼ of Section 02, Township 11 N, Range 12 W of the 6th P.M., Hall County, Nebraska.

### IV. FINDINGS OF FACT

7. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules for the Livestock Waste Management Act, Neb. Rev. Stat. §§ 54-2416-2438, the Council adopted a rule codified as *Title 130, Neb. Admin. Code, Livestock Waste Control Regulations*.

8. A routine inspection of Myers on August 21, 2014, revealed that the facility had been operating as a large Concentrated Animal Feeding Operation (CAFO) since 2003.

9. A Construction and Operating Permit and National Pollutant Discharge Elimination System (NPDES) Permit Required letter was sent to Myers on September

18, 2014, with a compliance date of April 1, 2015, for submission of complete applications.

10. A second letter was sent to Myers on April 16, 2015, granting an extension of the compliance date to November 1, 2015.

11. A Notice of Violation (NOV) was issued to Myers on January 3, 2017, for failure to submit the required Construction and Operating Permit and NPDES Permit by November 1, 2015.

12. Failure to submit the required Construction and Operating Permit and NPDES Permit is a violation of 130 Neb. Admin. Code Ch. 2 Livestock Waste Control Regulations which states:

004 When livestock waste control facilities are required by the Department, the owner or operator of the animal feeding operation is required to apply for construction and operating permit as provided in Chapter 4. In the case of an existing animal feeding operation, the owner or operator will be notified in writing following an inspection by the Department whether or not a facility is required and, if required, the applicant shall submit an application according to the compliance dates in the notification.

13. The NOV required Myers to submit the complete applications for a Construction and Operating Permit and an NPDES Permit to the Department as soon as possible and to draft a proposed timeline for the earliest possible submission of the required applications within ten days of receipt of the NOV. The NOV was received by Myers on or about January 11, 2017.

14. To date, Myers has not submitted complete applications for a Construction and Operating Permit and an NPDES Permit to the Department.

#### V. COMPLIANCE ORDER AND SCHEDULE

15. Myers agrees to perform the following:

A. By July 31, 2017, submit complete applications for a Construction and Operating Permit and an NPDES Permit to the Department.

B. The Livestock Waste Management Facility (LWMF) must be designed to contain runoff from the following areas in accordance with the Livestock Waste Management Act and Title 130:

i. The open lots in the southwest corner of the NW ¼, Section 02, Township 11N, Range 12W, Hall County, Nebraska, also known as the Myers Brothers Feedlot.

ii. The two (2) open lot pens located in the northeast corner of the NW ¼, Section 02, Township 11N, Range 12 W, Hall County, Nebraska, also known as the south pens of the Jerry and Betty Myers Feedlot (Facility ID # 94764).

16. Myers shall respond promptly to any written communication by the Department to modify any submitted documents and by making the required modifications or changes no later than 30 days after receipt or date specified in written comments by the Department. Any delay in responding to such communication shall be construed as non-compliance with this Consent Order.

17. Information to be submitted under this Consent Order shall be sent to:

Agriculture Section, Water Permits Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922 (1200 N St., Suite 400)  
Lincoln, NE 68509-8922  
Telephone: 402-471-2186

#### VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

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

## VII. RESERVATION OF RIGHTS

19. 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 Act and any rules, regulations, orders, or permits issued pursuant to the Act.

## VIII. NEGATION OF AGENCY RELATIONSHIP

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

## IX. AMENDMENT

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

## X. EFFECTIVE DATE

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

## XI. SEVERABILITY

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

## XII. SIGNATURES

For the Respondents Kirby L. Myers, Corey J. Myers, and Kelly J. Myers dba Myers Brothers Feedlot: The undersigned certify that they are fully authorized to enter into the terms and conditions of this Consent Order and to bind the Respondents.

By: Kirby L. Myers Date: 6-21-17  
Kirby L. Myers

By: Corey J. Myers Date: 6-22-17  
Corey J. Myers

By: Kelly J. Myers Date: 6-22-17  
Kelly J. Myers

For the Department: IT IS ORDERED and agreed this 3<sup>rd</sup> day of

July, 2017.

By: Jim Macy  
Jim Macy, Director  
Department of Environmental Quality