

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

Case No. 3390

James F. Curlo,
d/b/a JMJ CURLO CATTLE

FID# 66593

Respondent

**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 (Reissue 2014). The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent is James F. Curlo d/b/a JMJ Curlo Cattle (hereinafter "Respondent"), whose facility is located near Ashton, Sherman County, Nebraska.

2. Complainant has determined that Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §81-1501 et. seq. (Reissue 2014, 2015 Supp.); the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§54-2416 to 54-2438 (Reissue 2010); and Title 130, Neb. Admin. Code, *Livestock Waste Control Regulations*.

3. The Department is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. §§81-1504(1) and 54-2418, of exercising exclusive general supervision, administration, and enforcement of NEPA, the LWMA, and all rules, regulations and orders promulgated under such acts.



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

II. COMPLAINT

5. Respondent has, at all relevant times herein, owned and operated an animal feeding operation in Sherman County, Nebraska. The legal description of Respondent's livestock feeding operation is NW ¼, Section 12, Township N 14, Range W 13, Sherman County, Nebraska.

6. Pursuant to the Nebraska Environmental Quality Council's authority to adopt rules and regulations for the purpose of livestock waste management, as expressed in Neb. Rev. Stat. §§81-1505(10) and 54-2418, the Council adopted rules and regulations codified as Title 130, Neb. Adm. Code, *Livestock Waste Control Regulations*.

7. In the course of its normal business operations, Respondent feeds between 500 and 950 head of feeder cattle, depending on time of year, making the operation a medium animal feeding operation under Title 130, Chapter 1, Section 029.

8. Title 130, Chapter 2, Section 002 states that any person owning or operating a medium animal feeding operation without a permit must submit an inspection request to the Department. The purpose of this inspection is to determine whether a livestock waste control facility (LWCF) is required.

9. A LWCF is defined in Title 130, Chapter 1, Section 026 as "any structure or combination of structures utilized to control livestock waste until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such

structures include, but are not limited to, diversion terraces, holding ponds, settling basins, liquid manure storage pits, lagoons, and other such devices utilized to control livestock wastes."

10. On November 1, 2000 and July 3, 2001, NDEQ inspected Respondent's animal feeding operation. On both inspections, the NDEQ inspector observed that Respondent's animal feeding operation had the potential to discharge to a neighboring property owner's pond, a Water of the State as defined in Neb. Rev. Stat. §81-1502(21) and Title 130, Chapter 1, Section 050.

11. Title 130, Chapter 2, Section 003 states that "[a] livestock waste control facility is required for an existing or proposed animal feeding operation when livestock wastes have discharged or have the potential to discharge in a manner that is not lawfully authorized by permit or these regulations."

12. Title 130, Chapter 2, Section 004 states that "[w]hen livestock waste control facilities are required by the Department, the owner or operator of the animal feeding operation is required to apply for [a] construction and operating permit as provided in Chapter 4."

13. On August 9, 2001, NDEQ notified Respondent by letter that a LWCF is required for continued operation of his animal feeding operation and that Respondent would need to submit an application for a construction permit satisfying Title 130 requirements prior to January 1, 2002 and before any construction began on a LWCF.

14. Between August 9, 2001 and May 29, 2014, NDEQ did not receive a construction permit application from Respondent.

15. On May 29, 2014, NDEQ inspected Respondent's animal feeding operation a third time and again notified Respondent that a LWCF and construction permit (now known as a construction and operating permit) are still required.

16. On June 5, 2014, NDEQ notified Respondent by letter that a LWCF is required and that an application for a construction and operating permit must be submitted to NDEQ as soon as possible.

17. NDEQ made follow-up site visits to Respondent's cattle feeding operation on July 10, 2014 and July 30, 2015, again notifying Respondent that a LWCF and application for a construction and operating permit are required.

18. On September 25, 2015, NDEQ issued respondent a Letter of Warning notifying Respondent of his ongoing violation of Title 130, Chapter 2, Section 004 and requiring him to submit a complete application for a construction and operating permit.

19. To date, NDEQ has not received an application for a construction and operating permit from Respondent.

20. Since at least November 1, 2000 to date, Respondent has continued to operate an animal feeding operation without a LWCF and construction and operating permit in violation of the NEPA §81-1506(5)(a),(b), and (d); the LWMA §54-2432(3); and Title 130.

21. The NDEQ Director is authorized pursuant to Neb. Rev. Stat. §81-1504(1) and (13) to issue this order requiring enforcement of NEPA, the LWMA, and Title 130.

III. COMPLIANCE ORDER

22. Within thirty (30) days, Respondent shall submit a complete application for a construction and operating permit for the purpose of installing a Title 130-compliant LWCF at Respondent's animal feeding operation in Sherman County, Nebraska.

23. Respondent may request a one-time extension to the 30 day compliance deadline of this Order by submitting to NDEQ within 30 days:

- a. A copy of Respondent's completed application for financial and technical assistance under the Natural Resource Conservation Service (NRCS) Environmental Quality Incentives Program (EQIP) for the purpose of installing a Title 130-compliant LWCF at Respondent's animal feeding operation in Sherman County, Nebraska; and
- b. Written confirmation from NRCS that a completed application was received by NRCS from Respondent and is under review.

24. The granting or denial of a one-time extension to the 30 day compliance deadline of this Order is at the discretion of the NDEQ Director and confers no additional due process or other rights upon Respondent other than those already conferred by NEPA, the LWMA, and all rules and regulations and orders promulgated under such acts.

25. If requesting an extension to the 30 day compliance deadline of this Order, Respondent must immediately notify NDEQ upon receiving notice from

NRCS that Respondent will or will not receive technical and financial assistance under NRCS EQIP.

26. Respondent's compliance obligations as identified and required in this Order and in all past communications with NDEQ are in no way reduced or eliminated by the Director's one-time offer of an extension to the 30 day compliance deadline. The one-time offer of an extension to the 30 day compliance deadline of this Order is made for the sole purpose of allowing Respondent to obtain NRCS EQIP financial and technical assistance for the purpose of installing a LWCF that is compliant with Title 130 requirements.

27. Respondent shall promptly respond to any written communication from NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Order.

28. Information to be submitted under this Order shall refer to FID# 66593 and shall be sent to:

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

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

29. This Order shall become final, pursuant to Neb. Rev. Stat. §81-1507(1), unless Respondent files an answer and requests, in writing, a hearing no later than 30 days after receipt of this Order. Failure to answer within 30 days shall be deemed an admission of the allegations of the Complaint.

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

V. SETTLEMENT CONFERENCE

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

32. A request for settlement conference does not extend the 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. RESERVATION OF RIGHTS, INJUNCTIVE RELIEF AND PENALTY PROVISIONS

33. 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. NDEQ reserves the right to negotiate a further compliance schedule based on the Respondent's violations and Department's subsequent review of Respondent's permit application which is ordered herein. Nothing in this

Complaint, Compliance Order and Notice of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement.


January 30, 2017
Date

Jim Macy
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 30th day of January, 2017, upon the Respondent listed below at their address:

James F. Curlo
JMJ Curlo Cattle
78603 485th Avenue
Ashton, NE 68817

A handwritten signature in black ink, appearing to read "Brian McMullen", written over a horizontal line.

Brian McMullen, #26071
Attorney