

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF
DINSDALE BROS., INC.,
A corporation authorized in Nebraska,
Respondent.

Case No. 2988
COMPLAINT, COMPLIANCE ORDER,
AND NOTICE OF OPPORTUNITY
FOR HEARING

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing, is issued pursuant to §81-1507 (Reissue 2008) of the Environmental Protection Act, Neb. Rev. Stat. §81-1501 et seq. (Reissue 2008), the Livestock Waste Management Act, §54-2416 et seq. (Reissue 2004, Cum Supp. 2008, LB 56 Laws 2009), and rules and regulations promulgated thereunder. The complainant is Michael J. Linder, Director of the Nebraska Department of Environmental Quality (referred to herein as NDEQ). The respondent is Dinsdale Bros., Inc., a corporation authorized in Nebraska.

2. The respondent, Dinsdale Bros., Inc., owns and operates two large concentrated animal feeding operations as defined by Title 130, Chapter 1, 024, Nebraska Department of Environmental Quality, Livestock Waste Control Regulations. One operation is near Palmer in Nance County, Nebraska; and is known as Dinsdale Bros., North Lot. The other is also near Palmer but located in Merrick County, Nebraska, and is known as Dinsdale Bros. Inc. - South.

3. At all times material herein Neb. Rev. Stat. §54-2432 (Reissue 2004) has provided in pertinent part as follows: “Acts prohibited. ...Except as provided in section 54-2422, it shall be unlawful for any person to: ...(5) Violate the terms of a permit or construction approval or any provision of the Livestock Waste Management Act and rules and regulations adopted and promulgated by the council pursuant to the act.”

NORTH LOT ISSUES

4. At all times material herein Livestock Waste Control Regulations, Title 130, Chapter 8, has provided in pertinent parts as follows:

“Title 130 - Livestock Waste Control Regulations

Chapter 8 - WASTE CONTROL METHODS: DESIGN CRITERIA AND
CONSTRUCTION REQUIREMENTS

001 Livestock waste control facilities shall be designed and constructed to allow application or utilization of livestock wastes at those times compatible with crop management and available waste handling equipment. Factors to account for include, but are not limited to, the maximum length of time anticipated between emptying events, the frequency of emptying events or dewatering, the hydraulic limitations of the land application areas, the nutrient content and concentration in the storage structure, and the appropriate timing of application as specified in the applicable technical standards for nutrient management. ...

008 A method for measuring accumulations of manure, litter, and process wastewater is required. For underfloor pits, tanks, and similar storage devices or structures with limited access, the applicant may propose a method of measuring manure, litter, or process wastewater accumulations, subject to the Department's approval. A permanent depth marker is required for all other storage or treatment structures, including runoff holding ponds, liquid manure storage pits, and treatment lagoons. The marker shall be made of a durable material, permanently fixed, referenced to a permanently fixed bench mark or fixed elevation reference point adjacent to and outside of the waste containment area, located where the depth marks can be easily and safely viewed for facility management and inspections, clearly marked in at least one-foot increments, with a reference number or numbers, and with the following clearly marked:

008.01 The freeboard level;

008.02 The level indicating the volume needed to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event or 100-year, 24-hour rainfall event, as appropriate. Pumping shall begin as soon as possible anytime this storage level is exceeded. This can be identified as the 'must pump level';

008.03 The level indicating the volume needed for the minimum design storage capacity. The capacity required for the storage period volume shall be available prior to the start of the storage period. In no case shall the minimum storage period be less than needed to provide adequate storage

through the winter months. This can be identified as the ‘winter pumpdown level’; and

008.04 For lagoons, the level needed for the minimum treatment volume, marked on the depth marker or clearly posted on a sign adjacent to the lagoon. The minimum treatment volume is the amount of liquid needed to maintain proper lagoon function to be considered a lagoon for land application purposes and this volume shall be maintained above any sludge accumulations. ...”

5. From June 8, 2009, to the present the respondent has operated its large concentrated animal feeding operation in Nance County without any permanent depth markers whatsoever at two of its four runoff holding ponds, and the remaining two holding ponds had depth markers that were not referenced, not easily and safely viewed, and not clearly marked in the manner required by Title 130, Chapter 8, 008.

SOUTH LOT ISSUES

6. On July 26, 2006, the NDEQ, pursuant to the respondent’s application and Neb. Rev. Stat. §54-2424 (Reissue 2004), issued the respondent a permit pertaining to the respondent’s South Lot in Merrick County, Nebraska, that provided in part: “The Department of Environmental Quality approves construction of livestock waste control facilities at the concentrated animal feeding operation listed below only as specified in the application received on March 02, 2006 and addendums received on April 26, and May 08, 2006. Construction must be completed as-soon-as possible. ... Name of Operation: Dinsdale Brothers Inc.- South ...Other conditions of approval are as follows: ...It is required that the fifth well be installed as-soon-as possible. ...”

7. Continuously, from July 26, 2006, to date the respondent has operated its large concentrated animal feeding operation in Merrick County prior to completing construction of the livestock waste control facility as approved by the department, including installation of staff gauges, and in doing so violated the terms of the construction permit from the department granted on July 26, 2006, said permit required construction of the structure, Holding Pond # 2, and which was never constructed.

8. Continuously, from October 10, 2002, to date the respondent has operated said large concentrated animal feeding operation in Merrick County in violation of the

Groundwater Monitoring Plan made an express requirement of the permit of July 26, 2006, to completing construction of a groundwater monitoring well # 5.

9. IT IS THEREFORE ORDERED that on or before May 1, 2010, the respondent shall install all staff gauges at each location in Nance County and Merrick County required in conformity with Title 130 and applicable permits. The gauges shall be reasonably permanent. Within 5 days following the installation of the last such gauge the respondent shall notify the department in writing that it has installed all gauges required by Title 130 and the State of Nebraska General Permit For Concentrated Animal Feeding Operations Confining Cattle in Open Lots issued March 3, 2008. Said notification shall be addressed to: The Nebraska Department of Environmental Quality, Attn: Dennis Heitmann, Suite 440, The Atrium, 1200 "N" Street, P.O. Box 98922, Lincoln, NE 68509-8922.

10. IT IS FURTHER ORDERED that on or before September 1, 2010 the respondent shall complete construction of Holding Pond # 2 and groundwater monitoring well # 5, or in the alternative to said construction on or before September 1, 2010, the respondent shall, on or before September 1, 2010, cease all concentrated animal feeding operations at Dinsdale Bros., Inc. – South, except that activities required of closed operations shall be performed as required by statute and applicable regulations.

NOTICE OF OPPORTUNITY TO REQUEST A HEARING

11. Pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2008) the respondent has the right to apply for a hearing to contest a Complaint, and Compliance Order by making a request for such hearing to the director no later than 30 days after service hereof. Nebraska Department of Environmental Quality, Rules of Practice and Procedure, Title 115, Chapter 7, set forth the procedure of such hearings.

ADVISEMENT OF POSSIBLE PENALTIES

12. The 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. Nothing in this Complaint, Compliance Order, and Notice of Opportunity for Hearing precludes the NDEQ from pursuing such enforcement. Failure to obey this Order may result in civil fines of up to \$10,000 per day as set out in Neb. Rev. Stat. §81-1508.02 (Reissue 2008).

Dated: March 9, 2010

By: /s/ Michael J. Linder
Michael J. Linder, Director
Nebraska Department of
Environmental Quality