

BEFORE THE NEBRASKA DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT

IN THE MATTER OF:) Case No. 3652
)
Brian Shaw,) ADMINISTRATIVE CONSENT ORDER
)
d/b/a B-SHAW FEEDYARD)
FID #74890)
)
Respondent.

I. INTRODUCTION

1. The Nebraska Department of Water, Energy, and Environment (“DWEE”) and Respondent Brian Shaw voluntarily enter in the Consent Order. The Consent Order establishes a Compliance Schedule for Respondent to comply with the Livestock Waste Management Act (“LWMA”), Neb. Rev. Stat. §§ 54-2416 to 54-2438; the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. §§ 81-1501 to 81-1532; and Nebraska Administrative Code Title 130 – *Livestock Waste Control Regulations* (“Title 130”).

2. The Department and Respondent agree that settlement of this matter is in the public interest to ensure compliance with state statutes, rules, and regulations, adopted and issued to protect the environment.

II. JURISDICTION

3. The Department is the agency of the State of Nebraska charged with the duties, pursuant to Neb. Rev. Stat. § 81-1504(1), of exercising exclusive general supervision, administration, and enforcement of LWMA, NEPA, and all rules and regulations promulgated under such acts, including Title 130.

4. In signing this Consent Order, Respondent agrees to undertake all actions required by this Consent Order. Respondent agrees not to contest the jurisdictional allegations referenced herein

in any action to enforce this Consent Order. Respondent waives his rights to further hearing as provided in § 81-1507 of NEPA and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 *et seq.*

III. PARTIES

5. The parties to this Consent Order are DWEE and Respondent Brian Shaw, d/b/a B-Shaw Feedyard, owner and operator of a large concentrated animal feeding operation (“CAFO”) as defined in Title 130, Chapter 1, 024.03.

6. Respondent is a “person” as defined in Neb. Rev. Stat. § 81-1502(10).

7. This Consent Order is binding on DWEE, Respondent, and any successors and assigns of the parties. In agreeing to this Consent Order, Respondent shall ensure that all consultants, contractors, and agents hired to perform work required by this Consent Order are notified of and comply with any applicable requirements of the LWMA, NEPA, and Title 130.

8. This Consent Order also refers to and describes actions of the Nebraska Department of Environment and Energy (NDEE) which was a predecessor agency to the DWEE and, at the time of the events described, was charged with the duties described in paragraph 3. Legislative Bill 317, which was passed and signed in the 109th Legislature, merged, reorganized, and renamed the NDEE and Nebraska Department of Natural Resources (NeDNR) as the DWEE, and took effect on July 1, 2025.

IV. FINDINGS OF FACT

9. The legal description of Respondent’s large CAFO is SW 1/4 and Pt. SE 1/4 Section 27, and Pt. NW 1/4, Section 34, Township 06N, Range 07W, Clay County, Nebraska. These parcels have identification numbers 000256800, 000256601, and 000259400, respectively, in the Clay County Assessor Property Database.

10. An adjacent property to the south and downslope receiving water for discharges of livestock waste from Respondent's animal feeding operation is Kissinger Basin Wildlife Management Area (WMA) containing the "Brook Berringer Marsh Project" wetland restoration. Kissinger Basin is a "Water of the State" under Neb. Rev. Stat. §§ 81-1502(21). It is the second-largest state-owned wetland in Nebraska's Rainwater Basin wetland complex and open to public access for hunting, fishing, hiking, and wildlife viewing.

11. On March 27, 2018, NDEE issued Respondent a "Modified Construction and Operating Permit" authorizing Respondent to confine and feed a maximum of 4,000 head of feeder cattle while lawfully operating the eight (8) Livestock Waste Control Facilities (LWCFs) as described in the permit and maintaining compliance with all other terms and conditions of the permit.

12. Among the terms and conditions of Respondent's Modified Construction and Operating Permit is Condition # 7 which states and requires: "7) The Permittee shall allow the Department access, at any reasonable time, to the operation, LWCF, and any records required under Title 130, *Livestock Waste Control Regulations* and this permit."

13. Among the terms and conditions of Respondent's Modified Construction and Operating Permit is Condition # 9 which states and requires: "9) The Operation and LWCF shall be constructed and operated in compliance with the approved application, this permit, Title 130 regulations and the laws of the State of Nebraska. This permit may be revoked, modified, or suspended as provided for in Title 130 regulations."

14. On June 1, 2020, NDEE issued Respondent coverage under the National Pollutant Discharge Elimination System (NPDES) General Permit NEG019000 for Concentrated Animal Feeding Operations (CAFOs) Confining Cattle, Permit Coverage Application No. NEG019073.

15. Among the terms and conditions of Respondent's coverage under NPDES CAFO General Permit NEG019000 is the requirement in Title 130, Chapter 5, 007.06 that “[t]he NPDES permittee shall submit an annual report for the previous calendar year to the Department by March 1. The annual report shall include [all required information in subsections 007.06A through 007.06I].”

16. On December 15, 2021, NDEE inspected Respondent's large CAFO and made the following observations:

- a.** Respondent had not submitted a NPDES CAFO annual report as required by Title 130, Chapter 5, 007.06 for the 2019 calendar year, which was due March 1, 2020, and an annual report for the 2020 calendar year, which was due March 1, 2021.
- b.** Respondent did not have permanent depth markers with required markings consisting of one-foot increments, freeboard level, must-pump level, and winter pump-down level installed in Holding Ponds #1 and #3 as required by Title 130, Chapter 8, 008;
- c.** Respondent did not have documentation of sampling and testing of the nitrogen concentration in groundwater used to irrigate the CAFO's land application sites which is required to be sampled and tested every 5 years by Title 130, Chapter 14, 001.11D and had not documented sampling and testing of the groundwater used to irrigate since August 2015;
- d.** Respondent had not dewatered Holding Pond #1 from its level of 8.5' on the day of inspection to the must-pump level of 4.5' and pre-winter level of 2.5' as required by Respondent's Modified Construction and Operating Permit and Title 130, Chapter 11, 003.

e. Respondent had not dewatered Holding Pond #2 from its level of 7.5' on the day of inspection to the must-pump level of 4.5' and pre-winter level of 2.0' as required by Respondent's Modified Construction and Operating Permit and Title 130, Chapter 11, 003.

17. On January 11, 2022, NDEE issued Respondent a Letter of Non-Compliance (LNC) for the following violations:

- a. failure to submit NPDES CAFO annual reports for the 2019 and 2020 calendar year in violation of Neb. Rev. Stat. § 81-1506(5)(c) and (d); Title 130, Chapter 2, 008.13; and Title 130, Chapter 5, 007.06;
- b. failure to have permanent depth markers containing all required markings installed in two (2) holding ponds in violation of Neb. Rev. Stat. § 81-1506(5)(c) and (d); Title 130, Chapter 2, 008.13; and Title 130, Chapter 8, 008;
- c. failure to sample, test, and document the nitrogen concentration in groundwater used to irrigate the CAFO's land application sites in violation of Neb. Rev. Stat. § 54-2432(5); Neb. Rev. Stat. § 81-1506(5)(c) and (d); and Title 130, Chapter 14, 001.11D;
- d. failure to dewater below critical levels in Holding Ponds #1 and #2 and utilize all available dewatering days in violation of Neb. Rev. Stat. § 81-1506(5)(c) and (d); Title 130, Chapter 2, 008.13; and Title 130, Chapter 11, 003;

18. The LNC issued by NDEE to Respondent on January 11, 2022, required compliance actions to be completed by the following deadlines:

- a. submit annual reports for years 2020 and 2021 by March 1, 2022;

- b. install or repair permanent depth markers containing all required markings by March 1, 2022;
- c. dewater below pre-winter levels in Holding Ponds #1 and #2 as soon as possible;
- d. sample, test, and report the nitrogen concentration in irrigation water to NDEE by July 1, 2022;

19. On February 28, 2022, a representative of Respondent submitted NPDES CAFO annual reports for the 2020 and 2021 calendar years on his behalf satisfying one (1) compliance requirement of the January 11, 2022, LNC.

20. On October 8, 2024 – 1,002 days after the January 11, 2022, LNC was issued by NDEE – a representative of Respondent submitted documentation of the nitrogen concentration in groundwater used to irrigate the CAFO's land application sites on his behalf satisfying a second compliance requirement of the January 11, 2022.

21. To date, and for a period of over three (3) years, Respondent has made no attempts to satisfy the remaining two (2) compliance requirements of the January 11, 2022, LNC which are to:

- a. repair or install permanent depth markers containing all required markings in Holding Ponds #1 and #3 as required by Title 130, Chapter 8, 008; and
- b. dewater Holding Ponds #1 and #2 to critical levels and utilize all available dewatering days as required by Title 130, Chapter 11, 003.

22. In addition to the outstanding violations of the January 11, 2022, LNC that Respondent has failed to address, Respondent has also once again failed to submit NPDES CAFO annual reports for the 2022, 2023, and 2024 calendar years in violation of Neb. Rev. Stat. § 81-1506(5)(c) and (d); Title 130, Chapter 2, 008.13; and Title 130, Chapter 5, 007.06.

23. NDEE has attempted to contact Respondent by phone on five (5) separate occasions for purposes of scheduling inspections and discussing how NDEE may work with Respondent to voluntarily return his large CAFO to compliance. These attempts by NDEE to reach Respondent were made on June 28, 2023; September 25, 2024; October 3, 2024; February 20, 2025; and March 11, 2025. Respondent did not respond to or return any of these phone calls despite the good faith efforts of NDEE to work with Respondent for purposes of achieving voluntary compliance under the meaning of Neb. Rev. Stat. § 81-1510.

V. VIOLATIONS

FIRST CAUSE OF ACTION – OPERATION OF TWO (2) LIVESTOCK WASTE CONTROL FACILITIES WITHOUT REQUIRED PERMANENT DEPTH MARKERS

24. Title 130, Chapter 11, 008 states “[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 [freeboard level, must pump level, winter pumpdown level, and, if applicable, minimum treatment volume] clearly marked”.

25. Respondent’s operation of Holding Ponds #1 and #3 without the required permanent depth markers are two violations each per day of Title 130, Chapter 8, 008 since December 15, 2021.

SECOND CAUSE OF ACTION – FAILURE TO DEWATER Two (2) LIVESTOCK WASTE CONTROL FACILITIES BELOW CRITICAL LEVELS AND UTILIZE ALL AVAILABLE DEWATERING DAYS

26. Based on the depth markings required in Title 130, Chapter 11, 008, which are specifically referred to as “must pump level” and “winter pumpdown level” and generally referred to as “critical levels”, Respondent is further required under Title 130, Chapter 11, 003 to maintain lagoon levels below critical levels “[a]ny time the waste storage volume in the livestock waste control facility exceeds the level identified in 008.02 in Chapter 8 (i.e. the “must pump level”), livestock wastes shall be land applied on all available dewatering days until adequate storage is restored.”

27. Respondent’s operation of Holding Ponds #1 and #2 without maintaining lagoon levels below must pump level and winter pumpdown level are two violations each per day of Title 130, Chapter 11, 008 since December 15, 2021.

THIRD CAUSE OF ACTION – FAILURE TO SUBMIT NPDES CAFO ANNUAL REPORTS FOR THE 2022, 2023, AND 2024 CALENDAR REPORTING YEARS

28. Title 130, Chapter 5, 007.06 states “[t]he NPDES permittee shall submit an annual report for the previous calendar year to the Department by March 1. The annual report shall include [all required information in subsections 007.06A through 007.06I].”

29. Respondent’s failure to submit NPDES CAFO annual reports is one violation of per day of Title 130, Chapter 5, 007.06 after March 1, 2023, for the 2022 calendar reporting year; one additional violation per day after March 1, 2024, for the 2023 calendar reporting year; and one additional violation per day after March 1, 2025, for the 2024 calendar reporting year.

FOURTH CAUSE OF ACTION – VIOLATION OF THE LIVESTOCK WASTE MANAGEMENT ACT

30. § 81-1506(5)(c) of NEPA states “it shall be unlawful for any person to [v]iolate any provision of the Livestock Waste Management Act”.

31. Respondent’s violations as listed above, realleged, and incorporated herein are also violations of Neb. Rev. Stat. § 81-1506(5)(c).

FIFTH CAUSE OF ACTION – VIOLATION OF THE TERMS AND CONDITIONS OF AN ANIMAL**FEEDING OPERATION PERMIT**

32. § 81-1506(5)(d) of NEPA states “it shall be unlawful for any person to [v]iolate any term or condition of an animal feeding operation permit”.

33. As a permittee holding both a Modified Construction and Operating Permit and coverage under NPDES CAFO General Permit NEG019000, Respondent’s violations as listed above, realleged, and incorporated herein are also violations of Neb. Rev. Stat. § 81-1506(5)(d).

SIXTH CAUSE OF ACTION – VIOLATION OF N.A.C. TITLE 130, CHAPTER 2, 008.13

34. Title 130, Chapter 2, 008.13 states “[a]ny person who owns or operates an animal feeding operation shall not [v]iolate 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.”

35. Respondent’s multiple violations as listed above, realleged, and incorporated herein are also violations of Title 130, Chapter 2, 008.13.

VI. COMPLIANCE SCHEDULE

36. Having unsuccessfully pursued a voluntary compliance resolution with Respondent for over three (3) years in order to resolve Respondent’s outstanding violations of LWMA, NEPA, and Title 130, the DWEE Director is authorized under Neb. Rev. Stat. § 81-1504(7), (25), and §

81-1507(1) to require and enforce compliance schedules to prevent, control, or abate unlawful discharges of livestock waste to waters of the state or when a violation of LWMA, NEPA, or Title 130 has occurred.

37. Beginning immediately and for the full duration of this Administrative Consent Order, Respondent agrees to respond to requests for information, requests for compliance status updates, or any other inquiries from DWEE within seven (7) days of any such request, inquiry, or contact by DWEE.

38. Within 60 days of the effective date of this Administrative Consent Order, Respondent agrees to:

- a. complete and submit NDPES CAFO annual reports for the 2022, 2023, and 2024 calendar reporting years; and
- b. schedule, be present for, and complete a Title 130 routine inspection.

39. Within 90 days of the effective date of this Administrative Consent Order, Respondent agrees to:

- a. repair or install permanent depth markers in Holding Ponds #1 and #3 containing all markings as required by Title 130, Chapter 8, 008; and
- b. correct all violations identified on the scheduled inspection agreed to by Respondent in paragraph 37.b. that DWEE determines can be corrected within 90 days of the effective date of this Administrative Consent Order.

40. Within 120 days of the effective date of this Administrative Consent Order, Respondent agrees to correct all violations identified on the scheduled inspection agreed to by Respondent in paragraph 37.b. that DWEE determines can be corrected within 120 days of the effective date of this Administrative Consent Order.

41. By April 1, 2026, Respondent agrees to:

- a. dewater the levels of Holding Ponds #1 and #2 below winter pumpdown level; and
- b. correct any remaining violations identified on the scheduled inspection agreed to by Respondent in paragraph 38.b.

42. Information submittals documenting compliance with the deadlines above shall be marked with Respondent's name, FID #74890, and shall be sent by email or postal mail to:

Jordan Jaeger
jordan.jaeger@nebraska.gov
Nebraska Department of Water, Energy, and Environment
P.O. Box 98922
Lincoln, NE 68509-8922

VII. RESERVATION OF RIGHTS

43. Nothing in this Consent Order shall be construed to limit the power and authority of the Department to take or order any action necessary to protect the public health, public welfare, or the environment or to enforce any provision of LWMA or NEPA or any rules, regulations, orders, or permits, issued pursuant to LWMA or NEPA. The Department reserves the right to pursue any other remedies to which it is entitled for violations of this Consent Order or the underlying violations alleged herein, including penalties or injunctive relief.

VIII. NEGATION OF AGENCY RELATIONSHIP

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

IX. AMENDMENTS

45. This Consent Order may be amended upon the mutual written agreement of the Department and Respondent.

X. EFFECTIVE DATE

46. This Consent Order shall become effective on the date the Director of the Department or the Director's designee signs the Consent Order.

XI. TERMINATION

47. Upon completion of the Compliance Schedule, Respondent will be notified by DWEE in writing that the Compliance Schedule has been completed and the present administrative case is closed. Such notification shall be issued within 90 days of the Department determining that the terms of the Compliance Schedule have been met.

XII. SEVERABILITY

48. If any provision or authority of this Consent Order or the application of this Agreement 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 Agreement shall remain in force and shall not be affected thereby.

XIII. SIGNATURES

49. Signature in Counterparts. Respondent may sign and return this Consent Order to DWEE by postal mail at: DWEE Legal Division, P.O. Box 98922, Lincoln, NE 68509. Alternatively, Respondent may contact DWEE at (402) 471-0276 for instructions on email submittal. After receipt of signature by Respondent, DWEE will return to Respondent a copy of the countersigned Consent Order containing the signature of the DWEE Director.

50. By the act of signing, Respondent certifies that he possesses actual authority to enter into this Consent Order and to bind himself as Respondent.

51. For Respondent Brian Shaw, Owner and Operator, d/b/a B-Shaw Feedyard

Signature of Brian Shaw:

Brian M. Shaw

Respondent

Date:

12-29-2025

52. For the Department:

IT IS SO ORDERED and agreed this 12th day of January, 2026.



JESSE BRADLEY
DIRECTOR
NEBRASKA DEPARTMENT OF WATER, ENERGY, AND ENVIRONMENT