

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

| | | |
|--------------------------------------|---|------------------------------|
| IN THE MATTER OF: |) | Case No. 3632 |
| |) | |
| ADAM’S LIVESTOCK |) | ADMINISTRATIVE CONSENT ORDER |
| FID#: 117608 |) | |
| Owner: Adam Blase |) | |
| |) | |
| ALLEN BLASE LIVESTOCK |) | |
| FID#: 118413 |) | |
| Owner: Allen Blase |) | |
| |) | |
| ERIC BLASE LIVESTOCK |) | |
| FID#: 118412 |) | |
| Owner: Eric Blase |) | |
| |) | |
| LAWRENCE LIVESTOCK |) | |
| FID#: 117480 |) | |
| Owners: Eric Blase and Adam Blase |) | |
| |) | |
| LAWRENCE LIVESTOCK – SCHOOL |) | |
| LANDS |) | |
| FID#: 117607 |) | |
| Owner: Nebraska Board of Educational |) | |
| Lands and Funds; Lease # 114886 |) | |
| |) | |
| TERRY’S NORTH |) | |
| FID#: 119911 |) | |
| Owners: Eric and Lisa Blase |) | |
| |) | |
| ERIC BLASE, Operator |) | |
| |) | |
| Respondents. |) | |

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (“NDEE”) and Allen Blase Livestock, Adam’s Livestock, Eric Blase Livestock, Lawrence Livestock, Lawrence Livestock – School Lands, Terry’s North, and Eric Blase, Operator, (“Respondents”) voluntarily enter into this Consent Order. The Consent Order establishes a Compliance Schedule for Respondents 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 Respondents 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 duty, 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, Respondents agree to undertake all actions required by this Consent Order. Respondents agree not to contest the jurisdictional allegations referenced herein in any action to enforce this Consent Order. Respondents waive their 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 NDEE and six (6) owner Respondents and one (1) operator Respondent.

6. Under Title 130, Chapter 1, § 039 “[o]wner” is defined as “the person who owns an animal feeding operation or part of an animal feeding operation.

7. All six (6) owner Respondents are owners of medium animal feeding operations (“AFOs”), as defined by Title 130, Chapter 1, § 029.03, located on individual pivot corners among quarter sections owned by Respondents that are adjacent to each other in Howard County, Nebraska.

8. As alleged below, all six (6) pivot corner AFOs have discharged livestock waste and mixtures of surface water runoff and livestock waste from feeding pens to county road ditches along 10th Avenue, Denton Road, and State Highway 92 in Howard County, Nebraska.

9. The six (6) medium AFOs are:

Adam’s Livestock

SE1/4, Section 17, Township 14N, Range 09W, Howard County, Nebraska
Owner: Adam E. Blase, 4140 Elmwood Dr., Grand Island, NE 68803

Allen Blase Livestock

SW1/4, Section 21, Township 14N, Range 09W, Howard County, Nebraska
Owner: Allen Blase c/o Eric Blase, 1057 Denton Rd, St. Paul, NE 68873

Eric Blase Livestock

SW1/4, Section 16 Township 14N, Range 09W, Howard County, Nebraska
Owner: Eric A. Blase, 2819 Idaho Ave., Grand Island, NE 68803

Lawrence Livestock

NE1/4, Section 17, Township 14N, Range 09W, Howard County, Nebraska
Owners: Eric A. Blase and Adam E. Blase, 2819 Idaho Ave., Grand Island, NE 68803

Lawrence Livestock – School Lands

NW1/4, Section 16, Township 14N, Range 09W, Howard County, Nebraska
Owner: Nebraska Board of Educational Lands and Funds, 555 North Cotner Blvd., Lincoln, NE 68505-2353

Terry’s North

NW1/4, Section 21, Township 14N, Range 09W, Howard County, Nebraska
Owners: Eric A. and Lisa M. Blase, 2819 Idaho Ave., Grand Island, NE 68803

10. § 54-2417(1) of LWMA states “[t]wo or more animal feeding operations under common ownership are deemed to be a single animal feeding operation if they are adjacent to each other or if they utilize a common area or system for the disposal of livestock waste.”

11. Under Title 130, Chapter 1, § 038 “[o]perator” is defined as “the person responsible for the operation of an animal feeding operation.”

12. In meetings, correspondence, and other interactions with NDEE, all six (6) medium AFOs have been and continue to be operated collectively under shared management by a single operator being Mr. Eric Blase, who is also a member, manager, officer, director, shareholder, or otherwise associated with Blase Farms, LLC, and the Blase Group Ltd, Inc. In addition to Mr. Eric Blase, Mr. Jim Gdanitz has a subordinate managerial role in the operation of all six (6) medium AFOs.

13. The six (6) medium AFOs listed in paragraph 9 have various operational, ownership, livestock production, livestock waste management, and legal indications of being operated as a single, large animal feeding operation or large concentrated animal feeding operation as defined in Title 130, Chapter 1, § 024.03.

14. If operated as a large animal feeding operation or large concentrated animal feeding operation, Respondents would generally be subject to the requirements to obtain Construction and Operating and National Pollutant Discharge Elimination System (NPDES) permits prior to operation and to construct and operate Livestock Waste Control Facilities for the lawful management of livestock waste in accordance with LWMA, NEPA, and Title 130.

15. This Consent Order is binding on NDEE, Respondents, and any successors and assigns of the parties. In agreeing to this Consent Order, Respondents 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.

16. Respondents are persons as defined in Neb. Rev. Stat. § 81-1502(10).

IV. FINDINGS OF FACT

17. At present, none of the six (6) medium AFOs owned by Respondents manage livestock waste using an approved Livestock Waste Control Facility as defined by Title 130, Chapter 1, § 026 to mean “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.”

18. Five (5) of six (6) Respondents have been issued “Conditional Requirements” letters on two (2) dates (May 23, 2022 for Adam’s Livestock, Lawrence Livestock, and Lawrence Livestock – School Lands; August 24, 2022 for Allen Blase Livestock and Eric Blase Livestock) notifying them that, among other conditions, they must operate so that all waste leaving feeding pens flows into adjacent fields, dissipates over those fields, and does not discharge to or remain in road ditches. The Conditional Requirements letters clearly state that the “conditions are set on a trial basis”, that Respondents are “responsible for complying with any [] county or local zoning requirements”, and, if the conditions are not met by Respondents and not effective in preventing discharges, Respondents may be subject to the requirement to obtain a Construction and Operating or NPDES CAFO permits.

19. On May 9, 2023, NDEE responded to a public complaint reporting the discharge of livestock waste to county road ditches in the vicinity of Respondents’ AFOs. The complaint investigation was conducted at Adam’s Livestock, Eric Blase Livestock, and Lawrence Livestock – School Lands. Upon investigation, NDEE staff confirmed that multiple pivot corners had areas of ponded livestock waste within feeding pens and five (5) pivot corners had

discharged livestock waste or a mixture of surface water runoff and livestock waste to multiple areas along road ditches as follows:

- a. at Adam's Livestock, a mixture of surface water runoff and livestock waste had discharged from the feeding pen located in the southeast pivot corner to the road ditch along the west side of Denton Road;
- b. at Eric Blase Livestock, a mixture of surface water runoff and livestock waste had ponded at areas within and discharged from the feeding pen located in the southwest pivot corner to the road ditch along the north side of 10th Avenue;
- c. also at Eric Blase Livestock, a mixture of surface water runoff and livestock waste had ponded at areas within and discharged from both feeding pens located in the northwest and southwest pivot corners to the road ditch along the east side of Denton Road;
- d. at Lawrence Livestock – School Lands, a mixture of surface water runoff and livestock waste had discharged from the feeding pen located in the southwest pivot corner to the road ditch along the east side of Denton Road; and
- e. an additional pivot corner was being used as a feeding pen that had not been previously identified in any of the initial inspection reports for the other AFOs; the pen had a very large amount of ponded, mixed surface water runoff and livestock waste within the feeding pen; the feeding pen had discharged to the road ditch along the south side of 10th Avenue; and was later determined to be owned by Eric and Lisa Blase.

20. On May 19, 2023, and based on the observations described in paragraphs 19.a. through 19.d., NDEE issued "Corrective Action Required" letters to Adam's Livestock, Eric Blase Livestock, and Lawrence Livestock – School Lands requiring regrading of feeding pens to prevent the ponding of livestock waste within feeding pens, to prevent the discharge of livestock waste to road ditches, and to allow for livestock waste to properly flow and dissipate to adjacent fields and pasture areas.

21. On May 19, 2023, and based on the observations described in paragraph 19.e., NDEE issued a "Letter of Non-Compliance" (LNC) to Eric Blase Livestock for failure to request an inspection prior to operation of the pivot corner feeding pen located at the NW 1/4, NW 1/4, Section 21, Township 14N, Range 09W, Howard County, Nebraska, as required by Title 130, Chapter 2, § 002. This pen would later be referred to by Respondents and in NDEE records as

part of Terry's North, the north half of which NDEE has not received the required inspection request to date.

22. On June 15, 2023, NDEE conducted a combined Compliance Status Inspection and Compliance Assistance Visit at the location of Respondents' AFOs to discuss progress toward and options for compliance with the May 19, 2023 Corrective Action Required letters. NDEE staff met with operator Mr. Eric Blase, Mr. Jim Janda of the Nebraska Board of Educational Lands and Funds, and Mr. Travis Caspersen of Settje Agri-Services and Engineering, Inc. (Settje). These individuals were provided with suggestions for compliance by NDEE staff and they discussed Respondents' plans for compliance with LWMA, NEPA, and Title 130. In communications between these individuals and NDEE during and after the Compliance Status Inspection/Compliance Assistance Visit, NDEE staff understood that grading work would begin in September 2023 and that substantial progress would be made, if not completed, on multiple pivot corner feeding pens comprising Respondents' medium AFOs during September and October of 2023.

23. On October 24, 2023, NDEE conducted a compliance status inspection at Respondents' AFOs on the progress of the grading work that was the subject of the May 19, 2023, Corrective Action Required letters and June 15, 2023, Compliance Status Inspection/Compliance Assistance Visit. During the inspection, NDEE staff observed and documented that "none of the pens appeared to have been re-graded", accumulations of livestock waste and sediment continued to be present in the road ditches along 10th Avenue and Denton Road, and that interior areas of feeding pens continued to have areas of ponded livestock waste or mixtures of livestock waste and surface water runoff.

24. On October 26, 2023, and as follow-up to the October 24, 2023, compliance status inspection, NDEE sent an email to Eric Blase requesting a timeline to complete regrading of the feeding pens. NDEE did not receive a response from Mr. Blase by email or phone.

25. During the first two weeks of November 2023 (November 7, 2023 for Eric Blase Livestock and Adam's Livestock; November 13, 2023 for Lawrence Livestock – School Lands and Terry's North) and based on the failure to complete the required grading work proposed by Respondents as a means of complying with the Corrective Action Required letters, NDEE issued LNCs to the four (4) Respondents listed herein for discharging livestock waste into county road ditches in violation of Title 130, Chapter 2, § 008.10. The LNCs required the Respondents to submit a complete application for a Construction and Operating Permit by May 1, 2024.

26. Pursuant to Title 130, Chapter 2, § 004, an owner or operator is required to apply for a Construction and Operating Permit when Livestock Waste Control Facilities are required by NDEE.

27. Despite its previous efforts to provide compliance assistance to Respondents, NDEE received no communication or status updates from Respondents between September 2023 and April 2024 – a seven (7) month period – on their plans and efforts to comply with LWMA, NEPA, and Title 130 either through completing grading work previously discussed with NDEE or through submittal of individual or joint Construction and Operating Permit applications by May 1, 2024.

28. On April 10, 2024, NDEE responded to another public complaint reporting the discharge of livestock waste to county road ditches in the vicinity of Respondents' AFOs. Upon investigation, NDEE staff confirmed that multiple pivot corners had areas of ponded livestock

waste within feeding pens and six (6) pivot corners had discharged livestock waste or a mixture of surface water runoff and livestock waste to multiple areas along road ditches as follows:

- a. at Adam's Livestock, the feeding pen in the southeast pivot corner had discharged livestock waste to the road ditch along the west side of Denton Road;
- b. at Eric Blase Livestock, the feeding pens in the northwest and southwest pivot corners had discharged livestock waste to the road ditch along the east side of Denton Road and the feeding pens in the southwest and southeast pivot corners had discharged livestock waste to the road ditch along the north side of 10th Avenue;
- c. at Lawrence Livestock – School Lands, the feeding pen in the southwest pivot corner had discharged livestock waste to the road ditch along the east side of Denton Road; and
- d. at Terry's North, the feeding pen in the northwest pivot corner had discharged livestock waste to the road ditch along the south side of 10th Avenue.

29. On April 24, 2024, NDEE issued LNCs to Respondents Adam's Livestock, Eric Blase Livestock, Lawrence Livestock – School Lands, and Terry's North. The LNCs repeated the instruction from the prior November 2023 LNCs requiring Respondents to submit a complete application for a Construction and Operating Permit by May 1, 2024, and added the instruction to remove all livestock waste and sediment from county road ditches where livestock waste discharges had been observed by May 15, 2024. The LNCs also stated that they were the second LNC sent to Respondents for discharging livestock waste into the county road ditch and that “[a] county road ditch cannot be used as a livestock waste control facility (LWCF).”

30. On April 30, 2024, Settje responded to the LNC by letter on behalf of Respondents Adam's Livestock, Eric Blase Livestock, Lawrence Livestock – School Lands, and Terry's North stating that Respondents were “in the process of removing all cattle from the sites” and had “removed most of the manure from the pens”. The letter did not state that Respondents had initiated any work to remove livestock waste from road ditches nor did it state Respondents had initiated any grading work at pivot corner feeding pens, though the letter stated a contractor had been hired for the remaining grading, ditch cleaning, and pen scraping work. The letter did not

provide a timeline for completion of grading, ditch cleaning, and pen scraping work and did not state whether Respondents intended to submit Construction and Operating Permit applications.

31. On May 1, 2024, an employee of “The Blase Group” submitted to NDEE by email a summary table of recent actions toward partial compliance taken between April 15, 2024 and April 29, 2024, with the heading of “Blase Farms” at the top of the summary table. The summary table described that road ditch cleaning activities had begun at some locations, but did not state that grading work at pivot corner feeding pens had been initiated. Neither the email nor the summary table stated whether Respondents intended to submit Construction and Operating Permit applications.

32. NDEE did not receive any individual or joint Construction and Operating Permit applications from Respondents or their representatives on or before May 1, 2024, as required by the November 2023 and April 24, 2024 LNCs.

33. On June 4, 2024, NDEE responded to another public complaint reporting the discharge of livestock waste to both county road ditches and State Highway 92 in the vicinity of Respondents’ AFOs. Upon investigation, NDEE staff again confirmed that multiple pivot corners had areas of ponded livestock waste within feeding pens and that nine (9) pivot corner feeding pens had discharged livestock waste or a mixture of surface water runoff and livestock waste to multiple areas along road ditches and State Highway 92, overflowing onto county roads in some areas, as follows:

- a. at Adam’s Livestock, the feeding pen in the southeast pivot corner had discharged livestock waste to the road ditch along the west side of Denton Road;
- b. at Allen Blase Livestock, the feeding pen in the northwest pivot corner had discharged livestock waste to the road ditch along the east side of Denton Road;
- c. at Eric Blase Livestock, the feeding pen in the northwest pivot corner had discharged livestock waste to the road ditch along the east side of Denton Road, the feeding pen in the southwest pivot corner had discharged to road ditches along the east side of Denton Road and north side of 10th Avenue, and the feeding pen in the southeast

pivot corner had discharged livestock waste to the road ditch along the north side of 10th Avenue;

- d. at Lawrence Livestock, the feeding pen in the northeast pivot corner had discharged livestock waste to the road ditch along the south side of State Highway 92;
- e. at Lawrence Livestock – School Lands, the feeding pen in the northwest pivot corner had discharged livestock waste to the road ditch along the south side of State Highway 92; and
- f. at Terry’s North, the feeding pens in the northwest and northeast pivot corners had discharged livestock waste to the road ditch along the south side of 10th Avenue.

34. Also during the June 4, 2024 complaint investigation, NDEE staff met with Mr. Adam Blase and Mr. Jim Gdanitz, a manager for Blase Farms, LLC, or the Blase Group Ltd, Inc. Mr. Gdanitz stated that he had been pumping surface water runoff and livestock waste out of road ditches and would be moving livestock pen fence lines away from road ditches to help control runoff. NDEE staff asked Mr. Gdanitz whether an application for a Construction and Operating Permit would be submitted to the Department; Mr. Gdanitz replied he did not know.

35. On July 9, 2024, and based on the June 4, 2024 complaint investigation, NDEE issued LNCs to all six (6) Respondents repeating the previous instructions from the November 2023 and April 2024 LNCs that Respondents were required to submit a complete application for a Construction and Operating Permit and remove all livestock waste and sediment from the county road ditch. The LNCs issued to Adam’s Livestock, Eric Blase Livestock, Lawrence Livestock – School Lands, and Terry’s North stated that “[t]his is the third LNC issued for discharging livestock waste into the county road ditch” and that “[a] county road ditch cannot be used as a livestock waste control facility (LWCF).”

36. On July 30, 2024, NDEE conducted a combined Compliance Status Inspection and Compliance Assistance Visit at the location of Respondents’ AFOs. Respondent Mr. Adam Blase; Mr. Jim Gdanitz, Manager for Blase Farms, LLC, or the Blase Group Ltd, Inc.; and Mr. Travis Caspersen of Settje Agri-Services and Engineering, Inc. attended the meeting, were

provided with suggestions for compliance by NDEE staff, and discussed Respondents' plans for compliance with LWMA, NEPA, and Title 130. During the inspection and meeting, NDEE documented the following observations and interactions:

- a. the northeast pivot corner feeding pen at Lawrence Livestock and northwest pivot corner feeding pen at Lawrence Livestock – School Lands has discharged mixtures of surface water runoff and livestock waste to the road ditches along the south side of State Highway 92;
- b. at the southeast pivot corner feeding pen at Adam's Livestock, Respondents were in the process of completing grading work to redirect the drainage of livestock waste from the road ditch to the interior of the pivot's crop field and an area of the feeding pen where ongoing ponding could occur was identified as requiring additional grading work or a permit;
- c. at the southwest pivot corner feeding pen at Eric Blase Livestock, Respondents were also in the process of completing grading work to redirect the drainage of livestock waste from the road ditch to the interior of the pivot's crop field;
- d. at the northwest pivot corner feeding pen at Terry's North, NDEE observed much of the pen and adjacent road ditch submerged under a mixture of standing water and livestock waste and discussed pen abandonment with Mr. Gdanitz as the most practical option due to the surrounding topography;
- e. Mr. Gdanitz discussed future regrading of the northwest pivot corner feeding pen at Allen Blase Livestock and northeast pivot corner feeding pen at Lawrence Livestock;
- f. Mr. Gdanitz discussed possible plans for the northwest and southwest pivot corner feeding pens at Lawrence Livestock – School Lands, such as pen abandonment or use as temporary pens, and NDEE stated that any temporary structures to prevent discharges to road ditches must eventually be removed or permitted by NDEE;
- g. NDEE advised Mr. Gdanitz that seasonal winter feeding on pivot centers is allowed provided the fields do not become de-vegetated; and
- h. NDEE provided and discussed with Mr. Gdanitz copies of the five (5) Conditional Requirements letters described in paragraph 18, above.

V. VIOLATIONS

FIRST CAUSE OF ACTION – OPERATION OF AN ANIMAL FEEDING OPERATION PRIOR TO CONSTRUCTION OF AN APPROVED LIVESTOCK WASTE CONTROL FACILITY

37. § 54-2432(3) of LWMA states “it shall be unlawful for any person to [o]perate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirement for a livestock waste control facility 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.”

38. Title 130, Chapter 2, § 008.08 states “any person who owns or operates an animal feeding operation shall not [o]perate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirements for a construction and operating permit by the Nebraska Environmental Protection Act, Livestock Waste Management Act, or these regulations”.

39. The ponding of livestock waste in Respondents’ AFOs pivot corner feeding pens, the discharge of livestock waste from Respondents’ AFOs to county road ditches and State Highway 92, and Respondents’ unlawful use of county road ditches and State Highway 92 as unapproved livestock waste control facilities is the operation of an animal feeding operation prior to construction of an approved livestock waste control facility in violation in Neb. Rev. Stat. § 54-2432(3) and Title 130, Chapter 2, § 008.08.

40. Respondents have operated animal feeding operations while using 10th Avenue, Denton Road, and State Highway 92 as unapproved Livestock Waste Control Facilities since on or before May 9, 2023.

SECOND CAUSE OF ACTION – DISCHARGE OF LIVESTOCK WASTE AND PRECIPITATION

POLLUTED BY LIVESTOCK WASTE WITHOUT A CONSTRUCTION AND OPERATING PERMIT

41. § 54-2432(4) of LWMA states “it shall be unlawful for any person to [d]ischarge 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”.

42. Title 130, Chapter 2, § 008.10 restates this violation.

43. Respondents’ discharges of livestock waste, mixtures of surface water runoff and livestock waste, and precipitation polluted by falling on or flowing onto Respondents’ pivot corner feeding pens without a Construction and Operating Permit are violations of Neb. Rev. Stat. § 54-2432(4) and Title 130, Chapter 2, § 008.10.

44. Respondents violated Neb. Rev. Stat. § 54-2432(3) in at least twenty (20) total documented instances on May 9, 2023 (5 instances); April 10, 2024 (6 instances); and June 4, 2024 (9 instances).

THIRD CAUSE OF ACTION – OPERATION OF AN ANIMAL FEEDING OPERATION WITHOUT A PERMIT

45. § 81-1506(5)(a) of NEPA states “[i]t shall be unlawful for any person to [c]onstruct or operate an animal feeding operation without first obtaining a permit if required under the Livestock Waste Management Act or under the Environmental Protection Act and the rules and regulations adopted and promulgated by the council pursuant to such acts”.

46. Title 130, Chapter 2, § 008.09 states “[a]ny person who owns or operates an animal feeding operation shall not [o]perate an animal feeding operation without a construction approval, operating permit, construction and operating permit or a NPDES permit as required in Chapter 5 of these regulations, unless exempted from permitting under these regulations.”

47. NDEE issued Conditional Requirements letters to five (5) Respondents in May and August of 2022 as described in paragraph 18, above, that specified the conditions which

Respondents must follow to maintain a conditional exemption from the Title 130 Construction and Operating Permit requirement.

48. As a result of Respondents' repeated discharges of livestock waste and mixtures of surface water runoff and livestock waste from pivot corner feeding pens to road ditches and Respondents' subsequent failure to complete the grading work necessary to maintain their conditional exemptions, Respondents did not meet the conditions for an exemption from the Construction and Operating Permit requirement as specified in the Conditional Requirements letters issued by NDEE in May and August of 2022.

49. NDEE made its determination that certain Respondents were subject to the Construction and Operating Permit requirement on the dates in November 2023 that NDEE first issued those Respondents LNCs with an instruction to submit a complete permit application by May 1, 2024, as described in paragraph 25.

50. Respondents Adam's Livestock, Eric Blase Livestock, Lawrence Livestock – School Lands, and Terry's North have violated Neb. Rev. Stat. § 81-1506(5)(a) and Title 130, Chapter 2, § 008.09 since May 1, 2024, being the date on which the deadline passed for these Respondents to submit a complete Construction and Operating Permit application to NDEE.

**FOURTH CAUSE OF ACTION – CONSTRUCTION AND OPERATION OF AN ANIMAL FEEDING
OPERATION PRIOR TO AN INSPECTION FROM THE DEPARTMENT**

51. § 54-2432(1) of LWMA states “it shall be unlawful for any person to [c]onstruct or operate an animal feeding operation prior to an inspection from the department, unless exempted from inspection 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”.

52. Title 130, Chapter 2, § 008.06 states “[a]ny person who owns or operates an animal feeding operation shall not [c]onstruct an animal feeding operation or any portion thereof prior to an inspection by the Department, unless exempted from inspection by the Nebraska Environmental Protection Act, Livestock Waste Management Act, or these regulations”.

53. Respondent Terry’s North has constructed and operated pivot corner feeding pens on the N 1/2 of the NW 1/4 of Section 21, Township 14N, Range 09W in Howard County, Nebraska without an inspection from the Department since May 9, 2023, for the northwest pivot corner feeding pen and since April 10, 2024, for the northeast pivot corner feeding pen in violation of Neb. Rev. Stat. § 54-2432(1) and Title 130, Chapter 2, § 008.06.

VI. COMPLIANCE SCHEDULE

54. By January 15, 2025, Respondents agree to complete removal of all surface water runoff, livestock waste, and sediment from county road ditches.

55. By January 15, 2025, Respondents agree to meet with appropriate staff from Howard County to both: 1) verify satisfactory completion of the removal of surface water runoff, livestock waste, and sediment from county road ditches; and 2) identify any remaining actions to be completed by Respondents or Howard County such as vegetative re-seeding in ditches, gravel replacement, road re-grading, or any other such actions that are necessary to restore 10th Avenue and Denton Road to their original condition prior to the discharges from Respondents’ AFOs in 2023 and 2024. In determining Respondents compliance with the requirements of this paragraph, NDEE will confirm the completion of these tasks with Howard County and may conduct its own independent evaluation to the extent that its area of regulatory jurisdiction over the lawful management of livestock waste remains separate from and does not interfere with or

intrude on Howard County's jurisdiction over the maintenance, upkeep, and safety of its county roads.

56. By January 15, 2025, Respondents agree to contact the appropriate District Engineer at Nebraska Department of Transportation (NDOT) to discuss whether and how NDOT will require Respondents to remove any remaining livestock waste and sediment from ditches along the south side of State Highway 92 in the vicinity of its intersection with Denton Road or perform other corrective work, such as revegetation, and under what timeline, conditions, and instructions any cleanup or corrective activities by Respondents should be conducted to maintain public safety. If NDOT requires Respondents to perform cleanup or corrective work to return ditches along the south side of State Highway 92 to their condition prior to the discharge of livestock waste from Respondents AFOs, Respondents agree to obtain the necessary permits or written approvals from NDOT prior to initiating any cleanup or corrective work as required by Neb. Rev. Stat. § 39-1359(1). NDEE will confirm with NDOT that Respondents have discussed their possible cleanup and corrective responsibilities and, if applicable, ultimately satisfied those responsibilities.

57. Owner Respondents each agree to individually select one (1) of three (3) options for compliance with LWMA, NEPA, and Title 130. Each of the three (3) options are further defined by their associated conditions as described in paragraphs 58 through 60, respectively. If selecting Option 2 – Permitted Facility Option – Respondents may apply individually or jointly for a Construction and Operating Permit and, depending on the proposed operational size and characteristics described in the application, may also be subject to the requirement to obtain NPDES Permit coverage under Title 130, Chapter 5. The three (3) compliance options are:

- a. **Compliance Option 1: Grading Workplan Submittal, Grading Workplan Completion, and Grading Effectiveness Performance Period Option; OR**
- b. **Compliance Option 2: Permitted Facility Option; OR**
- c. **Compliance Option 3: Permanent Pen Abandonment Option**

58. In selecting Compliance Option 1: Grading Workplan Submittal, Grading Workplan Completion, and Grading Effectiveness Performance Period Option,

Respondents agree to the following conditions:

- a. **By November 1, 2024**, submit a professionally-prepared grading workplan that describes the grading work to be completed so that a performance standard is achieved whereby:
 - i. all drainage from livestock feeding pens is directed away from road ditches and toward the interior areas of adjacent crop fields; and
 - ii. livestock waste and mixtures of surface water and livestock waste that drain from feeding pens must dissipate from the interior areas of adjacent crop fields and not remain ponded after 48-72 hours.
- b. If grading work has already begun, **by November 1, 2024**, submit a professionally-prepared summary of the grading work already completed and yet to be completed that achieves the performance standard described in paragraph 58.a.
- c. **By April 15, 2025**, complete all grading work so that all pivot corner feeding pens meet the performance standard described in paragraph 58.a.
- d. NDEE may evaluate the effectiveness of the grading work in achieving the performance standard for up to a five (5) year period prior to closing the present administrative case.

- e. If NDEE determines that grading work is not effective in achieving the performance standard in paragraph 58.a., Respondents further agree to the following conditions:
 - i. Respondents agree to monitor feeding pens and road ditches for discharges during routine feeding activities and after precipitation events;
 - ii. if discharges of livestock waste or mixtures of surface water runoff and livestock waste to road ditches occur, Respondents agree to take immediate action to pump out road ditches and construct temporary berms at feeding pens to stop further discharges to road ditches;
 - iii. Respondents agree to notify NDEE within twenty-four (24) hours of any discharges to road ditches;
 - iv. Respondents agree to perform additional grading work to achieve the performance standard described in paragraph 58.a. as soon as soil moisture and, if applicable, cropping conditions allow; and
 - v. if additional grading work by Respondents is not effective in achieving the performance standard described in paragraph 58.a., NDEE may, in its discretion, require Respondents to further select Compliance Option 2 or Compliance Option 3 as a means of compliance with LWMA, NEPA, and Title 130.
- f. If wintertime feeding use of seasonally cropped areas of adjacent fields or pivot circles results in complete de-vegetation, NDEE may, in its discretion, require Respondents to further select Compliance Option 2 or Compliance Option 3 as a means of compliance with LWMA, NEPA, and Title 130.
- g. In selecting Compliance Option 1: Grading Workplan Submittal, Grading Workplan Completion, and Grading Effectiveness Performance Period Option, Respondents

remain subject to all terms and conditions of any prior Conditional Requirements letters and agree that NDEE, in its discretion, may update, modify, and amend the terms and conditions of any future Conditional Requirements letters issued by NDEE, including, but not limited to, the maximum livestock headcount in each pivot corner feeding pen.

59. In selecting **Compliance Option 2: Permitted Facility Option**, Respondents agree to the following conditions:

- a.** By **January 1, 2025**, submit a complete application for a Construction and Operating Permit meeting the requirements of Title 130, Chapter 4 for all pivot feeding corner feeding pens currently operated by the applying Respondents, for all pivot corner feeding pens proposed to be operated by the applying Respondents, and any other animal feeding operations currently owned or operated by or proposed to be owned or operated by the applying Respondents in the approximate vicinity of 10th Avenue, Denton Road, and State Highway 92 in Howard County, Nebraska.
- b.** If submitting a Construction and Operating Permit application for the northwest or northeast pivot corner feeding pens located at the N 1/2 of Terry's North, Respondent Terry's North further agree to the following:
 - i.** Submit a complete Title 130 Form A – Request for Inspection of Animal Feeding Operation; and
 - ii.** Along with the completed Title 130 Form A, include payment of the \$50 late fee per month beginning on May 2023 for the northwest pivot feeding corner pen and beginning on April 2024 for the northeast pivot corner feeding pen for all months

up to the month of application submittal, as required by Neb. Rev. Stat. § 54-2423(1) and Title 130, Chapter 3, § 002.

- c. In selecting Compliance Option 2: Permitted Facility Option, Respondents remain subject to all terms and conditions of any prior Conditional Requirements letters only until such time as any Construction and Operating Permits and, if applicable, NPDES Permits issued by NDEE to Respondents take effect. Any prior Conditional Requirements letters are replaced and superseded in full by the terms and conditions of the issued permits as of their effective date(s).

60. In selecting Compliance Option 3: Permanent Pen Abandonment Option,

Respondents agree to the following conditions:

- a. **By January 1, 2025:**
 - i. Remove all cattle from pivot corner feeding pens;
 - ii. Remove all feeding bunk lines and fencing and gating used to confine cattle;
 - iii. Clean all pivot corner feeding pens of livestock waste;
 - iv. Disk, drill, scrape, or otherwise disturb and prepare the soil surface adequately to allow for the successful planting of crops or establishment of permanent vegetation for the 2025 growing season.
- b. **By June 1, 2025,** plant crops or permanent vegetation in all pivot corner feeding pens selecting compliance under this option.
- c. On ongoing basis, maintain seasonal cropping or permanent vegetation in all pivot corners formerly used as feeding pens.

d. In selecting Compliance Option 3: Permanent Pen Abandonment Option,

Respondents understand and agree that any prior Conditional Requirements letters are hereby revoked, null, and void.

61. Respondents agree to perform all actions required in this Consent Order in accordance with all applicable federal, state, and local laws, regulations, and permits.

62. Information submittals documenting compliance with the deadlines applicable to Compliance Option #1 and Compliance Option #3 shall be marked with the relevant Respondent name(s), FID#, and shall be sent by email or postal mail to:

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

VII. RESERVATION OF RIGHTS

63. 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

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

IX. AMENDMENTS

65. This Consent Order may be amended upon the mutual written agreement of the Department and Respondents.

X. EFFECTIVE DATE

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

XI. TERMINATION

67. Upon completion of the Compliance Schedule, Respondents will be notified by NDEE 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

68. 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

69. Signature in Counterparts. Respondents have been mailed duplicate, identical copies of this Consent Order and shall sign and return each of their duplicate, identical copies of this Consent Order to NDEE at: NDEE Legal Division, P.O. Box 98922, Lincoln, NE 68509. After receipt of signatures by all Respondents, NDEE will return to each Respondent a copy of the countersigned Consent Order containing the signature of the NDEE Interim Director and signatures of all other Respondents.

70. By the act of signing, Respondents certify that they possess actual authority to enter into this Consent Order on behalf of that Respondent and to bind that Respondent.

71. For Respondent Adam's Livestock:

- | Select One | Compliance Option |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Option 1: Grading Workplan, Completion, Performance Period |
| <input type="checkbox"/> | Option 2: Permitted Facility |
| <input type="checkbox"/> | Option 3: Permanent Pen Abandonment |
| <input type="checkbox"/> | Multiple – specify Compliance Option # below by pivot corner, including all pivot corners currently used as AFOs for the quarter section owned by Respondent: |

Signature of Adam Blase:



Owner, Adam Blase Livestock

Date:

10-12-2024

72. For Respondent Allen Blase Livestock:

- | Select One | Compliance Option |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Option 1: Grading Workplan, Completion, Performance Period |
| <input type="checkbox"/> | Option 2: Permitted Facility |
| <input type="checkbox"/> | Option 3: Permanent Pen Abandonment |
| <input type="checkbox"/> | Multiple – specify Compliance Option # below by pivot corner, including all pivot corners currently used as AFOs for the quarter section owned by Respondent: |

Signature of Allen Blase:

Allen Blase

Owner, Allen Blase Livestock

Date:

10-11-24

73. For Respondent Eric Blase Livestock:

- | Select One | Compliance Option |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Option 1: Grading Workplan, Completion, Performance Period |
| <input type="checkbox"/> | Option 2: Permitted Facility |
| <input type="checkbox"/> | Option 3: Permanent Pen Abandonment |
| <input type="checkbox"/> | Multiple – specify Compliance Option # below by pivot corner, including all pivot corners currently used as AFOs for the quarter section owned by Respondent: |

Signature of Eric Blase:

Eric A. Blase

Owner, Eric Blase Livestock


Date:

10-10-2024

74. For Respondent Terry's North:

- | Select One | Compliance Option |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Option 1: Grading Workplan, Completion, Performance Period |
| <input type="checkbox"/> | Option 2: Permitted Facility |
| <input type="checkbox"/> | Option 3: Permanent Pen Abandonment |
| <input type="checkbox"/> | Multiple – specify Compliance Option # below by pivot corner, including all pivot corners currently used as AFOs for the quarter section owned by Respondent: |


Signature of Eric Blase: 
Owner, Terry's North

Signature of Lisa Blase: 
Owner, Terry's North

75. For Respondent Lawrence Livestock

- | Select One | Compliance Option |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Option 1: Grading Workplan, Completion, Performance Period |
| <input type="checkbox"/> | Option 2: Permitted Facility |
| <input type="checkbox"/> | Option 3: Permanent Pen Abandonment |
| <input type="checkbox"/> | Multiple – specify Compliance Option # below by pivot corner, including all pivot corners currently used as AFOs for the quarter section owned by Respondent: |

Signature of Adam Blase:



Owner, Lawrence Livestock

Signature of Eric Blase:



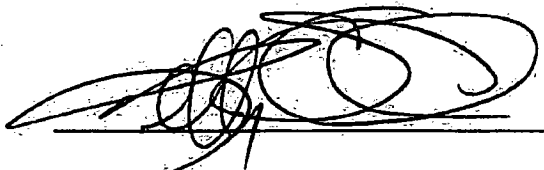
Owner, Lawrence Livestock

76. For Respondent Lawrence Livestock – School Lands / Nebraska Board of Educational

Lands and Funds

- | Select One | Compliance Option |
|-------------------------------------|---|
| <input type="checkbox"/> | Option 1: Grading Workplan, Completion, Performance Period |
| <input type="checkbox"/> | Option 2: Permitted Facility |
| <input checked="" type="checkbox"/> | Option 3: Permanent Pen Abandonment |
| <input type="checkbox"/> | Multiple – specify Compliance Option # below by pivot corner, including all pivot corners currently used as AFOs for the quarter section owned by Respondent: |

Signature:



Title:

CEO/Exec. Sec.
Nebraska Board of Educational Lands and Funds

Date:

10.22-24

77. For Respondent Allen Blase Livestock

- | Select One | Compliance Option |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | Option 1: Grading Workplan, Completion, Performance Period |
| <input type="checkbox"/> | Option 2: Permitted Facility |
| <input type="checkbox"/> | Option 3: Permanent Pen Abandonment |
| <input type="checkbox"/> | Multiple – specify Compliance Option # below by pivot corner, including all pivot corners currently used as AFOs for the quarter section owned by Respondent: |

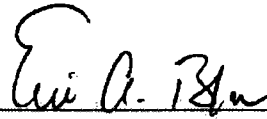
Signature of Allen Blase: Allen Blase
Owner, Allen Blase Livestock

Date: 10-11-24

78. For Respondent Eric Blase, Operator

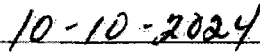
In signing, Operator Eric Blase agrees to operate each individual AFO consistent with the Compliance Option selected by each of the individual owner Respondents.

Signature of Eric Blase:

Handwritten signature of Eric A. Blase in black ink, written over a horizontal line.

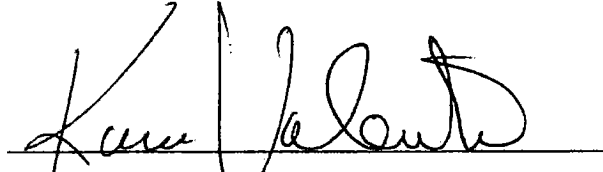
Operator

Date:

Handwritten date 10-10-2024 in black ink, written over a horizontal line.

79. For the Department:

IT IS SO ORDERED and agreed this 23rd day of October, 2024.

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

KARA VALENTINE
INTERIM DIRECTOR
NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY