

BEFORE THE DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)	
)	Case No. 3623
BUNKER HILL CATTLE CO.)	
FID: 75594)	COMPLAINT, COMPLIANCE ORDER,
)	AND NOTICE OF OPPORTUNITY
Respondent.)	FOR HEARING
)	

I. INTRODUCTION

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing (“Order”) is issued pursuant to Neb. Rev. Stat. §§ 81-1504(7)(b), 81-1507(1), and 81-15,304(4).

2. The Complainant is the Interim Director of the Nebraska Department of Environment and Energy (“Department”).

3. The Respondent is Bunker Hill Cattle Co. (“Respondent”), a domestic corporation that owns and operates a large concentrated animal feeding operation (“CAFO”), located at 858 Eagle Road, St. Paul, Nebraska 68873.

4. The Complainant has determined the Respondent is in violation of the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. §§ 81-1501 to 81-1532, and the Livestock Waste Management Act (“LWMA”), Neb. Rev. Stat. §§ 54-2416 to 54-2438.

II. JURISDICTION

5. 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 NEPA, the LWMA, and all rules and regulations promulgated under such acts, including Title 130 of the Nebraska Administrative Code (“NAC”).

6. The Department may issue orders requiring a responsible person to take specific actions when a release occurs under the Nebraska Environmental Response Act (“NERA”), Neb. Rev.



Stat. §§ 81-15,301 to 81-15,311, including corrective actions as may be reasonably required to prevent a recurrence of a release. *See also* Neb. Rev. Stat. § 81-1504(7)(b).

III. COMPLAINT

7. The NEPA makes it unlawful to violate any provision of the LWMA, or any rule or regulation adopted and promulgated by the council pursuant to the NEPA or the LWMA. Neb. Rev. Stat. § 81-1506(5)(b) and (d).

8. Pursuant to 130 NAC 11-010, livestock waste control facilities are required to be maintained in proper operating condition.

9. Additionally, as relevant here, the LWMA authorizes the Department to require an engineering evaluation or assessment performed by a licensed professional engineer for a livestock waste control facility if, after an inspection, the Department:

a. Determines that the facility has:

i. Signs of discharge due to structural weakness, Neb. Rev. Stat. § 54-2429(5)(a)(ii);
or

ii. Improper maintenance, Neb. Rev. Stat. § 54-2429(5)(a)(iii); or

b. Has reason to believe that an animal feeding operation with a livestock waste control facility has violated or threatens to violate the NEPA, LWMA, or any rules or regulations adopted and promulgated under such acts, Neb. Rev. Stat. § 54-2429(5)(b).

10. On or about January 30, 2024, the Department and Respondent entered into a Consent Order (“Consent Order”), the Findings of Fact of which are hereby incorporated by reference as if fully set forth herein.

11. Pursuant to the terms of the Consent Order, Respondent agreed to, among other things:

- a.** With respect to the south berm of Holding Pond 3 (“Berm”):
 - i.** Within six months of the effective date of the Consent Order, repair the Berm;
and
 - ii.** Within 15 days of the completion of the repairs to the Berm, conduct seepage and permeability testing of the same; and
- b.** With respect to the synthetic liner of Holding Pond 5 (“Liner”):
 - i.** Within six months of the effective date of the Consent Order, repair the damaged portions of the Liner; and
 - ii.** Within 15 days of the completion of the repairs to the damaged portions of the liner of the Liner, submit to the Department:
 - A.** Seam testing results for all seams repaired or areas replaced; and
 - B.** A Nebraska Department of Environment and Energy Certificate of completion form documenting the completion and results of the seam testing.

12. The Respondent has failed to comply with §§ 11(a) and 11(b)(ii).

13. On or about September 19, 2024, the Department conducted an inspection (“September 19 Inspection”).

14. According to the inspection report prepared for the September 19 Inspection:

- a.** With respect to the Berm:
 - i.** Some repairs had been made to the Berm;
 - ii.** The Berm did not pass permeability testing; and
- b.** With respect to the Liner:
 - i.** The Liner was repaired using an electric high-density polyethylene (“HDPE”) extrusion welder;

- ii. Seam testing was not conducted, as required by ¶ 30(d) of the Consent Order;
- iii. A new tear to the Liner has formed in the southeast corner of Holding Pond 5 and a large portion of the berm underneath the tear had washed out;
- iv. A large “bubble” of soil underneath the Liner has formed to the west of the repaired area;
- v. A portion of the Liner has also torn or come unbolted from the concrete pad into which the Liner was bolted in the southwest corner of Holding Pond 5, creating an area where livestock waste can flow under the liner and cause the soil to sluff off; and
- vi. Trees and other debris were present on the Liner.

FIRST CAUSE OF ACTION

15. Neb. Rev. Stat. § 81-1506(5)(d) states that it shall be unlawful for any person to “[v]iolate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or Livestock Waste Management Act.”

16. 130 NAC 11-010 requires that “[l]ivestock waste control facilities shall be maintained in proper working conditions.”

17. By failing to timely complete repairs to, and perform permeability testing on, the Berm of Holding Pond 3, Respondent failed to maintain its livestock waste control facility in proper working condition from on or about August 27, 2019, to on or about the date of this Order, both dates being approximate and inclusive, as described herein, is a violation of Neb. Rev. Stat. § 81-1506(5)(d) and 130 NAC 11-010.

SECOND CAUSE OF ACTION

18. Neb. Rev. Stat. § 81-1506(5)(d) states that it shall be unlawful for any person to “[v]iolate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or Livestock Waste Management Act.”

19. 130 NAC 11-010 requires that “[l]ivestock waste control facilities shall be maintained in proper working conditions.”

20. By failing to timely complete repairs to, and perform seam testing of, the Liner of Holding Pond 5, Respondent failed to maintain its livestock waste control facility in proper working condition from on or about August 4, 2022, to on or about the date of this Order, both dates being approximate and inclusive, as described herein, is a violation of Neb. Rev. Stat. § 81-1506(5)(d) and 130 NAC 11-010.

IV. COMPLIANCE ORDER

21. IT IS HEREBY ORDERED, pursuant to Neb. Rev. Stat. §§ 54-2429(5), 81-1504(7)(b), and 81-15,304(4), that Respondent shall:

- a. With respect to Holding Pond 5:
 - i. By November 1, 2024, submit to the Department documentation demonstrating that a professional engineer licensed in the State of Nebraska has been engaged to perform a professional engineering evaluation for the following areas of Holding Pond 5:
 - A. The tear in the Liner located in the southeast corner, specifically, the need for fill soil to be placed in the washed out area;
 - B. The compromised Liner located in the southwest corner by the concrete pad and inlet pipe; and

- C. The “bubble” of soil that has formed underneath the Liner;
- ii. Within 30 days of submitting the documentation described in ¶ 21(a)(i), submit to the Department for approval the professional engineering evaluation, signed and stamped by the engineer who completed it;
- iii. Within 90 days of the Department approving the professional engineering evaluation:
 - A. Complete all repairs consistent with the professional engineering evaluation and all applicable laws and regulations;
 - B. For purposes of ¶ 21(a)(iii)(A), repairs are considered “complete” only if the seams of the repaired or replace locations of the HDPE liner pass properly conducted seam tests and all debris and trees are removed from the pond; and
- iv. Within 30 days of completing the repairs described in ¶ 21(a)(iii), submit to the Department:
 - A. A Certificate of Completion, signed and stamped by an engineer licensed in the State of Nebraska, certifying that the repairs to Holding Pond 5 have been completed; and
 - B. A copy of the seam testing results, signed and stamped by an engineer licensed in the State of Nebraska, documenting that the tests passed requirements as stated in Title 130; and
- b. With respect to Holding Pond 3, by May 1, 2025:
 - i. Complete all necessary repairs to the Berm of Holding Pond 3;
 - ii. For purposes of ¶ 21(b)(i), repairs are considered “complete” only if the soil passes properly conducted permeability tests; and

iii. Submit to the Department:

- A.** A Certificate of Completion, signed and stamped by an engineer licensed in the State of Nebraska, certifying that the repairs to the Berm have been completed; and
- B.** A copy of the permeability testing results, signed and stamped by an engineer licensed in the State of Nebraska, documenting that the test passes requirements as stated in Title 130.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

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

23. Any written petition and request for hearing with respect to this Order must conform to the requirements of Title 115 of the Nebraska Administrative Code.

24. The petition and hearing request may be filed via either:

- a.** Postal mail to: Kara Valentine, Interim Director, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, NE 68509-8922; or
- b.** Hand delivery to: Nebraska Department of Environment and Energy, 245 Fallbrook Blvd, Ste 100, Lincoln, NE 68521.

VI. SETTLEMENT CONFERENCE

25. Whether or not Respondent requests a hearing, Respondent or Respondent's counsel may request an informal conference by writing to Maxwell Anderson, Attorney, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, NE 68509-8922.

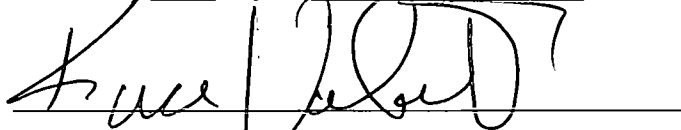
26. A request for a settlement conference does not extend the 30-day period during which a written petition and request for hearing must be submitted or otherwise delay the final effective date of this order.

VII. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

27. The Department reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil penalties or criminal prosecution for any violations that are the subject of this Order. Nothing in this Order precludes the Department from pursuing such enforcement.

28. Failure to comply with this order may result in the assessment of a civil penalty of up to \$10,000 per violation per day or an administrative penalty of up to \$5,000 per violation per day. Neb. Rev. Stat. §§ 81-1508.02 and 81-15,310.

Dated this 10th day of October, 2024.




Kara, Valentine, Interim Director,
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, was served by certified United States mail, postage prepaid, return receipt requested this 16th day of October, 2024, upon the Respondent listed below:

Brian Timmons
862 Eagle Rd.
St. Paul, NE 68873
USPS Label # 9414811898765480420380



Lauren Triplett
Paralegal