

BEFORE THE DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)	Case No. 3623
)	
BUNKER HILL CATTLE CO.)	CONSENT ORDER
FID: 75594)	
)	
Respondent.)	
)	

I. INTRODUCTION

1. The Nebraska Department of Environment and Energy (“Department”) and Bunker Hill Cattle Co. (“Respondent”), voluntarily enter into this Consent Order. The Consent Order establishes a Compliance Schedule for Respondent to comply with the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. §§ 81-1501 to 81-1532, the Livestock Waste Management Act (“LWMA”) Neb. Rev. Stat. §§ 54-2416 to 54-2438, and Title 130 of the Nebraska Administrative Code, Livestock Waste Control Regulations, and all relevant permits.

2. The Department and Respondent agree that settlement of this matter is in the public interest to ensure compliance with state laws, 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 the NEPA, the LWMA, and all rules and regulations promulgated under such acts, including Title 130.

4. The Department may issue orders requiring a responsible person to take specific actions when a release under the Nebraska Environmental Response Act (“NERA”) has occurred

pursuant to 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.

5. 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 its rights to further hearing as provided in Neb. Rev. Stat. § 81-1507 and the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 *et seq.*

III. PARTIES

6. The parties to this Consent Order are the Department and Respondent, a large, concentrated animal feeding operation (“CAFO”) whose address is 858 Eagle Rd, St. Paul, NE 68873. This Consent Order is binding on the Department, Respondent, and any successors and assigns of the parties. Respondent shall ensure that all contractors hired to perform work required by this Consent Order are informed of applicable requirements.

7. The Respondent is a person as defined in Neb. Rev. Stat. § 81-1502(10).

IV. FINDINGS OF FACT

8. Respondent owns and operates a concentrated large CAFO as defined by Title 130, Chapter 1, 024.03 of the Nebraska Administrative Code.

9. The CAFO is located at NW ¼ & NW ¼, SW ¼, Section 29, Township 14 N, Range 09W, Howard County, Nebraska.

10. On August 27, 2019, an onsite inspection was conducted in response to a discharge notification from Respondent. A large portion of the south berm of Holding Pond 3 (“Berm 3”) at Respondent’s location had been damaged due to the Bomb Cyclone weather event in March

2019 (“2019 Bomb Cyclone”). Due to heavy rains in August 2019 parts of Berm 3 had collapsed and discharged livestock waste across the nearby county road.

11. Pursuant to a discharge notification, on October 2, 2019 the Department investigated a discharge of livestock waste from Respondent’s CAFO. It revealed that a significant rainfall event had occurred and among other things caused the following:

- a. A large portion of the south berm of holding pond 3 collapsed and discharged effluent into an adjacent field.

12. A Corrective Action Letter was issued to Respondent on October 17, 2019, and required repair to the damaged Berm 3 by installation of a 12-inch clay liner. Respondent was also required to conduct seepage and percolation testing on the site of the repair by July 1, 2020.

13. The Department conducted a routine inspection on August 20, 2020, which revealed the repair of Berm 3 had not been completed. A second Corrective Action Letter dated September 2, 2020 was issued to Respondent and again required Respondent to repair Berm 3 and submit seepage and percolation testing following the completion of the repair.

14. The Department conducted a compliance status inspection on April 7, 2021, which revealed that Berm 3 had been repaired, but seepage and percolation tests were yet to be completed. In addition, it was discussed with Mr. Nathan Timmons, manager/operator for the CAFO, the need to complete a land application training every five years. The training was due February 1, 2020, but was overdue.

15. On August 4, 2022, the Department conducted a complaint inspection. The Complainant stated the north holding pond was leaking. Upon inspection it was revealed that a pool of water and livestock waste alongside the north side of the north holding pond 5 was caused by a leak in an above ground pipe from the pump to the de-watering fields causing the waste/water mixture

to pool in the ditch. The leak was caused by a side dump truck hitting a portion of the pipe. The pipe has since been buried at the request of the Department.

16. Following the complaint inspection the Department spoke with Settje Agri-Services & Engineering Inc., consultant for Respondent (“Settje”). Settje indicated samples taken related to the repairs of Berm 3 did not pass the seepage and percolation testing. The Department issued a Letter of Noncompliance (“LNC”) on August 26, 2022, requiring Respondent to submit verification of successful percolation testing related to Berm 3 by November 1, 2022.

17. In a response from Settje dated October 17, 2022, Settje stated that clay had been hauled in to repair Berm 3. On March 20, 2023 a status call was made to Mr. Timmons regarding the percolation testing for Berm 3. Mr. Timmons indicated a company had been lined up to complete the repairs and testing. Mr. Timmons was informed that the compliance date to complete the work had passed. No further information was provided by Respondent to the Department which indicated that the testing has been completed.

18. During the August 4, 2022 complaint inspection it was revealed that the liner along the south berm of the North Holding Pond 5 (“Berm 5”) had torn in two places due to a high wind event. Mr. Timmons indicated during the inspection that a company from Ord, Nebraska would repair the damaged area. NDEE Supervisor, Brad Edeal, told Mr. Timmons he would need to repair the damage as soon as possible because the liner was torn down to the effluent level at one location. Mr. Timmons indicated he would be pumping all the effluent out of the pond to allow the repairs to be made.

19. The LNC required Respondent to repair the liner of Berm 5 by November 1, 2022, and submit seam testing results within 15 days of the completion of repairs. The response letter from

Settje dated October 17, 2022 stated that a contractor was lined up to repair the synthetic liner of Berm 5.

20. On November 17, 2022, the Department called Mr. Timmons. Mr. Timmons stated he had a company lined up to repair the liner of Berm 5, but he had to pump down the pond to a lower level so that the contractor could repair it. Mr. Timmons indicated he would have the repair completed the following week.

21. On December 7, 2022, the Department called Matt Geiser of Manure Mafia, the contractor who was retained by Respondent to repair the tears in the liner. Mr. Geiser stated that Respondent was pumping down the pond to pre-winter levels, which would allow the repairs to be completed. Mr. Geiser anticipated that repairs would be completed by December 16, 2022.

22. The Department contacted Mr. Timmons on March 20, 2023 for a status update on the liner repair to Berm 5. Mr. Timmons indicated colder weather had prevented the completion of the repairs. It was conveyed to Mr. Timmons by the Department that the date for compliance had passed, and he was encouraged to make the repairs as soon as possible.

23. On April 12, 2023, the Department received a complaint about livestock waste discharging into a county road ditch. Complainant stated that the operation was pumping livestock waste from the North Holding Pond 5, and it was going into the county road ditch. On April 13, 2023 a complaint inspection was conducted. The inspection also revealed that the above ground pipe used for pumping livestock effluent was no longer leaking, but livestock waste remained in the county road ditch. Respondent had filled dirt on top of and around the leaking point of the pipe to prevent any further discharge. Respondent was pumping the pond to get it low enough to make repairs to Berm 5, which had not been completed at the time of the complaint inspection.

24. At the conclusion of the April 13, 2023 complaint inspection, Mr. Timmons was provided a Notification of Discharge of Livestock Waste form to fill out and submit to the Department within 5 days of the reported discharge. A Corrective Action Letter dated April 20, 2023 was sent to Respondent and provided that the form should be submitted to the Department as soon as possible and a status update was required in writing by April 27, 2023. The form has not been received by the Department. In addition, pursuant to the Corrective Action letter, Respondent was required to, and did, pump livestock waste out of the county road ditch south of 9th Avenue as soon as possible and repair the leak in the pipe that runs along the north berm of the north holding pond to prevent livestock waste from entering the ditch.

25. Compliance status inspections were conducted on September 28, October 24, and November 16, 2023 regarding the progress of repairing the damaged liner in Holding Pond 5. As of November 16, 2023 the damaged liner had not been repaired.

FIRST CAUSE OF ACTION

26. Failure to properly maintain a Livestock Waste Control Facility is a violation of Neb. Rev. Stat. § 81-1506(5); Neb. Rev. Stat. § 54-2432(5); Title 130, Chapter 11.001. Respondent attempted to make required repairs to Berm 3, but permeation testing results have not been submitted to the Department.

SECOND CAUSE OF ACTION

27. Failure to properly maintain a Livestock Waste Control Facility is a violation of Neb. Rev. Stat. § 81-1506(5); Neb. Rev. Stat. § 54-2432(5); and Title 130, Chapter 11.001. The liner along the south berm of North Holding Pond 5 is torn and the compliance date for repairs of November 1, 2022 has passed.

THIRD CAUSE OF ACTION

28. Failure to satisfactorily complete land application training every 5 years is a violation of Neb. Rev. Stat. § 81-1506(5); Neb. Rev. Stat. § 54-2432(5); and Title 130, Chapter 5.007.04. Respondent has not completed land application training due on February 1, 2020.

FOURTH CAUSE OF ACTION

29. Failure to notify the Department of any discharge of manure within 24 hours of the event and to provide a written report to the Department within 5 days of the event is a violation of Neb. Rev. Stat. § 81-1506(5); Neb. Rev. Stat. § 54-2432(5); and Title 130, Chapter 2.010. Respondent failed to file a discharge notice as required by the April 20, 2023 Corrective Action Letter.

V. COMPLIANCE SCHEDULE

30. Respondent agrees to:

- a. Within 15 days of the effective date of this order file the discharge report required by the April 20, 2023 Corrective Action Letter.
- b. Within 30 days of the effective date of this order complete a certified land application training and submit notification to the Department of completion of this training.
- c. Within 6 months of the effective date of this order repair the south berm of Holding Pond 3 and conduct seepage and permeability testing within 15 days of the completed repairs.
- d. Within 6 months of the effective date of this order repair the damaged portions of the liner of the North Holding Pond 5. Within 15 days of completion of the repairs, submit seam testing results to the Department for all seams that were repaired, or areas replaced, and a Nebraska Department of Environment and Energy Certificate of Completion form.

VI. SATISFACTION AND COMPLIANCE WITH OTHER LAWS

31. Respondent agrees to perform all actions required in this Consent Order in accordance with all applicable local, state, and federal laws, regulations, and permits.

VII. RESERVATION OF RIGHTS

32. 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, the public welfare, or the environment or to enforce any provision of the NEPA or any rules, regulations, orders, or permits, issued pursuant to the 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

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

IX. AMENDMENTS

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

X. EFFECTIVE DATE

35. 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

36. Upon completion of the Compliance Schedule, Respondent 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

37. 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

38. For Respondent: The undersigned certifies that the undersigned possesses actual authority to enter into this Consent Order on behalf of Respondent and to bind Respondent.

Signature: Brian Turner
Title: owner
Date: _____

39. For the Department:

IT IS SO ORDERED and agreed this 30th day of January, 2024

J. Macy
JIM MACY
DIRECTOR
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY