

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

IN THE MATTER OF)	Case No. 3615
)	
JARROD W. ANDERSON,)	COMPLAINT, COMPLIANCE ORDER
PAULA J. ANDERSON, and)	AND NOTICE OF
JHC CATTLE COMPANY, LLC)	OPPORTUNITY FOR HEARING
)	
FID #72636)	
)	
Respondents.)	

I. INTRODUCTION

1. This Complaint, Compliance Order, and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507. The Complainant is the Director of the Nebraska Department of Environment and Energy (NDEE or Department). The Respondents are Jarrod W. Anderson and Paula J. Anderson, owners and operators of an animal feeding operation located in Morrill County, NE, and JHC Cattle Company, LLC, a Nebraska limited liability company with its principal office located at 310360 Greenbuck Road, Minatare, NE 69356.

2. Complainant has determined the Respondents are in violation of the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 54-2416 to 54-2438; Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 to 81-1532; and Neb. Admin. Code, Title 130, Livestock Waste Control Regulations (Title 130).

II. JURISDICTION

3. NDEE 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. NDEE is further charged with the duty to “administer the state program for construction and operating permits and major modification approval for animal feeding operations and livestock waste control facilities provided under the Environmental Protection Act, the Livestock Waste Management Act, and the rules and regulations adopted and promulgated pursuant to such acts.” Neb. Rev. Stat. § 54-2418(2).

III. COMPLAINT

5. The Complaint below establishes the violations and the Compliance Order further below establishes a schedule for corrective actions to be taken by the Respondents to comply with LWMA, NEPA, and Title 130.

6. Respondents Jarrod W. Anderson and Paula J. Anderson own and operate an animal feeding operation (AFO) located at NW ¼, NE ¼, Section 8, Township 21N, Range 51W, Morrill County, NE, and are the owners of the real property on which the AFO is located.

7. Respondent JHC Cattle Company, LLC, was identified by Respondent Jarrod W. Anderson during a phone call with NDEE on August 29, 2022, as a related legal entity involved in the operation of Respondents’ AFO. Subsequent to this phone conversation, JHC Cattle Company, LLC, was used as the addressee for correspondence from NDEE, which shares the same mailing address and residential home of the individual Respondents. Respondent JHC Cattle Company, LLC, has not applied for any NDEE permits and has not submitted any written correspondence or other documentation to NDEE related to the AFO or its operation. The amount and nature of operational control of the AFO by JHC Cattle Company, LLC, is unknown to NDEE, beyond the August 29, 2022, phone call.

8. All Respondents are a “person” as defined in Neb. Rev. Stat. § 54-2417(16) and Neb. Rev. Stat. § 81-1502(10).

9. Respondents’ AFO is bordered on its north side by Nebraska Highway Link 62A, which connects U.S. Highway 26 with U.S. Highway 385. All three highways are part of the “Heartland Expressway Corridor” as designated by the Nebraska Department of Transportation (NDOT) in state highway planning documents. Respondents’ AFO is located between mile markers 3 and 4 of Nebraska Highway Link 62A, just west of mile marker 4.

10. As part of the Heartland Expressway Corridor Development Plan, NDOT intends to widen Nebraska Highway Link 62A from the existing two-lane highway to a four-lane expressway. NDOT held a public information meeting and solicited public comments on the project on September 8, 2022.

11. Respondents’ AFO consists of several confined feeding pens located along the west and east sides of a central road and feeding alley running approximately north-to-south. In total, the west and east pens contain approximately 2100 feet of bunk space capable of feeding between approximately 1400 and 2100 feeder cattle depending on animal size and age, feed blend, number of daily feedings, and other production variables. The confined feeding pens and operational capacity for feeding 1400 to 2100 cattle designates a facility of this size and operational character as both a “large” AFO and large concentrated animal feeding operation (CAFO) under Title 130, Chapter 1, 008 and 024.

12. On July 17, 2019, NDEE inspected the AFO that is now owned by Respondents and was under prior ownership at the time of inspection. On inspection, NDEE determined that discharges of livestock waste, runoff, and direct precipitation from the east pens flow east to an

abandoned irrigation canal repurposed for use as a “debris basin”, as that term is used in Neb. Rev. Stat. § 54-2417(10), and is then left in the canal to evaporate.

13. NDEE has no documentation on file from Respondents or previous owners of Respondents’ AFO that the debris basin receiving livestock waste, runoff, and direct precipitation from the east pens is capable of containing the 25-year, 24-hour rainfall event as required for existing large AFOs under Title 130, Chapter 7, 001.01.

14. During the July 17, 2019, inspection, NDEE also determined that discharges of livestock waste, runoff, and direct precipitation from the west pens were uncontrolled by any designed, repurposed, or other structures utilized to control livestock waste until it can be used, recycled, or disposed of in an environmentally acceptable manner. NDEE also determined that discharges of livestock waste from the west pens flowed north to the south road ditch for Nebraska Highway Link 62A, then flowed west for approximately ¼ mile, then turned south and flowed through a cropped intermittent drainage for approximately 650 feet, then emptied into a lateral branch of the Tristate Irrigation Canal, a water of the state as defined in Neb. Rev. Stat. § 81-1502(21).

15. As a result of the July 17, 2019, inspection of the AFO which was then under previous ownership and is now owned and operated by Respondents, NDEE determined that the discharge of livestock waste from the west pens was uncontrolled and had the potential to discharge livestock waste to a water of the state or to a place which will likely reach waters of the state, as “discharge” is defined and used in Neb. Rev. Stat. § 54-2417(8), LWMA, NEPA, and Title 130.

16. On August 30, 2019, and based on the findings of its July 17, 2019, inspection, NDEE sent a previous owner of Respondents’ AFO a “Permits Required” letter informing the previous owner that the AFO was subject to the livestock waste control permit requirements of Title 130 and that applications for a Construction and Operating (C&O) Permit and a National Pollutant

Discharge Elimination System (NPDES) Permit were required to be submitted to the Department on or before March 1, 2020. Among other requirements, a major requirement of a Title 130 C&O Permit is that the AFO owner/operator construct and operate an engineered livestock waste control facility (LWCF) as defined in Neb. Rev. Stat. § 54-2417(10), or multiple LWCFs, to contain and manage livestock waste, runoff, and precipitation from the AFO's production area.

17. Between August 30, 2019, and March 1, 2020, NDEE received no Title 130 C&O or NPDES permit applications from previous owners of Respondents' AFO.

18. On February 6, 2020, NDEE received a call from a real estate agent and auctioneer who stated that the AFO then under prior ownership and now owned by Respondents' had been repossessed by the lender and was expected to sell around March 12, 2020. During the call, NDEE stated the following: the AFO is required to submit an applications for C&O and NPDES permits by March 1, 2020; the new owners may be eligible for an extension of this deadline upon written request; both permits are required to continue operation as a large AFO; and that "the new owners may be able to operate under a conditional exemption if they drop to a medium, abandon pens, etc. but it is possible the Department will require the operation to obtain a C&O and NPDES permit even with a decreased headcount."

19. On July 16, 2020, NDEE was contacted by phone by another previous owner of Respondents' AFO seeking "information regarding the compliance status of the feedlot and his responsibilities as the new owner." NDEE discussed compliance options and explained the Title 130 permitting process during the call.

20. Also on July 16, 2020, NDEE sent the previous owner of Respondents' AFO who called on that same day a "Permits Required" letter which was identical in content to the preceding

“Permits Required” letter described in paragraph 15 and further required the permit applications to be submitted to the Department on or before January 15, 2021.

21. On January 21, 2021, NDEE received a completed “Request for Extension” form submitted by the previous owner of Respondents’ AFO who had called NDEE on July 16, 2020, and had been sent a “Permits Required” letter on that same day. In addition to the extension request and other information provided on the form, the previous owner indicated that an engineering consulting firm had been engaged; the consultant had completed a site evaluation, site survey, and preliminary design; and that the C&O permit application was “nearly finished” and would be submitted by February 26, 2021. After requesting an extension of the application deadline, the previous owner did not submit Title 130 C&O or NPDES permit applications.

22. On August 29, 2022, and after learning that Respondents were now the current owners of the AFO at NW ¼, NE ¼, Section 8, Township 21N, Range 51W, Morrill County, NE, NDEE contacted Respondent Jarrod Anderson by phone to inform him that Respondents’ AFO was subject to Title 130 C&O and NPDES permit requirements. Respondent stated that he was aware that his AFO was subject to permit requirements. Respondent also stated that he had been working with an engineering consulting firm, but that the project became too expensive. Respondent further stated that he was not intending to obtain the required permits and intended to “possibly move the facility capacity to under 1,000 head of cattle”.

23. On August 31, 2022, NDEE sent Respondents a “Permits Required” letter which was identical in content to the two (2) “Permits Required” letters sent to previous owners on August 30, 2019, and July 16, 2020, as described herein.

24. Pursuant to LWMA and Title 130, an AFO operating at a maximum capacity of 999 head of feeder cattle and in accordance with certain operational conditions and limitations established by NDEE may potentially be exempt from the Title 130 C&O and NPDES permit requirements.

25. In good faith and in fulfilling its statutory mandate in Neb. Rev. Stat. § 81-1510(1) to pursue voluntary compliance prior to initiating enforcement proceedings, NDEE conducted a reinspection and compliance assistance visit (CAV) of Respondents' AFO on October 5, 2022, for purposes of: 1) evaluating whether and under what operating conditions Respondents could operate their AFO lawfully and in an environmentally acceptable manner without the requirements to obtain Title 130 permits and construct a LWCF, and 2) confirming the observations made on and determinations resulting from the NDEE inspection on July 17, 2019, when Respondents' AFO was under prior ownership.

26. During the October 5, 2022 reinspection and CAV, NDEE confirmed that discharges of livestock waste, runoff, and direct precipitation from the east pens flow east to an abandoned irrigation canal repurposed for use as a debris basin. NDEE observed and documented that the debris basin could be used as a LWCF within the meaning of LWMA and Title 130 for the east pens provided that the debris basin was maintained to be free of weeds, dewatered within 84 hours of a runoff event, and pumped to an adjacent field directly to the east which, when cropped, would require crops to be planted in rows oriented from west to east to allow for proper drainage.

27. During the October 5, 2022 reinspection and CAV, NDEE confirmed that discharges of livestock waste, runoff, and direct precipitation from the west pens were uncontrolled; that the drainage path for discharges of livestock waste from the west pens followed the route documented by NDEE on its July 17, 2019, inspection; that operation of the west pens had the

potential for discharge of livestock waste to a water of the state; and that a LWCF and Title 130 permits were required for lawful operation of Respondents' AFO if such operation included use of the west pens. As an alternative to constructing a LWCF and obtaining Title 130 permits, NDEE documented in its inspection report that Respondents could permanently abandon the west pens and reduce the AFO's maximum operating capacity to 999 feeder cattle or below, thus becoming a medium AFO as defined in Title 130, Chapter 1, 029.03.

28. On October 31, 2022, NDEE sent Respondents a "Conditional Requirements" letter offering and describing the conditions necessary for Respondents to lawfully operate as a medium AFO without the requirements to construct a LWCF and obtain Title 130 C&O and NPDES permits, and, as such, be considered conditionally exempt from the requirements of Neb. Rev. Stat. § 54-2432(3) and (4) and Title 130, Chapter 2, 003 and 004, as cited below. The "Conditional Requirements" letter was a one-time offer of regulatory flexibility also conditioned upon Respondents' compliance with the offer by February 1, 2023 and conferred no permanent legal rights or regulatory determinations to Respondents, their successors, or assigns. To be eligible for the offer of a conditional exemption, Respondents were required to:

- a.** Confine no more than 999 head of feeder cattle at any time;
- b.** Permanently abandon the west pens, clean the west pens of livestock waste, and maintain vegetation in the west pens at all times;
- c.** Maintain the function of the debris basin receiving livestock waste, runoff, and precipitation from the east pens and pump the debris basin to the east field within 84 hours of a runoff event;
- d.** Ensure that livestock waste pumped from the debris basin to the east field is land applied as sheet flow runoff and that the east field does not become channelized;

- e. When the east field is planted to row crops, the rows must be oriented from west to east;
- f. Scrape the west pens on a regular basis and land apply the livestock waste at agronomic rates for nitrogen and phosphorous; and
- g. Stockpile livestock waste in a location that will prevent runoff to waters of the state.

29. On January 4, 2023, NDEE conducted a compliance status inspection at Respondents' AFO, noting that Respondents "had not complied with the Department's requests; there were cattle in the west pens, and the facility, [with a capacity] for 2,000 head, looked to be at or near capacity."

30. On February 14, 2023, NDEE conducted a compliance status inspection at Respondents' AFO, noting that "as of today, no work has been completed" on meeting the conditions of the "Conditional Requirements" letter.

31. Also on February 14, 2023, NDEE sent Respondents a "Letter of Non-Compliance" (LNC) citing violations of Title 130 and requiring Respondents to either meet the conditions of the "Conditional Requirements" letter or submit Title 130 C&O and NPDES permit applications by May 1, 2023. The LNC also required a written progress update by April 1, 2023.

32. To date, Respondents have not responded to the February 14, 2023, LNC and have not complied with both the progress update deadline of April 1, 2023, and revised completion deadline of May 1, 2023.

33. On April 4, 2023, NDEE conducted a compliance status inspection at Respondents' AFO, noting that "[a]t the time of inspection, the facility still had cattle confined in the pens west of the

drover's alley". The inspection report documented the ongoing presence of cattle in the west pens in three (3) photographs with captions.

34. On May 5, 2023, NDEE conducted a compliance status inspection at Respondents' AFO, noting that "[d]uring the compliance status inspection, it was noted that the pens west of the drover's alley still confined cattle." In four (4) photographs with captions, the inspection report documented the ongoing presence of cattle in the west pens. In two (2) photographs with captions, the inspection report documented standing liquid livestock waste at low points of the west pens that had the potential to discharge during a rain event.

35. June 1, 2023, NDEE documented in a memorandum to file dated that it had attempted to contact Respondent Jarrod Anderson by phone and had left messages with him on February 8, 2023, and May 12, 2023, for the purposes of providing follow-up on prior agency correspondence and providing compliance assistance. The memorandum to file also documents that Jarrod Anderson did not answer the two (2) calls from NDEE nor did he return the calls after messages were left requesting him to do so.

36. To date, Respondents have taken no actions to respond to or comply with:

- a.** The "Permits Required" letter that NDEE sent Respondents on August 31, 2022;
- b.** The "Conditional Requirements" letter that NDEE sent Respondents on October 31, 2022;
- c.** The "Letter of Non-Compliance" that NDEE sent Respondents February 14, 2023; and
- d.** Two attempts by NDEE to contact Respondents by phone and having left voicemail messages during each attempt.

VIOLATION #1 – OPERATION OF AN ANIMAL FEEDING OPERATION PRIOR TO CONSTRUCTION OF AN APPROVED LIVESTOCK WASTE CONTROL FACILITY

37. Neb. Rev. Stat. § 54-2432(3) states that 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, 003 states that “[a] livestock waste control facility is required for an existing or proposed animal feeding operation when livestock wastes have discharged or have the potential to discharge in a manner that is not lawfully authorized by permit or these regulations.”

39. Respondents’ ongoing operation of the west pens at the AFO in Morrill County as described herein and without a LWCF or exemption is a violation of Neb. Rev. Stat. § 54-2432(3) and Title 130, Chapter 2, 003.

VIOLATION #2 – OPERATION OF AN ANIMAL FEEDING OPERATION PRIOR TO OBTAINING A CONSTRUCTION AND OPERATING PERMIT AND NPDES PERMIT

40. Neb. Rev. Stat. § 81-1506(5)(a) states that it 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”.

41. Title 130, Chapter 2, 004 states that “[w]hen livestock waste control facilities are required by the Department, the owner or operator of the animal feeding operation is required to apply for construction and operating permit as provided in Chapter 4.”

42. Title 130, Chapter 2, 008.09 states that any 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.”

43. Respondents’ ongoing operation of the AFO in Morrill County as described herein and without the required C&O and NPDES permits or an exemption is a violation of Neb. Rev. Stat. § 81-1506(5)(a) and Title 130, Chapter 2, 004 and 008.09.

IV. COMPLIANCE ORDER

44. Within 90 days of receiving this Order, Respondents shall submit complete applications for a Construction and Operating Permit and a NPDES Permit meeting the requirements of Title 130. The Construction and Operating Permit application shall incorporate the anticipated design footprint(s) of Nebraska Highway Link 62A as known or planned for by NDOT at the time of application.

45. Submittals to the Department under this Order shall refer to FID #72636 and shall be sent to:

Brad Edeal
Agriculture Section Supervisor
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

46. This Order shall become final, pursuant to Neb. Rev. Stat. § 81-1507(1), unless Respondents file an answer and request, in writing, a hearing no later than thirty days after

receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

47. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Neb. Admin. Code, Title 115, Rules of Practice and Procedure, Chapter 1 – Adoption of Model Rules, and Neb. Admin. Code, Title 53, Model Rules of Agency Procedure, Chapter 4 – Rules of Practice and Procedure for Hearings in Contested Cases Before an Agency. The answer and request for hearing may be filed by mail to: Jim Macy, Director, State of Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the Department's Lincoln office located at 245 Fallbrook Blvd, Suite 100, Lincoln, Nebraska.

VI. SETTLEMENT CONFERENCE

48. Whether or not Respondents request a hearing, an informal settlement conference may be requested by writing to Legal Division, Nebraska Department of Environment and Energy, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

49. A request for settlement conference does not extend the thirty (30) day period during which a written answer and request for hearing must be submitted or otherwise delay the final effective date of this Order.

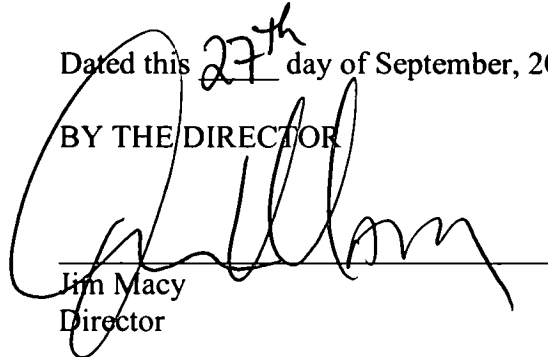
VII. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

50. NDEE reserves the right to pursue enforcement in the proper court of law for injunctive relief or to seek civil or criminal penalties for any violations that are the subject of this Complaint, Compliance Order and Notice of Opportunity for Hearing. Nothing in this

Complaint, Compliance Order and Notice of Opportunity for Hearing precludes NDEE from pursuing such enforcement.

Dated this 27th day of September, 2023.

BY THE DIRECTOR

A handwritten signature in black ink, appearing to read "Jim Macy", is written over a horizontal line. The signature is fluid and cursive.

Jim Macy
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 3rd day of October, 2023, upon the Respondent listed below:

Paula J. Anderson
310360 Greenbuck Road
Minatare, NE 69356
USPS Label # 9414811898765495907616

Jarrold W. Anderson
310360 Greenbuck Road
Minatare, NE 69356
USPS Label # 9414811898765495907968

JHC Cattle Company LLC
310360 Greenbuck Road
Minatare, NE 69356
USPS Label # 9414811898765495907012



Lauren Triplett
Paralegal