



Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY
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TO: Commenters to Public Notice

DATE: July 25, 2013

SUBJECT: Application for Construction and Operating Permit
Danbred Performance Research Center Animal Feeding Operation
SW ¼, S11-T16N-R1E, Butler County
IIS No. 101614, Large Concentrated Animal Feeding Operation (CAFO)
and
Hough Nursery Animal Feeding Operation
NE ¼, S23-T16N-R2E, Butler County
IIS No. 101613, Large Concentrated Animal Feeding Operation (CAFO)
Designers – Matthew Goeller P.E., Settje Agri-Services & Engineering, Inc.

Your letter submitted for public comment on the proposed Danbred Performance Research Center and/or Hough Nursery Livestock Waste Control Facilities (LWCFs) both in Butler County, Nebraska was received and reviewed. The application for the Danbred Performance Research Center was submitted for a maximum of 6,000 head of swine greater than 55 pounds and 2,000 head of swine less than 55 pounds. The application for Hough Nursery was submitted for a maximum of 12,000 head of swine less than 55 pounds; or 6,000 head of swine greater than 55 pounds; or a combination of 6,000 head of swine less than 55 pounds and 3,000 head of swine greater than 55 pounds.

We appreciate the interest you provided during the comment period. Additional letters were also received, comments were evaluated, and the issues raised are included in this response. Please note that comments received for both operations are addressed with this letter.

The Nebraska Department of Environmental Quality's (NDEQ) authority to regulate a LWCF comes from statutes passed by the Legislature and subsequent regulations approved by the Environmental Quality Council and Governor. The requirements are found in Title 130, *Livestock Waste Control Regulations*. The regulations can be found on the NDEQ's web page at <http://deq.ne.gov> and are also available on request. A permit requirement is based on the planned operation and an evaluation by the NDEQ of the proposed site. Each application for a LWCF permit is reviewed to determine if the proposed LWCF meets all Title 130 requirements.

The following is a summary of the issues that were raised, followed by the NDEQ's response:

I. A request for a public hearing.

Response: The Livestock Waste Management Act does not provide an opportunity for anyone to request a public hearing on an application for a Construction and Operating Permit. The Act provides specific timeframes for the NDEQ to notify the Natural Resources District and the county board of receipt of an application and then provides the public with a 30-day comment period.

II. Health concerns related to air pollution, odors.

Response: A plan describing best management practices to minimize odor was required as part of the permit application and was included in the applications. The plan meets the NDEQ requirements under Title 130, Chapter 4, 001.09, and describes best management practices to be implemented to minimize odors from the animal feeding operation, livestock waste control facility, and disposal practices. With regard to air pollution concerns, the NDEQ has conducted monitoring at animal feeding operations in the past and not found levels exceeding the established state and national air standards. The effect of odors from land application sites has not been evaluated. However, the NDEQ has reviewed research data from other states and universities, including the University of Nebraska, and will continue to review new research and data as it is obtained. The NDEQ will also continue to work with animal feeding operations and the livestock industry to encourage the development of methods and approaches to study and reduce the effects of flies, odors and dust. The NDEQ will conduct routine inspections of the completed LWCF and the record keeping required in their permits to ensure compliance with Title 130.

III. Concerns about surface water and groundwater quality related to the construction and operation of the LWCFs.

Response: An NDEQ Geologist reviews well logs and other geological information for the area to evaluate the potential for groundwater contamination. Based on review of the geologic information at the site, NDEQ has determined that groundwater monitoring should be required. The monitoring of the LWCFs will require the installation of upgradient and downgradient monitoring wells at both sites. The permittee will then conduct sampling and analysis of the groundwater semi-annually and submit the results to the NDEQ (Title 130, Chapter 13).

The Livestock Waste Control Facility and associated permits are required because of concerns related to the potential for discharge to waters of the state. The NDEQ required additional examination of both sites by a Nebraska registered professional engineer specializing in soils and foundations. The recommendations in the soils engineer's report must be followed by the owner and the engineer of record during the construction of the LWCFs. In addition, the NDEQ will conduct a post-construction inspection and review data to ensure compliance with the approved LWCF, prior to granting any approval to operate.

It is the responsibility of the owner to operate and maintain the LWCFs to prevent any discharge to waters of the state in compliance with their permit, Title 130, and Nebraska statutes.

IV. Concerns about discharges from land application sites, the proper application of livestock waste.

Response: The application of livestock waste to cropland, including through a tethered injection system or direct injection by tank wagon as proposed in the applications, is considered a common and accepted agriculture practice. The nutrient management plan requirements of Title 130 limit application to the agronomic rate for nitrogen for the crop being grown, with an analysis for phosphorus concerns prior to the first application of waste and at least every five years thereafter. Also, surface water setbacks must be maintained during land application of waste. Restriction of application of wastes in floodplains (other than the required setback distance to surface waters) would be a local land use issue and is outside the authority of the NDEQ. It is the responsibility of the permittee to follow setback requirements listed in Title 130. The land application sites have farmed through drainages and farmed through low spots. Waste cannot be applied to these areas when water is present. Also, analyses done by both the NDEQ and the designer indicate that the nitrogen produced by the maximum animal capacity of the operations versus the land base available for distribution of the waste is more than enough land to agronomically apply the nitrogen. The county crop yield averages are an acceptable way to estimate the amount of nitrogen needed. Discharges to waters of the state from land application sites due to improper application of the wastes are prohibited. Title 130, Chapter 9, 007 details setbacks that are required to be followed to protect waters of the state.

V. Questions about the seasonal high water table and the ability to maintain a 4-foot separation distance.

Response: On-site borings and historical measurements of wells in the area were utilized to determine the seasonal high groundwater level. The applicant then adjusted the floor elevation to maintain the required 4-foot separation distance between the floor of the LWCF and the seasonal high groundwater level.

VI. Concerns that there are wetlands on the Danbred Performance Research Center site.

Response: Wetlands were identified at this site and the extent was delineated by a qualified third party. The construction activity associated with this project will not disturb the vast majority of the wetlands on-site. Minor disturbance of wetlands identified in a road ditch will occur with the installation of the driveways at the site. The amount of wetland that will be disturbed is less than 0.1 acre and does not need to be mitigated under State & Federal wetland guidance.

VII. Concerns about pathogens, flies, dust from increased truck traffic, over-use of antibiotics and hormones, road and wildlife damage due to truck traffic, property values, quality of life issues, and groundwater usage.

Response: These concerns are outside the authority of the NDEQ's permit process for LWCFs. NDEQ's authority is based on water quality protection. The Legislature has given counties the authority to implement land use planning and adopt zoning regulations. The Natural Resources Districts have the authority to regulate groundwater withdrawals.

VIII. Concerns about site construction and water use by the Danbred Performance Research Center operation and the impact on the Platte River and threatened and endangered species.

Response: The proposed construction site is outside of the 100-year flood plain of the Platte River as indicated on maps developed by Federal Emergency Management Agency (FEMA). Any construction restrictions at this site would be a local issue.

The NDEQ submitted a request to the Nebraska Game and Parks Commission to conduct an Endangered and Threatened Species Review of this project. Game and Parks indicated that the location where the facility will be built does not contain habitat for endangered and threatened species. However, they had concern that instream flow depletions or impacts on water quality may adversely impact some or all of these species. The NDEQ conducted an evaluation of the projected water use for this project. In summary, the NDEQ found negligible impact to the flow in the Platte River.

The NDEQ has completed its review and concluded that a Construction and Operating Permit should be issued for both the Danbred Performance Research Center and Hough Nursery Livestock Waste Control Facilities (LWCFs). On July 24, 2013 the NDEQ issued the Construction and Operating Permit for both operations. The Construction and Operating Permit and the approved application may be viewed at our Lincoln office and on our webpage under "Request for Public Records". Please send a written request to the Records Management Unit to arrange for an appointment to view the files (FAX 402-471-2909).

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Trewhitt".

Tom Trewhitt, P.E.
Agriculture Section
Water Quality Division