

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	Case No. 3477
	)	
Thomas Fagan,	)	
d/b/a FAGAN FEEDLOT	)	AMENDED
	)	CONSENT ORDER
FID #71368	)	
Respondent.	)	

1. The Nebraska Department of Environmental Quality (NDEQ) and Thomas Fagan d/b/a Fagan Feedlot (Respondent) voluntarily enter into this Amended Consent Order. The previous consent order, entered on March 25, 2019, shall remain in full force and effect, except paragraph 24, which is replaced and superseded with paragraphs 2 through 4, below. Paragraph 25 of the March 25, 2019, Consent Order is amended to have an NPDES application submittal deadline of July 15, 2019.

2. By July 15, 2019, Respondent agrees to the following:

- a. Complete tillage and planting activities necessary to establish a gravityirrigated, permanent vegetative treatment area (VTA) meeting Natural Resources Conservation Service (NRCS) guidelines to the north of the CAFO utilizing existing underground piping and pumps. The VTA must be designed to control the potential for discharge of livestock waste originating from the north pens and north debris basin. The VTA must be planted to perennial grasses, shall be regularly harvested to remove nutrients, and shall not be grazed. No livestock shall have access to the VTA at any time. The pivot located in the same field may not pass through the VTA.
- b. Complete any grading necessary to cause the north pens to only drain to the north debris basin. All areas of the north pens that continue to drain to the



south after grading or that cannot be graded to drain north must be cleaned of livestock waste, fenced, and planted to permanent vegetation. Vegetation must be maintained in all south draining pens at all times.

- c. Operate and maintain the north debris basin so that it is completely dewatered to the VTA within 72 to 84 hours. The north debris basin must be fenced as necessary to prevent livestock access to the north debris basin at all times.
  - d. Submit a complete application for major modification of Respondent's Construction & Operating Permit that updates and corrects all prior application submittals and issued permits to the CAFO design and operational plan described in this Amended Consent Order. The maximum livestock headcount to be submitted in the application shall be for no more than 1,250 animals. The application shall meet all requirements applicable to a large CAFO under Title 130 – *Livestock Waste Control Regulations* and may require revisions to the current groundwater monitoring plan after application submittal and prior to final approval to operate.
3. By November 1, 2019, and on an ongoing basis, Respondent agrees to:
- a. Permanently abandon all pens on the south side of the CAFO. Clean all livestock waste from the south pens, plant and maintain vegetation in the south pens at all times. Gates to the abandoned south pens must be closed at all times or the pen fencing removed. Cattle shall not have access to the south pens at any time. After vegetation has been fully established, any intermittent, wintertime, or other supplemental feeding of cattle on pasture or stubble must be located and directed so that the south pen areas maintain permanent vegetation at all times.

- b. Utilize the working/handling areas for such purposes only. Respondent shall not place feed bunks or otherwise allow full-time feeding in the working/handling pens.
  - c. Operate at a livestock head count of no more than 1,250 animals.
4. On an ongoing basis, Respondent agrees to:
- a. Continue groundwater monitoring requirements in accordance with Title 130 and Respondent's issued permits; and
  - b. Comply with record-keeping requirements in accordance with Title 130 and Respondent's issued permits.

**SIGNATURES**

5. For Respondent:

By: Thomas Fagan  
Title: Owner  
Date: 6-19-19

6. For NDEQ:

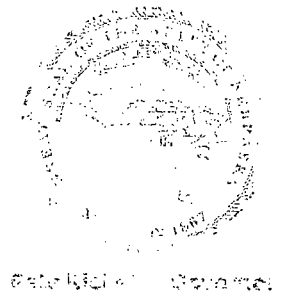
IT IS SO ORDERED and agreed this 1<sup>st</sup> day of July, 2019.

Jim Macy  
Jim Macy  
Director  
Nebraska Department of Environmental Quality

# NEBRASKA

Good Life. Great Resources.

**DEPT. OF ENVIRONMENT AND ENERGY**



July 3, 2019

Thomas Fagan  
Fagan Feedlot  
5063 N 80<sup>th</sup> Road  
Cairo, NE 68824

Re.: Legal Case No. 3477 / Facility ID No. 71368

Dear Mr. Fagan:

Thank you for your signature and return of the Administrative Consent Order in your case. Attached to this letter, you will find a copy for your files containing both your signature and the signature of the NDEE Director.

Sincerely,

Lauren Triplett  
Staff Assistant  
NDEE – Legal Division Attorney

CC: Dean Settje, President  
Settje Agri-Services and Engineering,  
15460 NW 48th St  
Raymond, NE 68428

Jacob Mayer, P.E.  
Settje Agri-Services and Engineering,  
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**Department of Environment and Energy**

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**Jim Macy, Director**

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