

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

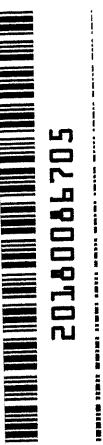
IN THE MATTER OF)	
Bartling Brothers, Inc.,)	CASE NO. 3447
dba Tricep,)	
)	COMPLAINT, COMPLIANCE
FID # 77350)	ORDER AND NOTICE OF
)	OPPORTUNITY FOR HEARING
Respondent.)	

I. INTRODUCTION

1. This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. § 81-1507 (Reissue 2014). The Complainant is the Director, State of Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Department"). The Respondent Bartling Brothers, Inc. (hereinafter "Bartling"), whose facilities # 77350 ("Tricep") is located in Sterling, Johnson County, Nebraska. Complainant has determined that the Respondent is in violation of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §§ 81-1501 et. seq. (Reissue 2014, Cum. Supp. 2016); the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 54-2416 to 2438 (Reissue 2010, Cum. Supp. 2016); Neb. Admin. Code Title 130, Livestock Waste Control Regulations, and Neb. Admin. Code Title 178, Water Well Construction, Pump Installation, and Water Well Decommissioning Standards Regulations.

2. 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 and LWMA, and all rules and regulations and orders promulgated under such acts.

3. The Complaint below establishes the violations, and the Compliance Order establishes a schedule for corrective actions to be taken by the Respondent.



II. COMPLAINT

4. Respondent is Bartling, which owns an animal feeding operation (“facility”) at 73451 616 Ave, Sterling, Nebraska 68443. The legal description is SE ¼, NE ¼, Section 22, Township 06N, Range 10E, Johnson County, Nebraska.

5. Pursuant to the Nebraska Environmental Quality Council’s authority to adopt rules and regulations for enforcement of the Livestock Waste Management Act, as expressed in Neb. Rev. Stat. §§ 81-1505(1), (10), the Council adopted rules and regulations codified as Neb. Adm. Code, Title 130, Livestock Waste Control Regulations.

6. Neb. Rev. Stat. § 54-2432(2) states it shall be unlawful for anyone to:

“Construct a livestock waste control facility without first obtaining a construction and operating permit from the department, unless exempted from the requirement for a construction and operating permit 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.”

7. Neb. Rev. Stat. § 54-2432(5) states it shall be unlawful to anyone to:

“Violate the terms of a National Pollutant Discharge Elimination System permit or construction and operating permit or any provision of the Livestock Waste Management Act and rules and regulations adopted and promulgated by the council pursuant to the act.”

8. Nebraska Administrative Code, Title 130, Livestock Waste Control Regulations, Chapter 2, Section 008.06, states that any person who owns or operates an animal feeding operation shall not:

“Construct an animal feeding operation or any portion thereof prior to an inspection by the Department, unless exempted from inspection by the Nebraska Environmental Protection Act, Livestock Waste Management Act, or these regulations.”

9. Nebraska Administrative Code, Title 130, Livestock Waste Control

Regulations, Chapter 2, Section 008.07, states that any person who owns or operates an animal feeding operation shall not:

“Construct a livestock waste control facility without a construction and operating permit, or construction approval or not in compliance with a construction and operating permit or construction approval issued by the Department, unless exempted from the requirements for a construction and operating permit by the Nebraska Environmental Protection Act, Livestock Waste Management Act, or these regulations.”

10. Nebraska Administrative Code, Title 130, Livestock Waste Control

Regulations, Chapter 2, Section 008.08, states that any person who owns or operates an animal feeding operation shall not:

“Operate an animal feeding operation prior to construction of an approved livestock waste control facility, unless exempted from the requirements for a construction and operating permit by the Nebraska Environmental Protection Act, Livestock Waste Management Act, or these regulations.”

11. Nebraska Administrative Code, Title 130, Livestock Waste Management

Regulations, Chapter 2, Section 008.09, states that any person who owns or operates an animal feeding operation shall not:

“Operate 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.”

12. Nebraska Administrative Code, Title 130, Livestock Waste Control

Regulations, Chapter 9, Section 002, states that

“The Department will not accept an application or issue a permit for an animal feeding operation with an existing livestock waste control facility if the facility is located within 100 feet of a domestic water well not owned by the operation. The Department may permit an existing livestock waste control facility, located within 100 feet of a well owned by the operation, based upon an evaluation of the following conditions:

- 002.01 Depth to ground water;
- 002.02 Known flow direction of ground water;

002.03 Structural integrity of the facility and, if known, the well; and
002.04 Any other circumstance that may adversely affect ground
water quality.”

13. Nebraska Administrative Code, Title 178, Water Well Construction, Pump
Installation, and Water Well Decommissioning Standards Regulations, Chapter 12,
Section 011.01F, states that:

”Repair or Modifications to Pumps and Pumping Equipment: Upon
the removal of, or the repair and/or modification to the pump or pumping
equipment in which replacement of original equipment is required, current
pump and pumping equipment installation standards must be followed.
This includes replacement of, or modification to the electrical wiring and/or
controls located in the electrical layout serving the pump and pumping
equipment including connection to the load side of the service disconnect
or breaker. Any upgrade of this electrical system must be in compliance
with all current applicable state or national electrical codes, and be
installed according to the manufacturer's specifications.”

14. Nebraska Administrative Code, Title 178, Water Well Construction, Pump
Installation, and Water Well Decommissioning Standards Regulations, Chapter 12,
Section 011.03D, states that:

“12-011.03D Discharge Piping includes any and all piping
beginning at the discharge head or pitless unit tapping, extending to the
first shut off valve or backflow preventer.

12-011.03D2 Underground Discharge Piping must be equipped
with a curb stop valve and schedule 80 plastic or metal riser within one
foot of the discharge, and be in compliance with 178 NAC 12-011.01.”

15. On October 24, 2007, the previous owner of facility # 77350 signed an NDEQ
Form E Transfer Request for their permit, the transfer to Bartling to be effective
December 1, 2007. On November 25, 2016, the previous owner of facility # 77350
signed an NDEQ Form D Permit Transfer Request for their Construction and Operating
Permit, the transfer to Bartling to be effective December 1, 2016. The transferred
permits did not include any proposed construction.

16. An NDEQ inspector visited the facility on December 12, 2017, and found Bartling had constructed two underfloor shallow pit barns. Swine were being fed in the north barn. Construction was not completed on the south barn, and the inspector was able to inspect some of the interior construction work. During a follow-up inspection on January 12, 2018, swine were populated in the south barn, prior to a full inspection by NDEQ.

17. A Notice of Violation (“NOV”) was issued by NDEQ on December 22, 2017, and received by Bartling on or about December 29, 2017, finding Bartling in violation of Neb. Rev. Stat. §§ 54-2432 (2), (5) and 54-2433; Neb. Admin. Code Title 130, Chapter 2, Sections 008.06 and 008.07; and Chapter 3, Section 002. The violations included constructing a livestock waste control facility without obtaining a Construction and Operating Permit, violating the terms of a Construction and Operating Permit, and failing to request an inspection prior to operation of the livestock waste control facility.

18. The December 22, 2017, NOV required Bartling, to come into compliance in five areas. Four of these requirements have been completed, and the following requirement was not met:

“The newly constructed underfloor shallow pit buildings shall not be populated with livestock until an Approval to Operate has been granted by the Department. An approval will only be offered once the application for Major Modification has been reviewed and a Modified Construction and Operating Permit Issued by the Department.”

19. Bartling submitted an Application for a Construction & Operating Permit (“Application”) on July 23, 2018. The Application is under review by the NDEQ.

20. NDEQ inspectors visited the facility on November 15, 2018. They examined two livestock wells at the facility. Neither are registered with the Nebraska Department of Natural Resources, but they were installed prior to 1993, so are not required to be

registered. The wells are located at 40.47232, -96.2622 (“West Well”) and 40.47236, -96.27608 (“East Well”). Both wells are less than 100 feet from the livestock buildings. The East Well has a broken cover on the electrical junction at the well head, and the pitless unit is not 12 inches above grade. The West Well does not have a curb stop within one-foot of the discharge, and the wiring does not meet current electrical code.

21. The Director of the NDEQ is authorized pursuant to Neb. Rev. Stat. § 81-1504(1), (7), and (13) to issue this order requiring enforcement of the Nebraska Environmental Protection Act.

III. COMPLIANCE ORDER

22. Bartling shall bring their facility into compliance with all requirements of the Nebraska Environmental Protection Act and all rules and regulations and orders promulgated under such acts, including, but not limited to completing the following:

A. By May 1, 2019, decommission the two water wells identified in paragraph # 20 above, following the standards of Neb. Admin. Code, Title 178, Chapter 12, Section 012, Water Well Decommissioning.

B. By May 1, 2019, drill and construct replacement wells meeting the standards of Neb. Admin. Code, Title 130, Chapter 9, Location Restrictions and Setbacks: Wells, Ground Water, Cold Water Class A Stream Watersheds, and Title 178, Chapter 12, Water Well Construction, Pump Installation, and Water Well Decommissioning Standards.

C. Comply with the Construction and Operating permit, once approved, including any required ground water testing.

23. Respondents shall report to NDEQ by May 1, 2019, documenting how compliance with paragraph 22 of this Order has been achieved.

24. Respondents shall respond promptly to any written communication by the NDEQ. Any delay in responding to such communication shall be construed as non-compliance with this Order.

25. Information to be submitted under this Order shall refer to FID # 77350 and shall be sent to:

Agriculture Section
Nebraska Department of Environmental Quality
PO Box 98922
Lincoln, NE 68509-8922

IV. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

26. 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 (30) days after receipt of this Order. Failure to answer within thirty days shall be deemed an admission of the allegations of the Complaint.

27. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Neb. Admin. Code, Rules of Practice and Procedure, Chapter 7. The answer and request for hearing may be filed by mail to: Jim Macy, Director, State of Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or may be delivered to the Department's Lincoln office located at 1200 N Street, Suite 400, Lincoln, Nebraska.

V. SETTLEMENT CONFERENCE

28. Whether or not Respondent requests a hearing, an informal settlement conference may be requested by writing to Susan M. Ugai, Attorney, Nebraska Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922, or have your attorney make such a request.

29. 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.

VI. INJUNCTIVE RELIEF AND PENALTY PROVISIONS

30. The NDEQ 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 the NDEQ from pursuing such enforcement.

12-17-18

Date



Jim Macy, Director
Nebraska Department of Environmental Quality

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Complaint, Compliance Order and Notice of Opportunity for Hearing, with attachments, were served by certified United States mail, postage prepaid, return receipt requested this 17th day of December, 2018, upon the Respondent listed below at their registered agent and office address:

Bartling Brothers, Inc.
James Bartling
103 S. 16th Rd.
Unadilla, NE 68454



Susan M. Ugai