

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

Central Valley Ag Cooperative,	)	Case NO. 3242
A Nebraska Non Stock Corp.,	)	
Randolph, Nebraska.	)	COMPLAINT, COMPLIANCE
Storm Water Authorization No.	)	ORDER AND NOTICE OF
NER113481	)	OPPORTUNITY FOR HEARING
FID# 99782,	)	
Respondent.	)	

PRELIMINARY STATEMENT

This Complaint, Compliance Order and Notice of Opportunity for Hearing is issued pursuant to Neb. Rev. Stat. §81-1507(1) of the Environmental Protection Act (Act), Neb. Rev. Stat. §81-1501 et seq. (Reissue 2008, Cum. Supp. 2012, Supp. 2013), and in accordance with Title 115 - Rules of Practice and Procedure for the Department of Environmental Quality. The Complainant is the Nebraska Department of Environmental Quality (NDEQ or Department). The Respondent is Central Valley Ag Cooperative, a Nebraska Non Stock Corporation. The Registered Agent for the Respondent is Douglas Derscheid, 415 Hwy. 20, P.O. Box 330, O'Neill, NE 68763. The Complaint below establishes the violations of the rules and regulations promulgated under the laws of the State of Nebraska and the Compliance Order establishes the corrective actions to be taken by the Respondent.

COMPLAINT

1. The Complainant incorporates by reference the allegations of the preliminary statement.



2. Pursuant to Neb. Rev. Stat. §81-1505 of the Environmental Protection Act, the Environmental Quality Council adopted Title 119, *Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System*.

3. The Respondent is constructing a grain storage and chemical storage facility near Randolph, Pierce County, Nebraska.

4. The Respondent applied to the Department for permission to discharge storm water from the construction site near Randolph, Nebraska to an unnamed tributary of Yankton Slough and a roadside ditch to Yankton Slough. The Complainant acting under the authority of the Environmental Protection Act §81-1504 (4) and (11) granted permission to the Respondent to discharge storm water under terms and conditions set forth in the NPDES (National Pollutant Discharge Elimination System) General Permit Numbers NER 110000 (Permit), NER113481 (authorization number).

5. The Permit required that stabilization measures must be initiated as soon as practicable in portions of the site where construction activities have temporarily or permanently ceased, but in no case more than 14 days after the construction activity in that portion of the site has temporarily or permanently ceased.

6. On or about July 2, 2013, an inspection by NDEQ revealed that: the Respondent had failed to provide proper best management practices and that the Respondent had failed to complete or take any other stabilization measures other than silt fencing. On September 11, 2013 a Notice of Violation letter was sent to

the Respondent concerning this violation. On October 16, 2013 a complaint was received by the Department concerning sediment discharges.

7. Neb. Rev. Stat. § 81-1508.02 (1) (b) and (e) provide that it is unlawful to violate any permit or license condition or limitation issued or entered into pursuant to the Environmental Protection Act or violate any other provision of or fail to perform any other duty imposed by such acts, rules or regulations.

#### COMPLIANCE ORDER

IT IS HEREBY ORDERED THAT:

8. Respondent shall immediately take steps to stabilize the site, stop discharges of sediment and minimize the damage done by discharges of sediment (watering high traffic areas, mats, bales, berms, gravel, wind breaks, etc...). Respondent within 15 days of this order shall, in writing, inform the Department as to what steps were taken.

9. Temporarily seed, throughout construction, denuded areas that will be inactive for 14 days or more.

A. Covercrop seeding with rapidly growing annual plants shall be established as a temporary vegetative cover on denuded soil surfaces, side slopes, disturbed areas, and stockpiles. Plant selection shall be based on seasonal suitability. In the spring oats will be planted. Summer seeding may be with foxtail millet or pearl millet. Winter wheat shall be planted in the fall. Covercrop seeding will be used on disturbed areas where the inactive period is greater than 14 days but less than one growing season. The seed must germinate, grow, and provide adequate vegetative density to provide stabilization.

B. Temporary seeding using perennial grasses shall be established on denuded soil surfaces, side slopes, disturbed areas, and stockpiles that will be inactive for periods longer than one growing season. Temporary seeding must be established within the growing season of May 1 through October 31. The seed must germinate, grow, and provide adequate vegetative density to provide stabilization.

C. Temporary mulch shall be used by itself where vegetation is not established and in conjunction with covercrop and temporary seeding to provide protection of the soil surface during construction. Temporary Mulching prevents erosion by protecting the soil surface from raindrop impact and by reducing the velocity of overland flow. Temporary mulching material shall be either dry cured native prairie hay, native grass hay from seed growing operations, native grass hay from planted warm season grass stands, or threshed grain straw (brome hay is not allowed due to its' shallow root structure). Temporary mulch shall be applied at the rate of 1.5 tons/acres (3.35 Mg/ha) for hay, 2.0 tons/acre (4.5 Mg/ha) for straw and 2.5 tons/acre (5.6 Mg/ha) for rushes or similar materials.

10. Install riprap around outlet structures as each outlet structure is installed.

A. Rock riprap shall be sandstone, limestone, quartzite or other hard stone, clean and free of earth, clay or refuse.

B. Dumped riprap shall be graded rock or stone dumped on a prepared slope in such a manner that segregation will not take place.

11. Permanently stabilize areas to be vegetated as they are brought to final grade.

A. Seeding with perennial grasses shall provide permanent stabilization of denuded soil surfaces, side slopes, and disturbed areas. Temporary mulch shall be used in conjunction with the seeding to provide protection of the soil surface. The soils in these areas must contain enough organic material to provide for seed germination, growth, and vegetative density for stabilization.

12. Respondent shall provide the Department with a written weekly report verifying that the Best Management Practices are being properly maintained until final stabilization is achieved. Once final stabilization is achieved, the Respondent will submit a notice of termination to the Department. Prior to requesting termination of permit coverage, the Respondent shall contact the Department and request a site visit. The Respondent shall meet the Department

representative at the site to conduct a construction stormwater inspection to determine compliance.

13. Failure to comply with the terms and conditions of this Order could result in further legal action including fines and action to enjoin the Respondent.

14. Information required to be submitted under this Order shall be sent to:

Reuel Anderson,  
Water Quality Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Suite 400, The Atrium  
1200 N Street  
Lincoln, Nebraska 68509-8922  
Telephone:(402) 471-2186

#### NOTICE OF OPPORTUNITY TO REQUEST A HEARING

15. In accordance with Neb. Rev. Stat. §81-1507(2), the Compliance Order shall become final unless the Respondent files an answer and requests a hearing in writing no later than 30 days after receipt of the Complaint, Compliance Order and Notice of Opportunity for Hearing.

16. A written answer to the Complaint, Compliance Order and Notice of Opportunity for Hearing must conform to the requirements of Title 115, Chapter 7. The answer and request for hearing must be filed with the Director, Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922.

17. Failure to answer shall be deemed an admission of the facts of the Complaint.

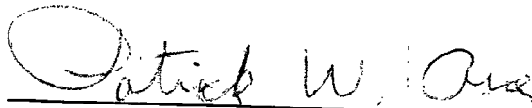
#### SETTLEMENT CONFERENCE

18. Whether or not the Respondent requests a hearing, an informal conference may be requested in order to reach an amicable settlement. To request a settlement conference, please write to Steve Moeller, Attorney, Legal Services, Department of Environmental Quality, P.O. Box 98922, Lincoln, Nebraska 68509-8922.

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

20. This Complaint, Compliance Order and Notice of Opportunity for Hearing does not preclude the Department of Environmental Quality from pursuing enforcement in the proper court for injunctive relief and penalties based on violations of the rules and regulations as set out above.

Dated this 12<sup>TH</sup> day of February, 2014.




Patrick W. Rice  
Acting Director  
Department of Environmental Quality

### 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 13<sup>th</sup> day of February 2014  
upon the Respondent listed below:

Douglas Derscheid, Registered Agent, 415 Hwy. 20, P.O. Box 330, O'Neill, NE  
68763.

  
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Steven J. Moeller  
Staff Attorney