

STATE OF NEBRASKA

BEFORE THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of Notice of Violation)	
of N.I.D. 3065)	DNR Case No. 002-09CC
)	
Water Division 2-B)	

DECISION AND ORDER

Background

1. On January 8, 2009, in accordance with Neb. Rev. Stat. 46-1667, the Department of Natural Resources ("Department") issued a Notice of Violation to Schindler Farms Partnership c/o Gary Schindler ("Partnership") alleging the Partnership owns an impoundment of water located on an unnamed tributary of Antelope Creek in the SW1/4 of Section 9, Township 24 North, Range 7 West of the 6th Principal Meridian in Antelope County Nebraska; that the dam creating the impoundment had not been approved under the Safety of Dams and Reservoirs Act, Neb. Rev. Stat. Sections 46-1601 to 46-1670 ("Act"); and that the Partnership did not have an appropriation to impound the water.
2. As a result of the issuance of the Notice of Violation and in accordance with Neb. Rev. Stat. Section 46-1667, the Partnership was given an opportunity to request a hearing before the Department as to why the Partnership should not be order to cease and desist from the violation. The Partnership requested a hearing and a contested case hearing was held April 9, 2009.
3. Gary Schindler appeared, represented by legal counsel.

Findings of Fact

Based upon the evidence presented at the hearing, the Director finds:

1. The Schindler Farms Partnership dam (Schindler dam) impounds greater than 50 acre-feet of surface water at the top of the dam and, therefore, is subject to the Safety of Dams and Reservoirs Act.
2. The Schindler dam has not received approval under Neb. Rev. Stat. Section 46-1670.
3. The owner of the Schindler dam had not taken steps to seek approval of the dam under Neb. Rev. Stat. Section 46-1670.

Conclusions of Law

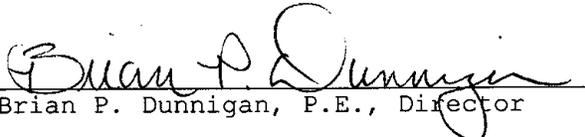
The Director concludes, as a matter of law, that the Schindler dam is in violation of the Act because it has not been approved by the Department under Neb. Rev. Stat. Section 46-1670.

Order

It is therefore ORDERED that:

1. Schindler Farms Partnership shall apply to the Department for approval of the Schindler dam under Neb. Rev. Stat. Section 46-1670 by August 1, 2009, if the Partnership intends to keep the dam.
2. If the Partnership does not intend to keep the dam, the Partnership shall submit plans to safely modify or breach the dam and come into compliance with the Act on or before July 1, 2009.

DEPARTMENT OF NATURAL RESOURCES


Brian P. Dunnigan, P.E., Director

Date: April 30, 2009

CERTIFICATE OF SERVICE

This Decision and Order was posted on the Department's website. This Decision and Order was sent on April 30, 2009, by certified mail, return receipt to:

Schindler Farms Partnership
c/o Gary Schindler
51151 Highway 70
Elgin, NE 68636

James A. Fehringner
Fehringner, Mielak & Fehringner, PC
3919 25th St, P.O. Box 400
Columbus, NE 68602-0400

cc:

Patrick Diederich, Department Chief of Dam Safety
Mike Thomson, Department Chief of Permits and Registration
Pam Andersen, Department Legal Counsel
Department Field Office, Norfolk