

IN THE DISTRICT COURT OF KEARNEY COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
JIM MACY, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENT AND ENERGY,)

Case No. CI 20-1

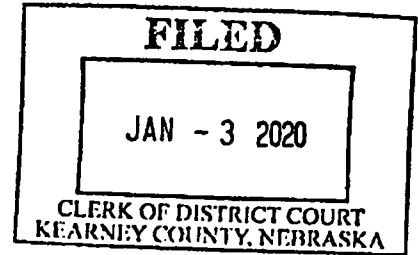
Plaintiff,)

COMPLAINT

v.)

KCC FEEDING, INC., a Nebraska)
Corporation,)

Defendant.)



COMES NOW Jim Macy, Director of the Nebraska Department of Environment and Energy, who institutes this action through Douglas J. Peterson, Nebraska Attorney General, on behalf of the State of Nebraska, alleges as follows:

PARTIES AND INTERESTS

1. Plaintiff Nebraska Department of Environment and Energy (“Department”) is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504 (Cum. Supp. 2018), to administer and enforce the Livestock Waste Management Act (“LWMA”), Neb. Rev. Stat. § 54-2416 (Reissue 2010), Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2014), and all rules, regulations, orders, and permits issued pursuant to such Acts.

2. The Department is further charged with the duty to “administer the animal feeding operation permitting program in accordance with the National Pollutant Discharge Elimination System [“NPDES”] of the federal Clean Water Act ... through [NEPA], the [LWMA], and the rules and regulations adopted and promulgated pursuant to such act” Neb. Rev. Stat. § 54-2418(1).



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3. Defendant KCC Feeding, Inc. (“KCC Feeding”) is a Nebraska corporation that operates an animal feeding operation outside of Minden, Nebraska.

4. KCC Feeding is considered a “person” for purposes of NEPA and the LWMA. Neb. Rev. Stat. § 81-1502(10); *id.* § 54-2417(16).

JURISDICTION AND VENUE

5. The District Court has subject-matter jurisdiction pursuant to Neb. Rev. Stat. § 24-302 (Reissue 2016).

6. Venue is proper in Kearney County pursuant to Neb. Rev. Stat. § 25-403.01 (Reissue 2016), as KCC Feeding operates an animal feeding operation in Kearney County and the events at issue took place in Kearney County.

LEGAL BACKGROUND

7. NDEE has exclusive general supervision of NEPA, the LWMA, and all rules and regulations implementing those Acts. Neb. Rev. Stat. § 81-1504(1).

8. Pursuant to its authority in Neb. Rev. Stat. § 81-1505, the Nebraska Environmental Quality Council promulgated Title 130 of the Nebraska Administrative Code—*Livestock Waste Control Regulations*.

9. Under NEPA, it is “unlawful for any person to”:
- a. “Violate any provision of the [LWMA];
 - b. “Violate any term or condition of an animal feeding operation permit; or”
 - c. “Violate any rule or regulation adopted and promulgated by the council pursuant to [NEPA] or the [LWMA].”

Neb. Rev. Stat. § 81-1506(5).

10. Under NEPA, it is “unlawful for any person ... [t]o cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they

are likely to cause pollution of any air, waters, or land of the state; or ... [t]o discharge or emit any wastes into any air, waters, or land of the state which reduce the quality of such air, waters, or land below the air, water, or land quality standards established therefor by the council.” Neb. Rev. Stat. § 81-1506(1).

11. The definition of “person” includes a “public or private corporation[.]” Neb. Rev. Stat. § 81-1502(10).

12. “Wastes” are defined as “sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any air, land, or waters of the state” Neb. Rev. Stat. § 81-1502(14).

13. “Land pollution” means “the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state.” Neb. Rev. Stat. § 81-1502(19).

14. Under the LWMA, it is “unlawful for any person to ... [d]ischarge animal excreta ... or overflow from ... precipitation polluted by falling on or flowing onto an animal feeding operation ... in violation of ... a [NPDES] permit, a construction and operating permit ... the [LWMA], or the rules and regulations adopted and promulgated by the council pursuant to such acts[.]” Neb. Rev. Stat. § 54-2432(4); *see also* 130 Neb. Admin. Code §§ 2-008.02, 2-008.10.

15. “Construction and operating permit” means “the state permit to construct and operate a livestock waste control facility, including conditions imposed on the livestock waste control facility and the associated animal feeding operation[.]” Neb. Rev. Stat. § 54-2417(4).

16. “Discharge” means “the spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the state or in a place which will likely reach waters of the state[.]” Neb. Rev. Stat. § 54-2417(8); *see also* 130 Neb. Admin. Code § 1-016.

17. “Waters of the State” means “all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state[.]” Neb. Rev. Stat. § 81-1502(21); *see also* Neb. Rev. Stat. § 54-2417(17).

18. “Livestock wastes” are defined as “animal and poultry excreta and associated feed losses, bedding, spillage or overflow from watering systems, wash and flushing waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, and other materials polluted by livestock wastes.” 130 Neb. Admin. Code § 1-027.

19. “Livestock waste control facility” means “any structure or combination of structures utilized to control livestock waste at an animal feeding operation until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such structures include ... holding ponds” Neb. Rev. Stat. § 54-2417(10).

20. “Holding pond” means “an impoundment made by constructing an excavated pit, dam, embankment or combination of these for temporary storage of liquid livestock wastes,

generally receiving runoff from open lots and contributing drainage area.” 130 Neb. Admin. Code § 1-021.

21. NPDES permits are either general or individual permits issued by the Department. Neb. Rev. Stat. § 54-2417(12). “A general permit authorizes categories of disposal practices or livestock waste control facilities and covers a geographic area corresponding to existing geographic or political boundaries” *Id.*

22. Under the LWMA, it is “unlawful for any person to ... [v]iolate the terms of a [NPDES] permit or construction and operating permit or any provision of the [LWMA] and rules and regulations adopted and promulgated by the council pursuant to the act.” Neb. Rev. Stat. § 54-2432(5).

23. Under Title 130, “[a]ny time the waste storage volume in the livestock waste control facility exceeds the [start pump level] ..., livestock wastes shall be land applied on all available dewatering days until adequate storage is restored.” 130 Neb. Admin. Code § 11-003.

24. “Dewatering days” means “days that have suitable weather and soil conditions for land application of accumulated livestock wastes.” 130 Neb. Admin. Code § 1-014.

25. Under Title 130, “[t]he NPDES permittee shall operate the facility in accordance with the NPDES permit, the site-specific nutrient management plan, these regulations, and any terms and conditions as determined by the Department” 130 Neb. Admin. Code § 5-007.

26. If a discharge occurs, the permittee is required to report to the Department within 24 hours of the event. 130 Neb. Admin. Code § 5-007.03; *see also id.* § 2-010.

27. “25-year, 24-hour rainfall event” means “a rainfall event with a probable recurrence interval of one in twenty-five (25) years.” 130 Neb. Admin. Code § 1-048.

28. Under Title 130, “[t]he minimum design storage capacity for construction or modification of a livestock waste control facility for any concentrated animal feeding operation shall provide adequate storage capacity for all manure, litter, and process wastewater (process water includes runoff which has come into contact with animal waste) generated during the storage period; all runoff or the runoff from a 25-year, 24-hour rainfall event ...; any net positive amount from normal precipitation less evaporation during the storage period; and any additional storage needed to meet management goals or other regulatory requirements.” 130 Neb. Admin. Code § 8-002.

29. The start pump level (or must pump level) is “[t]he level indicating the volume needed to contain all runoff and direct precipitation, or the runoff and direct precipitation of the 25-year, 24-hour rainfall event Pumping shall begin as soon as possible anytime the storage level is exceeded[.]” 130 Neb. Admin. Code § 8-008.02.

FACTUAL BACKGROUND

30. At all times relevant, KCC Feeding was operating an animal feeding operation near Minden, Nebraska.

31. KCC Feeding has a construction and operating permit for its animal feeding operation at its Main Yard, dated October 15, 2012, and supersedes the permit issued on January 13, 2010. The permitted capacity at its Main Yard feedlot is 15,000 feeder cattle.

32. KCC Feeding uses two livestock waste control facilities (“LWCF”), labeled as holding pond 1A and 1B, at its Main Yard feedlot. These livestock waste control facilities were approved on November 14, 2012.

33. Holding pond 1A is connected to holding pond 1B. Holding pond 1B contains the staff gauge, which provides the level of the effluent contained in the holding ponds.

34. KCC Feeding's Construction and Operating Permit includes the following applicable terms and conditions:

- a. "The operation and LWCF shall be operated in compliance with the approved application, this permit, Title 130 regulations, and the laws of the State of Nebraska."
- b. "Adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities."

35. On March 25, 2013, the Department issued coverage under the NPDES General Permit for Concentrated Animal Feeding Operations Confining Cattle (NEG014000) ("NPDES Permit") to KCC Feeding's operation.

36. At all times relevant, KCC Feeding has been covered by the NPDES Permit.

37. The NPDES Permit provides:

Cattle [concentrated animal feeding operations] are not allowed to discharge manure, litter, or process wastewater pollutants into waters of the state from the production area, except when precipitation causes an overflow of manure, litter, or process wastewater. The overflow may be discharged into waters of the state, provided:

- (01) The production area for open lots is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff and the direct precipitation, from a 25-year, 24-hour rainfall event (see Attachment E);
- (02) The production area for confinement buildings is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff and the direct precipitation, from a 25-year, 24-hour rainfall event, plus storage capacity for a minimum of 180 days, except as provided in Title 130;
- (03) Such discharge was the result of the 25-year, 24-hour rainfall event(s);
- (04) No feasible alternative to discharging existed;

- (05) Only waste in the excess of the storage capacity of the Livestock Waste Control Facility (LWCF) was discharged;
 - (06) The discharge was conducted under such conditions to minimize any adverse effects to waters of the State; and
 - (07) The Department received notification of the discharge as set out in this permit.
38. The 25-year, 24-hour rainfall event applicable to KCC Feeding, Inc. is 4.9 inches.
39. The NPDES Permit also provides:
- 2) *Holding Pond Operation*
 - (a) Dewatering of holding ponds shall begin on the first dewatering day following a precipitation event and continue on all subsequent dewatering days until the “Must Pump” level is reached
40. The NPDES Permit further requires permittees that apply effluent to land under the permittee’s control to implement a nutrient management plan (“NMP”). Permittees cannot discharge effluent except in compliance with the NMP.
41. The NPDES Permit also provides:
- F) **Removal of Livestock Wastes**
 - 1) *Compliance with NMP* – Waste material shall be removed or mounded within the lots in accordance with the [NMP] when necessary for maintenance and/or proper operation of the LWCF. Livestock wastes may be land applied or stockpiled in a manner that will not contribute to water pollution.
 - 2) *Pumping Requirements* – Any time the waste storage volume in the [LWCF] exceeds the “Must Pump” level ..., pumping shall begin as soon as possible, and livestock wastes shall be land applied on all available dewatering days until adequate storage is restored.
42. KCC Feeding, Inc. has an NMP, dated August 12, 2016, which has been revised to add and remove land application sites listed in its Irrigation Distribution Plan.

43. At all times relevant, KCC Feeding, Inc.'s Irrigation Distribution Plan listed six fields available for land application of effluent.

44. The NMP has an Operation and Maintenance Plan, which identifies the critical storage depths by which to manage the holding pond volumes, including top of berm, start pump level, and winter pumpdown level.

45. The top of the berm of holding pond 1B is 24.5 feet. The top of the berm is the elevation at which liquid will flow out of the holding pond.

46. The maximum water level for holding pond 1B is 23 feet.

47. The start pump level for holding pond 1B is 16 feet. The start pump level is the trigger to begin pumping and continue on all available dewatering days until the holding pond has capacity for a 25-year, 24-hour rainfall event.

48. The winter pumpdown level is 11.5 feet. The holding pond is pumped to winter pumpdown level to maximize the space available for runoff accumulation during the winter months.

49. KCC Feeding, Inc. keeps dewatering and pond levels logs for each month. The pond levels log provides precipitation amounts for each day, the level of the holding pond, and comments.

50. On March 15, 2019, the level of holding pond 1B reached 16.5 feet, which is over start pump level.

51. On March 22, 2019, the level of holding pond 1B reached 17 feet.

52. KCC Feeding did not dewater holding pond 1B during March 2019.

53. On April 19, 2019, the level of holding pond 1B reached 17.5 feet.

54. KCC Feeding did not dewater holding pond 1B during April 2019.

55. On May 17, 2019, the level of holding pond 1B reached 19 feet and, on May 29, 2019, it reached 23.5 feet, which is over the maximum water level of holding pond 1B.

56. The top of the berm for holding pond 1B is at 24.5 feet.

57. KCC Feeding did not dewater holding pond 1B during May 2019.

58. According to KCC Feeding's pond levels log for June 2019, the level of holding pond 1B remained at 23.5 feet through the entire month.

59. KCC Feeding did not dewater holding pond 1B during June 2019.

60. According to KCC Feeding's pond levels log for June 2019 for its other feedlot approximately five miles north, KCC Feeding dewatered the holding pond at that location on June 28, 2019 and June 29, 2019.

61. Although there were precipitation events occurring between March 15, 2019 and July 2, 2019, there were available dewatering days on which KCC Feeding could have dewatered holding pond 1B.

62. According to KCC Feeding's pond levels log for June 2019, KCC Feeding began dewatering holding pond 1B on or about July 2, 2019 through July 5, 2019, which decreased the level of the holding pond to 23 feet, which is at max water level.

63. On July 3, 2019, the Department conducted an inspection of KCC Feeding's Main Yard. During the inspection, the inspector walked around holding pond 1B, checked records, and noted the condition of the application fields that are part of the Irrigation Distribution Plan.

64. KCC Feeding was dewatering holding pond 1B at the time of the inspection.

65. The inspector noted the level of holding pond 1B was 23.5 feet according to KCC Feeding's records for June 2019.

66. The inspector also noted none of the four application fields appeared to be saturated.

67. While walking around holding pond 1B, the inspector further discovered dead, discolored vegetation that showed the path of an overflow of effluent from the east berm of holding pond 1B into the intermittent drainage on that east side.

68. The Department had not received a report of a discharge occurring from KCC Feeding, Inc.

69. On July 9, 2019, KCC Feeding, Inc.'s representative reported a discharge occurring after rainfall events on July 5, 2019 and the evening of July 8, 2019.

70. On July 10, 2019, KCC Feeding, Inc.'s representative reported the discharge was still occurring and requested compliance assistance.

71. On July 10, 2019, the Department sent an inspector to assist KCC Feeding, Inc. with controlling the discharge that was occurring.

72. The Department and KCC Feeding's representative discussed options to dewater. Upon information and belief, KCC Feeding began dewatering holding pond 1B.

73. On July 25, 2019, the Department issued a Notice of Violation to KCC Feeding, Inc. based on the findings of the routine inspection on July 3, 2019, the compliance assistance on July 10, 2019, and a review of KCC Feeding, Inc.'s records.

74. The Department found:

- a. Effluent had overtopped the east berm of holding pond 1B and entered into an intermittent drainage on two occasions.
- b. The Department had not received notification of the discharge that occurred prior to July 3, 2019.
- c. Winter pumpdown level had not been achieved prior to the winter months of 2018 and 2019.

- d. Start pump level (16 feet) for holding pond 1B was exceeded on March 15, 2019 and max pump level was exceeded on May 29, 2019.
- e. No dewatering days were used to restore the necessary storage volume to holding pond 1B before the routine inspection on July 3, 2019.

FIRST CAUSE OF ACTION

**DISCHARGE/OVERFLOW FROM AN ANIMAL FEEDING OPERATION
IN VIOLATION OF NEB. REV. STAT. § 54-2432 AND
130 NEB. ADMIN. CODE § 2-008.10.**

75. Plaintiff hereby realleges and incorporates by reference the allegations contained in the preceding paragraphs 1 through 74.

76. Under LWMA, it is “unlawful for any person to ... [d]ischarge animal excreta ... or overflow from ... precipitation polluted by falling on or flowing onto an animal feeding operation ... in violation of ... a [NPDES] permit, a construction and operating permit ... the [LWMA], or the rules and regulations adopted and promulgated by the council pursuant to such acts[.]” Neb. Rev. Stat. § 54-2432(4); *see also* 130 Neb. Admin. Code §§ 2-008.02, 2-008.10.

77. “Discharge” means “the spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the state or in a place which will likely reach waters of the state[.]” Neb. Rev. Stat. § 54-2417(8); *see also* 130 Neb. Admin. Code § 1-016.

78. “Waters of the State” means “all waters within the jurisdiction of this state” and includes “ponds”, “drainage systems”, and “waterways”. Neb. Rev. Stat. § 81-1502(21); *see also* Neb. Rev. Stat. § 54-2417(17).

79. KCC Feeding’s NPDES Permit only allows feeding operations to discharge into waters of the State when precipitation causes an overflow if:

- (01) The production area for open lots is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff and the direct precipitation, from a 25-year, 24-hour rainfall event (see Attachment E);

- (02) The production area for confinement buildings is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater, including the runoff and the direct precipitation, from a 25-year, 24-hour rainfall event, plus storage capacity for a minimum of 180 days, except as provided in Title 130;
- (03) Such discharge was the result of the 25-year, 24-hour rainfall event(s);
- (04) No feasible alternative to discharging existed;
- (05) Only waste in the excess of the storage capacity of the Livestock Waste Control Facility (LWCF) was discharged;
- (06) The discharge was conducted under such conditions to minimize any adverse effects to waters of the State; and
- (07) The Department received notification of the discharge as set out in this permit.

80. Operation and maintenance of a livestock waste control facility includes using all available de-watering days until adequate storage is restored when start pump level is reached.

81. From March 2019 to July 2019, the level of holding pond 1B was above start pump level (16 feet) and near or over max water level in May 2019 and June 2019.

82. KCC Feeding did not begin dewatering holding pond 1B until on or about July 2, 2019.

83. Holding pond 1B overflowed on at least two occasions. One discharge was discovered by the Department on July 3, 2019. Another discharge was reported by KCC Feeding on July 9, 2019 and continued to July 10, 2019.

84. On these two occasions, holding pond 1B overflowed discharged animal excreta, which entered into an intermittent drainage, which is approximately a quarter-mile upstream of a freshwater pond.

85. The pond and the intermittent drainage are waters of the State.

86. KCC Feeding failed to operate and maintain holding pond 1B to contain all manure, litter, and process wastewater, including the runoff and direct precipitation, from a 25-year, 24-hour rainfall event or other precipitation events, for these discharges.

87. KCC Feeding did not use any feasible alternatives to discharging.

88. KCC Feeding's failure to operate and maintain holding pond 1B caused these discharges to occur and/or caused an increase in the volume of animal excreta discharged.

89. Due to KCC Feeding's failure to operate and maintain holding pond 1B in accordance with its NPDES Permit, when the 25-year, 24-hour rainfall event and other precipitation events occurred, holding pond 1B overflowed and discharged animal excreta that reached a water of the State or was in a place which would likely reach a water of the State in violation of Neb. Rev. Stat. § 54-2432(4) and 130 Neb. Admin. Code § 2-008.10.

90. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided for violations of the LWMA, as well as any rules or regulations adopted and promulgated pursuant to such Act.

SECOND CAUSE OF ACTION

POLLUTION OF WATER AND LAND OF THE STATE IN VIOLATION OF NEB. REV. STAT. § 81-1506(1) AND 117 NEB. ADMIN. CODE § 4-005.

91. Plaintiff hereby realleges and incorporates by reference the allegations contained in the preceding paragraphs 1 through 90.

92. Under NEPA, it is "unlawful for any person ... [t]o cause pollution of any air, waters, or land of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any air, waters, or land of the state; or ... [t]o discharge or emit any wastes into any air, waters, or land of the state which reduce the quality of such air, waters,

or land below the air, water, or land quality standards established therefor by the council.” Neb. Rev. Stat. § 81-1506(1).

93. “Waters of the State” means “all waters within the jurisdiction of this state” and includes “ponds”, “drainage systems”, and “waterways”. Neb. Rev. Stat. § 81-1502(21); *see also* Neb. Rev. Stat. § 54-2417(17).

94. In 2019, holding pond 1B overflowed or discharged, and entered into an intermittent drainage on at least two occasions amounting to three or more days. One discharge was discovered by the Department on July 3, 2019. Another discharge was reported by KCC Feeding on July 9, 2019 and continued through at least July 10, 2019.

95. The intermittent drainage is both a water of the State and land of the State.

96. Animal excreta is a waste and a pollutant.

97. The overflows or discharges of animal excreta contained in holding 1B caused pollution.

98. KCC Feeding violated Neb. Rev. Stat. § 81-1506(1).

99. Pursuant to Neb. Rev. Stat. § 81-1508.02(2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided for violations of NEPA and the , any rules or regulations adopted and promulgated pursuant to such Act, or any provision of Neb. Rev. Stat. § 81-1506.

THIRD CAUSE OF ACTION

VIOLATION OF THE TERMS OF ITS PERMITS PURSUANT TO NEB. REV. STAT. § 54-2432(5) AND 130 NEB. ADMIN. CODE § 2.008.13.

100. Plaintiff hereby realleges and incorporates by reference the allegations contained in the preceding paragraphs 1 through 99.

101. Under LWMA, it is “unlawful for any person to ... [v]iolate the terms of a ... construction and operating permit or any provision of the [LWMA] and rules and regulations adopted and promulgated by the council pursuant to the act.” Neb. Rev. Stat. § 54-2432(5); *see* 130 Neb. Admin. Code § 2-008.13 (“Any person who owns or operates an animal feeding operation shall not ... [v]iolate the terms of an operating permit, construction approval, construction and operating permit or NPDES permit or any provision of the Livestock Waste Management Act and regulations.”).

102. Under Title 130, “[a]ny time the waste storage volume in the livestock waste control facility exceeds the [start pump level] ... livestock wastes shall be land applied on all available dewatering days until adequate storage is restored.” 130 Neb. Admin. Code § 11-003.

103. Likewise, the NPDES Permit includes the terms and conditions:

Dewatering of holding ponds shall begin on the first dewatering day following a precipitation event and continue on all subsequent dewatering days until the “Must Pump” level is reached

* * *

Any time the waste storage volume in the livestock waste control facility exceeds the “Must Pump” level ..., pumping shall begin as soon as possible, and livestock wastes shall be land applied on all available dewatering days until adequate storage is restored.

104. KCC Feeding has a construction and operating permit and has been issued a NPDES Permit.

105. KCC Feeding’s construction and operating permit requires KCC Feeding to operate in compliance with the terms of the permit, Title 130 regulations, and the laws of the State of Nebraska.

106. When start pump level is reached, KCC Feeding must begin pumping effluent from holding pond 1B and must continue to do so on all days with suitable weather and soil

conditions for land application until the capacity needed for the 25-year, 24-hour rainfall event is restored as required by its NPDES Permit and Title 130 of the Nebraska Administrative Code.

107. The start pump level for holding pond 1B is 16 feet.

108. On March 15, 2019, the level of holding pond 1B exceeded start pump level.

109. KCC Feeding did not begin dewatering holding pond 1B until July 2, 2019.

110. Although there were precipitation events occurring between March 2019 and July 2, 2019, there were available dewatering days on which KCC Feeding could have pumped holding pond 1B in order to restore adequate storage to holding pond 1B for a 25-year, 24-hour rainfall event or other precipitation events.

111. At a minimum, KCC Feeding could have dewatering holding pond 1B between March 25, 2019 and April 10, 2019, May 17, 2019 and May 20, 2019, and June 25, 2019 and July 2, 2019.

112. KCC Feeding failed to use all available dewatering days between March 15, 2019 and July 2, 2019.

113. KCC Feeding violated the terms of its construction and operating permit and its NPDES Permit, the LWMA, and Title 130 of the Nebraska Administrative Code.

114. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided for violations of the LWMA, as well as any rules or regulations adopted and promulgated pursuant to such Act.

FOURTH CAUSE OF ACTION

FAILURE TO REPORT A DISCHARGE WITHIN 24 HOURS OF THE EVENT IN VIOLATION OF 130 NEB. ADMIN. CODE § 5-007.03 AND § 2-010.

115. Plaintiff hereby realleges and incorporates by reference the allegations contained in the preceding paragraphs 1 through 114.

116. An NPDES permittee is required to report a discharge to the Department within 24 hours of the event. 130 Neb. Admin. Code § 5-007.03.

117. KCC Feeding was issued an NPDES Permit.

118. On July 3, 2019, the Department conducted an inspection and discovered evidence that a discharge had recently occurred.

119. The Department never received a report that a discharge occurred from KCC Feeding.

120. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided for violations of the LWMA, as well as any rules or regulations adopted and promulgated pursuant to such Act.

REQUEST FOR RELIEF

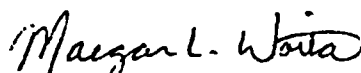
WHEREFORE, Plaintiff requests this Court to enter judgment on this Complaint in its favor and grant the following relief:

- A. Declare KCC Feeding violated the Livestock Waste Management Act and/or Title 130 of the Nebraska Administrative Code, *Livestock Waste Control Regulations*;
- B. Declare KCC Feeding violated the Nebraska Environmental Protection Act;
- C. Declare KCC Feeding violated Title 130 of the Nebraska Administrative Code, *Livestock Waste Control Regulations*, the terms and conditions of its construction and operating permit, and/or the terms and conditions of its NPDES Permit;
- D. Enter the statutory maximum civil penalty against KCC Feeding, as provided under Neb. Rev. Stat. § 81-1508.02(2);
- E. Tax all court costs herein to KCC Feeding; and
- F. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 31st day of December 2019.

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND ENERGY, Plaintiff

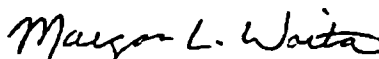
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Attorney General

By: 
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Lincoln, Nebraska 68509-8920
Tel. (402) 471-1912
maegan.woita@nebraska.gov
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served on the Defendant through its counsel, by regular U.S. Mail, first-class postage prepaid on this 31st day of December 2019, addressed as follows:

Stephen Mossman
MATTSON RICKETTS LAW FIRM
134 S. 13th Street, Suite 1200
Lincoln, Nebraska 68508-1901
sdm@mattsonricketts.com


Maegan L. Woita
Assistant Attorney General