

IN THE DISTRICT COURT OF RED WILLOW COUNTY, NEBRASKA

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

Case No. _____

Plaintiff,

COMPLAINT

v.

POWERLINE DAIRY, LLC & KINGDOM
DAIRY, LLC

Defendants.

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, as Plaintiff, and alleges as follows:

PARTIES AND INTERESTS

1. The 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, to administer and enforce the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.*, the Livestock Waste Management Act (“LWMA”), Neb. Rev. Stat. § 54-2416 *et seq.*, and all rules, regulations, orders, and permits issued pursuant to NEPA or LWMA.

2. Powerline Dairy, LLC (“Powerline Dairy”) is a foreign limited liability company doing business in Nebraska. Powerline Dairy has a principal place of business in Cimarron, Kansas. At all times relevant, Powerline Dairy has operated a large animal feeding operation in Red Willow County, Nebraska. Powerline Dairy has a registered agent in McCook, Nebraska.

3. Kingdom Dairy, LLC (“Kingdom Dairy”) is a domestic limited liability company with a principal place of business in McCook, Nebraska. At all

times relevant, Kingdom Dairy has operated a large animal feeding operation in Red Willow County, Nebraska.

4. Upon information and belief, both Powerline Dairy and Kingdom Dairy are owned by Ted Boersma. Powerline Dairy has represented that it is doing business in Nebraska as Kingdom Dairy. Both companies have involvement with the large animal feeding operation at issue.

5. Both Powerline Dairy and Kingdom Dairy are considered persons under Neb. Rev. Stat. § 81-1502(10).

JURISDICTION AND VENUE

6. The District Court has jurisdiction over the subject-matter of this action, pursuant to Neb. Rev. Stat. § 24-302, and over the parties to this action.

7. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as the concentrated feedlot operation at issue is located in Red Willow County and the events at issue took place in Red Willow County.

FACTUAL ALLEGATIONS

8. Powerline Dairy and Kingdom Dairy operate a large animal feeding operation in Red Willow County, Nebraska.

9. Associated with its animal feeding operation, Powerline Dairy has a Construction and Operating Permit, a National Pollutant Discharge Elimination System (“NPDES”) Permit, and a Nutrient Management Plan (“NMP”).

10. During an inspection of Powerline Dairy’s animal feeding operation on June 21, 2018, an NDEE representative observed that livestock waste had overflowed from Holding Pond #2 and ran into a road ditch to the north of Holding Pond #2. The water flowed either under or over the county road to the drainage on the north side of the county road and continued to flow north for an unknown distance.

11. The NDEE representative noted that waste levels in Holding Pond #2 were 1.5 feet from the top of the berm before the animal feeding operation received rain, causing Holding Pond #2 to overflow. No staff gauge was present in Holding Pond #2, nor were there any identifying marks for freeboard or the start pump level. Holding Pond #2 was not being managed according to NDEE requirements.

12. No notice was received by the department within 24 hours of the discharge and written notification was not given until June 26, 2018. The written notification indicated that the discharge had happened on June 19, 2018 and June 20, 2018.

13. On March 7, 2019, an NDEE representative conducted an inspection of Powerline Dairy's animal feeding operation that found several violations of Nebraska statutes and regulations, including that Powerline Dairy was failing to keep records in compliance with its construction and operating permit and that staff gauges had been installed incorrectly in several of the livestock waste control facilities.

14. On July 12, 2019, livestock waste was observed flowing off of a land application field to the south of the operation. The field was one of the land application fields included in Powerline Dairy's Nutrient Management Plan. At the time of the discharge, the pivot on that field was operating, livestock waste was flowing out of the field at different locations, and it appeared that the system was not being monitored. Livestock waste was observed in the drainage from the land application field to the county road just north of the Republican River.

15. No notice was received by the Department within 24 hours of the discharge and written notice was not provided to NDEE until July 29, 2019.

16. On October 30, 2019, a Notice of Violation ("NOV") was issued to Powerline Dairy describing the following violations:

- a. Starting in June, 2018 and continuing, Holding Pond #4 was being used for the storage of livestock waste without approval from NDEE, in violation of Neb. Rev. Stat. § 81-1506 and Title 130, Chapter 4, Section 006;
- b. The June 19, 2018 discharge in violation of Neb. Rev. Stat. § 81-1506 and Title 130, Chapter 2, Section 008 and Chapter 14, Section 001;
- c. During an inspection on March 7, 2019, the operation was not keeping records as required by the operation's permit, in violation of Title 130, Chapter 12, Sections 001 and 004;
- d. The July 12, 2019 discharge, in violation of Neb. Rev. Stat. § 81-1506 and Title 130, Chapter 2, Section 008 and Chapter 14, Section 001;

- e. Failing to timely report discharges, in violation of Neb. Rev. Stat. § 81-1506 and Title 130, Chapter 2, Section 010.

17. On May 19, 2021, NDEE issued a Letter of Non-Compliance to Powerline Dairy describing the following violations:

- a. Discharging waste to waters of the state, in violation of Title 130, Chapter 2, Section 008;
- b. Failing to report a discharge within 24 hours, in violation of Title 130, Chapter 2, Section 010;
- c. Failure to submit a written report five days after the date of discharge; in violation of Title 130, Chapter 2, Section 010;
- d. Installing an incorrect staff gauge in Pit 2, in violation of Title 130, Chapter 8, Section 008;
- e. Eliminating the basin south of Holding Pond 4 prior to NDEE approval, in violation of Title 130, Chapter 2, Section 008;
- f. Operating a livestock waste control facility, specifically Holding Pond 4, prior to NDEE approval, in violation of Title 130, Chapter 2, Section 008;
- g. Failure to maintain all facilities and equipment in proper working condition, specifically the south channel was not de-watered, in violation of Title 130, Chapter 12, Section 002;
- h. Eliminating the north channel to Holding Pond 4 prior to NDEE approval, in violation of Title 130, Chapter 2, Section 008;
- i. Constructing an livestock waste control facility within 100 feet of a well, in violation of Title 130, Chapter 9, Section 001.01, and Title 178, Chapter 12, Section 003.01C;
- j. Improper land application, in violation of Title 130, Chapter 11, Section 004.

18. On January 28, 2022, NDEE issued a Letter of Non-Compliance (“LNC”) to Powerline Dairy describing the following violations:

- a. Weed growth that limits facility inspections, in violation of Title 130, Chapter 11, Section 010;

- b. Pooling on the east side of the berm, in violation of Title 130, Chapter 11, Section 010;
 - c. Overapplication of waste onto south pivot, in violation of Title 130, Chapter 2, Section 008.13;
 - d. Operating a livestock waste control facility, specifically Holding Pond 4 and the south diversion berm, prior to completing all permit requirements, in violation of Title 130, Chapter 2, Section 008.13;
 - e. Installing an incorrect staff gauge in Pits 2 and 3, in violation of Title 130, Chapter 2, Section 008.13;
 - f. Not recording pit levels after precipitation events, in violation of Title 130, Chapter 2, Section 008.13;
 - g. Not recording land application fields, in violation of Title 130, Chapter 2, Section 008.13.
19. On April 19, 2022, NDEE issued a LNC describing the following violation:
- a. Over application of waste onto the South Pivot, and South Corner fields is a violation of Title 130, Chapter 2, Section 008.13.

CAUSES OF ACTION

FIRST CAUSE OF ACTION – DISCHARGE FROM AN ANIMAL FEEDING OPERATION

20. The allegations contained in paragraphs 1 through 19, above, are incorporated herein by reference.

21. Under Neb. Rev. Stat. § 54-2432(4), it is unlawful for any person to, without a permit:

Discharge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a National Pollutant Discharge Elimination System permit, a construction and operating permit, or an exemption from

the department, if required 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.

22. Under Neb. Rev. Stat. § 81-1506(1)(a), it is unlawful for any person to “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.”

23. Under 130 Neb. Admin. Code § 2-008, any person who owns or operates an animal feeding operation shall not:

008.02 Allow livestock at an animal feeding operation to come into contact with waters of the State, apply livestock waste on or into waters of the state, or to otherwise allow or cause such a discharge;

...

008.10 Discharge animal excreta, feed, bedding, spillage, or overflow from water systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a NPDES permit, a construction and operating permit, construction approval, or exemption from the Department if required by the Nebraska Environmental Protection Act, Livestock Waste Management Act, or these regulations;

...

008.13 Violate 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.

24. Under 130 Neb. Admin. Code § 7-001, “For existing large beef . . . concentrated animal feeding operations . . . there shall be no discharge of manure, litter, or process wastewater pollutants into the waters of the state from the production area” unless precipitation causes an overflow from a production area that is “[d]esigned, 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,” and “[o]perated in accordance with these regulations.”

25. An NDEE inspection on June 15, 2018 had observed that Holding Pond 2 was not being operated according to the permit or Title 130 because no staff gauge had been installed, no identifying mark for freeboard or start pump level was present, and waste was within 1.5 feet of the top of the berm.

26. On June 21, 2018, an NDEE representative observed that Holding Pond 2 at Powerline Dairy’s facility had overflowed to the road and observed livestock waste was present in the road ditch. The NDEE representative spoke with staff at the facility who confirmed that Holding Pond 2 had overflowed from June 19, 2018 until June 20, 2018.

27. On June 22, 2018, Ted Boersma submitted, on behalf of Kingdom Dairy, LLC, a Notification of Discharge of Livestock Waste indicating that the discharge of livestock waste at Powerline Dairy’s animal feeding operation had begun at 6:00 p.m. on June 19, 2018 and ended on June 20, 2018 at 7 a.m.

28. The livestock waste left the facility and flowed into a road ditch, where it was likely to reach waters of the state.

29. On July 12, 2019, an NDEE representative observed that livestock waste was flowing off a land application field to the south of the Powerline Dairy operation. At the time of the observation, the pivot on that field was running, livestock waste was flowing out of the field at different locations, and it appeared that the system was not being monitored.

30. Livestock waste was observed in the drainage from the land application field to the county road just north of the Republican River, where it was likely to reach waters of the state.

31. On July 29, 2019, Ted Boersma, on behalf of Kingdom Dairy, LLC, submitted a Notification of Discharge of Livestock Waste indicating that the discharge of livestock waste at Powerline Dairy’s animal feeding operation had taken place on July 12, 2019.

32. On April 14, 2021, an NDEE representative conducted an investigation and noted that valves located to the northwest of Pit 3 had leaked and run into a county road ditch north of the operation, where it was likely to reach waters of the state.

33. On July 21, 2021, Ted Boersma, on behalf of Powerline Dairy, LLC, submitted a Notification of Discharge of Livestock Waste indicating that backflow from a wastewater application pipeline discharged flowed across crop land to a county road ditch from April 7, 2021 until April 14, 2021.

34. These discharges are each in violation of NEPA, LWMA, and Title 130 of the Nebraska Administrative Code.

35. Under Neb. Rev. Stat. § 81-1508.02, these violations “shall subject a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.”

**SECOND CAUSE OF ACTION – FAILURE TO NOTIFY
THE DEPARTMENT OF DISCHARGE FROM
AN ANIMAL FEEDING OPERATION**

36. The allegations contained in paragraphs 1 through 35, above, are incorporated herein by reference.

37. Under 130 Neb. Admin. Code 2-010, “[a]ny person who owns or operates an animal feeding operation shall report any discharge of manure, litter, or process wastewater to the Department within 24 hours of the event and provide a written report to the Department within five days of the event.

38. On June 19, 2018, livestock waste was discharged from Holding Pond 2 at Powerline Dairy’s facility. Powerline Dairy did not notify the Department within 24 hours of the discharge.

39. On July 12, 2019, livestock waste was discharged from a center pivot on a land application field to the south of Powerline Dairy’s facility. The discharge was observed by an NDEE representative. No written report regarding the discharge was submitted until July 29, 2019, more than five days after the discharge.

40. From April 7, 2021 until April 14, 2021, waste was discharged from valves to the north of Pit 3 to a county road ditch. No written report

regarding the discharge was submitted until July 1, 2021, more than five days after the discharge.

41. Under Neb. Rev. Stat. § 81-1508.02, these violations of Title 130 “shall subject a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.”

**THIRD CAUSE OF ACTION – OPERATION OF A
HOLDING POND WITHOUT NDEE APPROVAL OR
BEFORE PERMIT CONDITIONS HAVE BEEN MET**

42. The allegations contained in paragraphs 1 through 41, above, are incorporated herein by reference.

43. Failure to comply with the conditions of a Construction and Operating Permit is prohibited by Neb. Rev. Stat. § 81-1506 and 130 Neb. Admin. Code § 4-006.

44. Under 130 Neb. Admin. Code § 2-008.13, “Any person who owns or operates an animal feeding operation shall not . . . Violate 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.”

45. Powerline Dairy’s Construction and Operating Permit required it to obtain written authorization from NDEE prior to utilizing livestock waste control facilities.

46. On June 15, 2018, an NDEE representative conducted an inspection of Powerline Dairy’s facilities and noted that Holding Pond #4 was being used prior to certification by NDEE.

47. On March 7, 2019, an NDEE representative conducted an inspection of Powerline Dairy’s facilities and noted that livestock waste was present in Holding Pond #4 prior to certification by NDEE.

48. On October 30, 2019, NDEE issued a Notice of Violation that stated, “The on-site inspection revealed Holding Pond #4 was being utilized for

the storage of livestock waste, however Holding Pond #4 has not been approved by the Department.”

49. On May 19, 2021, NDEE issued a LNC that stated, “Operating a LWCF (Holding Pond #4) prior to completing all permit requirements is in violation of Title 130, Chapter 2, Section 008.”

50. On January 28, 2022, NDEE issued a LNC that stated, “Operating a LWCF, (Holding Pond #4, and south diversion berm) prior to completing all permit requirements is in Violation of Title 130, Chapter 2, Section 008.13.”

51. Upon information and belief, Powerline Dairy is still operating Holding Pond #4 prior to meeting all permit conditions or in violation of permit requirements.

52. Operating a livestock waste control facility prior to obtaining written authorization from NDEE as required by Powerline Dairy’s construction and operating permit is a violation of Neb. Rev. Stat. § 81-1506 and 130 Neb. Admin. Code §§ 2-008.13 & 4-006.

53. Operating a livestock waste control facility prior to completing all permit requirements is a violation of Neb. Rev. Stat. § 81-1506 and 130 Neb. Admin. Code §§ 2-008.13 & 4-006.

54. Powerline Dairy operated Holding Pond #4 prior to receiving approval from NDEE or prior to completing all permit conditions in violation of state law for a number of days to be determined at trial.

55. Under Neb. Rev. Stat. § 81-1508.02, these violations “shall subject a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.”

56. Powerline Dairy’s operation of Holding Pond #4 prior to permit conditions being met is a violation of state law and causes or threatens to cause permanent injury to the land or waters of the state.

57. There is no adequate remedy at law to address Powerline Dairy’s operation of Holding Pond #4 prior to permit conditions being met.

58. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of

humans or animals or to the environment and/or Powerline Dairy violated and/or threatens to violate NEPA. This Court should enter an injunction ordering Powerline Dairy to complete all permit conditions and come into compliance with all legal requirements prior to using Holding Pond #4.

**FOURTH CAUSE OF ACTION – FAILURE TO INSTALL
APPROPRIATE PERMANENT DEPTH MARKERS**

59. The allegations contained in paragraphs 1 through 58, above, are incorporated herein by reference.

60. Under 130 Neb. Admin. Code § 8-008:

A method for measuring accumulations of manure, litter, and process wastewater is required. For underfloor pits, tanks, and similar storage devices or structures with limited access, the applicant may propose a method of measuring manure, litter, or process wastewater accumulations, subject to the Department's approval. A permanent depth marker is required for all other storage or treatment structures, including runoff holding ponds, liquid manure storage pits, and treatment lagoons. The marker shall be made of a durable material, permanently fixed, referenced to a permanently fixed bench mark or fixed elevation reference point adjacent to and outside of the waste containment area, located where the depth marks can be easily and safely viewed for facility management and inspections, clearly marked in at least one-foot increments, with a reference number or numbers, and with the following clearly marked:

008.01 The freeboard level;

008.02 The 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, as appropriate. Pumping shall begin as soon as possible anytime this storage level is exceeded. This can be identified as the “must pump level”;

008.03 The level indicating the volume needed for the minimum design storage capacity. The capacity required for the storage period volume shall be available prior to the start of the storage period. In no case shall the minimum storage period be less than needed to provide adequate storage through the winter months. This can be identified as the “winter pumpdown level”; and

008.04 For lagoons, the level needed for the minimum treatment volume, marked on the depth marker or clearly posted on a sign adjacent to the lagoon. The minimum treatment volume is the amount of liquid needed to maintain proper lagoon function to be considered a lagoon for land application purposes and this volume shall be maintained above any sludge accumulations.

61. On June 21, 2018, an NDEE representative conducted an inspection and noted that Holding Pond 2 had no staff gauge installed nor was there an indication of the freeboard level or start pump level.

62. On March 7, 2019, an NDEE representative conducted an inspection and noted that “Current levels are not correct measurements for an accurate level. Staff gauges are not correctly set in the holding pond, for example holding pond #2 is described as a [sic] 16 feet from the pond to the top of the berm. Currently the pond staff gauge goes up to 10 feet being close to the top of the berm.”

63. On April 14, 2021, an NDEE representative conducted an inspection and noted that a staff gauge in Pit 2 was incorrect.

64. On May 19, 2021, NDEE issued a LNC noting that, “Installing an incorrect staff gauge in Pit #2 is in Violation of Title 130, Chapter 8, section 008.”

65. On November 4, 2021, an NDEE representative conducted an inspection of Powerline Dairy’s facilities and noted that “Pond #2 depth gauge is not installed according to the approved application. Critical marks in pond #4 are not installed. . . Pit #3 levels need to be corrected.”

66. Powerline Dairy has failed to install or failed to properly install permanent depth markers and other holding pond level indicators as required by Title 130 for a number of days to be determined at trial.

67. Under Neb. Rev. Stat. § 81-1508.02, these violations of Title 130 “shall subject a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.”

68. Upon information and belief, Powerline Dairy has still not properly installed permanent depth markers and other holding pond level indicators as required by Title 130.

69. Powerline Dairy’s failure to install or properly install permanent depth markers and other required holding pond level indicators violates state law and threatens to cause permanent injury to waters of the state because such indicators are essential to proper operation of livestock waste control facilities. Failing to install or properly install such permanent depth markers and other required holding pond level indicators makes the possibility of discharges from those wastewater control facilities more likely.

70. There is no adequate remedy at law to address these violations.

71. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or Powerline Dairy violated and/or threatens to violate NEPA. This Court should enter an injunction ordering Powerline Dairy to come into compliance with all requirements of Title 130 and its permits regarding permanent depth markers and other required holding pond level indicators.

FIFTH CAUSE OF ACTION – OVER APPLICATION OF WASTE IN VIOLATION OF PERMITS

72. Paragraphs 1 through 71, above, are incorporated herein by reference.

73. Under 130 Neb. Admin. Code § 2-008.13, “Any person who owns or operates an animal feeding operation shall not . . . Violate 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.”

74. Powerline Dairy’s permits, as well as Title 130, require land application of livestock waste at agronomic rates.

75. On January 28, 2022, NDEE issued a LNC that noted “over application of waste onto south pivot is a violation of Title 130, Chapter 2, Section 008.13.”

76. On April 19, 2022, NDEE issued a LNC that noted “over application of waste onto the South Pivot, and South Corner fields is a violation of Title 130, Chapter 2, Section 008.13.”

77. Powerline Dairy has over applied livestock waste to the South Pivot in violation of its permits and Title 130, causing pollution to a land of the state, for a number of days to be determined at trial.

78. Upon information and belief, Powerline Dairy is continuing to over apply livestock waste in violation of its NPDES permit.

79. Under Neb. Rev. Stat. § 81-1508.02, these violations of Title 130 “shall subject a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.”

80. Powerline Dairy’s over application of livestock waste is in violation of state law and causes or threatens to cause permanent injury to lands of the state.

81. There is no adequate remedy at law to address Powerline Dairy’s over-application of livestock waste.

82. Pursuant to Neb. Rev. Stat. § 81-1508, the foregoing cause of action presents an imminent and substantial endangerment to the health of humans or animals or to the environment and/or Powerline Dairy violated and/or threatens to violate NEPA. This Court should enter an injunction ordering Powerline Dairy to cease land application in violation of permit requirements or Title 130.

**SIXTH CAUSE OF ACTION – FAILURE TO KEEP RECORDS AS
REQUIRED BY PERMITS AND TITLE 130**

83. Paragraphs 1 through 82, above, are incorporated herein by reference.

84. Under 130 Neb. Admin. Code § 12-001 & 004, permittees and recipients of construction approval, and an NPDES permittee or the owner or operator of a large animal feeding operation are required to keep records as required by the regulation.

85. On March 7, 2019, an NDEE representative conducted an inspection of Powerline Dairy’s facilities and noted that records were not being kept as required.

86. On October 30, 2019, NDEE issued an NOV that noted, “On March 7, 2019, a Department representative conducted a routine inspection on the operation. The inspection included an inspection of the operation’s records. It was determined that records were not being kept in accordance with the operation’s permit.”

87. On November 4, 2021, an NDEE representative conducted an inspection of Powerline Dairy’s facilities and noted that records were not being kept as required, including documentation of dates of manure, litter or process waste water was applied to each field, documentation of weekly inspections of storm water and runoff diversion devices and structures, documentation of daily inspections of production area water lines, and documentation of precipitation events and the liquid depth after a precipitation event.

88. Powerline Dairy has failed to keep records, as required by its permit and Title 130, in violation of state law for a number of days to be determined at trial.

89. Under Neb. Rev. Stat. § 81-1508.02, these violations of Title 130 “shall subject a person to a civil penalty of no more than ten thousand dollars per day. In the case of a continuing violation, each day shall constitute a separate offense. In assessing the amount of the fine, the court shall consider the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance.”

PRAYER FOR RELIEF

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

A. Declare that the Defendant violated the Nebraska Environmental Protection Act, the Livestock Waste Management Act, Title 130 of the Nebraska Administrative Code, or other Nebraska laws or regulations by:

- i. allowing discharges of a pollutant from its facility;
- ii. failing to provide required notifications to NDEE of discharges of pollutants from its facility;
- iii. by operating Holding Pond #4 prior to receiving approval by NDEE or prior to completing all permit conditions required by NDEE;
- iv. by failing to install or failing to properly install permanent depth markers and other required holding pond level indicators;
- v. by over-applying livestock waste to fields at higher than agronomic rates;
- vi. by failing to keep records required by Title 130 and its permits;

B. Enter the statutory maximum civil penalty for each violation against the Defendant, as provided under Neb. Rev. Stat. § 81-1508.02;

C. Enter an injunction against the Defendant prohibiting it from operating Holding Pond #4 until all permit conditions have been met and any required approval from NDEE has been obtained, requiring Defendant to install or properly install all required permanent depth markers and other required holding pond level indicators for the livestock waste control facilities, and prohibiting Defendant from applying livestock waste to fields at higher than agronomic rates in violation of permit conditions;

D. Tax all costs herein to the Defendant; and

E. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 17th day of June, 2022.

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

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