

IN THE DISTRICT COURT FOR HARLAN COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Plaintiff,

v.

HARLAN FEEDERS, INC.

Defendant.

Case No. CF 13-52

COMPLAINT

FILED

SEP 27 2013

CLERK DISTRICT COURT
HARLAN COUNTY, NE

COMES NOW Michael J. Linder, Director of the Department of Environmental Quality,
who institutes this action through Jon C. Bruning, Attorney General, on behalf of the State of
Nebraska as Plaintiff and alleges as follows:

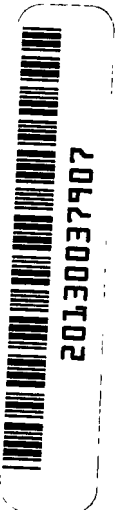
FIRST CLAIM

1. The Plaintiff, the Nebraska Department of Environmental Quality (hereinafter "NDEQ"),
is at all times material herein the agency of the State of Nebraska charged with the duty, pursuant
to Neb. Rev. Stat. § 81-1504 (Reissue 2008) to administer and enforce the Environmental
Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2008), the Livestock Waste
Management Act, Neb. Rev. Stat. § 54-2416 *et seq.* (Reissue 2010, Cum. Supp. 2010) and all
rules, regulations, orders, and permits issued thereunder.

2. The Defendant, Harlan Feeders, Inc. is a company authorized to do business in Nebraska.
At all times material herein, the Defendant owned and operated an animal feeding operation
located at 71049 "L" Road, Orleans, Nebraska, legally described as S ½, NW ¼, Section 19,
Township 02N, Range 18W & E ½, Section 24, Township 02N, Range 19W, Harlan County,
Nebraska.



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3. Neb. Rev. Stat. § 81-1502 (10) (Reissue 2008) is in effect at all times material herein and defines the Defendant as a “person.”

4. Neb. Rev. Stat. § 81-1506 (1) (Reissue 2008) is in effect at all times material herein and states that it is unlawful for any person “(a) 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...”

5. Neb. Rev. Stat. § 81-1508.02 (1) (b) (Reissue 2008) is in effect at all times material herein and states that it is unlawful to violate any regulations promulgated under the Environmental Protection Act or the Livestock Waste Management Act. Pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008, Cum. Supp. 2012), the Nebraska Environmental Quality Council adopted the *Livestock Waste Control Regulations*, promulgated at Title 130 of the Nebraska Administrative Code, which is in effect at all times material herein.

6. 130 Neb. Admin. Code, Ch. 2, § 008.02 states that any person who owns or operates an animal feeding operation shall not allow or cause a discharge.

7. On or about June 22, 2012, the Defendant allowed or caused a discharge of livestock waste into a conservation pond, a water of the State.

8. Pursuant to Neb. Rev. Stat. § 81-1508.02 (2) (Reissue 2008), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Act.

SECOND CLAIM

9. The Plaintiff hereby incorporates by reference the allegations contained in its First Claim.

10. 130 Neb. Admin. Code, Ch. 2, § 010 requires any person who owns or operates an animal feeding operation to report any discharge of manure, litter, or process wastewater to NDEQ within twenty four (24) hours of the event and provide a written report to NDEQ within five (5) days of the event.

11. On or about June 22, 2012, the Defendant failed to notify NDEQ of the discharge from Defendant's facility within twenty four (24) hours and submitted a written report to NDEQ past the five (5) day deadline.

12. Pursuant to Neb. Rev. Stat. § 81-1508.02 (2) (Reissue 2008), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Act.

THIRD CLAIM

13. The Plaintiff hereby incorporates by reference the allegations contained in its First and Second Claims.

14. Pursuant to Neb. Rev. Stat. § 81-1505 (Reissue 2008, Cum. Supp. 2012), the Nebraska Environmental Quality Council adopted the *Rules and Regulations Pertaining to the Issuance of Permits Under the National Pollutant Discharge Elimination System*, promulgated at Title 119 of the Nebraska Administrative Code, which is in effect at all times material herein.

15. Under 119 Neb. Admin. Code, Ch. 25, the Plaintiff issued the Defendant a National Pollutant Discharge Elimination System general permit No. NEG011002 (hereinafter, "Permit") on June 10, 2008, which is in effect at all times material herein.

16. Part II (G) (1) (b) of the Permit states that "A permanent marker... shall be maintained and... (04) Clearly marked with the following levels: (i) Freeboard level... (ii) The "Must

Pump” level... (iii) The Winter Pump Down” level...” Part II (F) of the Permit requires the Defendant to keep five (5) years of records for “(1) (c) Weekly measurements of the depth of the manure and process wastewater in the LWCF as indicated by the depth marker; and (d) Measurements of the liquid levels in the LWCF following (01) A precipitation event...”

17. Prior to and on or about June 22, 2012, the Defendant failed to mark the trigger levels on a holding pond staff gauge and failed to consistently record pond levels on a weekly basis and after precipitation events.

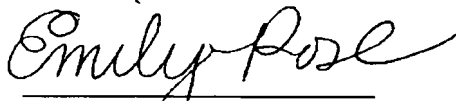
18. Pursuant to Neb. Rev. Stat. § 81-1508.02 (2) (Reissue 2008), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act and any rules or regulations adopted and promulgated pursuant to such Act.

WHEREFORE, the Plaintiff prays that judgment on its claim be entered herein against the Defendant in the form of a civil penalty as provided under § 81-1508.02 together with the costs of this action.

Respectfully submitted this 24th day of September, 2013

STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

By JON C. BRUNING, #20351
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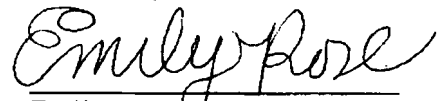
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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served on the Defendant by regular United States mail, first class postage prepaid on this 24th day of September, 2013, addressed to the Defendant's attorney of record as follows:

Stephen D. Mossman
Mattson Ricketts Davies Stewart & Calkins
134 South 13th Street, Suite 1200
Lincoln, NE 68508



Emily K. Rose
Assistant Attorney General