

IN THE DISTRICT COURT OF PHELPS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
NEBRASKA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY, )  
Plaintiff, )  
v. )  
DAHLGREN CATTLE CO., INC. )  
Defendant. )

CASE NO. CI 04-176

THIRD AMENDED  
COMPLAINT

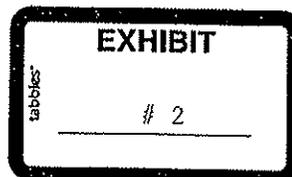
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COMES NOW the Plaintiff, Nebraska Department of Environmental Quality (hereinafter "NDEQ" or "Plaintiff"), and hereby amends its Complaint. Pursuant to Rule 15(a) of the Nebraska Rules of Pleading in Civil Action, Plaintiff may amend its Complaint by leave of court and leave shall be freely given when justice so requires. For its Third Amended Complaint, Plaintiff alleges and states as follows:

FIRST CLAIM

1. Plaintiff is the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. §81-1504(1) (Reissue 1999) of exercising exclusive supervision, administration and enforcement of the Environmental Protection Act, Neb. Rev. Stat. §81-1501 (Reissue 1999 and Cum. Supp. 2002) *et seq.* and the Livestock Waste Management Act, Neb. Rev. Stat. §54-2401 (Reissue 1998 and Cum. Supp. 2002) *et seq.*, along with all rules and regulations promulgated thereunder.

2. At all times material herein Defendant, Dahlgren Cattle Co., Inc., (hereinafter "Defendant") owned and operated a livestock operation, located in Phelps County, Nebraska.



3. Pursuant to Neb. Rev. Stat. §81-1506 (1) (a) (Reissue 1999), "[i]t shall be unlawful for any person . . . [t]o cause pollution of any air, waters, or land of the state. . . ." In the alternative, Neb. Rev. Stat. §81-1506(2)(a) states "[i]t shall be unlawful for any person to . . . [d]ischarge any pollutant into waters of the state without obtaining a permit as required by the National Pollutant Discharge Elimination System created by the Clean Water Act. . . ."

4. On or about November 20, 2002, and continuing daily through November 26, 2002, Defendant discharged cattle waste without an National Pollutant Discharge Elimination Permit from its livestock operation into waters of the state, in Phelps County, Nebraska, including but not limited to the Cottonwood Waterfowl Production Area Wetland.

5. The Director of NDEQ issued an Administrative Order on February 12, 2004 ("Administrative Order"). A true and correct copy of the Administrative Order is attached and incorporated herein as Attachment A.

6. In the Administrative Order, the Director of NDEQ found that Defendant "operates the livestock waste control facilities without an operating permit or a current interim use authorization. Further . . . [Defendant] has violated . . . Neb. Rev. Stat. §81-1506(1)(a)."

7. Defendant did not appeal the Administrative Order within the requisite thirty days after receipt of the Administrative Order and the Administrative Order therefore became final on March 15, 2004, pursuant to Neb. Rev. Stat. §81-1507(1).

8. Pursuant to Neb. Rev. Stat. §81-1508.02 (1) and (2), a civil penalty is provided in the amount of not more than \$10,000 (ten thousand dollars) for each day of violation. In case of a continuing violation, each day shall constitute a separate offense.

#### SECOND CLAIM

9. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 8 herein.

10. Neb. Rev. Stat. §81-1506 (1)(b) (Reissue 1999) states that it shall be unlawful for any person to discharge or emit any wastes into any waters of the state which reduce the quality of such waters below the water quality standards established by the Environmental Quality Council. Neb. Rev. Stat. §81-1508.02 (1)(b) (Reissue 1999) makes it unlawful for any person to violate any water quality standard.

11. Pursuant to the Nebraska Environmental Quality Council's authority as expressed in Neb. Rev. Stat. §81-1505 (Reissue 1999), the Council adopted a rule and standard codified as Title 117, *Nebraska Surface Water Quality Standards*, which set standards for: aesthetics, Chapter 4, Section 005; and ammonia, Chapter 4, Section 003.04B2.

12. On or about November 26, 2002, Defendant, by discharging livestock wastes into the waters of the state, caused discoloration of the water and produced a significant odor thereby reducing water quality standards for that water below those set by the Council for aesthetics set in Title 117, Chapter 4, Section 005.

### THIRD CLAIM

13. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 12 herein.

14. On or about November 26, 2002, Defendant, by discharging livestock wastes into the waters of the state, reduced water quality standards for that water below those set by the Council for ammonia set in Title 117, Chapter 4, Section 003.04B2.

### FOURTH CLAIM

15. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 14 herein.

16. Pursuant to the Nebraska Environmental Quality Council's authority as expressed in Neb. Rev. Stat. §81-1505 and Neb. Rev. Stat. §54-2413, the Council adopted a rule and standard codified as Title 130, *Rules and Regulations Pertaining to Livestock Waste Control*, which requires in Chapter 3, Section 001.04K, that any discharge of waste shall be reported to NDEQ within 24 hours of the event.

17. Defendant did not report the discharge of waste to NDEQ within the requisite 24 hours on any day between November 20, 2002 and November 26, 2002.

### FIFTH CLAIM

18. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 17 herein.

19. Pursuant to Neb. Rev. Stat. 81-1506(1)(a)(Reissue 1999), “[i]t shall be unlawful for any person 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. . .”

20. On or about November 20, 2002, and continuing daily through November 26, 2002, Defendant placed or caused to be placed cattle waste from its livestock operation in a location where it was likely to cause pollution of the waters of the state, in Phelps County, Nebraska, including but not limited to the Cottonwood Waterfowl Production Area Wetland.

21. In the Administrative Order, the Director of NDEQ found “[f]urther, the [Defendant’s] operation continues to place livestock waste in a location where they are likely to cause pollution to waters of the state in violation of Neb. Rev. Stat. §81-1506(1)(a).”

WHEREFORE, Plaintiff prays that judgment be entered in favor of Plaintiff and against Defendant in the form of civil penalties as provided in Neb. Rev. Stat. § 81-1508.02 and further that all costs of this action be taxed to Defendant. Pursuant to Neb. Rev. Stat. §81-1508.02, in determining the appropriate civil penalty, the Court should consider “the degree and extent of the violation, the size of the operation, and any economic benefit derived from noncompliance”.

DATED this 2<sup>nd</sup> day of November, 2005.

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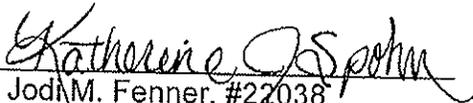
21. In the Administrative Order, the Director of NDEQ found “[f]urther, the [Defendant’s] operation continues to place livestock waste in a location where they are likely to cause pollution to waters of the state in violation of Neb. Rev. Stat. §81-1506(1)(a).”

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DATED this 2<sup>nd</sup> day of November, 2005.

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

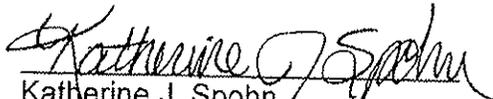
By JON C. BRUNING, #20351  
Attorney General

By   
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Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-2682  
Attorney for Plaintiff

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Complaint has been served upon the Defendant by regular United States mail, first class postage prepaid on this 2<sup>nd</sup> day of November, 2005 addressed to the Defendant's attorney of record as follows:

Stephen D. Mossman  
Mattson Ricketts Davies  
Stewart & Calkins  
134 S. 13<sup>th</sup> Street, #1200  
Lincoln, NE 68508-1901

  
Katherine J. Spohn  
Assistant Attorney General