

COPY

IN THE DISTRICT COURT OF HOWARD COUNTY, NEBRASKA.

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

Plaintiff,

JD CATTLE CO., INC.,

Defendant.

Case No. CI 12-62

COMPLAINT

FILED

AUG 08 2012

MARGE PALMBERG  
HOWARD COUNTY CLERK  
CLERK OF DISTRICT COURT

The Nebraska Department of Environmental Quality institutes this action through Jon C. Bruning, Attorney General, and alleges the following:

FIRST CLAIM

1. The Nebraska Department of Environmental Quality ("Department") the agency of the State of Nebraska responsible for enforcement of the Environmental Protection Act, NEB. REV. STAT. § 81-1501-1532 (Reissue 2008), the Livestock Waste Management Act, NEB. REV. STAT. § 54-2416-2435 (Reissue 2010), and all rules, regulations, orders promulgated thereunder.

2. JD Cattle Co., Inc., at all times material herein, owned and operated an animal feeding operation located at 1196 Twin Forks Lane, St. Paul, Nebraska legally described as NW 1/4, Section 20, Township 15N, Range 10W, Howard County, Nebraska.

3. Under Nebraska law, it is unlawful to discharge livestock waste into waters of the State without a proper permit. See, NEB. REV. STAT. §§ 81-1506(1) & (2); Title 130 NEB. ADMIN. CODE CHAPTER 2 § 008 (2011).

4. JD Cattle Co., Inc., discharged waste from its animal feeding operation to waters of the State in violation of Nebraska law on or about June 11, 2008 and again on or about June 29, 2010.



000004524D49



2012002102

## SECOND CLAIM

5. The State hereby incorporates the allegations contained in its First Claim.

6. Nebraska law prohibits any discharge of livestock waste that reduces water quality below the standards established by law. NEB. REV. STAT. § 81-1506(1).

7. TITLE 117 NEB. ADMIN. CODE CHAPTER 4 § 003.04B1 establishes the one day minimum for dissolved oxygen for early life stages between April 1 and September 30. Dissolved oxygen must be at least 5.0 milligrams per liter (mg/l) during this time period.

8. JD Cattle Co., Inc., discharged livestock waste causing the dissolved oxygen levels in a water of the State to fall below the applicable water quality standard on or about June 11, 2008.

## THIRD CLAIM

9. The State hereby incorporates the allegations contained in its First and Second Claims.

10. TITLE 117 NEB. ADMIN. CODE CHAPTER 4 § 003.05 establishes the maximum total phosphorus limit at 95 micrograms per liter and the maximum for total nitrogen at 1240 micrograms per liter.

11. JD Cattle Co., Inc., discharged livestock waste causing the total phosphorus and nitrogen levels in a water of the State to exceed the applicable water quality standard on or about June 11, 2008.

## FOURTH CLAIM

12. The State hereby incorporates the allegations contained in its First and Second Claims.

13. TITLE 117 NEB. ADMIN. CODE CHAPTER 4 § 004.02B1 establishes the maximum conductivity limit for waters used for general agricultural purposes at 2,000 microsiemes per centimeter between April 1 and September 30.

14. JD Cattle Co., Inc. discharged livestock waste causing the conductivity level in a water of the State to exceed the applicable water quality standard on or about June 11, 2008.

#### FIFTH CLAIM

15. The State hereby incorporates the allegations contained in its First and Second Claims.

16. TITLE 117 NEB. ADMIN. CODE CHAPTER 4 § 002.01 establishes the maximum *E. coli* bacteria level between May 1 and September 30 for waters used for primary recreation at a geometric mean of 126 colonies per 100 milliliters.

17. JD Cattle Co., Inc. discharged livestock waste causing the *E. coli* bacteria level in a water of the State to exceed the applicable water quality standard on or about June 11, 2008.

#### SEVENTH CLAIM

18. The State hereby incorporates the allegations contained in its First and Second Claims.

19. TITLE 130 NEB. ADMIN. CODE CHAPTER 4, § 010 states that “[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.

20. JD Cattle Co., Inc. failed to provide the Department with timely notification following the discharge of livestock waste on or about June 11, 2008 and June 29, 2010.

#### EIGHTH CLAIM

21. Nebraska law prohibits the operation of an animal feeding operation without an approved livestock waste control facility. See, NEB. REV. STAT. § 54-2432; NEB. ADMIN. CODE TITLE 130 CHAPTER 2, § 003.

22. JD Cattle Co., Inc. failed to construct an adequate livestock waste control facility prior to operation of the animal feeding operation.

#### NINTH CLAIM

23. Nebraska law prohibits the construction or operation of an animal feeding operation without a permit. See, NEB. REV. STAT. § 81-1506(5); TITLE 130 NEB. ADMIN. CODE CHAPTER 2, § 008.

24. JD Cattle Co., Inc., failed to submit the required permit application prior to constructing and operating an animal feeding operation.

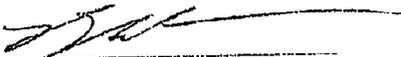
#### PRAYER FOR RELIEF

The State requests that the Court enter judgment against JD Cattle, Co., Inc. in the form of a civil penalty as provided under Neb. Rev. Stat. § 81-1508.02, all costs of this action, and any further relief deemed just and equitable.

Respectfully submitted this 2nd day of August, 2012.

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

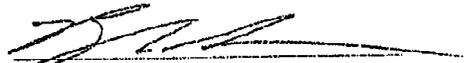
By JON C. BRUNING, #20351  
Attorney General

By   
Blake E. Johnson, #24158  
Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-1912  
blake.johnson@nebraska.gov  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

I, Blake E. Johnson, hereby certify that a copy of the foregoing Complaint has been served upon the following by regular United States mail, first class postage prepaid on this 2nd day of August, 2012, at the address provided below:

Stephen D. Mossman  
Mattson, Ricketts, Davies, Stewart and Calkins  
134 South 13<sup>th</sup> Street, Suite 1200  
Lincoln, NE 68508



Blake E. Johnson  
*Assistant Attorney General*