

IN THE DISTRICT COURT OF SEWARD COUNTY, NEBRASKA

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

Case No. _____

Plaintiff,

COMPLAINT

v.

LAGOON PUMPING & DREDGING, INC.

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, 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. The Defendant Lagoon Pumping & Dredging, Inc. (“Defendant”) is a foreign corporation registered to do business in the state of Nebraska. Defendant has a principal office in Columbus, Nebraska.

JURISDICTION AND VENUE

3. 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.

4. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as the event at issue took place in Seward County.

FACTUAL ALLEGATIONS

5. DeHoog Dairy Farm, LLC (“DeHoog Dairy”) formerly operated a large animal feeding operation in Seward County, Nebraska.

6. Upon information and belief, DeHoog Dairy moved its operation to Iowa in 2018.

7. Upon information and belief, DeHoog Dairy contracted with Defendant to pump livestock waste from its livestock waste lagoons prior to moving its operation.

8. Upon information and belief, Defendant was an independent contractor of DeHoog Dairy and was not an employee of DeHoog Dairy.

9. On June 19, 2018, an NDEE representative conducted an investigation into a report of a discharge at DeHoog Dairy. The NDEE representative observed that effluent had run off a field where it had been land applied and had pooled in the ditches on both sides of a county road. He further observed that the effluent had traveled through a drainage and into a freshwater pond on neighboring property.

10. The effluent adversely affected the freshwater pond, but did not appear to cause a fish kill.

11. The NDEE representative spoke with the Defendant’s pumping crew on site, who indicated that a hose had broken, causing the discharge. The NDEE representative was unable to confirm the presence of a broken hose.

12. Upon information and belief, the Defendant’s pumping crew was in sole control of the pumping activities that resulted in the discharge.

CAUSES OF ACTION

FIRST CAUSE OF ACTION – DISCHARGE FROM AN ANIMAL FEEDING OPERATION

13. Paragraphs 1 through 12, above, are incorporated herein by reference.

14. 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.”

15. The Defendant is considered a person under Neb. Rev. Stat. § 81-1502(10).

16. On June 19, 2018, the Defendant caused effluent, a pollutant, to run off the land application field into the county road ditches, where it traveled through a drainage to a water of the State on neighboring property, in violation of state law.

17. Under Neb. Rev. Stat. § 81-1508.02, this violation “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;

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

C. Tax all costs herein to the Defendant; and

D. 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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