

IN THE DISTRICT COURT OF KEARNEY COUNTY, NEBRASKA

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

Plaintiff,

v.

KCC FEEDING, INC., a Nebraska  
Corporation,

Defendant.

Case No. CI 20-1

CONSENT DECREE

COMES NOW Plaintiff, Jim Macy, Director of the Nebraska Department of Environment and Energy ("Department"), proceeding on the Complaint filed herein and appearing through counsel, Douglas J. Peterson, Attorney General, and Defendant KCC Feeding, Inc., a Nebraska Corporation, appearing through counsel, and each party having consented to the making and entering of this Consent Decree without trial, request entry of this Consent Decree.

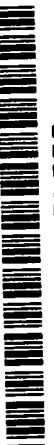
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over the subject-matter of this action pursuant to the Neb. Rev. Stat. § 24-302 (Reissue 2016). Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as Defendant's animal feeding operation is located in Kearney County and the events at issue took place in Kearney County.

2. In the Complaint, Plaintiff alleges Defendant discharged animal excreta from its holding pond in violation of its National Pollutant Discharge Elimination System Permit ("NPDES Permit"), the Livestock Waste Management Act, and Title 130 of the Nebraska Administrative Code—*Livestock Waste Control Regulations*. Plaintiff alleges Defendant caused pollution to land of the State in violation of the Nebraska Environmental Protection Act.



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Plaintiff alleges Defendant failed to comply with the terms of its construction and operating permit and NPDES Permit in violation of the Livestock Waste Management Act and Title 130 of the Nebraska Administrative Code. Plaintiff also alleges Defendant failed to report a discharge within 24 hours of the event in violation of Title 130 of the Nebraska Administrative Code.

3. On July 25, 2019, the Department issued a Notice of Violation to Defendant. A true and accurate copy of the July 25, 2019 Notice of Violation is incorporated and appended hereto as Attachment 1. The Notice of Violation included the following corrective action:

Starting September 1, 2019, submit monthly weather data, pond levels and detailed de-watering logs on the 15th of each month for the previous month. De-watering logs should include the dates, times, volumes and locations of application of effluent. This will continue through June 30, 2020.

Attachment 1 at 2.

4. The parties agree settlement of this matter is in the public interest and entry of this Consent Decree is the most appropriate means of resolving their dispute. The parties desire to conclude this case without trial or adjudication of any issues of fact or law. The parties further desire to conclude this case without this Consent Decree constituting an admission by Defendant with respect to such issues.

5. This Consent Decree will be in full satisfaction of all claims between the parties alleged in Plaintiff's Complaint.

6. IT IS THEREFORE ORDERED Defendant will pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02(2) (Reissue 2014), in the amount of twenty-five thousand dollars (\$25,000.00), as well as court costs in the amount of eighty-three dollars (\$83.00), to the District Court for Kearney County, Nebraska. The civil penalty will be handled as provided by Article VII, Section V, of the Nebraska Constitution. IT IS ALSO ORDERED:

- A. Twelve thousand five hundred dollars (\$12,500.00) of the civil penalty, as well as court costs of eighty-three dollars (\$83.00), to be paid upon entry of the Consent Decree and payable to the Clerk of the District Court for Kearney County; and
- B. The remaining twelve thousand five hundred dollars (\$12,500.00) of the civil penalty shall be waived if Defendant complies with the following terms and conditions:
- (i) Defendant will submit monthly weather data, pond levels and detailed dewatering logs on the 15th of each month from the previous month, as described in the July 25, 2019 Notice of Violation (Attachment 1); and
  - (ii) Defendant will have no violations of the Livestock Waste Management Act, the Nebraska Environmental Protection Act, applicable rules and regulations including Title 130 of the Nebraska Administrative Code—*Livestock Waste Control Regulations*, its Construction and Operating Permit, and its NPDES Permit until June 15, 2020.

If Defendant does not comply with any of the above terms and conditions (Paragraph 6(B)(i) through (ii)), then the remaining twelve thousand five hundred dollars (\$12,500.00) will not be waived and, instead, will be payable to the Clerk of the District Court for Kearney County no later than June 30, 2020.

- C. Defendant shall provide Plaintiff with a showing of compliance no later than June 22, 2020. The showing of compliance must indicate Defendant complied with all of the terms and conditions listed in Paragraph 6(B) of this Consent Decree.
- D. Plaintiff will file a Satisfaction of Judgment with the Court after Defendant provides its showing of compliance pursuant to Paragraph 6(C) of this Consent Decree. If Defendant, however, violates any of the terms and conditions of Paragraph 6(B)(i) through (iii) of this Consent Decree during the period of compliance following entry of this Consent Decree, then Plaintiff, in its sole discretion, may file with the Court a motion to enforce the terms of the Consent Decree for payment of the remaining twelve thousand five hundred dollars (\$12,500.00). The determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

7. This Consent Decree will have no effect on any enforcement action brought by the Department against Defendant for future violations of any statutes, regulations, or permits.

8. The undersigned consent without further notice to the form and entry of this Consent Decree.

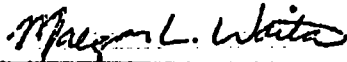
DATED this 31<sup>st</sup> day of January, <sup>2020</sup>~~2019~~, in Kearney County, Nebraska.

BY THE COURT:


  
District Judge of Kearney County, Nebraska

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

BY: Douglas J. Peterson, #18146  
Attorney General

BY:   
Maegan L. Wolta, #26287  
Assistant Attorney General  
2115 State Capitol  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
Tel: (402) 471-1912  
maegan.wolta@nebraska.gov  
Attorneys for Plaintiff

KCC FEEDING INC., Defendant

BY:   
Stephen D. Mossman, #19859  
Mattson Ricketts Law Firm  
134 S. 13th Street, Suite 1200  
Lincoln, Nebraska 68508-1901  
sdm@mattsonricketts.com  
Attorney for Defendant

# Attachment 1

# NEBRASKA

Good Life. Great Resources.

DEPT. OF ENVIRONMENT AND ENERGY

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**



July 25, 2019, 10:11 AM

**JUL 25 2019**

John Wubbenhorst  
KCC Feeding, Inc. - Main Yard  
PO Box 174  
Minden, NE 68959

RE: KCC Feeding, Inc. - Main Yard Concentrated Animal Feeding Operation  
NDEQID: 72493  
Program ID: LWC 52-093  
Subject: **NOTICE OF VIOLATION (NOV)**  
NW 1/4, Section 04, Township 05N, Range 13W, Kearney County

Dear Mr. Wubbenhorst:

On July 3, 2019, a representative of the Nebraska Department of Environment and Energy (Department) conducted a routine inspection at the concentrated animal feeding operation (CAFO) described above. At the time of the inspection, it was discovered that effluent had overtopped the east berm of Holding Pond 1B and entered an intermittent drainage. The Department did not receive notification of this discharge as required. The holding pond level and precipitation log records reviewed during the inspection indicated that the winter pumpdown level was not achieved prior to entering the 2018/19 winter months. Additionally, the records revealed the must pump level for the holding ponds were exceeded on March 15, 2019 and Max water level was exceeded on May 29 2019. No dewatering days were utilized to restore the necessary storage volume before the discharge occurred. Additionally, a second discharge occurred on July 9, 2019. The holding pond level was at 23.5 to 24 feet at the July 3, 2019 inspection and the holding ponds were being de-watered at that time. On July 10, 2019 an onsite compliance inspection was conducted. It was stated at this time that the holding ponds were pumped to a final level of 22 feet prior to the discharge on July 9, 2019.

Based on this information, your facility is in violation of the following provisions of the Livestock Waste Management Act and Title 130, *Livestock Waste Control Regulations*:

1. Failing to comply with the terms of your construction and operating permit and compliance schedule is a violation of Neb. Rev. Stat. §54-2431, §54-2432 and §81-1506 of the Livestock Waste Management Act, and Title 130, Chapter 2, Section 008, Chapter 4, Section 006 and Chapter 11.003.

The Department has determined that the following corrective actions must be taken in order to come into compliance with state statutes and regulations. Submit the required information by the dates indicated below.

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Department of Environment and Energy  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922

Jim Macy, Director  
OFFICE 402-471-2186 FAX 402-471-2909  
ndeq.mordinfo@nebraska.gov


- 1) Maintain the holding pond level at or below the start pump level of 16.0 feet. Utilize every available de-watering day and every available field shown in your irrigation distribution plan to maintain this level.
- 2) Record pond levels on a daily basis beginning on August 1, 2019 and continuing for at least six (6) months. If desired, after February 1, 2020, you may petition the Department to remove this permit condition.
- 3) By September 1, 2019, submit an updated and accurate Irrigation Distribution Plan showing all fields that will be used to de-water the holding pond.
- 4) Starting September 1, 2019, submit monthly weather data, pond levels and detailed de-watering logs on the 15<sup>th</sup> of each month for the previous month. De-watering logs shall include the dates, times, volumes and locations of application of effluent. This will continue through June 30, 2020.
- 5) The winter pump down level (11.5 feet) in the holding ponds must be reached prior to entering the winter months. The Department recommends this level be achieved by November 15th each year.

The Department is requesting that you voluntarily comply with these corrective actions. Compliance with this request does not mean that further enforcement action relative to these violations will not be considered. We will evaluate your prompt compliance in determining if further enforcement action is warranted. Enforcement action may include issuance of an administrative order, or referral to the Attorney General for injunctive relief or penalties of up to \$10,000 per day per violation or both. Be advised that you are responsible for complying with all other state or local regulations or ordinances that may apply to your animal feeding operation and compliance with Department regulations does not relieve you of this obligation.

All contacts concerning this Notice of Violation should be directed to:

Brad Edeal  
Agriculture Section  
Nebraska Department of Environment and Energy  
Water Permits Division  
PO Box 98922  
Lincoln, NE 68509-8922  
(402) 471-8131 or (402) 471-4239

Sincerely,

*for*   
Shelley Schneider,  
Water Permits Division Administrator