

IN THE DISTRICT COURT OF PIERCE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	
JIM MACY, Director,)	Case No. _____
NEBRASKA DEPARTMENT OF)	
ENVIRONMENT AND ENERGY,)	
)	
Plaintiff,)	COMPLAINT
)	
v.)	
)	
DIAMOND A FARMS, LLC,)	
)	
Defendant.)	

COMES NOW Jim Macy, Director of the Nebraska Department of Environment and Energy, who initiates 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. 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 those Acts.

2. The Department is further charged with the duty to “administer the animal feeding operation permitting program in accordance with the National Pollutant Discharge Elimination System [(“NPDES”)] of the federal Clean Water Act ... through [NEPA], the [LWMA], and the rules and regulations adopted and promulgated pursuant to such act” Neb. Rev. Stat. § 54-2418(1).

3. Defendant Diamond A Farms, LLC (“Diamond A”) is a Nebraska limited liability company that operates a medium-sized animal feeding operation located near Osmond, Nebraska in Pierce County.

4. Diamond A is considered a “person” for purposes of NEPA and LWMA. Neb. Rev. Stat. §§ 81-1502(10) & 54-2417(16).

JURISDICTION AND VENUE

5. 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.

6. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as Diamond A’s animal feeding operation is located in Pierce County and the events at issue took place in Pierce County.

LEGAL BACKGROUND

7. NEPA was enacted in 1971 to protect the water, land, and air of this State by, *inter alia*, making it unlawful “[t]o cause pollution of any air, waters, or land of the state or to place any wastes in a location where they are likely to cause pollution of the air, waters, or land of the state” *Id.* §§ 81-1501, 1506(1).

8. “Waters of the state” means “all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, wetlands, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state[.]” Neb. Rev. Stat. § 81-1502(21).

9. “Land pollution” means “the presence upon or within the land resources of the state of one or more contaminants or combinations of contaminants, including, but not limited to, refuse, garbage, rubbish, or junk, in such quantities and of such quality as will or are likely to (a) create a nuisance, (b) be harmful, detrimental, or injurious to public health, safety, or welfare, (c) be injurious to plant and animal life and property, or (d) be detrimental to the economic and social development, the scenic beauty, or the enjoyment of the natural attractions of the state[.]” Neb. Rev. Stat. § 81-1502(19).

10. “Water pollution” means “the manmade or man-induced alteration of the chemical, physical, biological, or radiological integrity of water[.]” Neb. Rev. Stat. § 81-1502(20).

11. “Wastes” means “sewage, industrial waste, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute any air, land, or waters of the state[.]” Neb. Rev. Stat. § 81-1502(14).

12. NEPA also makes it unlawful to violate the LWMA, an animal feeding operation permit, or any rules or regulation adopted and promulgated pursuant to NEPA or LWMA. Neb. Rev. Stat. § 81-1506(5).

13. The LWMA provides, *inter alia*, the permitting requirements, livestock waste management requirements, and prohibited acts for animal feeding operations. *See e.g.*, Neb. Rev. Stat. §§ 54-2418–2419, 2422–2425, 2432, & 2434. Prohibited acts under the LWMA include, *inter alia*, the discharge of livestock wastes in violation of or without a permit and failing to comply with rules and regulations.

14. Pursuant to its authority under Neb. Rev. Stat. § 81-1505, the Nebraska Environmental Quality Council (“council”) promulgated Title 130—*Livestock Waste Control Regulations*, to regulate animal feeding operations and management of livestock waste.

15. The LWMA makes it “unlawful for any person to ... [d]ischarge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a [NPDES] permit, a construction and operating permit, or an exemption from the department, if required by the [NEPA], [LWMA], or the rules and regulations ...” Neb. Rev. Stat. § 54-2432(4); *see also* 130 Neb. Admin. Code § 2-008.10.

16. An “animal feeding operation” is “a location where beef cattle ... or other livestock have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the location.” Neb. Rev. Stat. § 54-2417(1). Animal feeding operations can be large (more than 1,000 non-dairy cattle), medium (300 to 999 non-dairy cattle), or small (less than 300 non-dairy cattle). *See* 130 Neb. Admin. Code §§ 1-024, 1-029, 1-044.

17. “Discharge” means “the spilling, leaking, pumping, pouring, emitting, emptying, or dumping of pollutants into any waters of the state or in a place which will likely reach waters of the state[.]” Neb. Rev. Stat. § 54-2417(8); *see also* 130 Neb. Admin. Code § 1-016.

18. “Livestock wastes” means “animal and poultry excreta and associated feed losses, bedding, spillage or overflow from watering systems, wash and flushing waters, sprinkling waters from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, and other materials polluted by livestock wastes.” 130 Neb. Admin. Code § 1-027.

19. Under Title 130 of the Nebraska Administrative Code, “[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.” 130 Neb. Admin. Code § 2-010.

20. Under the LWMA, it is “unlawful for any person to ... [o]perate an animal feeding operation prior to construction of an approved livestock waste control facility [(“LWCF”)], unless exempted from the requirement for a livestock waste control facility by [NEPA], the [LWMA], or the rules and regulations adopted and promulgated by the council pursuant to such acts.” Neb. Rev. Stat. § 54-2432(3).

21. Under Title 130 of the Nebraska Administrative Code, “[an LWCF] is required for an existing or proposed animal feeding operation when livestock wastes have discharged or have the potential to discharge in a manner that is not lawfully authorized by permit or these regulations.” 130 Neb. Admin. Code § 2-003.

22. LWCF means “any structure or combination of structures utilized to control livestock waste at an animal feeding operation until it can be used, recycled, or disposed of in an environmentally acceptable manner. Such structures include ... lagoons, and other devices utilized to control livestock waste.” Neb. Rev. Stat. § 54-2417(10).

23. Pursuant to the LWMA, “[e]ach ... construction and operating permit shall include, in addition to other requirements ... a completed nutrient

management plan [(“NMP”)] and supporting documentation unless such information has been previously submitted and is unchanged. The [NMP] shall be considered part of the application.” Neb. Rev. Stat. § 54-2426; *see also* 130 Neb. Admin. Code § 14-001.

24. Under NEPA, the Department, through the Attorney General’s Office, is empowered to file an enforcement action seeking civil penalties and/or injunctive relief. *See* Neb. Rev. Stat. §§ 81-1508, 1508.02.

25. Each violation of NEPA subjects “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.” Neb. Rev. Stat. § 81-1508.02(2).

FACTUAL BACKGROUND

26. At all times relevant to this Complaint, Diamond A owned and operated a medium-sized animal feeding operation near Osmond, Nebraska in Pierce County. Diamond A has a 750-head capacity bed pack building and an open lot, the capacity of which does not exceed 999 cattle at any one time.

27. Diamond A did not and does not have a construction and operating permit or an NPDES permit. Rather, Diamond A had a conditional exemption from the Department because its feedlot did not feed more than 999 cattle at any one time and, prior to 2017, was not required to have an LWCF.

28. On February 4, 2015, the Department conducted a complaint investigation and compliance inspection at Diamond A’s animal feeding operation. The Department observed Diamond A’s open lot had four-foot concrete blocks on the west side and partly on the south side. The lack of a concrete block extending further on the south side increased the likelihood of a discharge going directly to a field drainage a few hundred feet from the pens.

29. On February 13, 2015, the Department sent a conditional requirements letter, which superseded the previous conditional exemption, requiring Diamond A to:

- a. Place additional concrete along the south side of the open lot pens to ensure runoff from the open lot does not flow south to the field drainage.
- b. Maintain the four (4) foot concrete blocks along the west, south and east sides of the open lots. In order to preserve the designated function, ensure manure does not accumulate along the base or at the corners of the blocks.
- c. Scrape the pens on a regular basis. Any stockpiled waste shall be placed in a location that prevents runoff.
- d. Land apply all livestock waste at agronomic rates for nitrogen and phosphorous.

30. The February 13, 2015 conditional requirements letter stated that if the conditions were not met or if a discharge occurred, then Diamond A may be required to submit an application for a construction and operating permit or an NPDES permit.

31. Diamond A placed additional concrete along the south side of the open lot, which was verified by the Department on March 10, 2015 through a drive-by investigation.

32. On November 8, 2017, the Department conducted another complaint investigation after being notified that livestock waste runoff from the open lot was discharging into a neighbor's field.

33. During the November 8, 2017 investigation, the Department observed the east side of the south concrete block contained two 6-inch PVC pipes—one about six inches above the ground and the other about twelve inches off the ground. The Department observed that livestock waste had overtopped the concrete block, washed through the cracks in the concrete blocks, and drained through the holes in the concrete block. The livestock waste joined runoff from a natural spring flowing down gradient, traveled through an intermittent drainage that runs under a highway to the east, through a culvert and to a riser, and resulted in the livestock waste running through the field, which empties into a creek approximately one quarter of a mile to the east of the highway.

34. During the November 8, 2017 investigation, the Department informed Diamond A that the pipes in the concrete block allowing discharges

were unacceptable and plugging the pipes would not solve the problem. The Department informed Diamond A it would need to take one of the following actions:

- a. Submit an application for a construction and operating permit for an LWCF to contain the runoff;
- b. Relocate the pen; or
- c. Abandon the pen.

35. On December 22, 2017, the Department sent a corrective actions letter to Diamond A, as well as another letter providing notice that an LWCF was required for the existing open lot based on the November 8, 2017 investigation. The letter also required Diamond A to submit a complete construction and operating permit, including an NMP by May 1, 2018.

36. Diamond A received both letters on January 4, 2018.

37. On January 3, 2018, the Department received a telephone call from Diamond A. Diamond A informed the Department that it was not going to move or abandon the pen and was not going to spend money to contain the runoff. The Department reiterated that an LWCF was required and plugging the holes in the concrete block was not sufficient to prevent a discharge.

38. On June 25, 2019, the Department received a complaint that livestock waste runoff from Diamond A's open lot was discharging to a tile line that runs to a nearby creek during rain events.

39. On July 3, 2019, the Department conducted an investigation in response to the June 25, 2019 complaint. During the investigation, the Department observed livestock waste had overtopped the concrete block due to rain falling the previous night. The livestock waste ran from Diamond A's open lot to an intermittent drainage, under the highway through a culvert and to a riser. The livestock waste then ran through the riser into a tile line that eventually empties into a creek. The creek empties into a tributary to the North Fork of the Elkhorn River.

40. On August 9, 2019, the Department issued a notice of violation ("NOV") notifying Diamond A of the following violations:

- a. Discharging livestock waste to waters of the state in violation of Neb. Rev. Stat. § 81-1506 and 130 Neb. Admin. Code § 2-008.
- b. Failing to report a discharge in violation of Neb. Rev. Stat. § 54-2432 and 130 Neb. Admin. Code § 2-010.
- c. Failing to apply for a permit required by the Department in violation of Neb. Rev. Stat. § 54-2428 and 130 Neb. Admin. Code § 2-004.

41. The August 9, 2019 NOV also required Diamond A to conduct the following relevant, corrective actions:

- a. Immediately cease all discharges of livestock waste to waters of the State, in accordance with NEPA, LWMA and Title 130.
- b. By September 15, 2019, submit a complete application for a construction and operating permit, adhering to the design requirements established in Title 130, Chapters 7, 8, and 9.
- c. Upon issuance of a construction and operating permit, adhere to all construction compliance dates outlined in the permit.

42. On April 16, 2020, the Department received Diamond A's application for a construction and operating permit, which was seven months past the date specified in the NOV.

43. On May 8, 2020, the Department notified Diamond A by email that the construction and operating permit application was incomplete, because it was missing two forms.

44. On June 1, 2020, the Department received the missing forms for the construction and operating permit application.

45. On July 27, 2020, the Department contacted Diamond A by email, requesting an NMP, which was also missing from the application, and updated storage tables information.

46. On August 31, 2020, the Department sent a letter to Diamond A requesting an NMP as described in Chapter 14 of Title 130 of the Nebraska Administrative Code, by September 28, 2020.

47. On September 9, 2020, Diamond A informed the Department by phone that it believed it did not need an NMP and indicated it would keep the holes plugged in the concrete block and keep operating. Diamond A indicated it was not going to submit any more information other than the information already submitted.

48. To date, the Department has not received an NMP from Diamond A.

49. To date, the Department has not approved the construction and operating permit application because the application is not complete.

50. Upon information and belief, Diamond A is operating and continues to operate an animal feeding operation without an LWCF.

FIRST CAUSE OF ACTION

DISCHARGE OF LIVESTOCK WASTE WITHOUT A CONSTRUCTION AND OPERATING PERMIT IN VIOLATION OF NEB. REV. STAT. § 81-1506(5).

51. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–50 as though fully set forth herein.

52. Under NEPA, it is “unlawful for any person to ... [v]iolate any provisions of the [LWMA] ... or ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA] or the [LWMA].” Neb. Rev. Stat. §§ 81-1506(5)(b) & (d).

53. The LWMA makes it “unlawful for any person to ... [d]ischarge animal excreta, feed, bedding, spillage or overflow from the watering systems, wash and flushing waters, sprinkling water from livestock cooling, precipitation polluted by falling on or flowing onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a [NPDES] permit, a construction and operating permit, or an exemption from the department, if required by the [NEPA], [LWMA], or the rules and regulations ...” Neb. Rev. Stat. § 54-2432(4); *see also* 130 Neb. Admin. Code § 2-008.10.

54. On June 25, 2019, the Department was notified that livestock waste was discharging from Diamond A's animal feeding operation into a drainage area and to a tile line connected to a creek.

55. On July 3, 2019, the Department observed a discharge of livestock waste, as defined in 130 Neb. Admin. Code §§ 1-016 & 1-027, had occurred at Diamond A's animal feeding operation. The discharge ran from Diamond A's open lot to an intermittent drainage, under the highway through a culvert and to a riser. The discharge ran through the riser to a tile line that empties into a creek. The creek empties into a tributary to the North Fork of the Elkhorn River.

56. An intermittent drainage is a waterway, which is a water of the State, as defined in Neb. Rev. Stat. § 81-1502(21).

57. A culvert, riser, and tile line are drainage systems, which are waters of the State, as defined in Neb. Rev. Stat. § 81-1502(21).

58. The creek is a stream, which is a water of the State, as defined in Neb. Rev. Stat. § 81-1502(21).

59. The tributary to the North Fork of the Elkhorn River is a water of the State, as defined in Neb. Rev. Stat. § 81-1502(21).

60. Livestock waste that overtopped the concrete block and drained into an intermittent drainage connected to a tile line that drains into a creek is a discharge, as defined in Neb. Rev. Stat. § 54-2417(8).

61. Diamond A was on notice as of 2017 that it was required to have a construction and operating permit and an LWCF.

62. Diamond A, however, did not have a construction and operating permit or an NPDES permit at the time of the July 2019 discharge.

63. Diamond A violated Neb. Rev. Stat. § 81-1506(5) because it discharged livestock waste without first obtaining a construction and operating permit or NPDES permit, which is prohibited by the LWMA and Title 130.

64. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Diamond A is subject to a civil penalty of not more than \$10,000 per day for each violation.

SECOND CAUSE OF ACTION

POLLUTION OF THE LAND AND/OR WATER OF THE STATE IN VIOLATION OF NEB. REV. STAT. § 81-1506(1)(a).

65. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–50 as though fully set forth herein.

66. Under NEPA, it is “unlawful for any person ... [t]o 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.” Neb. Rev. Stat. § 81-1506(1)(a).

67. On June 25, 2019, the Department was notified that livestock waste was discharging from Diamond A’s animal feeding operation into a drainage area and to a tile line connected to a creek.

68. On July 3, 2019, the Department observed a discharge of livestock waste, as defined in 130 Neb. Admin. Code §§ 1-016 & 1-027, had occurred at Diamond A’s animal feeding operation. The discharge ran from Diamond A’s open lot to an intermittent drainage, under the highway through a culvert and to a riser. The discharge ran through the riser to a tile line that eventually empties into a creek. The creek empties into a tributary to the North Fork of the Elkhorn River.

69. Livestock waste is a “waste” as defined by Neb. Rev. Stat. § 81-1502(14), and a pollutant.

70. An intermittent drainage is a waterway, which is a water of the State, as defined in Neb. Rev. Stat. § 81-1502(21).

71. A culvert, riser, and tile line are drainage systems, which are waters of the State, as defined in Neb. Rev. Stat. § 81-1502(21).

72. The creek is a stream, which is a water of the State, as defined in Neb. Rev. Stat. § 81-1502(21).

73. The tributary to the North Fork of the Elkhorn River is a water of the State, as defined in Neb. Rev. Stat. § 81-1502(21).

74. Discharge of livestock waste from Diamond A’s animal feeding operation caused pollution to land or water of the State or was placed in a location where discharges of livestock waste are likely to cause pollution to land or a water of the State.

75. Diamond A violated Neb. Rev. Stat. § 81-1506(1)(a) by causing pollution of land or waters of the state or by placing livestock wastes in a location likely to cause pollution to land or waters of the State.

76. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Diamond A is subject to a civil penalty of not more than \$10,000 per day for each violation.

THIRD CAUSE OF ACTION

FAILING TO REPORT A DISCHARGE IN VIOLATION OF NEB. REV. STAT. § 81-1506(5)(d) AND 130 NEB. ADMIN. CODE § 2-010.

77. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–50 as though fully set forth herein.

78. Under NEPA, it is “unlawful for any person to ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the Environmental Protection Act or the [LWMA].” Neb. Rev. Stat. § 81-1506(5)(d).

79. Under Title 130 of the Nebraska Administrative Code, “[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.” 130 Neb. Admin. Code § 2-010.

80. On June 25, 2019, the Department was notified that livestock waste was discharging from Diamond A’s animal feeding operation into a drainage area and to a tile line connected to a creek.

81. The Department did not receive a report from Diamond A that a discharge occurred on or about June 25, 2019.

82. On July 3, 2019, the Department observed a discharge of livestock waste, as defined in 130 Neb. Admin. Code §§ 1-016 & 1-027, had occurred at Diamond A’s animal feeding operation.

83. The Department did not receive a report from Diamond A that a discharge occurred on or about July 3, 2019.

84. The Department also never received written reports from Diamond A within five days of the June 25, 2019 or July 3, 2019 discharge events.

85. Diamond A violated Neb. Rev. Stat. § 81-1506(5)(d) by failing to report the two discharges within 24 hours of the events and by failing to provide a written report within five days of the events as required by 130 Neb. Admin. Code § 2-010.

86. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Diamond A is subject to a civil penalty of not more than \$10,000 per day for each violation.

FOURTH CAUSE OF ACTION

FAILING TO SUBMIT A NUTRIENT MANAGEMENT PLAN IN VIOLATION OF NEB. REV. STAT. § 54-2426 AND 130 NEB. ADMIN. CODE § 4-001.04.

87. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–50 as though fully set forth herein.

88. Under NEPA, it is “unlawful for any person to ... [v]iolate any provisions of the [LWMA] ... or ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA] or the [LWMA].” Neb. Rev. Stat. §§ 81-1506(5)(b) & (d).

89. Pursuant to the LWMA, “[e]ach ... construction and operating permit shall include, in addition to other requirements ... a completed [NMP] and supporting documentation unless such information has been previously submitted and is unchanged. The [NMP] shall be considered part of the application. ...” Neb. Rev. Stat. § 54-2426.

90. Under Title 130 of the Nebraska Administrative Code, “[e]ach application for a construction and operating permit shall include ... [an NMP] and supporting documentation as specified in Chapter 14.” 130 Neb. Admin. Code § 4-001.04; *see also* 130 Neb. Admin. Code § 14-001.

91. On August 9, 2019, the Department issued a NOV requiring Diamond A to, *inter alia*, submit a complete application for a construction and

operating permit by September 15, 2019. Pursuant to the LWMA and Title 130 of the Nebraska Administrative Code, each construction and operating permit must include an NMP to be complete.

92. On April 16, 2020, the Department received Diamond A's construction and operating permit application. The application did not include an NMP.

93. On July 27, 2020, the Department contacted Diamond A by email, requesting, *inter alia*, the missing NMP.

94. On August 31, 2020, the Department sent a letter to Diamond A requesting the missing NMP with a deadline of September 28, 2020.

95. On September 9, 2020, Diamond A informed the Department by phone that it believed it did not need an NMP and indicated it was not going to submit one.

96. To date, the Department has not received an NMP from Diamond A.

97. Diamond A violated and continues to violate Neb. Rev. Stat. § 81-1506(5) because it still has not submitted an NMP to complete the application for a construction and operating permit, which is required to operate its animal feeding operation and to construct the LWCF under the LWMA and Title 130.

98. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Diamond A is subject to a civil penalty of not more than \$10,000 per day for each violation.

99. Pursuant to Neb. Rev. Stat. § 81-1508, this Court should issue an injunction immediately ordering Diamond A to provide an NMP, as described in Chapter 14 of Title 130 of the Nebraska Administrative Code, to complete its construction and operating application so the Department may take action on the application.

FIFTH CAUSE OF ACTION

OPERATING AN ANIMAL FEEDING OPERATION WITHOUT A LIVESTOCK WASTE CONTROL FACILITY IN VIOLATION OF NEB. REV. STAT. § 54-2432(3) AND 130 NEB. ADMIN. CODE § 2-003.

100. Plaintiff hereby realleges and incorporates by reference the allegations contained in Paragraphs 1–50 as though fully set forth herein.

101. Under NEPA, it is “unlawful for any person to ... [v]iolate any provisions of the [LWMA] ... or ... [v]iolate any rule or regulation adopted and promulgated by the council pursuant to the [NEPA] or the [LWMA].” Neb. Rev. Stat. §§ 81-1506(5)(b) & (d).

102. Under the LWMA, “it shall be unlawful for any person to ... [o]perate an animal feeding operation prior to construction of an approved [LWCF], unless exempted from the requirement for a [LWCF] by [NEPA], the [LWMA], or the rules and regulations adopted and promulgated by the council pursuant to such acts.” Neb. Rev. Stat. § 54-2432(3); *see also* 130 Neb. Admin. Code § 2-008.08.

103. Under Title 130 of the Nebraska Administrative Code, “[an LWCF] is required for an existing or proposed animal feeding operation when livestock wastes have discharged or have the potential to discharge in a manner that is not lawfully authorized by permit or these regulations.” 130 Neb. Admin. Code § 2-003.

104. On December 22, 2017, the Department sent a letter notifying Diamond A that an LWCF was required for the existing open lot because the Department had observed evidence of discharges of livestock occurring from Diamond A’s animal feeding operation and Diamond A’s animal feeding operation has the potential to discharge in a manner not authorized by law.

105. Diamond A received notice that an LWCF was required to operate its animal feeding operation on January 4, 2018.

106. As of December 2017, Diamond A was no longer exempted from the requirement to construct an LWCF and is currently not exempt from such requirement.

107. An LWCF has been required since the November 8, 2017 investigation when the Department observed a livestock waste discharge, and certainly since January 4, 2018 when Diamond A received a letter providing notice that an LWCF was required.

108. To date, Diamond A has not constructed an LWCF for its animal feeding operation, which is required under the LWMA.

109. To date, Diamond A continues to operate its animal feeding operation without an LWCF.

110. Diamond A violated and continues to violate Neb. Rev. Stat. § 81-1506(5) by failing to construct an LWCF and operating an animal feeding operation without LWCF which is required by Neb. Rev. Stat. § 54-2432(3) and 130 Neb. Admin. Code § 2-003.

111. Pursuant to Neb. Rev. Stat. § 81-1508.02(2), Diamond A is subject to a civil penalty of not more than \$10,000 per day for each violation.

112. Pursuant to Neb. Rev. Stat. § 81-1508, this Court should issue an injunction immediately ordering Diamond A to take all actions necessary to receive approval to construct an LWCF and to construct an LWCF so it can lawfully operate its animal feeding operation.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff requests this Court to enter judgment on this Complaint in its favor and grant the following relief:

- A. Declare Diamond A violated the Nebraska Environmental Protection Act and/or the Livestock Waste Management Act and/or Title 130 of the Nebraska Administrative Code;
- B. Order Diamond A to submit a Nutrient Management Plan to the Department, as described in Chapter 14 of Title 130 of the Nebraska Administrative Code, to complete its construction and operating application and to take other necessary actions to obtain an approved construction and operating permit from the Department;

- C. Order Diamond A to construct a livestock waste control facility in accordance with the plans and specifications approved by the Department and in accordance with all construction compliance dates outlined in an issued construction and operating permit;
- D. Enter the statutory maximum civil penalty against Diamond A as provided under Neb. Rev. Stat. § 81-1508.02(2), for each day of each violation;
- E. Tax all court costs herein to Diamond A; and
- F. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this 4th day of February 2022.

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

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Attorney General

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