

IN THE DISTRICT COURT FOR CHASE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
JIM MACY, Director )  
NEBRASKA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY, )

Case No. CI 16-12

Plaintiff, )

v. )

COMPLAINT

DAVID HOGSETT, D/B/A DAVID )  
HOGSETT LIVESTOCK. )

**FILED** TIME 5:15 pm

Defendant. )

MAY 23 2016 *DOE*

CLERK OF THE DISTRICT COURT  
CHASE COUNTY, NEBRASKA

COMES NOW Jim Macy, Director of the Nebraska Department of Environmental Quality, who institutes this action through Douglas J. Peterson, Attorney General, on behalf of the State of Nebraska, and alleges as follows:

**FIRST CLAIM**

1. The Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), is at all times material herein, the agency of the State of Nebraska charged with the duty, pursuant to Neb. Rev. Stat. § 81-1504 (1) (Reissue 2014) to administer and enforce the Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2014), the Livestock Waste Management Act, Neb. Rev. Stat. § 54-2416 *et seq.* (Reissue 2014), and all rules, regulations, orders, and permits issued pursuant to such Acts.

2. The Defendant, David Hogsett, d/b/a David Hogsett Livestock, at all times material herein, owned and operated a large concentrated animal feeding operation at Jct. 318 Ave and 734 Rd., Champion, Nebraska 69023. The legal description of the Defendant's operation is SE ¼, Section 24, Township 06N, Range 41W, Chase County, Nebraska.



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3. On or about March 14, 2013, NDEQ sent a letter to the Defendant stating that a completed application for a Construction and Operating Permit for a livestock waste control facility (“LWCF”) should be submitted to NDEQ at least six (6) months in advance of the anticipated construction date.

4. On May 17, 2013, the Defendant filed an application for a Construction and Operating Permit for a LWCF. The Defendant began construction of the LWCF on May 28, 2013 and it was completed on June 14, 2013.

5. On October 2, 2013, NDEQ issued the Defendant a Construction and Operating Permit (“Permit”) for the LWCF.

6. Neb. Rev. Stat. § 54-2432(2) (Reissue 2014) is in effect at all times material herein and states that it is unlawful to “construct a livestock waste control facility without first obtaining a construction and operating permit from the department...”

7. Neb. Rev. Stat. § 81-1506(2) (Reissue 2014) is in effect at all times material herein and states that “[i]t shall be unlawful for any person to construct, install, modify, or operate any disposal system or part thereof of any extension or addition thereto without obtaining necessary permits from the [NDEQ].”

8. Pursuant to Neb. Rev. Stat. § 81-1508.02 (2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act, the Livestock Waste Management Act, and any rules or regulations adopted and promulgated pursuant to such Acts.

## **SECOND CLAIM**

9. The Plaintiff hereby incorporates by reference the allegations contained in its First Claim.

10. The Defendant's Permit provided that "[u]pon completion of construction, the Permittee shall file the attached Certification of Completion form with the [NDEQ]. The LWCF shall not be operated until written approval is received from the [NDEQ]."

11. On November 7, 2013, NDEQ received a Certification of Completion from Defendant for the LWCF. On November 14, 2013, an NDEQ inspector completed the post construction inspection of the Defendant's LWCF and found approximately eight hundred (800) calves in pens. On December 5, 2013, the Defendant's LWCF was approved by NDEQ.

12. Neb. Rev. Stat. § 54-2425(1) (Reissue 2014) is in effect at all times material herein and states that it is unlawful to "... operate an animal feeding operation prior to an inspection from the [NDEQ]..."

13. Neb. Rev. Stat. § 81-1506(5)(c) (Reissue 2014) is in effect at all times material herein and states that "[i]t shall be unlawful for any person to ... [v]iolate any term or condition of an animal feeding operation permit."

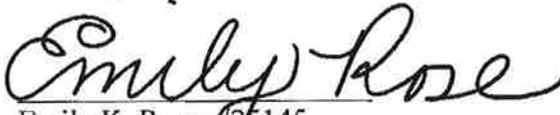
14. Pursuant to Neb. Rev. Stat. § 81-1508.02 (2) (Reissue 2014), a civil penalty not to exceed ten thousand dollars (\$10,000.00) per day per violation is provided in cases of violation of the Environmental Protection Act, the Livestock Waste Management Act, and any rules or regulations adopted and promulgated pursuant to such Acts.

WHEREFORE, the Plaintiff prays that judgment on its claims be entered herein against the Defendant in the form of a civil penalty as provided under Neb. Rev. Stat. § 81-1508.02 (2) (Reissue 2014) together with the costs of this action.

DATED this 12<sup>th</sup> day of May, 2016

STATE OF NEBRASKA, ex rel.,  
JIM MACY, Director  
NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY, Plaintiff

By DOUGLAS J. PETERSON, #18146  
Attorney General

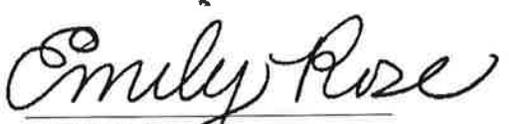
By:   
Emily K. Rose, #25145  
Assistant Attorney General  
2115 State Capitol Building  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
(402) 471-2683  
emily.rose@nebraska.gov

*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Complaint has been served on the Defendant by regular United States mail, first class postage prepaid on this 12<sup>th</sup> day of May, 2016, addressed to the Defendant's attorney of record as follows:

Stephen D. Mossman  
Mattson Ricketts  
134 South 13th Street  
Lincoln, Nebraska 68508

  
Emily K. Rose  
*Assistant Attorney General*