

IN THE DISTRICT COURT OF DAWSON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	
JIM MACY, DIRECTOR,)	Case No. _____
NEBRASKA DEPARTMENT OF)	
ENVIRONMENT AND ENERGY,)	
)	
Plaintiff,)	COMPLAINT
)	
v.)	
)	
DAWSON FEEDERS, INC.,)	
)	
Defendant.)	
)	

COMES NOW Jim Macy, Director of the Nebraska Department of Environment and Energy (“NDEE” or “Department”), who institutes this action through Michael T. Hilgers, Attorney General, on behalf of the State of Nebraska as plaintiff and alleges as follows:

PARTIES

1. NDEE is the agency of the State of Nebraska charged with exercising exclusive supervision, administration and enforcement of the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. § 81-1501 et. seq. (Reissue 2014; Cum. Supp. 2022); the Livestock Waste Management Act (LWMA), Neb. Rev. Stat. §§ 54-2416 to 54-2438 (Reissue 2021), and the rules and regulations promulgated pursuant to these Acts, including Title 130 of the Nebraska Administrative Code (N.A.C.), *Livestock Waste Control Regulations*.

2. Dawson Feeders, Inc. (“Dawson Feeders”) is a domestic corporation incorporated in the State of Nebraska with a principal office address at 43751 Road 758, Lexington, Dawson County, Nebraska. Dawson Feeders operates a large confined animal feeding

operation in Dawson County. John Boehler is the registered agent and president of Dawson Feeders.

JURISDICTION AND VENUE

3. The District Court has subject matter jurisdiction over this matter pursuant to Neb. Rev. Stat. § 24-302.

4. Venue is proper in Dawson County pursuant to Neb. Rev. Stat. § 35-403.01 as Dawson Feeders is located in Dawson County and a significant part of the actions in this proceeding arose in Dawson County.

FACTUAL ALLEGATIONS

5. Dawson Feeders operates a large confined animal feeding operation in Dawson County. Dawson Feeders' facility is north of Buffalo Creek, which discharges to the Platte River.

6. From March 13, 2019 until March 21, 2019, Dawson Feeders discharged effluent from its facility into a road ditch that itself discharges into Buffalo Creek. On March 26, 2019, an NDEE inspector conducted a discharge investigation and found that Dawson Feeders had cut a ditch from the southeast basin to the road ditch to drain the basin.

7. From May 27, 2019 until June 15, 2019, Dawson Feeders again discharged effluent from its facility into a road ditch that connects to Buffalo Creek. An NDEE inspector conducted a discharge investigation and found that the facility was not using its lagoons in the manner in which they were designed and permitted, that bubbling in the liner of one lagoon was reducing required storage requirements, that a ditch had been cut to the road ditch to drain a lagoon, and other operational problems that contributed to the discharge.

8. On July 9, 2019, Dawson Feeders again discharged effluent from its facility into a road ditch that connects to Buffalo Creek.

9. On July 21, 2019 through July 24, 2019, Dawson Feeders again discharged effluent from its facility into a road ditch that connects to Buffalo Creek. An NDEE inspector conducted a discharge investigation on July 24, 2019 and found similar operational problems that contributed to the discharge.

10. On August 24, 2019 through August 28, 2019, Dawson Feeders again discharged effluent from its facility into a road ditch that connects to Buffalo Creek. An NDEE inspector conducted a discharge investigation on September 5, 2019 and found similar operational problems that contributed to the discharge.

11. On September 3, 2019, Dawson Feeders was issued a Modified Phased Construction and Operating Permit. One condition of that permit required the repair of the facility's south structure synthetic liner by August 15, 2020. That deadline was not met.

12. On November 7, 2019, NDEE issued a Notice of Violation ("NOV") to Dawson Feeders listing three violations, including discharging effluent to waters of the State, cutting the southeast structure to the road ditch, and failing to report a discharge within five days of the discharge ceasing.

13. On May 23, 2020 through May 30, 2020, Dawson Feeders again discharged effluent from its facility into a road ditch that connects to Buffalo Creek. An NDEE inspector conducted a discharge investigation on May 27, 2020 and found the operation had not pumped lagoons down to required levels, the operation had not met start-pump requirements, required west structure maintenance and repair had not been completed, the east structure design was not in accordance with the approved permit, and other operational problems that contributed to the discharge. Dawson Feeders did not comply with the 24-hour verbal notice requirement nor the five-day written notice requirement for this discharge.

14. On June 16, 2020, NDEE issued an NOV to Dawson Feeders listing six violations, including discharging livestock waste to

waters of the State, failing to report a discharge within twenty-four hours, failing to submit a written report five days after a discharge, failure to submit a written report with an authorized representative's signature, and failure to properly maintain adequate holding pond levels in the north, south, and west structures and utilize all available dewatering days.

15. On August 30, 2021, NDEE issued a Letter of Non-Compliance ("LNC") (LNC is the new name for an NOV) to Dawson Feeders listing violations including failure to complete repairs in the south structure, failure to inspect the west structure, failure to document damage to the west structure, failure of the synthetic liner in a holding pond, failure to maintain proper working order in the structures, failure to document outstanding deficiencies (greater than thirty days) in the south structure liner, and failure to repair depth markers and maintain associated records.

CAUSES OF ACTION

FIRST CAUSE OF ACTION – DISCHARGE FROM AN ANIMAL FEEDING OPERATION

16. The allegations contained in paragraphs 1-16 above are incorporated herein by reference.

17. Under Neb. Rev. Stat. § 54-2432(4), it is unlawful for any person to, without a permit:

Discharge 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 onto an animal feeding operation, or other materials polluted by livestock waste in violation of or without first obtaining a National Pollutant Discharge Elimination System Permit, a construction and operating permit, or an exemption from the department, if required by the Environmental

Protection Act, the Livestock Waste Management Act, or the rules and regulations adopted and promulgated by the council pursuant to such acts.

18. 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 waters in a location where they are likely to cause pollution of any air, waters, or land of the state.”

19. Under 130 Neb. Admin. Code § 2-008, any person who owns or operates an animal feeding operation shall not:

008.02 Allow livestock at an animal feeding operation to come into contact with waters of the State, apply livestock waste on or into waters of the State, or to otherwise allow or cause a discharge;

...

008.10 Discharge animal excreta, feed, bedding, spillage, or overflow from water 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 an NPDES permit, a construction and operating permit, construction approval, or exemption from the Department, if required by the Nebraska Environmental Protection Act, Livestock Waste Management Act, or these regulations;

...

008.13 Violate the terms of an operating permit, construction approval, construction and operating permit or NPDES permit or any provision of the Livestock Waste Management Act and regulations.

20. Under 130 Neb. Admin. Code § 7-001, “For existing large beef . . . concentrated animal feeding operations . . . there shall be no discharge of manure, litter, or process wastewater pollutants into the waters of the state from the production area” unless precipitation causes an overflow from a production area that is “[d]esigned, constructed, operated and maintained to contain all manure, litter, and process wastewater including the runoff and the direct precipitation from a 25-year, 24-hour rainfall event,” and “[o]perated in accordance with these regulations.”

21. Dawson Feeders repeatedly discharged livestock waste from its facility, which, at all times material, was not constructed, operated, or maintained to contain the manure, litter, or process wastewater from a 25-year, 24-hour rainfall event and was not operated in accordance with the statutory and regulatory requirements.

22. Dawson Feeders discharged livestock waste from at least May 27, 2019 through June 15, 2019, on July 9, 2019, from July 21, 2019 through July 24, 2019, from August 24, 2019 through August 28, 2019, and from May 23, 2020 through May 30, 2020.

25. Each of these discharges left Dawson Feeders’ facility and entered a road ditch that connects to Buffalo Creek, in a place likely to reach waters of the State.

26. Each of these discharges is in violation of state law and is subject to a civil penalty of \$10,000 per day per violation.

SECOND CAUSE OF ACTION – PERMIT VIOLATIONS

27. The allegations contained in paragraphs 1-26 above are incorporated herein by reference.

28. 130 Neb. Admin. Code § 2-008.13 provides that “Any person who owns or operates an animal feeding operation shall not . . . [v]iolate the terms of an operating permit, construction approval,

construction and operating permit or NPDES permit or any provision of the Livestock Waste Management Act and regulations.

29. Some or all of the discharges of waste from Dawson Feeders' lagoons were caused by a ditch that was intentionally cut in the southeast structure.

30. Cutting a ditch into the southeast structure was not allowed by Dawson Feeders' Construction and Operating Permit.

31. Cutting a ditch into the southeast structure was a violation of state law and is subject to a civil penalty of \$10,000 per day per violation.

THIRD CAUSE OF ACTION – FAILURE TO NOTIFY NDEE OF DISCHARGE WITHIN FIVE DAYS

32. The allegations contained in paragraphs 1-31 above are incorporated herein by reference.

33. 130 Neb. Admin. Code § 2-010 provides 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.”

34. For some of the discharges of waste from Dawson Feeders' lagoons, Dawson Feeders failed to provide a written report within five days.

35. Failure to provide a written report within five days of the discharge was a violation of state law and is subject to a civil penalty of \$10,000 per day per violation.

REQUEST FOR RELIEF

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

- A. Declare Dawson Feeders violated the Livestock Waste Management Act, the Nebraska Environmental Protection Act, and Title 130 of the Nebraska Administrative Code;
- B. Enter the statutory maximum civil penalty against Dawson Feeders, as provided in Neb. Rev. Stat. § 81-1508.02(2);
- C. Tax all court costs herein to Dawson Feeders; and
- D. Grant Plaintiff such additional and further relief as this Court deems just and proper.

DATED this thirteenth day of June, 2023.

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

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