

IN THE DISTRICT COURT OF BUFFALO COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director,
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY,

Plaintiff,

v.

JANET M. SLEGRS, an individual,
WOOD RIVER DAIRY, L.L.C., a
Nebraska limited liability company, and
ASPEN DAIRY, a Nebraska general
partnership,

Defendants.

Case No. CI 13171

CONSENT DECREE

FILED
SHARON K MAHLER
2013 APR 12 AM 12 12
CLERK OF DISTRICT COURT
BUFFALO COUNTY, NE

COME NOW the parties, Plaintiff, Michael J. Linder, Director of the Nebraska Department of Environmental Quality (hereinafter "NDEQ"), proceeding on his Complaint filed herein and appearing through his Counsel, Jon Bruning, Attorney General, and Defendants, Janet M. Slegers, an individual, Wood River Dairy, L.L.C., a Nebraska limited liability company, and Aspen Dairy, a Nebraska general partnership, and each party having consented to the making and entering of this Consent Decree without trial, the Court finds that the Consent Decree should be and hereby is entered.

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

1. The Court has jurisdiction of the parties and the subject matter of this action pursuant to the Nebraska Environmental Protection Act, NEB.REV.STAT. § 81-1501 *et seq.* (Reissue 2008), and all rules and regulations and orders promulgated thereunder.

2. In the Complaint, the Plaintiff alleged, in pertinent part, that Defendants allowed or caused a discharge of livestock waste from its animal feeding operation located at 30955 Highway 183, Miller, Buffalo County, Nebraska, to the waters of the State, that Defendants failed to report said discharge



000179453D09



0090100E102

to NDEQ within 24 hours of its occurrence, and that Defendants violated a final order of the NDEQ director requiring Defendants to remain in compliance with certain environmental statutes and regulations for a period of two years, in violation of the Nebraska Environmental Protection Act, the Nebraska Livestock Waste Management Act, and certain rules and regulations adopted and promulgated pursuant to such Acts.

3. The parties agree that settlement of this matter is in the public interest and that 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, without this Consent Decree constituting an admission by Defendants with respect to such issues.

4. This Consent Decree will be in full satisfaction of all claims between the parties alleged in Plaintiff's complaint. The parties also agree to release any and all claims or actions arising out of the same transaction or occurrences referenced above and in Plaintiff's complaint, provided that such claims were known to NDEQ, or were reasonably ascertainable from information in NDEQ's possession, as of the date of the filing of the Consent Decree.

5. IT IS THEREFORE ORDERED that Defendants will pay a civil penalty, under NEB.REV.STAT. § 81-1508.02 (Reissue 2008), in the amount of thirty thousand dollars (\$30,000.00) as well as court costs in the amount of eighty-two dollars (\$82.00), to the District Court of Buffalo County, Nebraska.

- a. Ten thousand dollars (\$10,000.00) of said civil penalty will be paid within thirty days of the entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.
- b. Twenty thousand dollars (\$20,000.00) of the civil penalty will be paid to this Court no more than one (1) year from the entry of this Consent Decree by the Court. However, if Defendants maintain compliance with and do not violate any provision

of the Nebraska Environmental Protection Act, the Nebraska Livestock Waste Management Act, or any rule or regulation adopted and promulgated pursuant to such Acts, including, but not limited to, Title 130 of the Nebraska Administrative Code, during the one year following the entry of this Consent Decree, then payment of this \$20,000.00 of civil penalties will be waived.

- c. To qualify for the \$20,000.00 waiver of civil penalties as stated in paragraph 5(b), Defendants will file with the Court and serve upon Plaintiff a showing within fifteen (15) days prior to the due date of the civil penalties. The showing will certify that Defendants have maintained compliance with all requirements listed in paragraph 5(b). Plaintiff will file a satisfaction of judgment within ten (10) days of receipt of Defendants' showing. If Defendants violate the requirements in paragraph 5(b) during the one year following the entry of this Consent Decree, Plaintiff, in its sole discretion, may file an objection to Defendants' showing. If Plaintiff files an objection to Defendants' showing, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.
- d. Should Plaintiff file a satisfaction of judgment pursuant to paragraph 5(c), such satisfaction of judgment will be applicable only to the provisions contained in paragraph 5 of this Consent Decree and will not release Defendants from their obligations arising under any other section of this Consent Decree.

6. IT IS FURTHER ORDERED that Defendants will, within thirty (30) days of the entry of this Consent Decree and continuing each and every year thereafter by November 1st of each year, drain or de-water all waste lagoon cells at Defendants' facility to their required pre-winter levels. In the event Defendants fail to comply with this paragraph by the time required, Defendants will pay

stipulated civil penalties of one hundred dollars (\$100.00) per day for the first to fifteenth day of delay and five hundred dollars (\$500.00) per day for each day of delay thereafter.

7. IT IS FURTHER ORDERED that Defendants will, by or on the fifteenth (15th) day of the first month following the entry of this Consent Decree and continuing each and every month thereafter for a period of two (2) years, submit to NDEQ a lagoon pumping and manure hauling and spreading report for the immediately preceding month. In the event Defendants fail to submit said report to NDEQ by the time required in any month during the 2-year reporting period, Defendants will pay stipulated civil penalties of one hundred dollars (\$100.00) per day for the first to fifteenth day of delay and five hundred dollars (\$500.00) per day for each day of delay thereafter.

8. IT IS FURTHER ORDERED that Defendants will, within ninety (90) days of the entry of this Consent Decree, submit to NDEQ a complete nutrient management plan in accordance with the requirements of Title 130 of the Nebraska Administrative Code. The plan will include a list of land application sites available at any time of the year. In the event Defendants fail to submit said nutrient management plan to NDEQ by the time required, Defendants will pay stipulated civil penalties of one hundred dollars (\$100.00) per day for the first to fifteenth day of delay and five hundred dollars (\$500.00) per day for each day of delay thereafter.

9. IT IS FURTHER ORDERED that Defendants will, within ninety (90) days of the entry of this Consent Decree, submit to NDEQ a report evaluating Defendants' physical livestock waste control facilities. Said report will be prepared by a professional engineer licensed to practice in Nebraska and will evaluate all physical aspects of Defendants' livestock waste control facilities, including, but not limited to, the solid separation system, the staff gauge, and the cross-over pipe between waste lagoon cells. This report will cover an evaluation of sludge accumulation in the lagoon cells and describe any steps to be taken to avoid continuing problems with sludge accumulation. In the event Defendants fail to submit said report to NDEQ by the time required,

Defendants will pay stipulated civil penalties of one hundred dollars (\$100.00) per day for the first to fifteenth day of delay and five hundred dollars (\$500.00) per day for each day of delay thereafter.

10. IT IS FURTHER ORDERED that in the event Defendants fail to comply with the Nebraska Environmental Protection Act, the Nebraska Livestock Waste Management Act, and all rules and regulations adopted and promulgated pursuant to such Acts, including, but not limited to, Title 130 of the Nebraska Administrative Code, and such failure results in a discharge of livestock waste to any water of the State within two years of the entry of this Consent Decree, Defendants will cease operating Defendants' livestock operation and relinquish and surrender all of Defendants' state-issued permits concerning livestock waste to NDEQ. This paragraph will not be applicable to any livestock waste discharge attributable to a force majeure.

- a. For purposes of this Consent Decree, force majeure means any event arising from causes beyond the reasonable control of Defendants or any entity controlled by Defendants, including contractors and subcontractors, which results in the discharge of livestock waste from Defendants' facility into any water of the State. Defendants will exercise their best efforts to anticipate any potential force majeure and mitigate its effects as the event is occurring. Defendants will bear the burden to prove that a livestock waste discharge into any water of the State was attributable to a force majeure under this paragraph.

11. If any event occurs that may delay the performance of the obligations set forth in this Consent Decree, whether or not caused by a force majeure event, Defendants will notify NDEQ by telephone, e-mail or fax within 24 hours of learning of the event. Defendants will provide, in writing within 7 days, the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any action.

12. Information required to be submitted pursuant to this Consent Decree will be sent to:

Dennis Heitmann
Agricultural Section Supervisor
Water Quality Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, Nebraska 68509-8922
Telephone number (402) 471-2186

13. In the event NDEQ agrees that an event may delay the performance of any obligation set forth in this Consent Decree, the time for performance of the obligation will be extended for a period of time not to exceed the actual duration of the delay.

14. The parties may agree in writing to an extension caused by any other event.

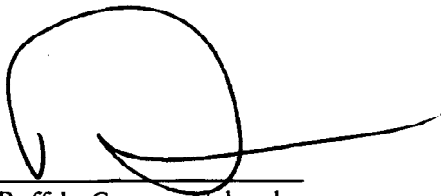
15. All civil penalties arising from this Consent Decree will be handled as provided in Article VII, Section V, of the Constitution of the State of Nebraska.

16. This Consent Decree will have no effect on any enforcement action brought by NDEQ against Defendants for future violations of any statutes or regulations.

17. The undersigned consent without further notice to the form and entry of this consent decree.

DATED THIS 1st day of April, 2013, in Buffalo County, Nebraska.

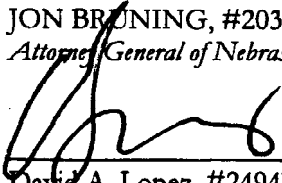
BY THE COURT:



District Judge of Buffalo County, Nebraska

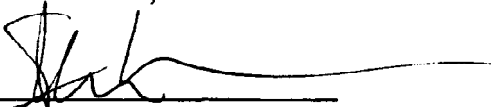
STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

By: JON BRUNING, #20351
Attorney General of Nebraska

By: 
David A. Lopez, #24947
Assistant Attorney General
2115 State Capitol
Lincoln, Nebraska 68509-8920
(402) 471-3882
dave.lopez@nebraska.gov

Attorneys for Plaintiff.

JANET M. SLEGGERS,
WOOD RIVER DAIRY, L.L.C.,
and ASPEN DAIRY, Defendants

By: 
Stephen D. Mossman, #19859
Mattson Ricketts Davies Stewart & Calkins
134 South 13th Street, Suite 1200
Lincoln, NE 68508
(402) 475-8433
sdm@mattsonricketts.com

Attorney for Defendants.

Notice of Judgment
Mailed to David Lopez
and Stephen Mossman
on 4-1-13

Sharon K. Mauler
Clerk of the District Court

By KAT