

IN THE DISTRICT COURT FOR HOWARD COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
EQUALITY,)
)
Plaintiff,)
v.)
)
JD CATTLE CO., INC.)
)
Defendant.)

Case No. CI 12-625

AMENDED
CONSENT DECREE
FILED

MAR 22 2013

MAR 22 2013
HOWARD COUNTY CLERK
CLERK OF DISTRICT COURT

The State of Nebraska, on behalf of the Nebraska Department of Environmental Quality ("NDEQ") and through its counsel, Attorney General Jon C. Bruning, and JD Cattle Co., Inc. ("JD Cattle"), through its counsel, Stephen D. Mossman, jointly file this Consent Decree and agree to this Court's entry of the following terms and orders:

1. This Court has jurisdiction of the parties and the subject matter of this action. The complaint filed in this case is a justiciable cause of action against JD Cattle under the Nebraska Environmental Protection Act, **Neb. Rev. Stat. § 81-1501 et seq.** (Reissue 2008), the Livestock Waste Management Act, **Neb. Rev. Stat. § 54-2416 et seq.** (Reissue 2009), and the rules and regulations promulgated pursuant to those acts.

2. In its Complaint filed herein, the State alleges that JD Cattle discharged livestock waste from its animal feeding operation into waters of the state in Howard County, Nebraska, in violation of **Neb. Rev. Stat. § 81-1506(1)(a)**. The State further alleges that JD Cattle received approval from NDEQ for the construction of a new livestock waste control facility, but has failed to meet the deadlines for construction.

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



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desire to resolve this matter without resorting to trial or adjudication of any issues of fact or law, without this Consent Decree constituting an admission by JD Cattle with respect to such issues. JD Cattle specifically denies that it allowed a discharge from his facility under **Neb.Rev.Stat. § 54-2431** (Reissue 2010).

4. The terms of this Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Complaint. The parties also agree to release any and all claims or actions arising out of the same transaction or occurrences referenced above and set forth in the Complaint provided that such claims were known to the State or were reasonably ascertainable from information in the State's possession as of the date of the filing of the Consent Decree.

5. The requirements of this Consent Decree are subject to force majeure. In the event that force majeure prevents JD Cattle from complying with the requirements of Paragraph 6, JD Cattle shall file a motion with the Court to seek excusal of its performance. The Court, after hearing, shall enter any order it deems appropriate which may include, without limitation, payment of the additional stipulated penalty contemplated herein or setting of new completion dates.

6. IT IS THEREFORE ORDERED that JD Cattle shall pay a civil penalty, in accordance with **Neb. Rev. Stat. § 81-1508.02**, in the amount of \$40,000.00 to the Howard County District Court along with the costs of this action. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. A \$10,000.00 civil penalty was paid to this Court upon entry of the original Consent Decree by the Court.

B. A \$30,000.00 civil penalty shall be paid to this Court no later than December 31, 2013. However, payment of this \$30,000.00 civil penalty will be waived if JD Cattle:

- i. Maintains compliance with the Nebraska Environmental Protection Act, **Neb. Rev. Stat. § 81-1501 et. seq.**, the Livestock Waste Management Act, **Neb. Rev. Stat. § 54-2416 et seq.**, or Title 130 of the Nebraska Administrative Code, "Livestock Waste Control Regulations", at all times after the entry of this Amended Consent Decree and until December 31, 2013;
- ii. Completes construction of the required livestock waste control facility in accordance with the plans and specifications approved by NDEQ on or before December 31, 2013; (b) submits progress reports to NDEQ on the progress of construction of the required livestock waste control facility beginning February 1, 2013; (c) secures an approval to operate prior to operating any modified portion of the facility; and (d) files and obtains approval of a Certification of Completion with NDEQ.
- iii. Files a Request for Waiver with the Court within 15 days following the due date of the civil penalties establishing that it has met all of the requirements listed in paragraph 6.

7. The State will file a Satisfaction of Judgment within 10 days of receiving JD Cattle's Request for Waiver if JD Cattle has complied with the terms set forth in Paragraph 6 between the date of entry of this Amended Consent Decree and December 31, 2013. If JD Cattle


fails to meet any of the terms set forth in paragraph 6 at any time between the date of entry of this Consent Decree and December 31, 2013, the State may file an objection to JD Cattle's Request for Waiver and the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

8. This Consent Decree shall have no effect on any enforcement action brought by the State or NDEQ against JD Cattle for future violations of any statutes or regulations.

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


DATED THIS ___ day of March 2013, in Howard County, Nebraska.

By The Court:

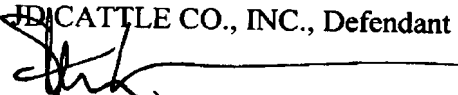

District Judge

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