

IN THE DISTRICT COURT OF GREELEY COUNTY, NEBRASKA

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

Plaintiff,

v.

NEBRASKA PORK PARTNERS,  
A General Partnership,

Defendant.

Case No. 06-3

CONSENT DECREE

COPY

Plaintiff, the Nebraska Department of Environmental Quality, proceeding on its Complaint filed herein and appearing through its counsel, Jon Bruning, Attorney General, and the Defendant, Nebraska Pork Partners, through its counsel, David A. Jarecke, 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 AND DECREED as follows:

1. This Court has jurisdiction of the parties and the subject matter of this action. The complaint filed herein constitutes a justiciable cause of action against the Defendant under the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004 and Supp. 2005).

2. Plaintiff alleges that on July 20, 2005 and continuing until July 21, 2005, Defendant caused pollution of waters of the state or placed or caused wastes to be

DEPARTMENT OF JUSTICE

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Catherine Sweeney  
Clerk of the District Court

placed in a location where they are likely to cause pollution to any waters of the state in violation of Neb. Rev. Stat. §81-1506(1)(a).

3. Plaintiff further alleges that on or around July 20, 2005, Defendant violated its state operating permit by failing to inspect their land application irrigation system in violation of Neb. Rev. Stat. §81-1506(5)(c) and Neb. Rev. Stat. §81-1508.02(1)(b).

4. The parties agree that settlement of these matters 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 the Defendant with respect to such issues. Therefore, and for only the purposes of this Consent Decree, the parties agree to the entry of this Order by the Court.

5. This Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Complaint and the parties further agree to release any and all claims or actions arising out of the same transaction or occurrences referenced above and in the complaint herein, provided that such claims were known to the State of Nebraska, or were reasonably ascertainable from information in the State's possession, as of the date of the filing of the consent decree.

6. IT IS ORDERED that Defendant shall pay into the District Court of Greeley County a penalty of \$18,000.00 (Eighteen thousand dollars), and the costs of the action in the amount of \$79.00 (Seventy-Nine dollars). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

a. \$6,000 (Five Six thousand dollars) of said penalty and the costs of the action are to be paid within seven (7) days of the approval of this Consent Decree by the District Court.

b. The remaining civil penalty of \$12,000 (Twelve thousand dollars) will be due and owing one hundred eighty (180) days after the approval of this Consent Decree by the District Court. In the event that Defendant maintains compliance with its obligations and provisions included in the foregoing texts, during the One hundred eighty day period following the Court's approval of this Consent Decree, the remaining \$12,000 (Twelve thousand dollars) of civil penalties will be waived:

- i. Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.*;
- ii. Livestock Waste Management Act, Neb. Rev. Stat. §54-2401 *et seq.*;
- iii. Title 117 of the Nebraska Administrative Code, Rules and Regulations pertaining to Nebraska Surface Water Quality Standards;
- iv. Title 119 of the Nebraska Administrative Code, Rules and Regulations pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System.
- v. Title 130 of the Nebraska Administrative Code, Rules and Regulations pertaining to Livestock Waste Control.

vi. Defendants' National Pollutant Discharge Elimination System Permit and all conditions and provisions related thereto.

c. To qualify for the \$12,000 waiver of civil penalties as stated in paragraph (6)(b), Defendant shall file a showing with the Court within (30) thirty days of the due date of the civil penalties establishing that it has maintained compliance as required. If Defendant receives a Notice of Violation from Plaintiff or is a party to legal action disputing compliance with the statutes and regulatory provisions in paragraph (5)(b) during the relevant time period, the Court may stay determination of this waiver provision pending ongoing enforcement proceedings.

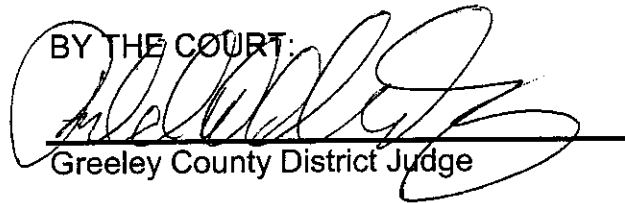
7. IT IS FURTHER ORDERED that the Defendant shall pay, as a Supplemental Environmental Project, the sum of \$12,000 (Twelve thousand dollars) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General.

8. For purposes of Neb. Rev. Stat. §54-2431 (Reissue 2004), these allegations shall constitute one discharge for the Wolbach Finish Site owned by Nebraska Pork Partners.

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


Dated this 23 day of January, 2006, in Greeley County, Nebraska.

BY THE COURT:

  
Greeley County District Judge

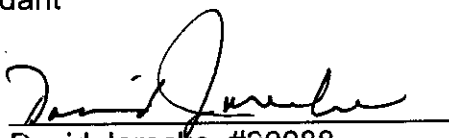
STATE OF NEBRASKA, ex rel.,  
MICHAEL J. LINDER, Director  
NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY, Plaintiff

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