

MAR 28 2006

STATE OF NEBRASKA

IN THE DISTRICT COURT OF DODGE COUNTY, NEBRASKA

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

Plaintiff, )

v. )

GARY KROENKE, LOU KROENKE )  
FARM, INC. D/B/A KROENKE )  
FARMS, INC. )

Defendant. )

Case No. 06-195

CONSENT DECREE

DOUGLAS COUNTY NE.  
LINDA SHELLSON  
DISTRICT COURT CLERK

06 MAR 27 PM 1:03

FILED

COME NOW the parties, Plaintiff, the Department of Environmental Quality (hereinafter "NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the Defendant, Gary Kroenke, Lou Kroenke Farm, Inc. d/b/a Kroenke Farms, Inc., 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. 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).

2. In its Complaint, Plaintiff alleges that the Defendant was in violation of its construction permit by failing to complete construction of a livestock waste control facility by August 1, 2005, and that Defendant had, and continues to have, livestock placed in the facility without a proper waste control system.

3. 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. The Defendant agrees to the form and entry of this Consent Decree for the purposes of settlement only. Therefore, and for only the purposes of this Consent Decree, the parties agree to the entry of this Order by the Court.

4. This Consent Decree shall be in full satisfaction of all claims alleged in the Complaint and the parties further agree to release any and all claims or actions arising out of the same transaction or occurrence 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.

5. IT IS THEREFORE ORDERED that the Defendant shall pay to the Clerk of the District Court of Dodge County a penalty of one thousand five hundred dollars (\$1,500.00), and the costs of the action in the amount of seventy-nine dollars (\$79.00); the penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution and will be due and owing 30 (thirty) days after the approval of this Consent Decree by the District Court.

6. IT IS FURTHER ORDERED that if the Defendant has not completed construction of a livestock waste control facility, as approved by the NDEQ, by August 1, 2006, Defendant stipulates and agrees that it shall cease operation of the livestock facility and remove all livestock from open lots of the facility until a waste control system is properly constructed and approved by NDEQ.

7. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

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

DATED THIS 27 day of March, 2006, in Dodge County, Nebraska.

**BY THE COURT:**

  
\_\_\_\_\_  
District Court Judge

**STATE OF NEBRASKA ex rel.,  
MICHAEL J. LINDER, Director  
Department of Environmental  
Quality, Plaintiff,**

By: JON C. BRUNING #20351,  
Attorney General

By: 

Justin D. Lavene #22178  
Assistant Attorney General  
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Lincoln, NE 68509  
Tel. (402) 471-2682

Attorneys for Plaintiff.

**GARY KROENKE, LOU KROENKE FARM, INC.  
d/b/a KROENKE FARMS, INC., Defendant,**

By: 

Gary Kroenke