

IN THE DISTRICT COURT OF JEFFERSON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
 MICHAEL J. LINDER, Director)
 DEPARTMENT OF ENVIRONMENTAL)
 QUALITY,)
)
 Plaintiff,)
 v.)
)
 CLASSIC DAIRY, INC.)
)
 Defendant.)

Case No. CL11-155

FILED

CONSENT DECREE

AUG 18 2011

Josanna M Wagant
 CLERK DISTRICT COURT
 JEFFERSON COUNTY, NE



COMES NOW the parties, Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its Counsel, Jon Bruning, Attorney General, and the Defendant Classic Dairy, 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. The Court has jurisdiction of the parties and the subject matter of this action pursuant to Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.* (Reissue 2010), and all rules and regulations and orders promulgated thereunder.
2. In its Complaint, the State alleges that on or about August 22 and 24, 2009, Classic Dairy discharged effluent from a livestock waste land application site to a water of the state in violation of § 81-1506(1) and NAC Title 130, Chapter 2, 008.03 and Chapter 11, 005. Furthermore, Classic Dairy failed to report the above alleged discharges to the NDEQ within 24 hours of the event in violation of NAC Title 130, Chapter 2, 010.
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



J00005047D33

desire to conclude this case without trial or adjudication of any issues of fact or law, without this consent decree constituting an admission by Classic Dairy, Inc., with respect to such issues.

4. This consent decree shall be in full satisfaction of all claims between the parties alleged in NDEQ'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 NDEQ'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 Classic Dairy, Inc., shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2010), in the amount of \$6,750.00 as well as court costs in the amount of \$82.00, to the Jefferson County District Court. The civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$2,250.00 of said civil penalty amount will be paid within ten days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.

B. \$4,500.00 of the civil penalty shall be paid to this Court no more than 180 days from the entry of this consent decree by the Court. However, if Classic Dairy, Inc., maintains compliance with and does not violate the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et. seq.*, the Livestock Waste Management Act, Neb. Rev. Stat. § 81-1501 *et seq.*, or any rules and regulations promulgated under either Act, including Title 130 of the Nebraska Administrative Code, "Livestock Waste Control Regulations" during the 180 days following the entry of this consent decree, then payment of this \$4,500.00 of civil penalties will be waived.

C. To qualify for the \$4,500.00 waiver of civil penalties as stated in paragraph 5(B), Classic Dairy, Inc. will file with the Court, and serve on NDEQ, a showing within fifteen (15) days following the due date of the civil penalties. The showing will certify that Classic Dairy has

maintained compliance with all requirements listed in paragraph 5(B). NDEQ will file a satisfaction of judgment within ten (10) days of receipt of Classic Dairy, Inc.'s showing. If Classic Dairy, Inc. violates the requirements in paragraph 5(B) during the 180 days following the entry of this Consent Decree, NDEQ, in its sole discretion, may file an objection to Classic Dairy Inc.'s showing. If NDEQ files an objection to Classic Dairy Inc.'s showing, the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

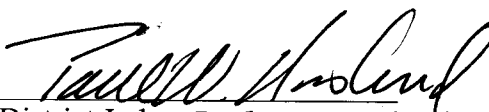
6. IT IS FURTHER ORDERED that the Classic Dairy, Inc. shall pay, as a voluntary supplemental environmental project, \$2,250.00 into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. This payment shall be paid as a lump-sum payment within ten (10) days of the entry of the consent decree by this Court.

7. This consent decree will have no effect on any enforcement action brought by NDEQ against Classic Dairy, Inc., for future violations of any statutes or regulations.

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

DATED THIS 18th day of Aug., 2011, in Jefferson County, Nebraska.

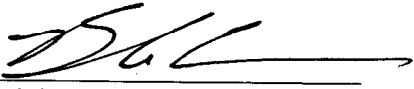
BY THE COURT:


District Judge Paul W. Korslund

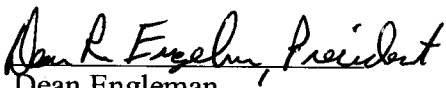


STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

By JON C. BRUNING, #20351
Attorney General

By: 
pc: Blake E. Johnson, #24158
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-1912
blake.johnson@nebraska.gov
Attorneys for Plaintiff.

Classic Dairy, Inc.,
Defendant

By: 
pc: Dean Engleman
Classic Dairy, Inc.
71465 Highway 103
Jansen, Nebraska 68377
Defendant.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on August 19 2011

By: U.S. Mail FAX
 Hand Delivered Overnight Courier
 Certified Mail Other

Signature Kris Stone, Deputy