

FILED IN THE DISTRICT COURT
YORK COUNTY, NEBRASKA

IN THE DISTRICT COURT OF YORK COUNTY, NEBRASKA

MAR 10 2014

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

Case No. CI 12-248

SHARILYN STEUBE
CLERK

Plaintiff,)

CONSENT DECREE

v.)

HEARTLAND SWINE, INC.,)

Defendant.)

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 Defendant, Heartland Swine, Inc., by and through its attorneys Rembolt Ludtke LLP, 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 March 27, 2010, and March 28, 2010, Defendant placed or caused to be placed swine waste from its animal feeding operation in a location where it was likely to cause pollution to any waters of the state in violation of § 81-1506(1). Further, the State alleges that Defendant failed to report the discharge of waste within



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the requisite time frame in violation of Title 130, *Rules and Regulations Pertaining to Livestock Waste Control*, Chapter 2, Section 010 and Neb. Rev. Stat. § 81-1508.02(1)(e). In its Answer, Defendant has denied the State's allegations.

3. The parties agree that settlement of this matter is in the interests of both parties 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 Defendant, with respect to such issues.

4. This consent decree shall be in full satisfaction of all claims between the named parties alleged in NDEQ's complaint. The named parties also agree to release any and all claims or actions between the named parties 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 or reasonably available to and/or obtainable by NDEQ, as of the date of the filing of the consent decree.

5. IT IS THEREFORE ORDERED that Heartland Swine, Inc. shall pay an amount to the State in the form of a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2010), in the amount of \$5,000.00 as well as court costs in the amount of \$82.00, to the York County District Court. The civil penalty amount shall be handled as provided in Article VII, Section V, of the Nebraska Constitution. The civil penalty amount will be paid within twenty days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.

6. IT IS FURTHER ORDERED that Heartland Swine, Inc. shall pay, as a voluntary supplemental environmental project, \$5,000.00 to the McCool Junction Rural Fire Department to be used at the sole discretion of the McCool Junction Rural Fire Department for the purchase of equipment used to extract petroleum products from bodies of water. This payment shall be paid as a lump-sum payment within twenty 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 Heartland Swine, 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 10th day of March, 2014, in York County, Nebraska.

BY THE COURT:

James C Stecker
District Judge JAMES C. STECKER

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

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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 3-10-2014

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

Signature David J.A. Bargaen

-Ryan S. Post
-David J.A. Bargaen
-McCool Fire Department

**HEARTLAND SWINE, INC.,
Defendant**

By: 

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