

IN THE DISTRICT COURT FOR PHELPS COUNTY, NEBRASKA

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

Plaintiff,

v.

SOUTH CENTRAL FEEDERS, INC.,

Defendant.

Case No. CT10-81

**CONSENT DECREE**

The State of Nebraska, on behalf of the Nebraska Department of Environmental Quality (NDEQ) and through its counsel, Attorney General Jon C. Bruning and Assistant Attorney General Kevin L. Griess, and South Central Feeders, Inc., through its counsel, Thomas R. Wilmoth, 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 South Central Feeders under the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2008, Supp. 2009), the Livestock Waste Management Act, Neb. Rev. Stat. § 54-2416 et seq. (Reissue 2004, Cum. Supp. 2008, Supp. 2009), and all rules and regulations promulgated those acts.

2. In its complaint, the State alleged that on June 20, 2007, South Central Feeders: (a) discharged livestock waste from its animal feeding operation into waters of the state in Phelps County, Nebraska, in violation of Neb. Rev. Stat. § 81-1506(1)(a) (Reissue 2008); (b) failed to monitor its irrigation distribution system, in violation of 130



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CLERK OF DISTRICT COURT  
PHELPS COUNTY

Neb. Admin. Code, ch. 12, § 001.04; and (c) failed to provide timely written notification to NDEQ of the discharge, in violation of the terms of its NPDES permit.

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

4. This consent decree shall be in full satisfaction of all claims between the parties alleged in the State'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 the State's 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. IT IS THEREFORE ORDERED that South Central Feeders shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$5,000, as well as court costs in the amount of \$82, to the Phelps County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$2,500 of the civil penalty shall be paid to this Court no more than 30 days from the entry of this consent decree by the Court.

B. \$2,500 of the civil penalty shall be paid to this Court no more than six months from the entry of this consent decree by the Court. However, if South Central Feeders maintains compliance with and does not violate either 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", during the six months following the entry of this consent decree, then payment of this \$2,500 of civil penalties will be waived.

C. To qualify for the waiver of \$2,500 of civil penalties as described in paragraph 5(B), South Central Feeders shall file a Request for Waiver with the Court within 15 days following the due date of the civil penalties establishing that it has maintained compliance with the statutes and regulatory provisions listed in paragraph 5(B). The State will file a satisfaction of judgment within 10 days of receiving South Central Feeders' Request for Waiver if South Central Feeders has complied with the statutes and regulations listed in paragraph 5(B) during the six months following the entry of this consent decree. If South Central Feeders violates the statutes or regulatory provisions in paragraph 5(B) during the six months following the entry of this consent decree, the State may file an objection to South Central Feeders' Request for Waiver and the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

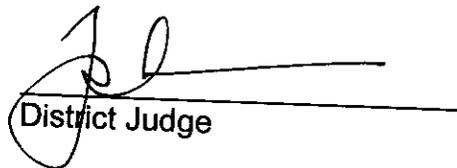
6. IT IS FURTHER ORDERED that South Central Feeders shall pay, as a supplemental environmental project, the sum of \$6,000 to the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by State law, at the sole discretion of the Nebraska Attorney General. This payment shall be paid as a lump-sum payment within 30 days of the entry of this consent decree by this Court.

7. This consent decree will have no effect on any enforcement action brought by the State or NDEQ against South Central Feeders 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 26<sup>th</sup> day of April, 2010, in Phelps County, Nebraska.

BY THE COURT:

  
District Judge

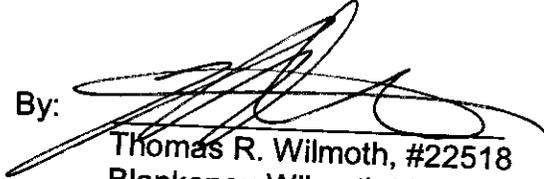
STATE OF NEBRASKA, ex rel.,  
MICHAEL J. LINDER, Director  
NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY, Plaintiff

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