

IN THE DISTRICT COURT OF PHELPS COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)
)
Plaintiff,)
)
v.)
)
DAHLGREN CATTLE CO., INC.,)
)
Defendant.)

Case No. CI 08-120

CONSENT DECREE

COPY

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 Dahlgren Cattle Co., Inc., appearing through its counsel, Stephen D. Mossman, 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:

1. The Court has jurisdiction of the parties and the subject matter of this action. The Complaint herein sets forth justiciable causes of action against Defendant.
2. NDEQ, in its Complaint, alleges that on or about July 3, 2007, the Defendant discharged cattle 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). In addition, NDEQ alleges Defendant violated its NPDES Permit in denying an authorized representative of the Department entry onto the Defendant's property. Pursuant to Neb. Rev. Stat. §81-



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JENNIFER L. NELSON
CLERK OF DISTRICT COURT
PHELPS COUNTY

1508.02(1)(b) it is unlawful for any person to violate any permit or license condition or limitation. NDEQ also alleges that Defendant modified or operated its disposal system by using an unpermitted method or equipment for land application of its waste in violation of Neb. Rev. Stat. §81-1506(2)(b).

3. NDEQ further alleges that Defendant is therefore subject to a civil penalty as provided in Neb. Rev. Stat. §81-1508.02(2) (Reissue 1999).

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. Defendant, without admitting any allegations of the Complaint, agrees to the form and entry of this Consent Decree for purposes of settlement only. Defendant specifically denies that it allowed an unpermitted discharge from its facility under **Neb. Rev. Stat. §54-2431** (2006 Cum. Supp.)

5. The parties agree that this Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Complaint and arising out of the same transaction or occurrence asserted therein, provided that such claims were known to the State of Nebraska as of the date of the filing of this Consent Decree.

6. IT IS THEREFORE ORDERED that Defendant shall pay to the Clerk of the District Court of Phelps County a civil penalty in the sum of twenty-four thousand dollars (\$24,000.00) pursuant to Neb. Rev. Stat. § 81-1508.02, together with court costs in the amount of seventy-nine dollars. (\$79.00). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

a. \$12,000 (Twelve thousand dollars) of said penalty and the costs of the action shall be imposed immediately upon the entry of this Consent Decree by the Court, and is due and owing no later than ten (10) days after the entry of this Consent Decree by the Court.

b. The remaining civil penalty of \$12,000 (ten thousand dollars) will be due and owing 180 days following the approval of this Consent Decree by the Court. In the event that said Defendant continues to maintain compliance with the following obligations and provisions, during the time period between the approval of this Consent Decree by the District Court and 180 days following that approval, the \$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 (twelve thousand dollars) waiver of civil penalties as stated in paragraph 6(B), Defendant shall file a showing with the Court within 30 (thirty) days following the due date of the civil penalties establishing that it has maintained compliance as required. If the Defendant does not receive a Notice of Violation from NDEQ and is not a party to legal action initiated by the NDEQ disputing compliance with the statutes and regulatory provisions in paragraph 6(B) during the relevant time period, NDEQ shall file a Satisfaction of Judgment in the case within ten days of receipt of Defendant's showing. If Defendant receives a Notice of Violation from NDEQ, or is a party to legal action initiated by NDEQ disputing compliance with the statutes and regulatory provisions in paragraph 6(B) during the relevant time period, NDEQ shall file an objection to Defendant's showing and determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

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 or Defendant's ability to pursue other parties for liability related to the circumstances giving rise to this action.

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

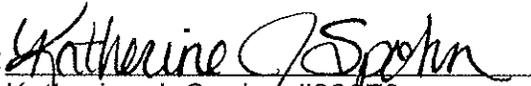
Dated this 18th day of July, 2008.

BY THE COURT:


DISTRICT JUDGE

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

By: JON C. BRUNING #20351
Attorney General

By: 
Katherine J. Spohn, #22979
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2682
Attorneys for Plaintiff

DAHLGREN CATTLE CO., INC., Defendant,

By: 

Stephen D. Mossman, #19859
Mattson, Ricketts, Davies, Stewart & Calkins
134 South 13th Street, Suite 1200
Lincoln, NE 68508
Tel. (402) 475-8433
sdm@mattsonricketts.com

Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Consent Decree has been served upon the Defendant by regular United States mail, first class postage prepaid on this ~~12th~~ ^{10th} day of July, 2008 addressed to the Defendant's attorney of record as follows:

Stephen D. Mossman, #19859
Mattson, Ricketts, Davies, Stewart & Calkins
134 South 13th Street, Suite 1200
Lincoln, NE 68508


Katherine J. Spohn
Assistant Attorney General