

IN THE DISTRICT COURT FOR YORK COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
DEPARTMENT OF ENVIRONMENTAL )  
QUALITY, )  
 )  
Plaintiff, )  
v. )  
 )  
BLUE RIVER PORK, INC., )  
 )  
Defendant. )

Case No. CI 11 34

**CONSENT DECREE**

FILED IN THE DISTRICT COURT  
YORK COUNTY, NEBRASKA

FEB 11 2011

SHARILYN RAMSEY  
CLERK

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 Blue River Pork, 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 2008), and all rules and regulations and orders promulgated thereunder.

2. In its complaint, the State alleges that Blue River Pork on or about August 14, 2008, operated the waste control facility without written approval from the Department; and on or about August 2008 Blue River Pork had changed the design and operation by changing the piping and destination of the waste from storage pit 1 to storage pit 2, without approval from the Department. Neb. Rev. Stat. §81-1506 (5) (c) and §81-1508.02 (1) (b) make it unlawful for any person to violate any term or condition of an animal feeding operation permit



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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 Blue River Pork, Inc., 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 Blue River Pork shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$6,250.00, as well as court costs in the amount of \$82.00, to the York County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$1,250.00 of the civil penalty shall be paid to this Court no more than 10 days from the entry of this consent decree by the Court.

B. \$5,000.00 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 Blue River Pork maintains compliance with and does not violate Title 130 of the Nebraska Administrative Code, "Livestock Waste Control Regulations" and the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et. seq.*, or any rules and

regulations promulgated under during the 180 days following the entry of this consent decree, during the 180 days following the entry of this consent decree, then payment of this \$5,000.00 of civil penalties will be waived.

C. To qualify for the waiver of \$5,000.00 of civil penalties as described in paragraph 5(B), Blue River Pork 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 Blue River Pork's Request for Waiver if Blue River Pork has complied with the statutes and regulations listed in paragraph 5(B) during the 180 days following the entry of this consent decree. If Blue River Pork violates the statutes or regulatory provisions in paragraph 5(B) during the 180 days following the entry of this consent decree, the State may file an objection to Blue River Pork's Request for Waiver and the determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

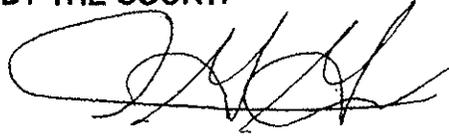
6. IT IS FURTHER ORDERED that Blue River Pork shall pay, as a supplemental environmental project, the sum of \$1,250.00 to the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by State law, at the sole 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 Blue River Pork 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 11<sup>th</sup> day of February, 2011, in York County, Nebraska.

BY THE COURT:



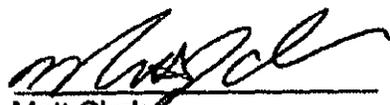
District Court Judge

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

By JON C. BRUNING, #20351  
Attorney General

By:   
Katherine J. Spohn, #229791  
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Attorneys for Plaintiff.

BLUE RIVER PORK, INC.,  
Defendant

By:   
Matt Clark  
Blue River Pork Inc.  
P.O. Box 205  
McCool Junction, NE 68401  
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 February 11 2011

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

Signature Sharilyn Ramsey

Katherine Spohn  
Matt Clark/Blue River Pork

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the \_\_\_ day of February, 2011, a true and correct copy of the foregoing Consent Decree was mailed by regular United States mail; postage prepaid, to the defendant as follows:

Matt Clark  
Blue River Pork, Inc.  
P.O. Box 205  
McCool Junction, NE 68401

  
Katherine J. Spohn  
*Special Counsel to the Attorney General*