

IN THE DISTRICT COURT FOR LANCASTER COUNTY, NEBRASKA

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

Case No. CZ11-241

CONSENT DECREE

LANCASTER COUNTY
2011 JAN 19 PM 3 59
CLERK OF THE
DISTRICT COURT

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 Dinsdale Bros., 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 1999, Cum. Supp. 2004 and Supp. 2005), and all rules and regulations and orders promulgated thereunder.

2. In its complaint, NDEQ alleges that on January 4, 2009, January 5, 2009, February 3, 2010, and February 4, 2010, Defendant discharged livestock waste from an irrigation pipe at its animal feeding operation into waters of the state when it did not have a permit, approval, or exemption from NDEQ to do so, in violation of Neb. Rev. Stat. §81-1506(2). Further, Defendant has failed to construct a fifth monitoring well and a structure known as Holding Pond 2 in violation of the express conditions of a July 26, 2006 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 by Dinsdale Bros., Inc. with respect to such issues. Dinsdale Bros., Inc. specifically denies that it allowed a discharge from his facility under Neb.Rev.Stat. § 54-2431 (Supp. 2009).

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 Dinsdale Bros., Inc., shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$7,500.00 as well as court costs in the amount of \$82.00, to the Lancaster County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$7,500.00 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 Dinsdale Bros., Inc. maintains compliance with and does not violate the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq., during the 180 days following the entry of this consent decree, then payment of this \$7,500.00 of civil penalties will be waived.

B. To qualify for the \$7,500.00 waiver of civil penalties as stated in paragraph 5(A), Defendant 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

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

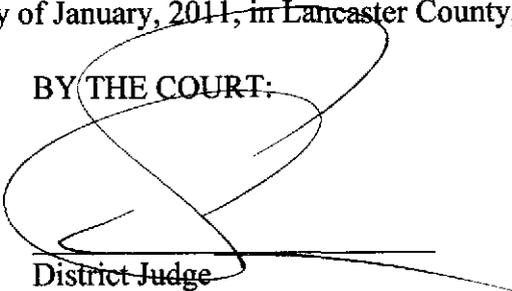
6. IT IS FURTHER ORDERED that Dinsdale Bros., Inc. shall pay, as a supplemental environmental project, the sum of \$7,500.00 to the Attorney General's Environmental Protection Fund. This payment shall be due ten days following entry of this consent decree.

7. This consent decree will have no effect on any enforcement action brought by NDEQ against Dinsdale Bros., 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 19th day of January, 2011, in Lancaster County, Nebraska.

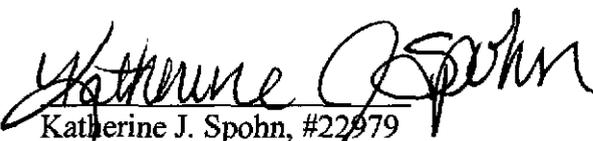
BY THE COURT:


District Judge

KAREN B. FLOWERS

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

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Defendant

By: 
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(402) 475-8433
sdm@mattsonricketts.com
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the _____ day of January, 2011, a true and correct copy of the foregoing Consent Decree was mailed by regular United States mail; postage prepaid, to the attorney for Dinsdale Bros., Inc., as follows:

Stephen D. Mossman
Mattson, Ricketts, Davies, Stewart & Calkins
134 S. 13th St., Suite 1200
Lincoln, Nebraska 68506

Katherine J. Spohn
Special Counsel to the Attorney General