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IN THE DISTRICT COURT OF HALL COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
JIM MACY, Director, NEBRASKA)
DEPARTMENT OF)
ENVIRONMENT AND)
ENERGY,)
)
Plaintiff,)
)
v.)

Case No. CI19-593

CONSENT DECREE

C & I CATTLE COMPANY, a Nebraska)
Corporation, and KEN A. KOHLHOF, as)
an individual,)
)
Defendants.)

FILED

JUL 19 2019

VALORIE BENDIXEN
CLERK OF DISTRICT COURT

COMES NOW Plaintiff, the State of Nebraska on behalf of Jim Macy, Director of the Nebraska Department of Environment and Energy ("NDEE"), proceeding on the Complaint filed herein and appearing through counsel, Douglas J. Peterson, Attorney General, and Defendants, C & I Cattle Company ("C & I Cattle") and Ken A. Kohlhof ("Kohlhof"), appearing through counsel, and each party having consented to the making and entering of this Consent Decree without trial, request entry of this Consent Decree.

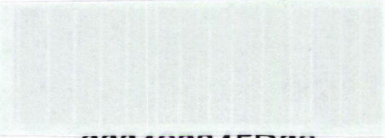
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IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. This Court has jurisdiction over this action pursuant to Neb. Rev. Stat. § 24-302 and venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as C & I Cattle's large concentrated animal feeding operation is located in Hall County and the events at issue took place in Hall County.

2. In the Complaint, NDEE alleges that C & I Cattle and Kohlhof violated the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.*, the Livestock Waste Management Act, Neb. Rev. Stat. § 54-2416 *et seq.*, and Title 130 of the Nebraska Administrative Code, in the following particulars:

A. Failing to obtain a Construction and Operating Permit or NPDES Permit;



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- B. Operating a large confined animal feeding operation without a livestock waste control facility; and
- C. Discharging livestock waste through a road ditch and ultimately into a neighboring pasture on May 10 and 11, 2016, and at other times.

3. The parties agree settlement of this matter is in the public interest and 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. The parties further desire to conclude this case without this Consent Decree constituting an admission by Defendants with respect to such issues.

4. This Consent Decree will be in full satisfaction of all claims between the parties alleged in Plaintiff's Complaint and the Consent Decree, as well as claims arising during the pendency of the Consent Decree for which stipulated penalties are paid by Defendants. The parties also agree to release any and all claims or actions arising out of the same transaction or occurrences referenced above and set forth in the 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. This Consent Decree will have no effect on any enforcement action brought by NDEE against Defendants for future violations of any statutes or regulations.

5. IT IS THEREFORE ORDERED Defendants will pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02(2) (Reissue 2014), in the amount of thirty-five thousand dollars (\$35,000.00), as well as court costs in the amount of eighty-three dollars (\$83.00), to the District Court for Hall County, Nebraska. The civil penalty will be handled as provided by Article VII, Section V, of the Nebraska Constitution. In addition:

- A. By July 1, 2019, Defendants shall complete construction of any required livestock waste control facilities, obtain all necessary permits or permit alterations, and come

fully into compliance with the Modified Construction and Operating Permit and all applicable statutes, regulations, and other requirements governing the feeding of livestock and feeding facilities.

B. By August 1, 2019, Defendants shall submit signed certification paperwork to NDEE certifying that all requirements of the Modified Construction and Operating Permit and applicable statutes and regulations have been met and requesting an inspection. Defendants shall, at the same time, submit a Showing of Compliance to the Nebraska Attorney General's Office certifying that all requirements have been met that were required under this Consent Decree by August 1, 2019.

C. After the date this Consent Decree is filed and until the time that Paragraphs 5(A) and 5(B) have been met, Defendants shall submit reports on the first day of each month to NDEE providing a detailed update on the construction status, including, but not limited to, what work has been completed and what work still remains. Specific reference shall be made to the status of the holding pond, the debris basin, and the lift station.

6. Defendants will comply with their Modified Construction and Operating Permit, Nebraska Environmental Protection Act (Neb. Rev. Stat. § 81-1501 et seq.) and Title 130 of the Nebraska Administrative Code, as well as the requirements of this Consent Decree. If Defendants violate applicable permit conditions, statutes, regulations, or this Consent Decree, then Defendants stipulate to the following:

A. If Defendants fail to meet the requirements in Paragraphs 5(A) or 5(B) above, Defendants, within fourteen (14) days, shall depopulate the feeding facility of any and all livestock and shall not repopulate with livestock or undertake any further feeding

operations until all requirements have been met. In addition, upon failure to meet the requirements of Paragraphs 5(A) or 5(B) above, Defendants, collectively, shall pay the following stipulated penalties:

- a. A civil penalty in the amount of fifty thousand dollars (\$50,000.00).
 - b. Upon failure to depopulate the feedlot as required by this paragraph, or upon repopulation of the facility without approval, a civil penalty of one thousand dollars (\$1,000.00) per day;
 - c. A civil penalty of five hundred dollars (\$500) per day until the requirements of 5(A) and 5(B) are met or until Defendants have completed all decertification requirements in the Modified Construction and Operating Permit and as required by the Nebraska Environmental Protection Act (Neb. Rev. Stat. § 81-1501 *et seq.*) and Title 130 of the Nebraska Administrative Code, including submitting a written request to NDEE to conduct a final inspection.
- B. If Defendants fail to meet the requirements in Paragraph 5(C), Defendants, collectively, shall pay a stipulated penalty of five hundred dollars (\$500.00) per day until the report is filed.
- C. For any unlawful discharges leaving the C & I Cattle property, including into a road ditch, occurring between the filing of this Consent Decree and December 31, 2019, Defendants, collectively, shall pay a stipulated penalty of ten thousand dollars (\$10,000.00) per violation per day, which is the statutory maximum under the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 *et seq.*
8. By January 14, 2020, but not sooner than January 1, 2020, Defendants shall submit a Showing of Compliance to the Nebraska Attorney General's Office certifying that all requirements of the Consent Decree have been met and that there have been no additional violations of the Nebraska

Environmental Protection Act or Title 130 of the Nebraska Administrative Code during the pendency of the Consent Decree.

9. When the requirements of the Consent Decree have been met, Defendants have submitted the required Showings of Compliance under Paragraphs 5(B) and 8 above, and NDEE certifies the compliance, Plaintiff shall file a Satisfaction of Judgment with the Court. If, however, Defendants violate the requirements of the Consent Decree, Plaintiff may file with the Court a motion to enforce the terms of the Consent Decree and for any other relief Plaintiff deems appropriate. If Defendant contends the Consent Decree's requirements in Paragraph 6 have been satisfied but the Plaintiff disagrees, Defendant may file with the Court a motion to determine whether the Consent Decree has been satisfied and to declare the rights of the parties. The court shall retain jurisdiction of this action to enforce the Consent Decree or declare the rights of the parties in the event of a controversy concerning its terms or whether those terms have been satisfied. The Defendant shall not file a motion that would constitute a collateral attack on an order of the Director of NDEE, including but not limited to a final determination to deny a permit because of construction deficiencies. Any final orders of the Director of NDEE governed by the Administrative Procedure Act must be appealed using that process.

10. This Consent Decree is binding on the Defendants' successors and assigns. Any change in ownership or corporate or other legal status, including bankruptcy or transfer of any assets or real or personal property, shall in no way alter the status or responsibilities of the Defendants under this Consent Decree.

11. Only force majeure shall excuse performance of this Decree. For purposes of this Consent Decree, force majeure shall only mean an event arising from causes beyond the control of Defendant which results in a delay of compliance with the requirements set forth in this Consent Decree. Defendant will exercise their best efforts to anticipate any potential force majeure and mitigate

its resulting delay. Defendant will bear the burden to prove that any delay was attributable to a force majeure under this paragraph. Defendants specifically acknowledge that inclement weather, including but not limited to rain, will not constitute a force majeure event and will not excuse non-compliance and that neither increased cost nor economic hardship will excuse non-compliance. The deadlines for compliance in the Consent Decree will be strictly enforced.

12 The undersigned consent without further notice to the form and entry of this Consent Decree.

DATED THIS 19th day of July, 2019, in Hall County, Nebraska

By the Court:



District Judge

STATE OF NEBRASKA, ex rel.,
JIM MACY, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENT AND
ENERGY,
Plaintiff,

By: DOUGLAS J. PETERSON #18146
Attorney General

By: 

Joshua B. Dethlefsen, #24667

Justin D. Lavene, #22178

Assistant Attorney General

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Lincoln, Nebraska 68509-8920

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Consent Deuce

C & I Cattle Company and Ken A. Kohlhof,
Defendants

By: *David A. Domina*
David A. Domina 6.28.19
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402-493-4100
dad@dominalaw.com

CERTIFICATE OF SERVICE

I, the undersigned, certify that on July 19, 2019 , I served a copy of the foregoing document upon the following persons at the addresses given, by mailing by United States Mail, postage prepaid, or via E-mail:

David A Domina
ddomina@dominalaw.com

Joshua E Dethlefsen
joshua.dethlefsen@nebraska.gov

Date: July 19, 2019

BY THE COURT:

Valorie Bendyjen

CLERK

