

IN THE DISTRICT COURT OF PIERCE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)	
JIM MACY, Director,)	Case No. <u>CI 22-5</u>
NEBRASKA DEPARTMENT OF)	
ENVIRONMENT AND ENERGY,)	
)	
Plaintiff,)	CONSENT DECREE
)	
v.)	
)	
DIAMOND A FARMS, LLC,)	
)	
Defendant.)	

COMES NOW Plaintiff, the State of Nebraska on behalf of Jim Macy, Director of the Nebraska Department of Environment and Energy (“Department”), proceeding on the Complaint filed herein and appearing through counsel, Douglas J. Peterson, Attorney General, and Defendant, Diamond A Farms, LLC, a Nebraska limited liability company, 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.

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

1. This Court has jurisdiction over the subject-matter of this action, pursuant to Neb. Rev. Stat. § 24-302, and over the parties to this action. Venue is proper pursuant to Neb. Rev. Stat. § 25-403.01, as Defendant’s facility is located in Pierce County and the events at issue took place in Pierce County.

2. In the Complaint, Plaintiff alleges Defendant violated the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.*, the Livestock Waste Management Act (“LWMA”), Neb. Rev. Stat. § 54-2416 *et seq.*, and applicable rules and regulations by, *inter alia*, discharging livestock waste without a permit and failing to report a discharge, polluting the land and/or water of the state, operating an animal feeding operation without a livestock waste control facility (“LWCF”), and failing to submit a Nutrient Management Plan (“NMP”) as part of the application for a construction and operating permit.

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 Defendant 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. This Consent Decree does not satisfy any future violations of any statutes or rules and regulations.

5. IT IS THEREFORE ORDERED that Defendant shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02(2), in the amount of twenty thousand dollars (\$20,000.00) to the District Court for Pierce County, Nebraska, as well as reimburse the Plaintiff for court costs in the amount of eighty-five dollars (\$85.00), subject to the following:

- A. Ten thousand dollars (\$10,000.00) of the civil penalty shall be paid by Defendant within thirty (30) days of entry of the Consent Decree and made payable to the Clerk of the District Court for Pierce County. Defendant shall also reimburse the Plaintiff for court costs in the amount of eighty-five dollars (\$85.00) within thirty (30) days of entry of the Consent Decree and made payable to the Nebraska Attorney General's Office; and
- B. The remaining ten thousand dollars (\$10,000.00) of the civil penalty shall be waived if Defendant complies with the following terms and conditions:
 - i. Defendant shall submit an amended LWCF application and NMP to the Department for a construction and operating permit no later than thirty (30) days after entry of this Consent Decree;

- ii. Defendant shall construct a LWCF in accordance with the plans and specifications approved by the Department within one (1) year of issuance of the construction and operating permit; and
- iii. Defendant shall not have any violations of NEPA, LWMA, applicable rules and regulations, or issued permits during the compliance period of this Consent Decree. However, discharges of livestock waste from Defendant's animal feeding operation will not be considered violations for purposes of waiver of the remaining half of the civil penalty if Defendant reports the discharge in accordance with 130 Neb. Admin. Code § 2-010 and makes efforts to prevent, mitigate, and clean up any discharge of livestock waste during the compliance period of the Consent Decree. This exception does not preclude Plaintiff from bringing an enforcement action for future violations, including discharges of livestock waste during the compliance period of this Consent Decree.

C. If Defendant does not comply with the requirements of Paragraph 5(B), above, then the remaining ten thousand dollars (\$10,000.00) will not be waived and, instead, Defendant shall pay the remaining half of civil penalty to the Clerk of the District Court for Pierce County within thirty (30) days of notice of failure to comply with and satisfy the requirements for waiver of the remaining half of the civil penalty.

D. The civil penalty will be deposited by the Court and remitted to the County Treasurer for Pierce County for use and support of the common schools in Pierce County as directed by Article VII, Section 5, of the Nebraska Constitution.

6. In addition to the foregoing civil penalty, Defendant shall be subject to the following:

A. If Defendant fails to construct the LWCF in accordance with the plans and specifications approved by the Department within one (1) year of issuance of the construction and operating permit as required by Paragraph 5(B)(ii), then Defendant shall pay the stipulated penalty of \$500.00 per day until construction of the LWCF is completed in accordance with the plans and specifications approved by the Department. Defendant shall pay any stipulated penalties no later than thirty (30) days after construction of the LWCF is completed in accordance with the plans and specifications approved by the Department. Any stipulated penalties paid under this Consent Decree will be deposited by the Court and remitted to the County Treasurer for Pierce County for use and support of the common schools in Pierce County as directed by Article VII, Section 5, of the Nebraska Constitution.

B. No later than fourteen (14) days after construction of the LWCF is complete, Defendant shall provide Plaintiff with a Showing of Compliance. This Showing of Compliance must indicate Defendant complied with all terms and conditions in the Consent Decree. The Department will verify compliance with the Consent Decree, including that the LWCF was constructed in accordance with the

plans and specifications approved by the Department. Plaintiff will file a Satisfaction of Judgment with the Court after Defendant provides it's Showing of Compliance and the Department verifies Defendant fully complied with all terms and conditions in this Consent Decree. If Defendant, however, does not comply with all terms and conditions of the Consent Decree during the compliance period, then Plaintiff, in its sole discretion, may file with the Court a motion to enforce the terms of the Consent Decree to recover any unpaid civil penalties, any unpaid stipulated penalties, and to demand completion of any terms and conditions under the Consent Decree, if necessary.

6. This Consent Decree is binding on Defendant's successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendant under this Consent Decree.

7. This Consent Decree will have no preclusive effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or rules and regulations. Defendant acknowledges that noncompliance with the terms and conditions set forth in this Consent Decree may also be violations of the Nebraska Environmental Protection Act, the Livestock Waste Management Act, or applicable rules and regulations, and this Consent Decree does not preclude Plaintiff from bringing an independent enforcement action seeking civil penalties and/or injunctive relief for such violations.

8. Plaintiff reserves its rights to seek civil penalties and/or injunctive relief against Defendant for future violations of the Nebraska Environmental Protection Act, the Livestock Waste Management Act, and applicable rules and regulations.

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

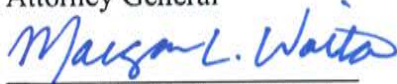
DATED this 4th day of February 2022, in Pierce County, Nebraska.

BY THE COURT

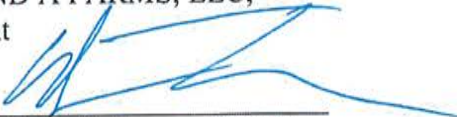

District Judge of Pierce County, Nebraska

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

BY: Douglas J. Peterson, #18146
Attorney General

BY: 
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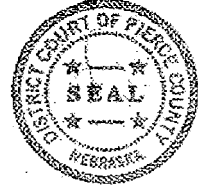
DIAMOND A FARMS, LLC,
Defendant

BY: 
Andrew S. Tugan, #26917
Koley Jessen P.C., L.L.O.
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(402) 343-3755
Andrew.Tugan@koleyjessen.com
Attorney for Defendant

CERTIFICATE OF SERVICE

I, the undersigned, certify that on February 4, 2022 , 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:

Maegan L Woita
Maegan.woita@nebraska.gov



Date: February 4, 2022

BY THE COURT:

Virgie Pierce

CLERK