

IN THE DISTRICT COURT FOR BOONE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
)
Plaintiff,)
v.)
)
WHITEWATER FARMS,)
A Nebraska General Partnership,)
)
Defendant.)

Case No. CI 10-45

CONSENT DECREE
FILED IN THE OFFICE OF THE CLERK
OF THE DISTRICT COURT
BOONE COUNTY, NEBRASKA

JUN 07 2010

Ellen L. Hirsch
CLERK OF 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 Whitewater Farms, A Nebraska General Partnership, 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 June 13, 2007, Defendant discharged livestock waste from a draw down tube in a lagoon dike in violation of Neb. Rev. Stat. §81-1506(1) (a), and that Defendant also installed a draw-down tube that was not a part of the plans submitted to the Department in violation of Neb. Rev. Stat. §81-1506(2) (b).



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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 Whitewater Farms with respect to such issues.

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 Whitewater Farms, shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$5,000.00 as well as court costs in the amount of \$82.00, to the Boone County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$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 Whitewater Farms 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 \$5,000.00 of civil penalties will be waived.

B. To qualify for the \$5,000.00 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 Whitewater Farms shall pay, as a supplemental environmental project, the sum of \$5,000.00 to the St. Edward Fire Department. This payment shall be paid as a lump-sum payment and shall be due upon the entry of this consent decree.

7. This consent decree will have no effect on any enforcement action brought by NDEQ against Whitewater Farms, 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 3 day of June, 2010, in Boone County, Nebraska.

CERTIFICATE OF SERVICE

I, Ellen L. Hirsch, Clerk of the District Court, Boone County, Nebraska do hereby certify that a copy of the above was sent to Counsel and/or parties in the above entitled case.

6-14-10 ELH
Date Deputy District Court Clerk
Katherine J Spohn

BY THE COURT:

[Signature]
District Judge

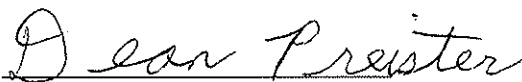
STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff

By JON C. BRUNING, #20351
Attorney General

By: 
Katherine J. Spohn, #27979
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682
katie.spohn@nebraska.gov

Attorneys for Plaintiff.

WHITEWATER FARMS,
A Nebraska General Partnership, Defendant

By: 
Dean Preister
45761 370th Avenue
Humphrey, NE 68642

Defendant.