

IN THE DISTRICT COURT FOR DAWSON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF)
ENVIRONMENTAL EQUALITY,)

Case No. CI 09-433

Plaintiff,)

CONSENT DECREE

v.)

JANE BELLAMY ROHMAN, d/b/a)
PLUM CREEK CATTLE,)

Defendant.)

The State of Nebraska, on behalf of the Nebraska Department of Environmental Quality (NDEQ) and through its counsel, Attorney General Jon C. Bruning and Assistant Attorney General Kevin L. Griess, and Jane Bellamy Rohman, doing business as Plum Creek Cattle, through its counsel, Stephen D. Mossman, jointly file this consent decree and agree to this Court's entry of the following terms and orders:

1. This Court has jurisdiction of the parties and the subject matter of this action. The complaint filed in this case is a justiciable cause of action against Plum Creek Cattle under 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 all rules and regulations promulgated those acts.

2. In its complaint, the State alleged that on April 16, 2008, Plum Creek Cattle discharged livestock waste from its animal feeding operation into waters of the state in Dawson County, Nebraska, in violation of Neb. Rev. Stat. § 81-1506(1)(a) (Reissue 2008). The State further alleged that Plum Creek Cattle

STATE OF NEBRASKA
DAWSON COUNTY

DEC 16 2011

FILED BY SHERRY WARNER
CLERK OF DISTRICT COURT



received construction approval from NDEQ for a new livestock waste control facility at its animal feeding operation, which required Plum Creek Cattle to complete construction of the livestock waste control facility and submit a ground water monitoring plan to NDEQ by certain deadlines, neither of which were fulfilled. Plum Creek Cattle denies the allegations in the State's complaint.

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 Plum Creek Cattle 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 Plum Creek Cattle shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$22,500 to the Dawson County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$7,500 of the civil penalty shall be paid to this Court no more than 30 days from the entry of this consent decree by the Court.

B. \$15,000 of the civil penalty shall be paid to this Court no later than October 1, 2012. However, payment of this \$15,000 of civil penalties will be waived if Plum Creek Cattle: (a) maintains compliance with and does not violate the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et. seq., the Livestock Waste Management Act, Neb. Rev. Stat. § 54-2416 et seq, or Title 130 of the Nebraska Administrative Code, "Livestock Waste Control Regulations", at any time after the entry of this consent decree and before October 1, 2012; and (b) completes construction of its livestock waste control facility in accordance with the construction approval issued by NDEQ on April 10, 2006 (including any modifications approved by NDEQ after April 10, 2006), and files a Certification of Completion with NDEQ, on or before October 1, 2012.

C. To qualify for the waiver of \$15,000 of civil penalties as described in paragraph 5(B), Plum Creek Cattle 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) and that it has completed construction of its livestock waste control facility and filed a Certification of Completion with NDEQ. The State will file a satisfaction of judgment within 10 days of receiving Plum Creek Cattle's Request for Waiver if Plum Creek Cattle has complied with the statutes and regulations listed in paragraph 5(B) between the date this consent decree is approved and October 1, 2012 and completed construction of its livestock waste control facility and filed a Certification of Completion with NDEQ. If Plum Creek

Cattle violates the statutes or regulatory provisions in paragraph 5(B) at any time between the date this consent decree is approved and October 1, 2012, or fails to complete construction of its livestock waste control facility or fails to file a Certification of Completion with NDEQ prior to October 1, 2012, the State may file an objection to Plum Creek Cattle's Request for Waiver and the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

D. In the event that force majeure prevents Plum Creek Cattle from completing construction of its livestock waste control facility before October 1, 2012, Plum Creek Cattle shall file a motion with the Court to excuse its performance. The Court, after hearing, shall enter any order it deems appropriate which may include, without limitation, payment of the additional stipulated penalty contemplated herein or setting of new completion dates.

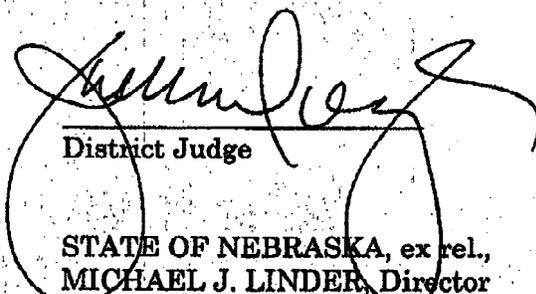
6. IT IS FURTHER ORDERED that Plum Creek Cattle shall pay, as a supplemental environmental project, the sum of \$7,500 to the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by State law, at the sole 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 Plum Creek Cattle 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 16 day of December, 2011, in Dawson County, Nebraska.

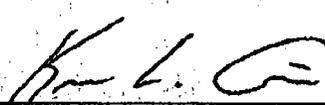
BY THE COURT:



District Judge

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

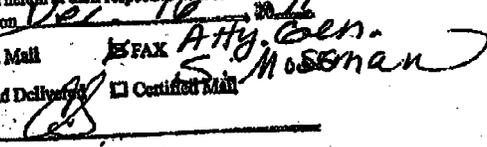
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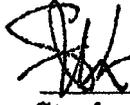
CERTIFICATE

The undersigned certifies that the foregoing document was served upon all pro se parties to the above cause and to each of the attorneys of record herein at their respective addresses as shown on the pleadings on Dec 16 2011

U.S. Mail FAX Hand Delivered Certified Mail

Signature 

JANE BELLAMY ROHMAN,
d/b/a PLUM CREEK CATTLE,
Defendant

By: 

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