

IN THE DISTRICT COURT OF SHERIDAN COUNTY, NEBRASKA

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

Plaintiff,)

v.)

SHERIDAN LIVESTOCK AUCTION)
CO., INC.,)

Defendant.)

Case No. CI-12-59

CONSENT DECREE

FILED
4-28-14
ELOISE J. KAMPELLO
CLERK DISTRICT COURT
SHERIDAN COUNTY
NEBRASKA

COMES NOW the parties, Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ" or "Department"), proceeding on its Complaint filed herein and appearing through its Counsel, Jon Bruning, Attorney General, and the Defendant Sheridan Livestock Auction Co., Inc. appearing through its Counsel, Dennis D. King, 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 2010), and all rules and regulations and orders promulgated thereunder.

2. In its Complaint, the State alleges that on or about October 2008, Defendant constructed an operated a wastewater lagoon without a permit in violation of § 81-1506(2)(b). Furthermore, the State alleges that on or about June 17, 2009, the seepage rate of the wastewater lagoon exceeded the permissible rate in violation of Title 123, Chapter 5, Section 005.01.



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3. On or about September 1, 2010, NDEQ issued a Compliant, Compliance Order and Notice of Opportunity for Hearing. A hearing on the Order was not requested and the Order became a final order. The State alleges that Defendant violated the Order by failing to comply with the deadlines set forth therein, in violation of § 81-1508.02.

4. 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 Sheridan Livestock Auction Co., Inc., with respect to such issues.

5. 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.

6. IT IS THEREFORE ORDERED that Sheridan Livestock Auction Co., Inc., shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2010), in the amount of \$15,000.00 as well as court costs in the amount of \$82.00, to the Sheridan County District Court. The civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution. The \$15,000.00 civil penalty amount will be paid within ten days of entry of this Consent Decree by the Court, and is payable to the Clerk of this Court.

7. IT IS FURTHER ORDERED that Defendant will undertake the following:

- A. Within thirty (30) days of the entry of this Consent Decree, either properly abandon the truck wash lagoon in accordance with Department specifications

or submit plans, created by a qualified professional engineer, for modification of the waste system as determined to be necessary by the Department to comply with all relevant statutes and regulations. As needed, this submission shall include plans for a lagoon liner, solids handling, and an irrigation system for land application of wastewater. Plans shall ensure that lagoon seepage rates comply with Department requirements.

- B. Within thirty (30) days of the entry of this Consent Decree, Defendant shall also apply for an NPDES permit as needed for proper operation of the truck wash lagoon and proper waste disposal.
- C. In the event NDEQ approves Defendant's submissions and application and issues a permit, Defendant will complete construction of all necessary modifications in order for the waste system to comply with all applicable statutes and regulations, including Title 123 within the one hundred eightieth (180) day of the date upon which the permit is issued by NDEQ.
- D. In the event NDEQ denies Defendant's submissions or application or does not issue a permit, Defendant will either properly abandon the truck wash lagoon in accordance with Department specifications or resubmit the plans and application agreed to in subsections (A) and (B) of this paragraph within sixty (60) days of NDEQ's denial.
- E. If Defendant has not completed construction of an approved wastewater facility by the time agreed to in subsection (C) of this paragraph or by December 31, 2014, whichever is earlier, Defendant will immediately close

and not operate the truck wash until construction of an approved wastewater facility is completed.

F. In the event Defendant fails to comply with any deadline set forth in paragraph 7 of this Consent Decree by the time required, Defendant will pay stipulated civil penalties of fifty dollars (\$50.00) per day for the first to fifteenth day of delay and two hundred dollars (\$200.00) per day for each day of delay thereafter.

8. IT IS FURTHER ORDERED that Defendant shall pay, as a voluntary supplemental environmental project, \$10,000.00 to the Rushville Fire Department to be used for environmental safety, training, public awareness, equipment or other related uses as permitted by state law, at the sole discretion of the Rushville Fire Department. This payment shall be paid as a lump-sum payment within ten days of the entry of the Consent Decree by this Court.

9. Force majeure for the purposes of this Consent Decree means any event arising from causes beyond the reasonable control of Defendant and any entity controlled by Defendant, including contractors and subcontractors, which delays or prevents the timely completion of the tasks outlined above under this Consent Decree or the performance of any obligation under this Consent Decree. Defendant shall exercise its best efforts to anticipate any potential force majeure and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable. Unless excused by the NDEQ under paragraph 12, Defendant shall bear the burden to prove that a failure to comply with the Consent Decree was the result of a force majeure event pursuant to this paragraph.

10. Economic circumstances shall not be considered circumstances beyond the control of Defendant, nor shall the failure of a contractor, subcontractor, or material man or agent (collectively referred to as "Contractors") to whom responsibility for performance is delegated to meet contractually imposed deadlines be a force beyond the control of Defendant, unless the cause of the Contractors' late performance was also beyond the Contractors' control.

11. If any event occurs that is likely to delay the completion of the tasks outlined above, whether or not caused by force majeure, Defendant shall notify NDEQ in writing within seven calendar days of learning of the delay of the anticipated length and cause of the delay, the measures taken or to be taken to prevent or minimize the delay and the timetable by which Defendant intends to implement these measures.

12. If NDEQ agrees that the delay is attributable to a force majeure, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay. Such request for extension shall not be unreasonably withheld, conditioned or delayed by NDEQ.

13. NDEQ, in its discretion, may agree to an extension caused by any other event.

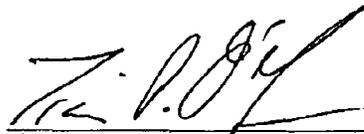
14. Failure of Defendant to comply with the notice requirements of this Consent Decree shall constitute a waiver of Defendant's right to request an extension of time for compliance with the requirements of the Consent Decree. Notice to NDEQ for purposes of this Consent Decree shall be directed to Ryan S. Post, Assistant Attorney General, 2115 State Capitol Building, P.O. Box 98920, Lincoln, Nebraska 68509-8920, Telephone # (402) 471-2682 and Annette Kovar, Attorney, Nebraska Department of Environmental Quality, 1200 "N" Street, Suite 400, P.O. Box 98922, Lincoln, Nebraska 68509-8922, Telephone # (402) 471-2186.

15. This consent decree will have no effect on any enforcement action brought by NDEQ against Sheridan Livestock Auction Co., Inc., for future violations of any statutes or regulations.

16. The undersigned consent without further notice to the form and entry of this consent decree.

DATED THIS 21st day of April, 2014, in Sheridan 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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