

**IN THE DISTRICT COURT OF THAYER COUNTY, NEBRASKA**

STATE OF NEBRASKA, ex rel.,	)	
JIM MACY, Director,	)	Case No. CI22-34
NEBRASKA DEPARTMENT OF	)	
ENVIRONMENT AND ENERGY,	)	
	)	
Plaintiff,	)	<b>CONSENT DECREE</b>
	)	
v.	)	
	)	
EXIDON, INC. d/b/a MID-AMERICA	)	
FEED YARD,	)	
	)	
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, Exidon, Inc. d/b/a Mid-America Feed Yard, a Nebraska corporation, 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 Thayer County and the events at issue took place in Thayer 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 in violation of its permit and/or improperly land applying livestock waste, polluting a water of the state, failing to maintain and monitor its irrigation distribution system, failing to land apply on all available dewatering days until adequate

storage is restored, and failing to properly record pond levels for its holding ponds.

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 unknown or 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 seventy-five thousand dollars (\$75,000.00) to the District Court for Thayer County, Nebraska, as well as reimburse the Plaintiff for court costs in the in the amount of eighty-five dollars (\$85.00), subject to the following:

- A. Thirty-seven thousand and five hundred dollars (\$37,500.00) 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 Thayer 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 thirty-seven thousand and five hundred dollars (\$37,500.00) of the civil penalty shall be waived if Defendant complies with the following terms and conditions:

- i. Defendant shall record the levels of the holding ponds once each week and after each precipitation event for a period of six months following entry of this Consent Decree by the Court; and
  - ii. For purposes of qualifying for the waiver in this Consent Decree only, Defendant shall have no material violations of NEPA, LWMA, applicable rules and regulations, its construction and operating permit, or its NPDES permit for a period of six months after entry of this Consent Decree by the Court. For purposes of the waiver, material violations include but are not limited to violations similar to those alleged in the Complaint filed herein. Regardless of the waiver, Plaintiff is not precluded from bringing an enforcement action for future violations, where considered material or immaterial under this Consent Decree.
- C. If Defendant does not comply with the requirements of Paragraph 5(B), above, then the remaining thirty-seven thousand and five hundred dollars (\$37,500.00) will not be waived and, instead, Defendant shall pay the remaining half of civil penalty to the Clerk of the District Court for Thayer 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 Thayer County for use and support of the common schools in

Thayer County as directed by Article VII, Section 5, of the Nebraska Constitution.

- E. No later than fourteen (14) days after the six-month compliance period ends, Defendant shall provide Plaintiff with a Showing of Compliance, as well as pond level logs through the end of the compliance period. 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. Plaintiff will file a Satisfaction of Judgment with the Court after Defendant provides its 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 six-month 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 unknown or 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 NEPA, LWMA, or applicable rules and regulations, and this Consent Decree does not preclude Plaintiff from bringing an independent

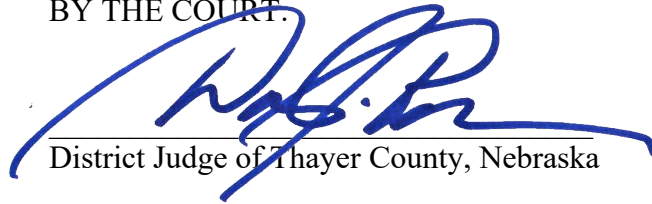
enforcement action seeking civil penalties and/or injunctive relief for such violations.

8. Plaintiff reserves its rights to seek civil penalties and/or injunctive relief against Defendant for unknown or future violations of the NEPA, LWMA, and applicable rules and regulations.

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

DATED this 28th day of July 2022, in Thayer County, Nebraska.

BY THE COURT.



District Judge of Thayer 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: /s/ Maegan L. Woita  
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EXIDON, INC. d/b/a MID-AMERICA  
FEED YARD, Defendant

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*Attorney for Defendant*

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on July 28, 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:

Steven P Case  
scase@mcgrathnorth.com

Maegan L Woita  
Maegan.woita@nebraska.gov

Date: July 28, 2022

BY THE COURT:

*Stacy L. McLaughlin*  
CLERK

