

IN THE DISTRICT COURT FOR PHELPS COUNTY, NEBRASKA

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

Plaintiff,

v.

MAYES GENERAL PARTNERSHIP,

Defendant.

Case No. CI10-202

CONSENT DECREE

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 Mayes General Partnership, 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 Mayes under the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (Reissue 2008, Supp. 2009), the Livestock Waste Management Act, Neb. Rev. Stat. § 54-2416 et seq. (Reissue 2004, Cum. Supp. 2008, Supp. 2009), and all rules and regulations promulgated those acts.

2. In its complaint, the State alleged that on August 1, 2007, Mayes: (a) discharged livestock waste from its animal feeding operation into waters of the state in Phelps County, Nebraska, in violation of Neb. Rev. Stat. § 81-1506(1)(a) (Reissue 2008); (b) failed to monitor its irrigation distribution system, in violation of



DEPARTMENT OF JUSTICE

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CLERK OF DISTRICT COURT
PHELPS COUNTY

130 Neb. Admin. Code, ch. 12, § 001.04; and (c) failed to provide timely written notification to NDEQ of the discharge, in violation of the terms of its NPDES permit. Mayes denies the violations alleged 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 Mayes 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 Mayes shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$4,500, as well as court costs in the amount of \$82, to the Phelps County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$2,250 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. \$2,250 of the civil penalty shall be paid to this Court no more than six months from the entry of this consent decree by the Court. However, if Mayes maintains compliance with and does not violate either 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", during the six months following the entry of this consent decree, then payment of this \$2,250 of civil penalties will be waived.

C. To qualify for the waiver of \$2,250 of civil penalties as described in paragraph 5(B), Mayes 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). The State will file a satisfaction of judgment within 10 days of receiving Mayes' Request for Waiver if Mayes has complied with the statutes and regulations listed in paragraph 5(B) during the six months following the entry of this consent decree. If Mayes violates the statutes or regulatory provisions in paragraph 5(B) during the six months following the entry of this consent decree, the State may file an objection to Mayes' Request for Waiver and the determination of this waiver provision will be stayed pending ongoing enforcement proceedings.

6. IT IS FURTHER ORDERED that Mayes shall pay, as a supplemental environmental project, the sum of \$4,500 to the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or

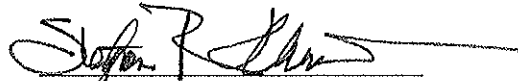
other related uses as permitted by State law, at the sole discretion of the Nebraska Attorney General. This payment shall be paid as a lump-sum payment within 30 days of the entry of this consent decree by this Court.

7. This consent decree will have no effect on any enforcement action brought by the State or NDEQ against Mayes for future violations of any statutes or regulations.

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

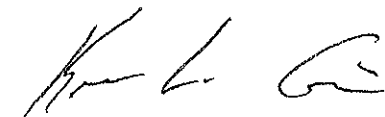
DATED THIS 17 day of November, 2010, in Phelps County, Nebraska.

BY THE COURT:


District Judge

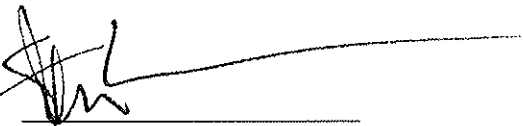
STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
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