

IN THE DISTRICT COURT OF MADISON COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
MICHAEL J. LINDER, Director)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
)
Plaintiff,)
v.)
)
TYSON FRESH MEATS, INC.,)
)
Defendant.)
)

Case No. CI 10-520 K

9:34 **FILED**
CONSENT DECREE A.M. P.M.

SEP 16 2010

IN DISTRICT COURT OF
MADISON COUNTY, NEBR.
MARJORIE SCHAFFER, CLERK

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 Tyson Fresh Meats, Inc., 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 or about November 7-9, 2009, Defendant applied wastewater in a way that allowed the waste to pool and run off onto adjacent land, waters of the state, and a public right-of-way, in violation of Neb. Rev. Stat. §§81-1506(1)(a) and 1508.02(1)(b).
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 Tyson Fresh Meats, Inc. 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 Tyson Fresh Meats, Inc., shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$10,000.00 as well as court costs in the amount of \$82.00, to the Madison County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$5,000.00 (five thousand dollars) of said 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.

B. \$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 Tyson Fresh Meats, Inc. maintains compliance with and does not violate the Nebraska Environmental Protection Act, Neb. Rev. Stat. §§ 81-1506(1)(a) and 81-1508.02(1)(b) during the 180 days following the entry of this consent decree, then payment of this \$5,000.00 of civil penalties will be waived.

C. To qualify for the \$5,000.00 waiver of civil penalties as stated in paragraph 5(B), 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(B). NDEQ will file a satisfaction of judgment within ten (10) days of receiving Defendant's showing. If Defendant violates the requirements in paragraph 5(B) 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

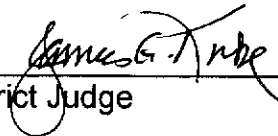
6. IT IS FURTHER ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, the sum of ten thousand dollars (\$10,000.00) into the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. This payment shall be paid as a lump-sum payment 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 Tyson Fresh Meats, Inc., 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 15th day of September, 2010, in Madison County, Nebraska.

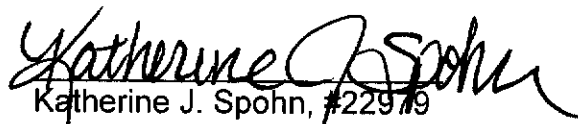
BY THE COURT:



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, #22979
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Attorneys for Plaintiff.

Tyson Fresh Meats, Inc.
Defendant

By: 

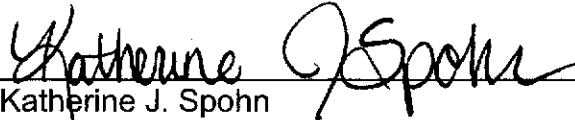
Dan Brooks
Tyson Fresh Meats, Inc.
PO Box 1010
1200 Industrial Parkway
Madison, Nebraska 68748

Defendant.

CERTIFICATE OF SERVICE

It is hereby certified that on this 10th day of September, 2010, a true and accurate copy of the foregoing Consent Decree has been served upon Defendant herein by placing a copy of the same in the United State Mail, first class postage prepaid, addressed to the Defendant's as follows:

Dan Brooks
Tim Jones
Tyson Fresh Meats, Madison
PO Box 1010
1200 Industrial Parkway
Madison, Nebraska 68748


Katherine J. Spohn
Assistant Attorney General