

COPY

IN THE DISTRICT COURT OF WAYNE COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
 MICHAEL J. LINDER, Director)
 NEBRASKA DEPARTMENT OF)
 ENVIRONMENTAL QUALITY,)
)
 Plaintiff,)
)
 v.)
)
 F&S FEEDLOT, INC.,)
)
 Defendant.)

Case No. 07-101

CONSENT DECREE

Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon C. Bruning, Attorney General, and the Defendant, F&S Feedlot, Inc. ("Defendant"), appearing through its counsel, Patrick P. Carney, 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 AND DECREED:

1. The Court has jurisdiction of the parties and the subject matter of this action. The Complaint herein sets forth justiciable causes of action against Defendant.
2. NDEQ, in its Complaint, alleges that Defendant, on about August 1, 2005 and continuing daily thereafter, did not complete construction of a livestock waste control facility as approved by NDEQ in violation of a September 1, 2004 Administrative Order. Pursuant to Neb. Rev. Stat. §81-1508.02(1)(b) (Reissue 1999), it is unlawful to "violate ... any order of the director."

FILED 3:53pm
 WAYNE COUNTY DISTRICT COURT

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DEBRA ALLEMANN-DANNELLY
 CLERK OF THE DISTRICT COURT

3. NDEQ further alleges that Defendant is therefore subject to a civil penalty as provided in Neb. Rev. Stat. §81-1508.02(2) (Reissue 1999).

4. The parties agree that settlement of these matters is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving their dispute. Defendant, without admitting any allegations of the Complaint, agrees to the form and entry of this Consent Decree for purposes of settlement only.

5. The parties agree that this Consent Decree shall be in full satisfaction of all claims alleged in the Complaint and arising out of the same transaction or occurrence asserted therein, provided that such claims were known to the State of Nebraska as of the date of the filing of this Consent Decree.

6. IT IS THEREFORE ORDERED that Defendant shall pay to the Clerk of the District Court of Wayne County a civil penalty in the sum of ten thousand dollars (\$10,000.00) pursuant to Neb. Rev. Stat. § 81-1508.02, together with court costs in the amount of seventy-nine dollars. (\$79.00). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

a. \$5,000 (Five thousand dollars) of said penalty and the costs of the action shall be due and owing within thirty (30) days of the signing of this consent decree.

b. The remaining civil penalty of \$5,000 (Five thousand dollars) will be due and owing on June 30, 2008. In the event that the following conditions are met, the remaining \$5,000 (Five thousand dollars) of civil penalties will be waived:

1. On September 17, 2007, Defendant submitted to NDEQ a Major Modification to the Modified Phased Construction Permit issued by NDEQ on May 25, 2006 proposing construction of a berm across pens 2,4 and 5 sufficient to redirect runoff from the shipping and receiving area to Pond 3. Defendant agrees that cattle shall only be kept in the shipping and receiving area to the limited extent necessary for shipping and receiving.

2. On or before December 31, 2007, Defendant shall submit to NDEQ a request for an extension of the deadline for submission of the Certification of Completion documents for Phase III detailed in the Modified Phased Construction Permit issued by NDEQ on May 25, 2006 until June 1, 2008. Defendant agrees that no cattle will be kept in this area until appropriate written approval is received from NDEQ.

3. On or before June 1, 2008, Defendant shall obtain a new deadline from NDEQ for submission of the Certification of Completion for Phase IV. Defendant agrees that no cattle will be kept in this area until appropriate written approval is received from NDEQ.

c. To qualify for the \$5,000 waiver of civil penalties as stated in paragraph (6)(b), Defendant shall file a showing with the Court by June 30, 2008 establishing that it has maintained compliance as required in this Consent Decree.

7. IT IS FURTHER ORDERED that the Defendant shall pay, as a Supplemental Environmental Project, the sum of \$10,000 (Ten thousand dollars) on or before December 31, 2007 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.

8. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

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

Dated this 2 day of November, 2007.

BY THE COURT:


DISTRICT JUDGE

STATE OF NEBRASKA ex rel.,
MICHAEL J. LINDER, DIRECTOR,
Department of Environmental
Quality, Plaintiff,

By: JON C. BRUNING #20351
Attorney General

By: Katherine J. Spohn
Katherine J. Spohn, #22979
Assistant Attorney General
2115 State Capitol Building
Lincoln, NE 68509
Tel. (402) 471-2682
Attorneys for Plaintiff


F&S FEEDLOT, INC., Defendant,

By: Patrick P. Carney
Patrick P. Carney, #20356
900 Riverside Boulevard
P.O. Box 17
Norfolk, NE 68702
Tel. (402)379-5600
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Consent Decree has been served upon the Defendant by regular United States mail, first class postage prepaid on this 19th day of November, 2007 addressed to the Defendant's attorney of record as follows:

Patrick P. Carney, #20356
900 Riverside Boulevard
P.O. Box 17
Norfolk, NE 68702


Katherine J. Spohn
Assistant Attorney General

IN THE DISTRICT COURT OF Wayne COUNTY, NEBRASKA

NOTICE OF JUDGMENT

State of Nebraska ex rel v. F&S Feedlot, Inc.

Case ID: CI 07 101

Judgment has been entered.

Judgment Date: 11/21/2007

Date: NOVEMBER 21, 2007

BY THE COURT: Melissa Robbins, Clerk
Clerk



Katherine J Spohn
2115 State Capitol Building
PO Box 98920
Lincoln, NE 68509-8920