

IN THE DISTRICT COURT FOR HAMILTON COUNTY, NEBRASKA

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

Plaintiff,)

v.)

RON PREHEIM, d/b/a Ron Preheim)
Livestock,)

Defendant.)

Case No. CI 08-128

CONSENT DECREE

FILED
HAMILTON CO. DISTRICT COURT

NOV 24 2009
Wendy C. Dethlefs
WENDY C. DETHLEFS
CLERK OF THE DISTRICT COURT

The State of Nebraska, on the relation 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 Ron Preheim, d/b/a Ron Preheim Livestock, through his 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 Preheim under the Nebraska Environmental Protection Act, Neb. Rev. Stat. § 81-1501 et seq. (Reissue 1999, Cum. Supp. 2006, and Supp. 2007), the Livestock Waste Management Act, Neb. Rev. Stat. § 54-2416 et seq. (Reissue 2004, Cum. Supp. 2006, Supp. 2007), and all rules and regulations promulgated those acts.

2. In its complaint, the State alleges that on August 2, 2007, to August 9, 2007, Preheim discharged livestock waste from his animal feeding operation into waters of the state in Hamilton County, Nebraska, in violation of Neb. Rev. Stat. § 81-1506(1)(a) (Reissue 2008).

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 Preheim with respect to such issues. Preheim specifically denies that he allowed a discharge from his facility under Neb. Rev. Stat. § 54-2431 (Supp. 2009).

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 Preheim shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02 (Reissue 2008), in the amount of \$11,000, as well as court costs in the amount of \$82, to the Hamilton County District Court. This civil penalty shall be handled as provided in Article VII, Section V, of the Nebraska Constitution.

A. \$5,000 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. \$6,000 of the civil penalty shall be paid to this Court no more than one year from the entry of this consent decree by the Court. However, if Preheim 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 to 54-2435 (Reissue 2004, Cum. Supp. 2008, and Supp. 2009), or Title 130 of the Nebraska Administrative Code, "Livestock Waste Control Regulations", during the one year following the entry of this consent decree, then payment of this \$6,000 of civil penalties will be waived.

C. To qualify for the waiver of \$6,000 of civil penalties as described in paragraph 5(B), Preheim shall file a Request for Waiver with the Court within 15 days following the due date of the civil penalties establishing that he 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 Preheim's Request for Waiver if Preheim has complied with the statutes and regulations listed in paragraph 5(B) during the one year following the entry of this consent decree. If Preheim violates the statutes or regulatory provisions in paragraph 5(B) during the one year following the entry of this consent decree, the State may file an objection to Preheim's Request for Waiver and the determination of this waiver provision shall be stayed pending ongoing enforcement proceedings.

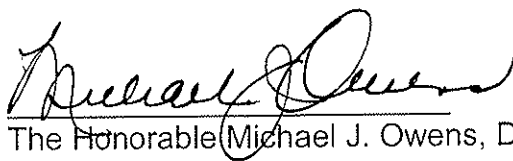
6. IT IS FURTHER ORDERED that Preheim shall pay, as a supplemental environmental project, the sum of \$6,000 to the Attorney General's Environmental Protection Fund to be used for environmental safety, training, public awareness, or other related uses as permitted by State law, at the sole discretion 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 Preheim 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 24th day of November, 2009, in Hamilton County, Nebraska.

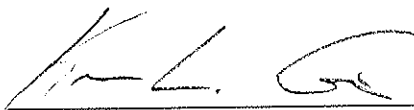
BY THE COURT:



The Honorable Michael J. Owens, District Judge

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

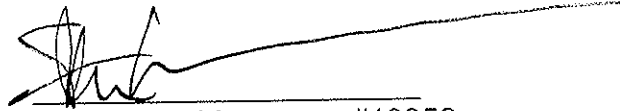
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