

**IN THE DISTRICT COURT OF RED WILLOW COUNTY, NEBRASKA**

STATE OF NEBRASKA, ex rel.,	)	<b>Case No. CI-22-096</b>
JIM MACY, Director,	)	
NEBRASKA DEPARTMENT OF	)	
ENVIRONMENT AND ENERGY,	)	
	)	
Plaintiff,	)	
	)	<b>CONSENT DECREE</b>
v.	)	
	)	
POWERLINE DAIRY, LLC and	)	
KINGDOM DAIRY, LLC,	)	
	)	
Defendants.	)	

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, Michael T. Hilgers, Nebraska Attorney General, and Joshua E. Dethlefsen, Assistant Attorney General, and Defendants, Powerline Dairy, LLC and Kingdom Dairy, LLC, Nebraska corporations, appearing through counsel, Stephen D. Mossman, 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 the events at issue took place in Red Willow County.

2. In the Complaint, Plaintiff alleges Defendants violated the Nebraska Environmental Protection Act (“NEPA”), Neb. Rev. Stat. § 81-1501 *et seq.*, and the Livestock Waste Management Act (“LWMA”), Neb. Rev. Stat. § 54-2416 *et seq.*, by, *inter alia*, operating a livestock waste control facility in violation



of permit conditions, failing to maintain required records, and discharging livestock waste onto lands and waters of the state.

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 Defendants 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 future violations of any statutes or rules and regulations.

5. IT IS THEREFORE ORDERED that Defendants shall pay a civil penalty, under Neb. Rev. Stat. § 81-1508.02(2), in the amount of sixty-two thousand dollars (\$62,000.00) to the District Court for Red Willow County, Nebraska, as well as reimburse the Plaintiff for court costs in the amount of eighty-seven dollars (\$87.00), subject to the following:

- A. Thirty-one thousand dollars (\$31,000.00) of the civil penalty shall be paid by Defendants within thirty (30) days of entry of the Consent Decree and made payable to the Clerk of the District Court for Red Willow County. Defendants shall also reimburse the Plaintiff for court costs in the amount of eighty-seven dollars (\$87.00) 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-one thousand dollars (\$31,000.00) of the civil penalty shall be waived if Defendants comply with the following terms and conditions:
  - 1) Defendants must cease application of all livestock waste to the fields called "South

Pivot” (33 Sec 33-004N-029W) and  
“Hauxwell Pivot” (28 Sec 28-004N-029W)  
until Defendants have demonstrated to the  
Department’s satisfaction that available  
nitrogen in the soil reaches a level of fifty  
pounds per acre on a soil test;

- 2) Defendants must continue to grow a crop on the South Pivot and Hauxwell Pivot on a yearly basis to help abate nitrogen levels until the Defendants have demonstrated to the Department’s satisfaction that available nitrogen in the soil reaches a level of fifty pounds per acre on a soil test;
- 3) Defendants must submit an update to their nutrient management plan that includes enough acres for required applications of livestock waste from its facility not including the South Pivot or Hauxwell Pivot and not including piping waste to neighboring facilities. The update to the nutrient management plan must also include a commitment to continue cropping the South Pivot and Hauxwell Pivot on a yearly basis without application of livestock waste until soil tests demonstrate that available nitrogen has reached a level of fifty pounds per acre; and
- 4) Defendants shall remain in compliance with NEPA, LWMA, and all other environmental laws, including applicable rules and regulations, for a period of twelve months from the entry of the Consent Decree.

- C. If Defendants do not comply with all of the requirements of Paragraph 5(B), above, then the remaining thirty-one thousand dollars (\$31,000.00) will not be waived and, instead, Defendants shall pay the remaining half of the civil penalty to the Clerk of the District Court for Red Willow 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 Red Willow County for use and support of the common schools in Red Willow County as directed by Article VII, Section 5, of the Nebraska Constitution.
- E. No later than fourteen (14) days after the twelve-month compliance period ends, Defendants shall provide Plaintiff with a Showing of Compliance. This Showing of Compliance must demonstrate Defendants 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 it's Showing of Compliance and the Department verifies Defendants fully complied with all terms and conditions in this Consent Decree. If Defendants, however, do not comply with all terms and conditions of the Consent Decree during the twelve-month compliance period, then Plaintiff, in its sole discretion, may file with the Court a motion to enforce the terms of the Consent Decree and to recover any unpaid civil penalties.

6. This Consent Decree is binding on Defendants' 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 Defendants under this Consent Decree.

7. This Consent Decree will have no preclusive effect on any enforcement action brought by Plaintiff against Defendants for future violations of any statutes or rules and regulations. Defendants acknowledge that noncompliance with the terms and conditions set forth in this Consent Decree may also be violations of NEPA, LWMA, or other applicable statutes, 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. Defendants specifically acknowledge that any application of livestock waste to the South Pivot and Hauxwell Pivot fields that takes place before the nitrogen levels in the soil reach a level of fifty pounds per acre on a soil test will be considered a separate violation and subject to additional civil penalties, notwithstanding compliance with the Consent Decree or the termination of the Consent Period.

8. Plaintiff reserves its rights to seek civil penalties and/or injunctive relief against Defendants for future violations of NEPA and other applicable statutes, rules, and regulations.

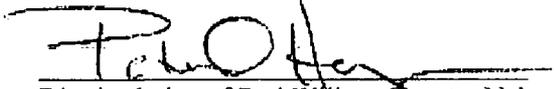
9. Plaintiff reserves its right to verify the results of any soil test submitted in accordance with Paragraph 5(B) through independent sampling performed by Plaintiff or its contractor.

10. The Department received an application for a Major Modification of Defendant's Construction and Operating permit on October 15, 2022, and a subsequent addendum to that application on February 16, 2023. The Department will either approve or deny the Major Modification within fourteen (14) days from receipt of the update to the nutrient management plan as described in Paragraph 5(B)(3).

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

DATED this 19th day of September 2023, in Red Willow County, Nebraska.

BY THE COURT:

  
District Judge of Red Willow County, Nebraska

STATE OF NEBRASKA, ex rel.,  
JIM MACY, Director, NEBRASKA  
DEPARTMENT OF ENVIRONMENT  
AND ENERGY, Plaintiff

BY: MICHAEL T. HILGERS, #24483  
Nebraska Attorney General

BY: /s/ Joshua E. Dethlefsen  
Joshua E. Dethlefsen, #24667  
Assistant Attorney General  
2115 State Capitol  
P.O. Box 98920  
Lincoln, Nebraska 68509-8920  
Tel: (402) 471-1813  
joshua.dethlefsen@nebraska.gov  
*Attorneys for Plaintiff*

POWERLINE DAIRY, LLC & KINGDOM  
DAIRY, LLC, Defendants

BY: /s/ Stephen D. Mossman  
Stephen D. Mossman  
Mattson Ricketts Law Firm  
134 S. 13<sup>th</sup> Street, Ste. 1200  
Lincoln, Nebraska 68508  
(402) 475-8433  
sdm@mattsonricketts.com  
*Attorney for Defendants*