

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3025
	)	
FORT KEARNY CONSOLIDATED,	)	DIRECTOR'S ORDER
a Partnership,	)	
	)	
Respondent.	)	

I have reviewed and considered the complete record, the hearing officer's findings of fact, conclusions of law and recommendation and the parties' proposed amended consent order in this case.

I hereby accept and adopt the hearing officer's findings of fact, conclusions of law and recommendation and find that the amended consent order, the original of which is marked as Exhibit 1 and attached to the transcript of the January 10, 2012 hearing, should be approved.

It is, therefore, ordered, adjudged and decreed that the parties' amended consent order is approved in its entirety and made the order of this tribunal.

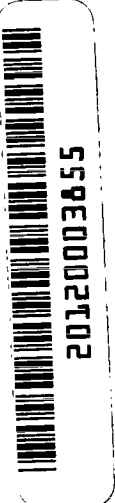
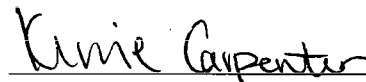
SO ORDERED on February 22, 2012.



Michael J. Linder, Director  
Nebraska Department of Environmental Quality

CERTIFICATE OF SERVICE

I certify that on February 22, 2012, I served a true and correct copy of the foregoing order by United States certified mail, return receipt requested on Stephen D. Mossman, Attorney at Law, 134 South 13th Street, Suite 1200, Lincoln, NE, 68508-1901; by first-class United States mail, postage prepaid on Bill Morris, Hearing Officer, Morris & Titus Law Firm, PC, LLO, 4645 Normal Blvd, Suite 272, Lincoln, Nebraska, 68506; and by hand-delivery to Timothy J. Doyle, Staff Attorney, Nebraska Dept. of Environmental Quality, 1200 'N' Street, Suite 400, Lincoln, Nebraska, 68509-8922.



BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF  
FORT KEARNY CONSOLIDATED,  
A Partnership,

Respondent.

CASE NO. 3025

AMENDED CONSENT ORDER

COME NOW the parties, Complainant, the Department of Environmental Quality (hereinafter "NDEQ"), and the Respondent Fort Kearny Consolidated, appearing through its counsel, Stephen D. Mossman, and each party having consented to the making and entering of this Consent Order and that the Consent Order should be and hereby is entered.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. The Complaint filed herein constitutes a justiciable cause of action against the Respondent.
2. The parties agree that settlement of these matters is in the public interest and that entry of this Consent Order is the most appropriate means of resolving their dispute. The parties desire to conclude this case without hearing or adjudication of any issues of fact or law, and without this Consent Order constituting an admission by the Respondent with respect to such issues. The Respondent agrees to the form and entry of this Consent Order for the purposes of settlement only. Therefore, and for only the purposes of this Consent Order, the parties agree to the entry of this Order.
3. It is agreed by the parties that the rights of the NDEQ to proceed with the requirements of NDEQ's letter of December 29, 2010, concerning Step 8 of Title 118, Ground Water Quality Standards and Use Classification are reserved and unaffected by this Consent Decree.

3pgs.	1/10/12
EXHIBIT NO. 1	
JODY WHITE, RMR	



4. IT IS THEREFORE ORDERED that Respondent Fort Kearny Consolidated shall on or before March 31, 2012, submit to NDEQ for its approval an action plan to include provisions for removal and reconstruction or abandonment of the Livestock Waste Control Facility and the ponds and wet basins on the west side of the facility, in a manner appropriate to the area's high ground water levels and local flooding tendencies. The features and structures affected by this requirement are the wet basin and ponds: 1A, 1B, 1C, and 1D.

5. IT IS FURTHER ORDERED that the Respondent shall remediate the ground water at the Ft Kearny site by application of monitored natural attenuation. The Respondent shall complete field work preparatory to development of a work plan for site remediation to be submitted to NDEQ for its approval. The field work shall utilize a variety of acceptable field methods to demonstrate the direction of ground water flow at the site. The field work shall include water level measurements and appropriate water samples for analysis taken at a minimum of 3 locations to determine the vertical delineation of the plume to be remediated. The site remediation plan shall be submitted by the Respondent to NDEQ on or before October 1, 2012, and shall include a methodology for selecting the location, or locations, for assessing whether remediation to the target value is occurring and is achieved. The plan shall be the means of remediation in satisfaction of Title 118, Appendix A, for the Ft. Kearny site. If the long-term needs of the public health and welfare and the environment have not been, or are not being, satisfied or if additional remedial action is necessary, the situation will be reassessed in steps 8 and 9 of Appendix A.

6. IT IS FURTHER ORDERED that in the event that the Respondent transfers title of the Fort Kearny premises, the Respondent shall inform the transferee of this Amended Consent Order and the Complaint and Compliance Order which it addresses, and as part of any

such transfer, Ft Kearny shall require the transferee to accept the responsibilities of this Amended Consent Order and make any subsequent transferee assume the same responsibilities in like manner until the target values have be achieved and remediation is complete.

7. The undersigned consent without further notice to the form and entry of the foregoing Consent Order.

**NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY,  
Complainant,**

By: 

Timothy J. Doyle, #15268  
Nebraska Department of  
Environmental Quality  
Suite 400, The Atrium  
P.O. Box 98922  
Lincoln, NE 68509-8922  
Telephone No.: (402) 471-4603  
Dated: January 6, 2012

**FORT KEARNY CONSOLIDATED,  
Respondent**

By: 

Stephen D. Mossman, #19859  
MATTSON, RICKETTS, DAVIES,  
STEWART & CALKINS  
134 South 13th Street, Suite 1200  
Lincoln, NE 68508  
Telephone No.: (402) 475-8433  
Facsimile No.: (402) 475-0105  
sdm@mattsonricketts.com  
Dated: January 10, 2012