



ORIGINAL

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF )

CASE NO. 3143

JANET M. SLEGGERS, WOOD RIVER )

DAIRY, LLC, and ASPEN DAIRY, )

a Nebraska General Partnership, )

Buffalo County, FID #65098, )

Respondents. )

DIRECTOR'S ORDER

I have reviewed and considered the complete record, the hearing officer's findings of fact, conclusions of law and recommendation and the parties' proposed 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 consent order, the original of which is attached as an addendum to the hearing officer's findings of fact, conclusions of law and recommendation, should be approved.

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

SO ORDERED on March 21, 2013.

Michael J. Linder, Director

Nebraska Department of Environmental Quality

CERTIFICATE OF SERVICE

I certify that on March 22, 2013, 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 Steven J. Moeller, Staff Attorney, Nebraska Dept. of Environmental Quality, 1200 'N' Street, Suite 400, Lincoln, Nebraska, 68509-8922.



ADDENDUM

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	)	CASE NO. 3143
JANET M. SLEGGERS, WOOD RIVER	)	
DAIRY L.L.C. AND ASPEN DAIRY, a	)	
Nebraska General Partnership,	)	CONSENT ORDER
Buffalo County, FID # 65098	)	
Respondents.	)	

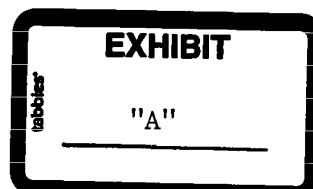
COME NOW the parties, Petitioner, the Nebraska Department of Environmental Quality ("NDEQ" or "Department"), proceeding on its Complaint, Compliance Order, and Notice of Opportunity for Hearing filed herein and appearing through its counsel, Steven Moeller, and the Respondents, Janet M. Slegers, Wood River Dairy L.L.C., and Aspen Dairy, a Nebraska general partnership, Stephen D. Mossman. Each party having consented to the making and entering of this Consent Order without trial, the Director finds that the Consent Order should be and hereby is entered.

1. The Director has jurisdiction over the parties and the subject matter of this action. The Complaint, Compliance Order, and Notice of Opportunity for Hearing filed herein constitute a justiciable cause of action against the Respondents.

2. The parties agree that settlement is in the public interest and that entry of this Consent Order is the most appropriate means of resolving their dispute.

3. The parties desire to conclude this case without trial or adjudication of any issues of fact or law concerning the Complaint, Compliance Order, and Notice of Opportunity for Hearing, without this Consent Order constituting an admission by the Respondents with respect to such issues contained in the Complaint, Compliance Order, and Notice of Opportunity for Hearing.

4. The Respondents agree to the form and entry of this Consent Order for the purposes of settlement only. The Department reserves the right to pursue any other action including additional enforcement in the proper court for injunctive relief and penalties, and/or an administrative order based on violations of the Nebraska



Environmental Protection Act, Neb. Rev. Stat. §§ 81-1501 to -1532 (Reissue 2008) and the Livestock Waste and Management Act, Neb. Rev. Stat. §§ 54-2416 to -2435 (reissue 2004). The Department further reserves the right to impose additional obligations to abate or eliminate the violation by further order or action by the Director. In addition, the Department specifically reserves its right to pursue either criminal or civil enforcement for any violations not covered by the Consent Order.

5. Therefore, and only for the purposes of this Consent Order, the parties agree to the entry of this Consent Order by the Director to resolve the contested case asked for on the Complaint, Compliance Order, and Notice of Opportunity for Hearing.

6. IT IS THEREFORE AGREED TO AS FOLLOWS:

a. Respondents shall, by November 1 each year, drain or de-water all waste lagoon cells at Respondents' facility to their required pre-winter levels.

b. Respondents shall, by or on the fifteenth (15th) day of the first month following the entry of this Consent Order and continuing each and every month thereafter for a period of two (2) years, submit to NDEQ a lagoon pumping and manure hauling and spreading report for the immediately preceding month.

c. Respondents shall, within ninety (90) days of the entry of this Consent Order, submit to NDEQ a complete nutrient management plan in accordance with the requirements of Title 130 of the Nebraska Administrative Code. The plan shall include a list of land application sites available at any time of the year.

d. Respondents shall, within ninety (90) days of the entry of this Consent Order, submit to NDEQ a report evaluating Respondents' physical livestock waste control facilities. Said report shall be prepared by a

professional engineer licensed to practice in Nebraska and shall evaluate all physical aspects of Respondents' livestock waste control facilities, including, but not limited to, the solid separation system, the staff gauge, and the cross-over pipe between waste lagoon cells. This report shall cover an evaluation of sludge accumulation in the lagoon cells and describe any steps to be taken to avoid continuing problems with sludge accumulation.

e. In the event Respondents should fail to comply with the provisions of the Nebraska Environmental Protection Act, the Nebraska Livestock Waste Management Act, and all rules and regulations adopted and promulgated pursuant to such Acts, including, but not limited to, Title 130 of the Nebraska Administrative Code and such failure results in a discharge of livestock waste to any water of the State within two years from the date of entry of this Consent Order, Respondents shall cease operating its livestock operation and relinquish and surrender all of Respondents' state issued permits concerning livestock waste to NDEQ. This paragraph shall not be applicable to any livestock waste discharge attributable to a force majeure.

7. For purposes of this Consent Order, force majeure means any event arising from causes beyond the reasonable control of Respondents or any entity controlled by Respondents, including contractors and subcontractors, which results in the discharge of livestock waste from Respondents' facility into any water of the State. Respondents shall exercise their best efforts to anticipate any potential force majeure and mitigate its effects as the event is occurring. Respondents shall bear the burden to prove that a livestock waste discharge into any water of the State was attributable to a force majeure under this paragraph.

8. If any event occurs that may delay the performance of the obligations in paragraph 6 of this Consent Order, whether or not caused by a force majeure event, the Respondents shall notify the DEQ by telephone, e-mail or fax within 24 hours of learning of the event. The Respondents shall provide, in writing within 7 days, the reasons for the delay, the anticipated duration of the delay, all actions taken or to be taken to prevent or minimize the delay, and a schedule for implementation of any action.

9. Information required to be submitted under this Order shall be sent to:

Dennis Heitmann  
Agricultural Section Supervisor  
Water Quality Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922  
Telephone number (402) 471-2186

10. If the DEQ agrees that an event may delay the performance of any obligation under this consent order, the time for performance of the work shall be extended for a period of time not to exceed the actual duration of the delay.

11. The parties may agree in writing to an extension caused by any other event.

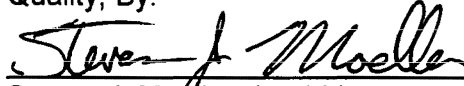
12. The Parties further agree that the request for contested case shall be dismissed and the undersigned consent without further notice to the form and entry of the foregoing Consent Order.

Janet M. Slegers, Wood River Dairy  
L.L.C., and Aspen Dairy, a Nebraska  
general partnership  
By its Attorney:



Stephen D. Mossman, #19859  
Mattson Ricketts Davies Stewart Calkins,  
134 S. 13<sup>th</sup> Street, Ste. #1200  
Lincoln, NE 68508-1901  
(402) 475-8433

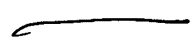
Nebraska Department of Environmental  
Quality, By:



Steven J. Moeller, #16003  
Nebraska Dept. of Environmental Quality  
1200 "N" Street, Suite 400  
P.O. Box 98922  
Lincoln, NE 68509  
(402) 471-0276

HEARING OFFICER

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Bill Morris  
Morris & Titus Law Firm, PC, LLO  
4645 Normal Blvd, Ste 272  
Lincoln, NE 68506

BY THE NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY:



Michael J. Linder, Director, Nebraska  
Department of Environmental Quality

March 21 2013  
Date