

BEFORE THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF

CASE NO. 3055

JD CATTLE CO.,

DIRECTOR'S ORDER

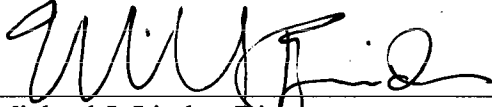
Respondent.

I have reviewed and considered the complete record, the hearing officer's findings of fact, conclusions of law and recommendation and the parties' proposed 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 marked as Exhibit 1 and attached to the transcript of the February 7, 2012 hearing, should be approved.

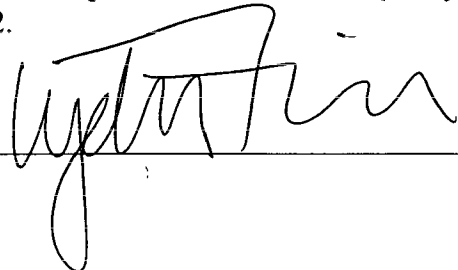
It is, therefore, ordered, adjudged and decreed that the parties' consent order is approved in its entirety and made the order of this tribunal.

SO ORDERED on March 16, 2012.

  
Michael J. Linder, Director  
Nebraska Department of Environmental Quality

CERTIFICATE OF SERVICE

I certify that on March 16<sup>th</sup>, 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 Lydia Fielder, 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  
JD Cattle Co., Inc.  
Howard County, Nebraska  
Respondent.

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CASE NO. 3055  
  
CONSENT ORDER

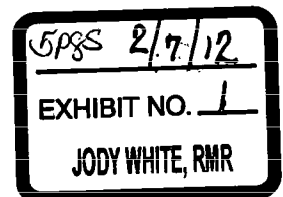
COME NOW the parties, Petitioner, the Nebraska Department of Environmental Quality ("NDEQ" or "Department"), proceeding on its Complaint, Compliance Order, and Notice of Opportunity for Hearing filed herein and appearing through its counsel, Lydia Fiedler, and the Respondent, JD Cattle Co., Inc., A corporation authorized to do business in the state of Nebraska, appearing through its counsel, 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 Respondent.

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 Respondent with respect to such issues contained in the Complaint, Compliance Order, and Notice of Opportunity for Hearing.

4. The Respondent agrees 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. By December 1, 2012, Respondent shall complete construction of the required livestock waste control facility, in accordance with plans and specifications approved by NDEQ, and which meets all other regulatory requirements.
- B. Beginning June 1, Respondent shall submit monthly progress reports to NDEQ on the progress of construction of the approved livestock waste control facility. These reports shall contain information regarding the activities associated with the project, construction schedule, and completion date.
- C. If construction is not completed by December 1, 2012, Respondent shall immediately reduce livestock numbers to less than 300 cattle and shall not repopulate the operation until construction of the livestock waste control facility is complete.
- D. Respondent shall secure an approval to operate prior to operating any modified portion of Respondent's operation. Respondent shall operate the facility in compliance with all relevant statutes, regulations, and permits.

7. The parties agree that the requirements in paragraph 6a this Consent Order are subject to force majeure. Force majeure for the purposes of this Consent Order

means any event arising from causes beyond the reasonable control of the Respondent and any entity controlled by the Respondent, including its contractors and subcontractors, that delays the timely performance of the obligations in paragraph 6a of this Consent Order. For this the purpose of this Consent Order only, winter weather after November 1<sup>st</sup>, 2012 will not be considered a force majeure event. The Respondent shall exercise best efforts to anticipate any potential force majeure events and address the potential effects as the event is occurring, and following the event, to ensure that any delay is minimized to the greatest extent practicable. Respondent shall bear the burden to prove that a failure to comply with the Consent Order was the result of a force majeure event pursuant to this Paragraph.

8. If any event occurs that may delay the performance of the obligations in paragraph 6a of this Consent Order, whether or not caused by a force majeure event, the Respondent shall notify the DEQ by telephone, e-mail or fax within 24 hours of learning of the event. The Respondent 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:

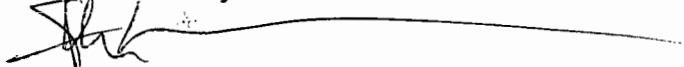
Dennis Heitmann  
Agricultural Section Supervisor  
Water Quality Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922  
Telephone number (402) 471-2186

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.

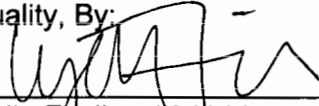
12. The Parties further agree that the request for contested case shall be dismissed and the undersigned consent without further notice to the form and entry of the foregoing Consent Order.

JD Cattle Co., Inc.,  
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

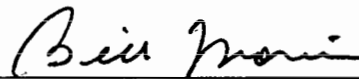
Nebraska Department of Environmental  
Quality, By:



Lydia Friedler, #24144  
Nebraska Dept. of Environmental Quality  
1200 "N" Street, Suite 400  
P.O. Box 98922  
Lincoln, NE 68509  
(402) 471-3173

HEARING OFFICER

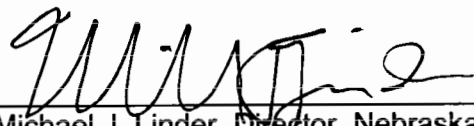
3/13/12  
Date



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

BY THE NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY:

March 16 2012  
Date

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