

SETTLEMENT AGREEMENT

This Agreement is made by and between the Missouri Department of Natural Resources (hereinafter "the Department"), the Missouri Attorney General's Office (hereinafter "the Attorney General"), Jody Shelenhamer, Robin J. Shelenhamer Trust, and Twin Hills Farms, LLC (hereinafter "Appellants"). The Department, the Attorney General and Appellants are collectively referred to herein as the "Parties."

WHEREAS, on April 5, 2013, the Department issued to Appellants Notice and Order to Abate Violations and Pay Administrative Penalties, No. 2013-WPCB-1238 for alleged violations of the Missouri Clean Water Law at Appellants' cattle feedlot (hereinafter the "Facility") located on Highway PP near Bolivar, Missouri; and

WHEREAS, on May 6, 2013, Appellants timely appealed the issuance of Order No. 2013-WPCB-1238 by filing Notice of Complaint No. 13-0725 with the Missouri Administrative Hearing Commission; and

WHEREAS, the Parties desire to amicably resolve the issues raised in Complaint No. 2013-WPCB-1238 without a hearing and adjudication; and

WHEREAS, the Parties agree that this Agreement is in the best interests of the Parties and the State of Missouri:

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. The provisions of this Agreement shall apply to and be binding upon the parties executing this Agreement, their agents, subsidiaries and affiliates, including the officers, agents, servants and persons acting under, through or for the parties agreeing hereto. The signatories hereto expressly recite and represent that they are duly authorized to bind the departments or offices they purport to be representing.

2. Appellants will fax to the Administrative Hearing Commission a written notice withdrawing Complaint No. 2013-WPCB-1238 no later than 12:00 p.m. on July 24, 2013. The fax number is (573) 751-5018.

3. Within thirty (30) days after Appellants sign this Settlement Agreement, Appellants agree to pay, without admitting liability or fault, \$1,500.00 of the \$6,000.00 penalty set forth in Order No. 2013-WPCB-1238. Such payment shall be made by check made payable to: *Polk County Collector as Treasurer of the Polk County School Fund*. Such payment must be delivered to the Department of Natural Resources, Accounting Program, P.O. Box 477, Jefferson City, MO 65102, for forwarding to the Polk County Treasurer.

4. Within sixty (60) days after Appellants sign this Settlement Agreement, Appellants agree to pay, without admitting liability or fault, \$1,500.00 of the \$6,000.00 penalty set forth in Order No. 2013-WPCB-1238. Such payment shall be made by check made payable to: *Polk County Collector*

as Treasurer of the Polk County School Fund. Such payment must be delivered to the Department of Natural Resources, Accounting Program, P.O. Box 477, Jefferson City, MO 65102, for forwarding to the Polk County Treasurer.

5. The remaining penalty of \$3,000.00 shall be suspended so long as Appellants comply with paragraph number 7 of this Settlement Agreement. The suspended portion of the penalty shall be forgiven if Appellants have no further violations of the Missouri Clean Water Law documented by the Department at the Facility for a period of one (1) year from the date Appellants sign this Settlement Agreement.

6. Within thirty (30) days after Appellants sign this Settlement Agreement, Appellants shall reimburse the Department for its costs and expenses in the amount of \$1,602.98. Such payment shall be made by check made payable to: *State of Missouri*. Such payment must be delivered to the Department of Natural Resources, Accounting Program, P.O. Box 477, Jefferson City, MO 65102.

7. Appellants shall complete the following corrective actions within the timelines specified:

- a. Within thirty (30) days after Appellants sign this Settlement Agreement, submit to the Department for review and comment a Daily Operations Plan (Plan) for the Facility. The Plan shall be

submitted to the Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102. The Plan shall be developed with assistance from the United States Department of Agriculture's Natural Resource Conservation Services, and shall include a description of how the Facility manages manure accumulation and disposal, animal fatalities, and stormwater at the Facility. The Plan shall also include a schedule with specific dates for completing the following activities at the Facility: 1) removing remaining feeder cattle and completing conversion of the Facility from a feedlot to a cow/calf operation; 2) seeding areas of the Facility that are devoid of vegetation, which includes but is not limited to the northern and eastern pens; and 3) rotating cattle between pastures to ensure vegetative cover is maintained throughout the Facility.

- b. Within fifteen (15) days receipt of the Department's comments on the Plan, respond to and adequately address all of the Department's comments on the Plan.
- c. By November 1, 2013, submit a written report with photographs to the Department documenting the following: 1) vegetation has been established throughout the Facility; 2) any remaining feeder cattle have been removed from the Facility; and 3) the Facility

has been converted from a feedlot to a cow/calf operation. The written report shall be submitted to the Missouri Department of Natural Resources, Water Protection Program, P.O. Box 176, Jefferson City, MO 65102.

8. Should Appellants fail to meet the terms of this Settlement Agreement, including the deadlines set out in paragraph number 7, Appellants agree to pay stipulated penalties in the following amounts:

<u>Days of Violation</u>	<u>Amount of Penalty</u>
1 to 30 days	\$250.00 per day
31 to 90 days	\$500.00 per day
91 days and above	\$1000.00 per day

Any such stipulated penalty shall be paid within ten (10) days of demand by the Attorney General. This stipulated penalty is not a civil penalty, nor an administrative penalty. Rather it is a sanction for not complying with the terms of this Settlement Agreement. Stipulated penalty payments shall be made by check made payable to: *Polk County Collector as Treasurer of the Polk County School Fund*. Such payment must be delivered to the Department of Natural Resources, Accounting Program, P.O. Box 477, Jefferson City, MO 65102, for forwarding to the Polk County Treasurer.

9. Each of the Parties shall be responsible for their own costs and attorneys fees for Complaint No. 2013-WPCB-1238 and this Settlement Agreement

IN WITNESS HEREOF, the Parties hereby execute this Agreement.

Missouri Department of Natural Resources

By: John Madras 7/24/13
John Madras, Director Date
Water Protection Program

On behalf of all Appellants
Jody Shelenhamer 7-24-13
Jody Shelenhamer Date

CHRIS KOSTER
Attorney General
By: Timothy P. Duggan 7/24/13
Timothy P. Duggan Date
Assistant Attorney General