

IN THE CIRCUIT COURT OF SALINE COUNTY, MISSOURI

STATE OF MISSOURI ex rel. )  
Attorney General Chris Koster and )  
Missouri Department of )  
Natural Resources, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
DENNIS KUEKER, )  
 )  
Defendant. )

**RECEIVED**

MAY 21 2014

**WATER PROTECTION PROGRAM**

Case No. 14SA-CV00154

**CONSENT JUDGMENT**

Plaintiff, by and through its relators Attorney General Chris Koster and the Missouri Department of Natural Resources, and Defendant Dennis Kueker consent to the entry of this Consent Judgment.

The Court has read Plaintiff's Petition for Injunctive Relief and Civil Penalties, in which Plaintiff alleges violations of the Missouri Clean Water Law at Defendant's concentrated or confined animal feeding operation, identified as Kueker SEW Farm CAFO. The Court is advised that the parties have consented to the terms in this Consent Judgment for settlement purposes only, and that their consent is conditioned upon the Court approving the Consent Judgment in its entirety. The Court is satisfied that the provisions of this Consent Judgment are intended to resolve the issues

raised by the Petition and that the parties want to terminate this controversy and consent to the entry of this judgment without trial.

Each and every term of this Judgment shall be enforceable by further order of this Court, and to that end, the Court retains jurisdiction of the matter in order to enforce each and every term of this Consent Judgment. The Court finds that the terms of this Consent Judgment protect the public's interest.

The parties, having consented to the entry of this Consent Judgment, it is hereby ORDERED, ADJUDGED AND DECREED that:

### **I. Objectives of the Parties**

1. The objectives of the parties to this Consent Judgment are to protect human health and the environment and to resolve allegations contained in Plaintiff's Petition.

### **II. Definitions**

2. Terms used herein shall have the same meaning as provided in the Missouri Clean Water Law, Chapter 644 RSMo, and the regulations adopted thereunder. In addition, the following terms are specifically defined:

a. "Consent Judgment" means this Consent Judgment and all attachments, which are included by reference and fully enforceable as a term of the judgment.

b. "Defendant" means Dennis Kueker.

c. "Department" means the Missouri Department of Natural Resources.

d. "Plaintiff" and "State" means the State of Missouri at the relation of Attorney General Chris Koster and the Department.

### **III. Jurisdiction and Venue**

3. This Court has jurisdiction over the subject matter and the parties in this case pursuant to § 644.076.1 RSMo.<sup>1</sup> Venue is proper in this court pursuant to § 644.076.1 RSMo because Defendant's residence and the subject CAFO facility are located in Saline County.

### **IV. Parties Bound**

4. The provisions of this Judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of the parties to this action or their agents, servants, employees, heirs, successors, and assigns. Defendant shall provide a copy of this order to all persons or entities retained to perform work required by this order.

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<sup>1</sup> All statutory references shall be to the 2013 Supplement to the Missouri Revised Statutes unless specifically stated otherwise.

## **V. Satisfaction and Reservation of Rights**

5. Upon the completion of all terms of this Consent Judgment, including the payment of civil penalties, completion of all schedules of compliance and the payment of any stipulated penalties due under the terms of this Consent Judgment, Defendant is relieved of liability for the violations alleged in the petition.

6. This Consent Judgment shall not be construed to limit the rights of the State to obtain penalties or injunctive relief under the Missouri Clean Water Law or its implementing regulations, or under other federal or state laws, or regulations, except as expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent the State from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for violations of the Missouri laws or regulations that were not alleged in the petition.

c. Nothing in this Consent Judgment shall preclude the State from seeking equitable or legal relief for future violations of the

Missouri Clean Water Law or regulations promulgated under its authority.

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment posed by Defendant's acts or omissions, whether related to the violations addressed in this Consent Judgment or otherwise.

### **VI. Injunctive Relief**

7. Defendant agrees and is ordered to comply with all State of Missouri environmental statutes and all implementing regulations for any and all future activities in the State of Missouri.

8. Within thirty days of the Court entering this Judgment, Defendant shall submit to the Department for its approval a written report that provides an explanation of the likely cause of the discharge of swine effluent on March 5, 2012. The report shall include steps that Defendant will take to ensure that a discharge does not occur again. Defendant shall respond in writing, to the Department's satisfaction, to any written comments from the Department about the report. Upon receiving notice that the Department approves the report, Defendant shall implement measures described in the report. If either Defendant or the Department observes evidence of a leak, Defendant, upon demand from the Department, shall

submit to the Department an engineering evaluation, which shall include a work plan and schedule to abate the leak. Defendant shall respond in writing, to the Department's satisfaction, to any comments from the Department concerning the engineering evaluation. Defendant shall implement the plan and schedule in the engineering evaluation as approved by the Department.

### **VII. Damages**

9. Defendant consents to the entry of judgment in favor of the State of Missouri for damages and investigation costs in the amount of \$3,132.69.

10. Defendant is ordered to pay \$3,132.69 by check made payable to the "*State of Missouri (Department of Natural Resources)*" within thirty (30) days of the entry of this Consent Judgment by mailing same to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

### **VIII. Civil Penalty**

11. Defendant consents to the entry of judgment in favor of the State of Missouri for a civil penalty of \$7,600.00. The parties agree that \$3,800.00 of this civil penalty shall be suspended as described in paragraph no. 12.

12. Defendant agrees to pay the \$3,800.00 up-front civil penalty by check made payable to the “*State of Missouri (Saline County)*” within thirty (30) days of the entry of this Consent Judgment by mailing same to: Collections Specialist, Missouri Attorney General’s Office, P.O. Box 899, Jefferson City, MO 65102-0899.

13. Suspended Civil Penalty. \$3,800.00 of the total penalty of \$7,600.00 shall be suspended upon the condition that Defendant commits no further violations of the Missouri Clean Water Law after entry of this Consent Judgment and complies with all terms of this Consent Judgment. Once a violation of the Missouri Clean Water Law is documented by the Missouri Department of Natural Resources, the Missouri Attorney General’s Office shall send a written demand for the suspended penalty to Defendant. Defendant shall have fifteen (15) days from its receipt of the written demand to submit the suspended penalty in the manner described in paragraph 11. The suspended penalty provided in this Consent Judgment shall be in addition to any other rights, remedies, or sanctions available to the State for Defendant's violation of this Consent Judgment or applicable law, including civil penalties.

### **IX. Modification**

14. Except as otherwise specified herein, this Consent Judgment may be modified or amended only upon written agreement by and among

the parties, their successors and assigns and with the approval of the Court.

All modifications shall be in writing and filed with the Court.

**X. Costs**

15. Defendant shall pay all court costs in this action.

**XI. Signatories**

The parties hereby consent to this Consent Judgment as indicated by their duly authorized signatures below.

DENNIS KUEKER

*Dennis Kueker*  
Date: 5-13-14

MISSOURI ATTORNEY GENERAL'S OFFICE

By: *Timothy P. Duggan*  
Timothy P. Duggan, MBE 27827  
Assistant Attorney General  
Date: 5/19/14

MISSOURI DEPARTMENT OF NATURAL RESOURCES

By: *Steven Feiler*  
Deputy, Director  
Division of Environmental Quality

Date: 5-28-14

SO ORDERED.

Date: 6/24/14

*[Signature]*  
Circuit Judge

The clerk shall provide certified copies to ~~the parties or their counsel.~~