

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

AGFEED INDUSTRIES, INC; M2 P2, LLC;  
and PORK TECHNOLOGIES, L.C.,

Plaintiffs,

v.

THOMAS J. MILLER, in his official Capacity  
as Attorney General of the State of Iowa,

Defendant.

NO. 4:11-cv-422

**CONSENT DECREE**

This Consent Decree, effective as of this 15<sup>th</sup> day of September, 2011 (the "Consent Decree"), is between AgFeed Industries, Inc., M2 P2, LLC, and Pork Technologies, L.C. and all of their present and future subsidiaries, affiliates, and/or companies under common control therewith, and their successors and assigns (herein collectively "AgFeed"), and the State of Iowa, by and through the Attorney General of the State of Iowa ("Attorney General").

WHEREAS, on July 22, 2002 Smithfield Foods, Inc., Murphy Farms, LLC, and Prestage-Stoecker Farms, Inc. (herein collectively "Smithfield") filed suit against the Attorney General in the United States District Court for the Southern District of Iowa; Smithfield Foods, Inc., Murphy Farms, LLC, and Prestage-Stoecker Farms, Inc. v Miller, No. 4:02-CV-90324 (the "Smithfield Lawsuit");

WHEREAS, the Smithfield Lawsuit asserted that Iowa Code section 9H.2, the predecessor to current Iowa Code section 202B.201, violated the United States Constitution;

WHEREAS, on January 22, 2003, the United States District Court for the Southern District of Iowa permanently enjoined the Attorney General from enforcing Iowa Code section 9H.2;

WHEREAS, Iowa Code section 9H.2 was amended by the Iowa Legislature in 2003 during the pendency of the appeal of the District Court's ruling by the Attorney General, and recodified at Iowa Code section 202B.201;

WHEREAS, the United States Court of Appeals for the Eighth Circuit vacated the District Court's January 22, 2003 ruling and remanded the Smithfield Lawsuit for further proceedings in light of the 2003 amendment;

WHEREAS, by agreement with Smithfield dated September 16, 2005, and with the approval of the United States District Court for the Southern District of Iowa, the Attorney General consented to an injunction prohibiting the enforcement of Iowa Code section 202B.201 against Smithfield by the State of Iowa;

WHEREAS, on January 18, 2006, Cargill, Incorporated, Cargill Meat Solutions Corporation, and Cargill Pork, LLC (herein collectively "Cargill") filed suit against the Attorney General in the United States District Court for the Southern District of Iowa, Cargill, Incorporated, Cargill Meat Solutions Corporation, and Cargill Pork, LLC v. Miller, No. 4:06-CV-20 (the "Cargill Lawsuit").

WHEREAS, the Cargill Lawsuit asserted that Iowa Code section 202B.201 violated the United States Constitution;

WHEREAS, by agreement with Cargill dated January 19, 2006, and with the approval of the United States District Court for the Southern District of Iowa, the Attorney General consented to an injunction prohibiting the enforcement of Iowa Code section 202B.201 against Cargill by the State of Iowa;

WHEREAS, on April 5, 2006, Hormel Foods Corporation ("Hormel") filed suit against the Attorney General in the United States District Court for the Southern District of Iowa, captioned Hormel Foods Corporation v. Miller, No. 4:06-CV-00161 (the "Hormel Lawsuit");

WHEREAS, the Hormel Lawsuit asserted that Iowa Code section 202B.201 violated the United States Constitution;

WHEREAS, by agreement with Hormel dated April 6, 2006, and with the approval of the United States District Court for the Southern District of Iowa, the Attorney General consented to an injunction prohibiting the enforcement of Iowa Code section 202B.201 against Hormel by the State of Iowa;

WHEREAS, on September 11, 2009 Tyson Fresh Meats, Inc (herein, "Tyson") filed suit against the Attorney General in the United States District Court for the Southern District of Iowa, captioned Tyson Fresh Meats, Inc. V. Miller, No. 4:09-CV-351 (the "Tyson Lawsuit");

WHEREAS, the Tyson Lawsuit asserted that Iowa Code section 202B.201 violated the United States Constitution;

WHEREAS, by agreement with Tyson dated September 11, 2009, and with the approval of the United States District Court for the Southern District of Iowa, the Attorney General

consented to an injunction prohibiting the enforcement of Iowa Code section 202B.201 against Tyson in the State of Iowa;

WHEREAS, on March 29, 2011, Christensen Farms Midwest, LLC ("Christensen Farms") filed suit against the Attorney General in the United States District Court for the Southern District of Iowa, Christensen Farms Midwest, LLC v. Miller, No. 4:11-CV-145 (the "Christensen Lawsuit");

WHEREAS, the Christensen Lawsuit asserted that Iowa Code section 202B.201 violated the United States Constitution;

WHEREAS, by agreement with Christensen Farms dated March 30, 2011, and with approval of the United States District Court for the Southern District of Iowa, the Attorney General consented to an injunction prohibiting the enforcement of Iowa Code section 202B.201 against Christensen Farms in the State of Iowa;

WHEREAS, Iowa Code section 202B.201 on its face prevents AgFeed from engaging in certain activities in the State of Iowa including owning or contracting for the production of swine if AgFeed would acquire Pine Ridge Farms, LLC, a Delaware limited liability company engaged in swine processing in the State of Iowa ("Pine Ridge");

WHEREAS, the Attorney General is charged with enforcing Iowa Code section 202B.201 on behalf of the State of Iowa;

WHEREAS, AgFeed desires to maintain the business operations of M2 P2, LLC, a Delaware limited liability company ("M2 P2") and Pork Technologies, L.C., an Iowa limited liability company ("Pork Tech") in the State of Iowa, and to expand its business operations in the State of Iowa by acquiring Pine Ridge, thereby engaging in certain activities currently prohibited by Iowa Code section 202B.201 including, but not limited to, directly conducting the business of the contracting in Iowa for the care and feeding of swine owned by AgFeed and its subsidiaries while at the same time owning a swine processor;

WHEREAS, AgFeed desires to aggressively pursue opportunities for the potential to expand further processing capacity at the Pine Ridge Des Moines, Iowa processing plant materially enhancing the ability of pork producers in Iowa and across the midwest to maximize the economic value of the market hogs and cull sows they produce;

WHEREAS, AgFeed desires to maintain its position as a business providing opportunities to Iowa pork producers to engage in the contract production of hogs with AgFeed. In fact, AgFeed believes that the terms contained in this Consent Decree will allow AgFeed to engage in the long-term expansion of its hog contracting business in Iowa, thereby increasing competition for the expertise and facilities provided by Iowa's pork producers;

WHEREAS, AgFeed has filed suit against the Attorney General, asserting that Iowa Code section 202B.201 violates the United States Constitution;

WHEREAS, the Attorney General denies that Iowa Code section 202B.201 violates the United States Constitution;

WHEREAS, the Attorney General and AgFeed have now agreed to compromise and settle all of their disputes between them related in any respect to Iowa Code section 202B.201 and its subject matter.

NOW THEREFORE, based on the mutual promises and covenants exchanged, the parties agree as follows:

1. Definitions:

- A. "Contract Grower" means a person or entity to the extent that person or entity enters into a Contract Grower Agreement with AgFeed for the care and feeding of swine owned by AgFeed in the State of Iowa.
- B. "Prospective Contract Grower" means a person or entity in active contact with AgFeed with respect to the establishment of a Contract Grower Agreement.
- C. "Contract Grower Agreement" means an agreement between AgFeed and a Contract Grower for the care and feeding of swine owned by AgFeed in the State of Iowa.
- D. "Contract Input" means a commodity, an organic or synthetic substance, a compound, or a service that is used by a Contract Grower to produce swine under a Contract Grower Agreement.
- E. "Association" means an organization, corporate, or otherwise, with or without capital stock, formed for a common purpose.

2. Contract Grower Rights

AgFeed hereby acknowledges that its Contract Growers and its Prospective Contract Growers have the following rights (hereinafter "Contract Grower Rights"):

- A. *Right to Join Association.* The right of a Contract Grower or Prospective Contract Grower to join, or to refrain from joining or belonging to, an Association of Contract Growers.

- B. *Right to Be a Whistleblower.* The right of a Contract Grower or Prospective Contract Grower to lawfully provide statements or information (including to the United States Secretary of Agriculture or to a law enforcement agency) regarding alleged improper actions or violations of law by AgFeed. This right does not include the right to make statements or provide information if such statements or information are determined to be libelous or slanderous.
- C. *Right to Use Contract Grower's Lien.* The right of a Contract Grower to file, continue, terminate, or enforce a lien under Iowa Code Chapters 579A and 579B.
- D. *Right to Review Production Contracts.* The right of a Contract Grower or Prospective Contract Grower to utilize protections to review production contracts granted under Iowa Code section 202.3.
- E. *Right to Disclose Contractual Terms.* The right of a Contract Grower or Prospective Contract Grower to disclose contractual terms under Iowa Code section 202.3.

3. Injunction Against the State of Iowa:

The State agrees, and this Court orders, that Iowa Code Section 202B.201, as it has existed in the past, as it now exists, or as it may be amended or recodified, shall not be enforced against AgFeed by or on behalf of the State of Iowa for the term of this Consent Decree as set out in paragraph 8.

4. Obligations of AgFeed:

AgFeed agrees that it will not engage, or permit any employee or agent to engage, in the following in connection with Contract Growers or Prospective Contract Growers:

- A. AgFeed will not impose less favorable terms and conditions in Contract Grower Agreements on the basis of a Contract Grower or Prospective Contract Grower's membership in a Contract Grower Association, or activities in such Association or Associations.
- B. AgFeed will not take actions to coerce, retaliate, or discriminate against any Contract Grower or Prospective Contract Grower because that Contract Grower or Prospective Contract Grower exercises, or attempts to exercise, any Contract Grower Right, including:

- 1) Any such coercive, retaliatory, or discriminatory actions in connection with the execution, termination, extension, or renewal of an agricultural contract between AgFeed and a Contract Grower;
  - 2) Any such coercive, retaliatory, or discriminatory actions in connection with the execution, termination, extension, or renewal of a Contract Grower Agreement;
  - 3) Any such coercive, retaliatory, or discriminatory actions in connection with the imposition of discriminatory or preferential terms in a Contract Grower Agreement, or the interpretation of the terms of a Contract Grower Agreement in a discriminatory or preferential manner (the terms may relate to the price paid for a commodity, the quality or the quantity of a commodity demanded, or financing, including investment requirements);
  - 4) Any such coercive, retaliatory, or discriminatory actions in connection with the imposition of a penalty, including the unreasonable denial of a reward (a penalty may be in any form, including, but not limited to, financial penalties and may relate to loans, bonuses, or inducements);
  - 5) Any such coercive, retaliatory, or discriminatory actions in connection with the altering of the quality, quantity, or delivery times of contract inputs provided to the Contract Grower by AgFeed as required in the Contract Grower Agreement; however, delivery times may be changed by mutual agreement due to weather and market conditions;
  - 6) Any such coercive, retaliatory, or discriminatory actions in connection with the use of the performance of any other Contract Grower as a basis for the termination, cancellation, or renewal of a Contract Grower Agreement, or to negatively affect the Contract Grower's compensation; provided, however, that nothing in this paragraph shall prohibit AgFeed from using a program which rewards Contract Growers with monetary bonuses based on superior performances.
- C. AgFeed will not provide false material factual information to Contract Growers or Prospective Contract Growers regarding the following:
- 1) Other Contract Growers with whom the Contract Grower or Prospective Contract Grower associates;

- 2) An Association of Contract Growers;
  - 3) An agricultural organization with which the Contract Grower or Prospective Contract Grower is affiliated; or
  - 4) The Contract Grower Rights.
- D. To the extent applicable to the Contract Grower Agreement, AgFeed will provide to Contract Grower, upon request, the statistical information and data used to determine payment to the Contract Grower under the Contract Grower Agreement with AgFeed.
- E. To the extent applicable to the Contract Grower Agreement, AgFeed will allow a Contract Grower or a Contract Grower's designated representative, where it is within AgFeed's authority, reasonable access to observe, by actual observation at the time of weighing, the weights and measures used to determine the Contract Grower's compensation under a Contract Grower Agreement.
- F. AgFeed will not require a Contract Grower to make capital investments associated with an existing Contract Grower Agreement that are in addition to the investment requirements of the Contract Grower Agreement unless fair and equitable compensation is paid to the Contract Grower by AgFeed, in a manner the Contract Grower agrees to in writing. However, AgFeed can require Contract Growers to make necessary capital improvements at Contract Growers' expense to meet statutory or regulatory standards and requirements as a condition to continuing their contractual relationship. If the Contract Grower cannot reasonably pay for or secure third-party financing for such improvements and modifications, AgFeed will attempt to negotiate mutually agreeable financing, terms and conditions for financing by AgFeed, enhanced compensation to the Contract Grower by AgFeed, or other contract modifications with the Contract Growers for such mandated improvements or modifications. If the Contract Grower cannot reasonably pay or secure third-party financing for such improvements or modifications, and no mutual agreement is reached with AgFeed regarding financing, compensation, or other contract modifications, either party may declare a force majeure event under the Contract Grower Agreement. Nothing in this paragraph shall affect a Contract Growers' obligation to reasonably maintain its existing facilities or the facilities as they are improved and modified as referenced above.
- G. AgFeed agrees, for purposes of this Consent Decree only, that Contract Growers or Prospective Contract Growers may form and operate an

Association of agricultural product producers pursuant to the Capper-Volstead Act, 7 U.S.C. §§ 291-292, and that such an Association may negotiate with AgFeed with respect to the terms of Contract Grower Agreements including, but not limited to, negotiations related to the compensation to be paid pursuant to Contract Grower Agreements. For purposes of this Consent Decree only, AgFeed waives any claim or defense that the services and facilities provided by Contract Growers under Contract Grower Agreements are not "agricultural products" pursuant to 7 U.S.C. § 291. To the extent that Contract Growers or Prospective Contract Growers organize such an Association, AgFeed agrees:

- 1) Not to retaliate or discriminate against such Contract Growers or Prospective Contract Growers because they have organized such and Association; and
  - 2) To negotiate in good faith with any such Association.
- H. AgFeed agrees that it will not assert, either in its case in chief or as a defense, in a suit arising out of this Consent Decree, that any of the protections and/or benefits provided by this Consent Decree are preempted by any existing federal law.
- I. AgFeed will provide the Attorney General ninety (90) days written notice of the closure of any permanent swine slaughter facility which it owns, constructs, or acquires after the effective date of this decree.
- J. For a period of two (2) years following the execution of this Consent Decree, at least twenty five percent (25%) of the swine slaughtered at the Pine Ridge Plant in Des Moines, Iowa (determined collectively on a rolling 30-day basis) will be purchased from sellers other than AgFeed-owned affiliates.
- K. AgFeed will file reports with the Iowa Secretary of State pursuant to Iowa Code § 202B.301 and will not file reports pursuant to Iowa Code § 202B.302.
5. Release:

For, and in consideration of, the actions and promises contained in this Consent Decree, the adequacy and sufficiency of which consideration is hereby acknowledged, the State of Iowa hereby releases, remises, acquits, and forever discharges AgFeed, its present and future subsidiaries and/or affiliated companies and their directors, officers, employees, attorneys, agents and owners from and against any and all liability or



responsibility whatsoever, of any and every kind and nature for any and all damages or losses or other claims, including injunctive or declaratory relief, or fines or penalties, based upon any and all past, present or future claims, demands, or causes of action, including, but not limited to, causes of action sounding in tort, resulting or result from, or on account of, or arising out of or relating to any alleged violation of Iowa Code § 202B.201 as it stands at the time of the entry of this Consent Decree, as it stood at any time prior to this Consent Decree, or may stand in the future. It is further agreed and understood that said consideration is given and accepted in compromise of disputed claims, and that nothing contained herein, is, or is to be construed as an admission of liability on the part of AgFeed, all such liability being expressly denied.

6. Contract Grower Remedies:

- A. A Contract Grower who suffers damages as a result of AgFeed's breach of this Consent Decree, or a Contract Grower Agreement, may obtain appropriate legal and equitable relief in a suit at common law against AgFeed.
- B. A Prospective Contract Grower who suffers damages as a result of AgFeed's breach of this Consent Decree may obtain appropriate legal and equitable relief in a suit at common law against AgFeed.
- C. The laws of the State of Iowa shall be applicable to any Contract Grower Agreement between AgFeed and a Contract Grower located in the State of Iowa.
- D. AgFeed shall not use binding alternative dispute resolution as a mechanism to resolve any disputed related to, or arising from, this Consent Decree or a Contract Grower Agreement. However, nothing in this Consent Decree shall affect a party's obligation to mediate a dispute pursuant to Iowa's mandatory mediation program, if applicable.
- E. The venue of any dispute between AgFeed and a Contract Grower or Prospective Contract Grower arising out of this Consent Decree or a Contract Grower Agreement shall be as follows:
  - 1) Any action by a Contract Grower or Prospective Contract Grower to enforce either this Consent Decree or a Contract Grower Agreement shall be brought in the Iowa District Court for Polk County or the United States District Court for the Southern District of Iowa.
  - 2) An action brought by AgFeed to enforce a Contract Grower Agreement or this Consent Decree shall be brought in either the

Iowa District Court for the county in which the Contract Grower resides or in the United States District Court for the Northern or Southern District of Iowa, as applicable.

- F. If the Contract Grower or Prospective Contract Grower prevails in such an action against AgFeed, the Contract Grower or prospective Contract Grower shall be entitled to court costs, reasonable attorney's fees, and reasonable litigation expenses.
- G. If injunctive relief is sought in such an action, a Contract Grower or Prospective Contract Grower shall not be required to post a bond.
- H. AgFeed shall not contract to limit the measure of damages available to a Contract Grower under Iowa Law.
- I. Except as specifically stated in this Consent Decree, a Contract Grower or Prospective Contract Grower shall be entitled to damages as provided by Iowa law and AgFeed shall be entitled to defenses as provided by Iowa law.

7. Attorney General Remedies:

The Attorney General may enforce this Consent Decree and any of the rights of Contract Growers and Prospective Contract Growers identified in this Consent Decree against AgFeed. The Attorney General shall also be entitled to injunctive relief, if appropriate, in order to redress violations of this Consent Decree or Contract Grower Rights. Any action brought pursuant to this section shall be brought in the Iowa District Court for Polk County or the United States District Court for the Southern District of Iowa. If the Attorney General prevails in such a proceeding against AgFeed, the presiding court may award a civil penalty against AgFeed, in an amount up to \$1,000 per day.

8. Term:

This Consent Decree will be in effect until midnight September 16, 2015, after which the rights of the parties will be as they stood prior to the entry of this Consent Decree. Notwithstanding the foregoing, AgFeed has the right to: a) enter into agreements with Contract Growers for the care and feeding of swine owned by AgFeed in the State of Iowa with a term extending beyond the term of this Consent Decree and with respect to each such Contract Grower Agreement the provisions of this Consent Decree shall remain in effect for the full term of such Contract Grower Agreement; and b) remain as an owner or enter into agreements to be an owner of swine processors with a term extending beyond the term of this Consent Decree and with respect to such agreements the provisions of this Consent Decree shall remain in effect for the full term of such agreements.

9. Continuing Jurisdiction:

This litigation will be terminated and placed within the closed matters of this Court. However, the Court will retain jurisdiction over this matter to enforce this Consent Decree, as may be necessary.

10. More Favorable Terms:

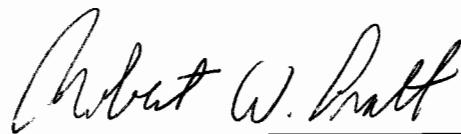
If at any time during the period this Consent Decree is in effect, the State of Iowa, by and through its Attorney General or otherwise, has previously made available or hereafter makes available to another processor in a consent decree or other agreement regarding Iowa Code § 202B.201, as it now exists and/or as it may be amended, more favorable terms than the terms in this Consent Decree, then the Attorney General shall make available to AgFeed the benefits of such more favorable terms. The Parties shall document in writing the modification of this Consent Decree to include any such more favorable terms.

11. Entire Agreement:

This Consent Decree constitutes the entire agreement between the parties upon which each relies as an inducement to settlement. The terms of this Consent Decree are contractual and not merely a recital. None of the terms shall be altered or modified in whole or in part except in writing signed by each party.

WHEREAS, the parties, through their authorized representatives, have requested and agreed to this Consent Decree which is hereby ordered this day to be effective immediately.

ENTERED:

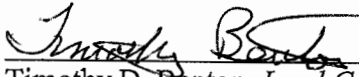


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Honorable Robert W. Pratt  
Chief Judge, Southern District of Iowa

Consent Decree Hereby Requested By:

STATE OF IOWA  
OFFICE OF THE ATTORNEY GENERAL

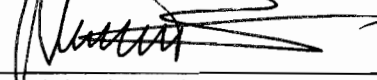
  
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**Capacity as Attorney General of the**  
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