

IN THE DISTRICT COURT OF KEARNEY COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel., )  
MICHAEL J. LINDER, Director )  
NEBRASKA DEPARTMENT OF )  
ENVIRONMENTAL QUALITY, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
COOPERATIVE PRODUCERS, INC. )  
 )  
 )  
Defendant. )

Case No. CI07-111

FILED  
JILL L. FRITSON

OCT 3 2007

CONSENT DECREE

CLERK DISTRICT COURT  
KEARNEY COUNTY

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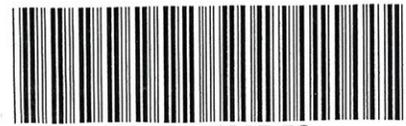
Plaintiff, the Nebraska Department of Environmental Quality ("NDEQ"), proceeding on its Complaint filed herein and appearing through its counsel, Jon Bruning, Attorney General, and Defendant, Cooperative Producers, Inc. and each party having consented to the making and entering of this Consent Decree without trial, the Court finds that the Consent Decree should be and hereby is entered.

IT IS THEREFORE ORDERED AND DECREED:

1. This Court has jurisdiction of the parties and the subject matter of this action. The complaint filed herein constitutes a justiciable cause of action against Cooperative Producers, Inc. under the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2004 and Supp. 2005).

2. The Plaintiff alleges that on or around November 7, 2006, Defendant failed to properly manage pesticide- and fertilizer-contaminated water, resulting in a discharge to waters of the State and failed to immediately notify NDEQ. NDEQ further

SCANNED



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alleges that the Defendant's actions resulted in violations of various provisions of the Nebraska Administrative Code and is therefore subject to a civil penalty as provided in Neb. Rev. Stat. §81-1508.02 (Reissue 1999).

3. The parties agree that settlement of these matters is in the public interest and that entry of this Consent Decree is the most appropriate means of resolving their dispute. Defendant, without admitting any allegations of the Complaint, agrees to the form and entry of this Consent Decree for purposes of settlement only. Nothing in this Consent Decree shall be deemed or considered as an admission by Defendant with respect to the allegations contained in the complaint filed in this case.

4. This Consent Decree shall be in full satisfaction of all claims between the parties alleged in the Complaint and the parties further agree to release any and all claims or actions arising out of the same transaction or occurrences referenced above and in the complaint filed in this case, provided that such claims were known to the State of Nebraska, or were reasonably ascertainable from information in the State's possession, as of the date of the filing of the consent decree.

5. IT IS THEREFORE ORDERED that the Defendant shall pay to the Clerk of the District Court a civil penalty in the amount of thirteen thousand, two hundred dollars (\$13,200.00), pursuant to Neb. Rev. Stat. § 81-1508.02, together with court costs herein in the amount of seventy-nine dollars (\$79.00). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

A. Six thousand six hundred dollars (\$6,600.00) of said penalty will be due and owing within ten days of approval of this consent decree

by the Court.

B. Six thousand, six hundred dollars (\$6,600.00) of said penalty will be due and owing within one hundred eighty (180) days following the approval of this Consent Decree by the Court. In the event that Defendant achieves and maintains compliance with the following obligations and provisions, during the time period between the approval of this Consent Decree by the Court and one hundred eighty (180) days, the remaining six thousand six hundred dollars (\$6,600.00) of civil penalties will be waived:

- i. Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.*;
- ii. Livestock Waste Management Act, Neb. Rev. Stat. §54-2401 *et seq.*;
- iii. Title 198 of the Nebraska Administrative Code, Rules and Regulations Pertaining to Agricultural Chemical Containment;
- iv. Title 119 of the Nebraska Administrative Code, Rules and Regulations Pertaining to the Issuance of Permits under the National Pollutant Discharge Elimination System.
- v. The Administrative Order dated May 21, 2007 and Stipulated Amended Administrative Order entered into between NDEQ and Defendant on or around September 27, 2007.

C. To qualify for the \$6,600.00 waiver of civil penalties as stated in paragraph 5(B), Defendant shall file a showing with the Court within 30 (thirty) days following the due date of the civil penalties establishing that it has maintained compliance as required. If the Defendant does not receive a Notice of Violation from Plaintiff and is not a party to a legal action initiated by the Plaintiff disputing compliance with the statutes and regulatory provisions in paragraph 5(B) during the relevant time period, Plaintiff shall file a Satisfaction of Judgment in the case within ten days of receipt of Defendant's showing. If Defendant receives a Notice of Violation from Plaintiff, or is a party to legal action initiated by the Plaintiff disputing compliance with the statutes and regulatory provisions in paragraph 5(A) during the relevant time period, Plaintiff shall file an objection to Defendant's showing and determination of this waiver provision will be stayed pending ongoing enforcement proceedings

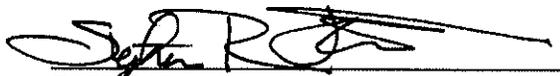
6. IT IS FURTHER ORDERED that the Defendant shall pay, as a voluntary supplemental environmental project, the sum of thirteen thousand, two hundred dollars (\$13,200.00) into the Attorney General's Environmental Protection Fund to be exclusively used for environmental safety, training, public awareness, or other related uses as permitted by state law, at the sole discretion of the Nebraska Attorney General. This payment shall be due and owing to the Attorney General's Environmental Protection Fund within ten (10) days of approval of this Consent Decree by the Court.

7. This Consent Decree will have no effect on any enforcement action brought by Plaintiff against Defendant for future violations of any statutes or regulations.

8. The undersigned consent without further notice to the form and entry of the foregoing Consent Decree.

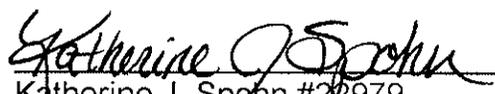
DATED THIS 3 day of OCTOBER, 2007, in Kearney County, Nebraska.

BY THE COURT:

  
DISTRICT JUDGE

STATE OF NEBRASKA ex rel.,  
MICHAEL J. LINDER, DIRECTOR,  
Department of Environmental  
Quality, Plaintiff,

By: JON C. BRUNING #20351  
Attorney General

By:   
Katherine J. Spohn #22979  
Assistant Attorney General  
2115 State Capitol Building  
Lincoln, NE 68509  
Tel. (402) 471-2682  
Attorneys for Plaintiff

COOPERATIVE PRODUCERS, INC.,  
Defendant

By: Bob Efield  
Print: Bob Efield  
Title: CEO

Approved as to Form and Content:

By: William R. Kutilek  
William R. Kutilek, #21505  
Crosby Guenzel LLP  
134 South 13<sup>th</sup> Street, #400  
Lincoln, Nebraska 68508-1981  
(402) 434-7300  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

It is hereby certified that on this 1<sup>st</sup> day of October, 2007, a true and accurate copy of the foregoing Consent Decree has been served upon Defendant herein by placing a copy of the same in the United States Mail, first class postage prepaid, addressed to Defendant's attorney of record,

William R. Kutilek  
Crosby Guenzel, LLP  
134 S 13<sup>th</sup> Street, Suite 400  
Lincoln, NE 68508

Katherine J. Spohn  
Katherine J. Spohn  
Assistant Attorney General

