

IN THE DISTRICT COURT OF SHERMAN COUNTY, NEBRASKA

STATE OF NEBRASKA, ex rel.,)
Michael J. Linder, Director,)
NEBRASKA DEPARTMENT OF)
ENVIRONMENTAL QUALITY)
)
Plaintiff,)
vs.)
LEPRINO FOODS COMPANY,)
)
Defendant.)

Case No. CI07-19 COURT JOURNAL #24
PAGE NO. 286-291

CONSENT DECREE

FILED

07 MAY - 8 AM 8:40

CLERK DISTRICT COURT
SHERMAN COUNTY CLERK

Plaintiff, the State of Nebraska, ex rel., Michael J. Linder, Director, Nebraska Department of Environmental Quality, proceeding on its Complaint filed herein and appearing through its counsel, Jon Bruning, Attorney General, and the Defendant, Leprino Foods Company, a Colorado corporation authorized to do business in Nebraska, 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 as follows:

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 the Defendant under the Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.* (Reissue 1999, Cum. Supp. 2006).

2. In its Complaint, Plaintiff alleges that the Defendant violated provisions of the Nebraska Environmental Protection Act, found at Neb. Rev. Stat. § 81-1501 *et seq.* and the regulations promulgated thereunder.

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. The parties desire to conclude this case without trial or adjudication of any issues of fact or law, without this Consent Decree constituting an admission by the Defendant with respect to such issues. Therefore, and for only the purposes of this Consent Decree, the parties agree to the entry of this Order by the Court.

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 herein, 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 ORDERED that Defendant shall pay into the District Court of Sherman County a penalty of \$9,000 (nine thousand dollars), and the costs of the action in the amount of \$79.00 (seventy-nine dollars). Said penalty is to be handled pursuant to Article VII, Section V, of the Nebraska Constitution.

a. \$4,500 (four thousand five hundred dollars) of said penalty and the costs of the action are to be paid within thirty (30) days of the approval of this Consent Decree by the District Court.

b. The remaining civil penalty of \$4,500 (four thousand five hundred dollars) will be due and owing one hundred eighty (180) days after the approval of this

Consent Decree by the District Court. In the event that Defendant maintains compliance with its obligations and provisions included in the foregoing texts, during the one-hundred-eighty-day period following the Court's approval of this Consent Decree, the remaining \$4,500 (four thousand five hundred dollars) of civil penalties will be waived:

- i. Environmental Protection Act, Neb. Rev. Stat. §81-1501 *et seq.*;
- ii. Defendant's National Pollutant Discharge Elimination System Permit and all conditions and provisions related thereto.

c. If Defendant receives no Notice of Violation from Plaintiff and is not a party to a legal action disputing compliance with the statutes and regulatory provisions in paragraph (5)(b) within the one hundred eighty (180) days after the approval of this Consent Decree by the District Court, then Plaintiff will file a Satisfaction of Judgment with the Court stating such facts and establishing that Defendant qualifies for the civil penalty waiver provision in paragraph 5(b). If Defendant receives a Notice of Violation from Plaintiff or is a party to legal action disputing compliance with the statutes and regulatory provisions in paragraph 5(b) during the relevant time period, then Defendant may file a showing with the Court on or before the due date of the civil penalties asserting its position on whether it has met the waiver requirements set forth in paragraph 5(b). The Court may stay determination of this waiver provision pending ongoing enforcement proceedings.

6. IT IS FURTHER ORDERED that the Defendant shall pay, as a Supplemental Environmental Project, the sum of \$9,000 (nine thousand dollars) into the Attorney General's Environmental Protection Fund to be 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.

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.

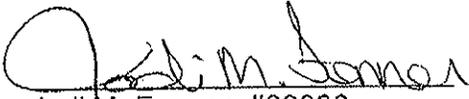
Dated this 7th day of May, 2007, in Sherman County, Nebraska.

BY THE COURT:

Karin Nook
Sherman County District Judge

STATE OF NEBRASKA, ex rel.,
MICHAEL J. LINDER, Director
NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY, Plaintiff.

By: Jon C. Bruning, #20351
Attorney General

By: 
Jodi M. Fenner, #22038
Assistant Attorney General
2115 State Capitol Building
P.O. Box 98920
Lincoln, Nebraska 68509-8920
(402) 471-2682

Attorneys for Plaintiff.

LEPRINO FOODS COMPANY,
Defendant.

By:

David Verhulst

Its:

Vice President Production
Operations

LEPRINO FOODS COMPANY
1830 WEST 38TH AVENUE
DENVER, CO 80211

pc: Jodi M. Fenner
Leprino Foods Co.